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Ninth meeting of the negotiating committee  
of the regional agreement on access to information,  
participation and justice in environmental matters  
in Latin America and the Caribbean

San José, 28 February-4 March 2018

**TEXT COMPILED BY THE PRESIDING OFFICERS INCORPORATING THE LANGUAGE  
PROPOSALS FROM THE COUNTRIES ON THE PRELIMINARY DOCUMENT  
ON THE REGIONAL AGREEMENT ON ACCESS TO INFORMATION,  
PARTICIPATION AND JUSTICE IN ENVIRONMENTAL MATTERS  
IN LATIN AMERICA AND THE CARIBBEAN**

**EIGHTH VERSION**



## NOTE BY THE SECRETARIAT

This document contains the advances made in the review of the preamble and articles 1 to 27 of the text compiled by the Presiding Officers and includes the language proposals made by the countries on the preliminary document on the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean.

The preliminary document was prepared by ECLAC at the request of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in the Santiago Decision, adopted at the fourth meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, held in Santiago from 4 to 6 November 2014,<sup>1</sup> thus launching the negotiations on the regional agreement on access to information, participation and justice in environmental matters.

The first meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean was held in Santiago from 5 to 7 May 2015. On that occasion, the countries adopted the *Organization and work plan of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean*.<sup>2</sup>

At the second meeting of the negotiating committee, held in Panama City from 27 to 29 October 2015, the countries reviewed the preamble, article 1 and part of article 2 of the compiled text. The results of that review were incorporated into a second version of the compiled text (LC/L.4059/Rev.1).

At the third meeting of the negotiating committee, held in Montevideo from 5 to 8 April 2016, the countries concluded the review of article 2 and reviewed articles 3 to 5 (current 4) and part of article 6 (current 5). In addition, the committee adopted the *Modalities for participation of the public in the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean*.<sup>3</sup>

At the fourth meeting of the negotiating committee, held in Santo Domingo from 9 to 12 August 2016, the countries concluded the review of article 6 (current 5) and reviewed part of article 7 (current 6).

At the fifth meeting of the negotiating committee, held in Santiago from 21 to 25 November 2016, the countries concluded the review of articles 7 and 8 (current 6 and 7) and began reviewing article 9 (current 8).

At the sixth meeting of the negotiating committee, held in Brasilia from 20 to 24 March 2017, the countries concluded the review of articles 9 (current 8, 9), 10 (current 10, 11 and 12) and 11 (current 13) and made progress in the analysis of the current articles 14 to 27. The contact groups examined the outstanding issues under articles 6, 7 and 8 (current 5, 6 and 7).

At the seventh meeting of the negotiating committee, held in Buenos Aires from 31 July to 4 August 2017, the countries agreed articles 6, 7 and 8 (current 5, 6 and 7), made progress in the review of articles 9 bis and 10 (current 9, 10, 11 and 12) and discussed the institutional arrangements for the future regional agreement (on the basis of articles 13 to 27 of the compiled text).

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<sup>1</sup> See LC/L.3970, annex A.

<sup>2</sup> LC/L.4011/Rev.1.

<sup>3</sup> See LC/L.4163.

At the eighth meeting of the negotiation committee, held in Santiago from 27 November to 1 December 2017, the countries agreed the articles on the objective (article 1), access to justice (current article 8), human rights defenders in environmental matters (current article 9), capacity-building (currently article 10), cooperation (current article 11) and the clearing house (current article 12). The articles on the principles (article 3) and the general [obligations] [provisions] (current article 4) were partially agreed, and progress was made in the analysis of article 2 (definitions).

Acknowledging the significant progress made in the negotiations of the text compiled by the Presiding Officers, the representatives of the countries participating in the eighth meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean agreed that those advances would be reflected in a eighth version of the document. They also agreed to make every effort to conclude the negotiations at the ninth meeting of the negotiating committee, using the eighth version of the compiled text.

Pursuant to the agreements adopted by the negotiating committee at its eighth meeting,<sup>4</sup> the secretariat is herewith making available to countries and the public an eighth version of the compiled text.

### **Considerations regarding the preamble and current articles 1 to 27**

During its second, third, fourth, fifth, sixth, seventh and eighth meetings, the negotiating committee reviewed the paragraphs of the preamble and articles 1 to 27. Current articles 1, 5, 6, 7, 8, 9, 10, 11 and 12 were agreed in their entirety, as is indicated at the beginning of each article. Paragraphs under other articles on which consensus was reached in the meeting room were marked as “agreed”.

Pursuant to the *Organization and work plan of the negotiating committee* and as requested by the countries, the secretariat compiled the inputs submitted by the public on the preliminary document prepared by ECLAC in a separate document.<sup>5</sup>

All the original communications received from the countries, as well as the inputs submitted by the public, may be consulted online at:

<http://www.cepal.org/en/input-preliminary-document>,  
<http://negociacionp10.cepal.org/2/en/additional-input-for-the-meeting>,  
<http://negociacionp10.cepal.org/3/en/node/16>,  
<http://negociacionp10.cepal.org/4/en/additional-input>,  
[http://negociacionp10.cepal.org/5/en/additional\\_input](http://negociacionp10.cepal.org/5/en/additional_input),  
<http://negociacionp10.cepal.org/6/en/node/10>,  
<https://negociacionp10.cepal.org/7/en/node/8>, and  
<https://negociacionp10.cepal.org/8/en/node/76>.

<sup>4</sup> See the agreements [online] <https://negociacionp10.cepal.org/8/en/documents/agreements-meeting>.

<sup>5</sup> See “Compilation of inputs submitted by the public. Note by the Secretariat (DDR/1)”.

## PREAMBLE

*The Parties to the present Agreement,*<sup>1</sup>

**1 ante. Reaffirming the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law. We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status, [Brazil, Argentina] [Not revised in the meeting room]**

1. *Reaffirming* all of the principles of the 1992 Rio Declaration on Environment and Development (hereinafter, “Rio Declaration”) and particularly Principle 10 thereof, which establishes, “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”, [Agreed]

**1 bis. Reaffirming that the Heads of State and Government and High Representatives undertook a commitment through the 2030 Agenda for Sustainable Development to achieve sustainable development in its three dimensions —economic, social and environmental— in a balanced and integrated manner, to eradicate poverty in all its forms and dimensions, to ensure the lasting protection of the planet and its natural resources and to promote inclusive economic growth, [Mexico] [Not revised in the meeting room]**

**1 ter. Reiterating that “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”, in accordance principle 21 of the Stockholm Declaration on the Human Environment and principle 2 of the Rio Declaration on Environment and Development, [Mexico] [Not revised in the meeting room]**

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<sup>1</sup> Brazil submits the following suggestion: “Taking into account the Santiago Decision, in which the countries decided to establish a committee to negotiate a “regional instrument” (paragraph 2) whose nature would be defined “during the negotiation process” (paragraph 11), Brazil reiterates its preference for the use of the term “instrument” instead of “agreement” since the former prejudices the legal nature of the future instrument. Brazil therefore requests that the documentation of past and future meetings of the negotiating committee be revised in order to reflect this change.”

2. *Recalling* the Declaration of the United Nations Conference on the Human Environment, Agenda 21, the Programme for the Further Implementation of Agenda 21, the Declaration of Barbados and the Programme of Action for the Sustainable Development of Small Island Developing States, the Mauritius Declaration and the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States, the Johannesburg Declaration on Sustainable Development, the Plan of Implementation of the World Summit on Sustainable Development and the Small Island Developing States Accelerated Modalities of Action (Samoa Pathway), [Agreed]
3. *Recalling also* that, in the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro (Brazil) in June 2012, entitled “The future we want”, among the many provisions referring to Principle 10 of the Rio Declaration, the Heads of State and Government and high-level representatives acknowledged that democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment, were essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and eradication of poverty and hunger; underscored that broad public participation and access to information and judicial and administrative proceedings were essential to the promotion of sustainable development; and encouraged action at the regional, national, subnational and local levels to promote access to information, public participation in decision-making and access to justice in environmental matters, as appropriate, [Agreed]
4. *Recalling further* the adoption, at the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, from 20 to 22 June 2012, of the Declaration on the application of Principle 10 of the Rio Declaration, reaffirming the commitment to the rights of access to information, participation and justice regarding environmental matters, recognizing the need to make commitments to ensure the full exercise of those rights and declaring a willingness to launch a process to explore the feasibility of adopting a regional instrument, [Agreed]
5. *Emphasizing* that the countries of Latin America and the Caribbean have underscored the importance of the application of Principle 10 of the Rio Declaration in the framework of the United Nations Environment Assembly of the United Nations Environment Programme, the Human Rights Council, the Forum of Ministers of the Environment of Latin America and the Caribbean, sessions of ECLAC and the Community of Latin American and Caribbean States (CELAC), among others,
6. *Emphasizing also* that national laws, instruments and practices have led to advances in the implementation of access rights,

**Suggested redraft of paragraph 6:**

***Emphasizing also* that the national laws, instruments and practices of the signatory countries of the Declaration on the application of Principle 10 have led to advances in the implementation of access rights and that national laws and practices are the main parameters for reaching agreements on and applying the rights and obligations under the present Agreement [Mexico] [Not revised in the meeting room]**

6 bis *Recalling* regional and global developments in the area of rights of access in forums such as [Mexico: ~~*Recalling*~~ regional and global developments in the area of rights of access in forums such as ***Recalling the progress made on access through the agreements and declarations adopted in regional and global forums, such as***] the Port of Spain Accord on the Management and Conservation of the Caribbean Environment, the Port of Spain Consensus of the Caribbean Regional Economic Conference, the St. George's Declaration of Principles for Environmental Sustainability and the Treaty of Basseterre of the Organization of Eastern Caribbean States, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and its Protocol on Pollutant Release and Transfer Registers, the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines), the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making, [Peru: **the Convention concerning Indigenous and Tribal Peoples, 1989 (No. 169) of the International Labour Organization, the United Nations Declaration on the Rights of Indigenous Peoples**], the Model Inter-American Law on Access to Public Information and the Open Government Partnership, among others,

7. *Resolved* to make commitments to ensure the full exercise of the rights of access to information, participation and justice in environmental matters enshrined in Principle 10 of the Rio Declaration, understanding these to be important prerequisites for building a citizenry that is committed to sustainable development in line with a rights-based approach [Colombia: ~~in line with a rights-based approach~~],

**Suggested redrafts of paragraph 7:**

***Resolved* to make even more significant progress towards the full implementation of access rights enshrined in Principle 10 of the Rio Declaration, taking into account the provisions of the road map for the creation of an instrument on the application of Principle 10 in Latin America and the Caribbean and the Lima Vision for a regional instrument on access rights relating to the environment, recognizing that “an instrument for Latin America and the Caribbean will contribute to ensuring effective and timely access to environmental information, participation in decisions that affect the environment and access to justice in environmental matters for all”, [Mexico] [Not revised in the meeting room]**

***Resolved* to forge a system of rights and obligations for the full implementation of the rights of access to information, participation and justice in environmental matters, as enshrined in Principle 10 of the Rio Declaration, recognizing these to be important for building a citizenry that is committed to sustainable development, [Mexico] [Not revised in the meeting room]**

8. *Recognizing* that everyone has the right to a healthy environment [Ecuador, Plurinational State of Bolivia: **to be exercised**] in harmony with nature, [Colombia, Mexico: ~~in harmony with nature~~] which is essential for the full development of human beings and for the achievement of sustainable development [Brazil, Mexico, Colombia, Jamaica, Peru: **in its three dimensions (social, economic and environmental) in a balanced manner**], poverty eradication, equality, and the preservation and stewardship of the environment for the benefit of present and future generations [Brazil, Mexico, Colombia: ~~poverty eradication, equality, and the preservation and stewardship of the environment for the benefit of present and future generations~~]

9. *Taking into account* that exercising access rights deepens and strengthens [Mexico: **contributes to strengthening**] democracy and contributes to better protection of the environment and thus of human rights, [Mexico: ~~and contributes to better protection of the environment and thus of human rights and to better protection of the environment,~~]
10. *Reaffirming* the obligations assumed by the Parties [Colombia: ~~by the Parties~~] to respect, protect and fulfil the right to freedom of thought, expression, assembly and association [Colombia: ~~and association~~ **assembly, association and privacy**], and the right to information, participation in public affairs and access to justice, among others, established in international human rights law,<sup>2</sup> [Colombia: ~~established in international human rights law~~ **in accordance with the obligations enshrined in the relevant instruments established in international human rights law and domestic laws of the signatory countries to the declaration,**] [Mexico: *Reaffirming* the obligations assumed to respect, protect and fulfil access rights under the present Agreement,]
11. *Emphasizing* that access rights are interrelated and interdependent, and so each and every one of them should be promoted and implemented in an integrated and balanced manner, [agreed]
12. *Bearing in mind* that access to information is fundamental in all democratic societies and that it is essential to take active measures to bring environmental information into the public domain, doing everything possible to guarantee [Brazil, Saint Vincent and the Grenadines, Argentina: ~~guarantee~~ **promote**] ready, rapid, effective and practical access to that information, [Colombia: ~~doing everything possible to guarantee ready, rapid, effective and practical access to that information,~~ **within the specific circumstances of each State,**]

**Suggested modification to paragraph 12:**

***Bearing in mind* that access to information is key to making progress towards sustainable development, to which end it is essential to take timely, faithful measures to bring environmental information into the public domain in order to enable the public to participate responsibly and give objective opinions in decision-making processes that affect the public's well-being and environment, taking into account the characteristics of and in accordance with national legal frameworks, [Mexico]**

13. *Reaffirming* that it is essential to promote participation by all sectors of society in furthering the issues that form the region's environmental agenda, as an important part of [Brazil: ~~furthering the issues that form the region's environmental agenda, as an important part of~~] the process of building and establishing a collective awareness [Brazil, Costa Rica, Panama, El Salvador, Guatemala, Peru: ~~building and establishing a collective awareness~~ **raising awareness**] of the diverse natural and cultural heritage of our peoples, in order to advance social inclusion, enhance solidarity, eradicate poverty and inequality and restore the balance and the health and integrity of our planet,

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<sup>2</sup> Brazil suggests replacing paragraph 10 with paragraph 1 ante.



**Suggested redraft of paragraph 13:**

***Reaffirming that the participation of society in the formulation and application of an environmental agenda by the countries contributes to the conservation and the sustainable use of natural resources and the achievement of sustainable development,*** [Mexico]

14. *Recalling* that, as a fundamental pillar of Principle 10, constraints on or the lack of suitable means by which to access justice in environmental matters deprives people of the “right to rights” by denying them or limiting real ways to exercise them, and that the principles underpinning rule of law, as well as equality, accessibility and effectiveness, must be guaranteed [Colombia: ~~guaranteed~~ **maintained**] not only at the start but all the way through the settlement process,

**Suggested redrafts of paragraph 14:**

***Recalling that, as a fundamental pillar of Principle 10, suitable means by which to access justice in environmental matters must be available to all, and that the principles underpinning the rule of law, as well as equality, accessibility and effectiveness, must be guaranteed not only at the start, but all the way through the settlement process,*** [secretariat at the request of Argentina] [Not revised in the meeting room]

***Bearing in mind that access to justice in environmental matters will benefit from independent, effective and accessible judicial processes,*** [Mexico]

15. *Recognizing* that cooperation, in all its modalities, and institutional capacity-building are essential for the full implementation of access rights,

**Suggested redraft of paragraph 15:**

***Recognizing that cooperation with a view to strengthening institutional capacities and actions to raise awareness and develop capacities at different levels in government and society contribute to promoting access rights and sustainable development,*** [Mexico]

16. *Bearing in mind* also that it is necessary to promote environmental education in order to, inter alia, raise awareness<sup>3</sup> among the public sector and the public, in order to contribute to the effective implementation of access rights, and provide people with the knowledge, skills and understanding they need to participate in environmental decision-making,
17. *Underscoring* the important contribution and fundamental role of the public and social organizations, [Antigua and Barbuda, Jamaica: **including faith-based organizations,**] and especially women, children and youth, indigenous peoples [Ecuador: **and nationalities**] [Honduras: **and ethnic groups**] and other groups and constituencies in the effective implementation of access rights and the attainment of sustainable development,

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<sup>3</sup> Colombia expresses reservations on the term “awareness-raising”.

**Suggested redraft of paragraph 17:**

***Underscoring the importance of public participation and recognizing that social organizations, women, boys, girls, youth, indigenous peoples, the public sector, the private sector and other groups and communities can contribute to the effective implementation of access rights and the achievement of sustainable development, [Colombia, Mexico, Brazil]***

18. *Reiterating* that, regardless of the measures agreed upon in order to strengthen the full implementation of access rights, nothing shall preclude, and the Parties<sup>4</sup> shall be encouraged to adopt, additional measures to ensure even broader access to information, participation and justice in environmental matters,

**Suggested redraft of paragraph 18:**

***Reiterating that, regardless of the measures agreed upon in order to strengthen the full implementation of access rights, the Parties may adopt additional measures, consistent with national legislation, to promote the application of rights of access to information, participation and justice in environmental matters, [Mexico]***

19. *Recognizing* the multiculturalism of the Latin America and the Caribbean region and the different cosmovisions<sup>5</sup> of its peoples, [Agreed]
20. *Convinced* that the present Agreement will help [Brazil: ~~that the present Agreement will help of the need to~~] generate synergies at the international, regional and national levels with a view to supporting implementation in Latin America and the Caribbean of the United Nations 2030 Agenda for Sustainable Development,<sup>6</sup>

**20 bis. *Reaffirming* the commitments enshrined in the outcome document of the United Nations summit for the adoption of the post-2015 development agenda, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, which recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development, on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions. We underscore the importance of the Sustainable Development Goals included in the 2030 Agenda, in particular, among others, Goal 16, which seeks to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels, [Brazil] [Not revised in the meeting room]**

21. *Convinced* that the present Agreement will promote and strengthen [Brazil: ~~that the present Agreement will promote and strengthen of the need to promote and strengthen~~] dialogue, cooperation and technical assistance and help to generate synergies for the implementation of access rights,<sup>7</sup> [Colombia: **in line with national priorities and needs**]

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<sup>4</sup> Colombia expresses reservations on the term “Parties”.

<sup>5</sup> Jamaica expresses reservations on the term “cosmovisions”.

<sup>6</sup> Colombia and Mexico express reservations on the drafting of the paragraph.

<sup>7</sup> Mexico and Panama suggest considering the drafting of paragraph 20. Colombia suggests considering the drafting of paragraph 15.

**Suggested additional preambular paragraph:**

**21 bis. Recognizing that States should promote and take appropriate and necessary measures with a view to achieving progressively the full exercise and enjoyment of rights of access to information and participation [Saint Vincent and the Grenadines: and justice] in environmental issues, and that, in order to ensure their realization, States must refrain from adopting measures that could hinder the effectiveness and guarantee of the right of access to information and participation [Saint Vincent and the Grenadines: and justice] in environmental issues, [Colombia, Dominican Republic]<sup>8</sup>**

*Have agreed as follows:*

Article 1  
Objective<sup>9</sup> [Agreed]

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

Article 2  
Definitions<sup>10</sup>

For the purposes of the present Agreement:

“**Access rights**” means the rights of access to environmental information, public participation in the decision-making process [Brazil and Mexico: **in environmental matters**] and access to justice in environmental matters, as enshrined in Principle 10 of the Rio Declaration.

“**Competent authority**” means any public body that, by legal mandate, exercises the powers, authority and functions for the application of access rights. In the right of access to information provisions set out under article 5 the present Agreement, a competent authority shall mean any public authority in any branch of the State (executive, legislative and judicial) and at any level of the internal government structure (central or federal, regional, provincial or municipal); it also applies to independent and autonomous bodies, organizations and entities owned or controlled by the government, whether by virtue of powers granted by the Constitution or other laws, as well as to private organizations that receive substantial 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.

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<sup>8</sup> Costa Rica, Panama and Chile express reservations on the inclusion of the new paragraph.

<sup>9</sup> Harmonize “access rights” so that the text is consistent with article 2.

<sup>10</sup> At the eighth meeting of the negotiating committee, the countries agreed to work on the following definitions: access rights, competent authority, environmental information, public, and persons or groups in vulnerable situations. They also agreed to discuss the definition of human rights defenders in environmental matters within this article.

**Suggested redraft of article 2, definition of “competent authority”:**

**“Competent authority” means any public body or institution that, by legal mandate, and within the sphere of its powers, is responsible for the application of access rights in accordance with the provisions of the legislation of the respective State party.** [Mexico, Colombia]<sup>11</sup>

**Suggested addition of definition of “public authority involved”** [Brazil, Mexico, Argentina]

**“Persons in vulnerable situations”** [Jamaica, Antigua and Barbuda: **“Vulnerable groups”**] means those persons [Costa Rica, Uruguay, Chile: **or groups**] who, because of their age, gender, physical or mental condition, or social, economic, ethnic and/or cultural circumstances, face particular difficulties in fully exercising the access rights recognized in this Agreement. The causes of vulnerability may include, [Trinidad and Tobago: **inter alia,**] age, disability, belonging to [Colombia: **ethnic groups,**] indigenous communities or minority groups, victimization, migration and internal displacement, [Colombia: **armed conflict,**] poverty, gender and deprivation of liberty. The determination of persons in vulnerable situations in each country shall depend on its specific characteristics, including its level of social and economic development.<sup>12</sup> [Mexico, Jamaica, Brazil, Antigua and Barbuda: **all the foregoing consistently with its national legislation**].

**“Environmental information”** means any information that is written, visual, audio, electronic or recorded in any other form, concerning the state of the environment and natural [Costa Rica: **cultural and genetic**] resources [El Salvador: **traditional knowledge and genetic resources**], including information on possible adverse impacts associated with the environment [Brazil: **in the context of sustainable development**] and human health [Colombia, Plurinational State of Bolivia: **public health**] [Costa Rica, El Salvador: ~~human~~ health]

- (a) the state of the biotic and abiotic elements of the environment, such as the air and atmosphere, water, earth, landscapes, protected areas, biological diversity and its components, including genetically modified organisms; and the interaction between these elements;

**Suggested deletion of letter (a) of the definition of “environmental information”** [Mexico, Colombia, Honduras, Costa Rica, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider these subparagraphs in other articles of the text]

- (b) factors, such as substances, energy, noise, radiation and waste, including radioactive waste, emissions, spills and other releases into the environment, that affect or could affect elements of the environment;

**Suggested deletion of letter (b) of the definition of “environmental information”** [Mexico, Colombia, Honduras, Costa Rica, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider these subparagraphs in other articles of the text]

- (c) legislation, administrative acts related to environmental matters or that affect or could affect the elements and factors cited in subparagraphs (a) and (b), and the measures, policies, rules, plans, programmes that support them;

<sup>11</sup> Uruguay expresses reservations.

<sup>12</sup> Mexico suggests including environmental matters among causes of vulnerability. Colombia suggests a more general definition.

**Suggested deletion of letter (c) of the definition of “environmental information”** [Mexico, Colombia, Honduras, Costa Rica, Uruguay, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider these subparagraphs in other articles of the text]

(d) reports and administrative acts on compliance with environmental legislation;

**Suggested deletion of letter (d) of the definition of “environmental information”** [Mexico, Colombia, Honduras, Costa Rica, Uruguay, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider these subparagraphs in other articles of the text]

(e) economic and social analyses, as well as other studies used to make decisions related to the legislation, administrative acts and supporting mechanisms referred to in subparagraph (c);

**Suggested deletion of letter (e) of the definition of “environmental information”** [Mexico, Colombia, Honduras, Costa Rica, Uruguay, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider these subparagraphs in other articles of the text]

(f) the state of the health and safety of individuals, living conditions, cultural assets [Jamaica: ~~assets~~ **sites and built structures**], when these are or could be affected by the state of the elements of the environment cited in subparagraph (a) or any of the factors or measures indicated in subparagraphs (b) and (c);

**Suggested deletion of letter (f) of the definition of “environmental information”** [Mexico, Colombia, Honduras, Costa Rica, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider these subparagraphs in other articles of the text]

(g) acts, resolutions, and decisions on matters related to the environment that are issued by the national judicial and/or administrative bodies; and

**Suggested deletion of letter (g) of the definition of “environmental information”** [Mexico, Colombia, Honduras, Costa Rica, Uruguay, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider these subparagraphs in other articles of the text]

(h) any other information on the environment or on elements, components or concepts related thereto [Antigua and Barbuda: **for the protection of the environment for the present and future generations and protection of human health**].

**Suggested deletion of letter (h) of the definition of “environmental information”** [Mexico, Colombia, Honduras, Costa Rica, Uruguay, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider these subparagraphs in other articles of the text]

**Suggested additional letter in the definition of “environmental information”:**

**(i) Community knowledge and traditional knowledge, practices of indigenous peoples and innovations, practices and knowledge acquired through generations.** [Antigua and Barbuda]

**(i bis) Information on the income the State receives from the exploitation of its natural resources.** [Peru]

**Suggested redraft in article 2, definition of “environmental information”:**

**“Environmental information” means any information that is written, visual, audio, and electronic, or recorded in any other form, regarding, inter alia, the state of the environment and its elements, natural resources, biodiversity, including genetic resources, and information on possible adverse impacts associated with factors affecting or likely to affect the environment and human health, and issues related to environmental management.** [Trinidad and Tobago, Chile, Jamaica, Grenada]

**“Public participation”** means the process by which natural or legal persons, individually or collectively, contribute to decision-making on environmental matters through different modalities of participation that are institutionalized or otherwise established in accordance with national legislation or practice.

**“Public”** means one or more natural or legal persons and, their associations, organizations or groups, [Jamaica, Mexico, Brazil, Plurinational State of Bolivia, Colombia, Honduras, Argentina: **in accordance with national legislation or practice**].

**“Directly affected public”** means public affected or potentially affected by decisions with environmental impacts [Mexico: ~~with environmental impacts~~ **taken, in accordance with the provisions of national legislation and practices**]. [Costa Rica, Argentina, Colombia, Plurinational State of Bolivia, Brazil, Honduras, Panama, Dominican Republic: suggest deleting this definition]

**Suggested redraft of definition of “directly affected public”:**

**“Directly affected public” means the public that, owing to place of residence or other characteristics, perceives particular advantages or disadvantages as a result of the decision at hand.** [Panama] [not revised in the meeting room] [Costa Rica, Argentina, Colombia, Plurinational State of Bolivia, Brazil, Honduras, Dominican Republic: suggest deleting this definition]

**“Public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making.** [Uruguay, Peru, Ecuador] [Costa Rica, Argentina, Colombia, Plurinational State of Bolivia, Brazil, Honduras, Panama, Dominican Republic: suggest deleting this definition]

**“Public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making. For the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law** [Jamaica] [Saint Vincent and the Grenadines, Chile: ~~and meeting any requirements under national law~~] **shall be deemed to have an interest.** [Costa Rica, Argentina, Colombia, Plurinational State of Bolivia, Brazil, Honduras, Panama, Dominican Republic: suggest deleting this definition]

**“Decision-making in environmental matters”**<sup>13</sup> means the development, implementation, compliance [Panama: ~~compliance~~], [Brazil: **monitoring**] and evaluation of laws and regulations [Panama, Plurinational State of Bolivia, Peru, Mexico: ~~laws and regulations~~ **normative frameworks**], policies, plans, strategies, programmes, projects —whether [Mexico: ~~whether~~] public or private liable to affect the environment or the use, exploitation or conservation of natural resources [Costa Rica, Uruguay: **conservation and sustainable use of natural resources** ~~the use, exploitation or conservation of natural resources~~] at all levels of the internal government structure (central or federal, regional, provincial or municipal). [Mexico: ~~at all levels of the internal~~

<sup>13</sup> Brazil requests that “environmental decision-making” be replaced with “decision-making on environmental matters” throughout the whole document.

~~government structure (central or federal, regional, provincial or municipal), in accordance with national legislation and practices].~~

**Suggested deletion of the definition of “environmental decision-making” [Colombia]**

**Suggested addition of the following definitions:**

**“Access to justice” means any judicial process through which an expeditious and comprehensive resolution to a legal conflict of an environmental nature is sought [Colombia: from national jurisdictional bodies] [Chile: from national jurisdictional and administrative bodies], under equal conditions of the parties [Paraguay: to the litigation] [Chile: to the proceedings], with a view to obtaining an individually and socially fair outcome. [Argentina] [Uruguay, Colombia, Chile: ~~under equal conditions of the parties, with a view to obtaining an individual and socially fair outcome]~~**

**“Access to justice” means the removal of barriers, inter alia, legal, social, and financial, to allow persons to seek redress on environmental matters through any [formal or informal] institution of justice, while affording equal treatment for all parties. [Saint Lucia]**

**“Environmental justice” means the possibility that legal conflicts of an environmental nature receive from the jurisdictional bodies expeditious and full settlement, which, to the degree that it can be achieved by the courts of justice, will contribute to environmental protection and the promotion of sustainable development. [Argentina] [Uruguay, Paraguay, Saint Lucia, Colombia: delete this definition]**

**“Environmental impact assessment” [Jamaica]**

**“Open data” [Agreed to include definition]**

**“Human rights defenders in environmental matters” means those individuals, groups or organizations that protect and promote the environment and human rights related to the environment. [Moved from current article 9]**

### Article 3 Principles

In implementing the present Agreement, each Party shall be guided by the following principles: [Agreed]

- a. Principle of equality and non-discrimination; [Agreed]
- b. Principle of transparency and accountability; [Agreed]
- c. Principle of non-regression and progressive realization; [Agreed]
- d. Principle of good faith; [Agreed]
- e. Preventive principle;
- f. Precautionary principle;
- g. Principle of intergenerational equity; [Agreed]
- h. Principle of maximum disclosure. [Agreed]

**Suggested addition of principles:**

- i. **Sovereignty of States over their natural resources.** [Mexico, Argentina] [Uruguay: include in preamble instead of here]
- j. **Legal equality of States** [Paraguay] [Argentina: ~~legal sovereign~~] [Uruguay: include in preamble instead of here]
- k. **Pro persona** [Panama, Chile, Costa Rica, Argentina, Brazil, Uruguay, Jamaica, Trinidad and Tobago, Antigua and Barbuda, Saint Lucia, Grenada]<sup>14</sup>

Article 4General [obligations] [provisions]

1. Each Party shall guarantee the right of every person to live in a healthy environment and any other universally-recognized human right related to the present Agreement. [Agreed]
2. Each Party shall ensure that the rights recognized in the present Agreement are freely exercised.<sup>15</sup>
3. Each Party shall adopt the necessary measures, inter alia, legislative, regulatory, administrative or any other, in the framework of its domestic provisions, to guarantee the implementation of the provisions of the present Agreement.<sup>16</sup> [Agreed]
4. With the aim of contributing to the effective application of the present Agreement, each Party shall provide the public with knowledge and information on access rights in environmental matters.<sup>17</sup> [Agreed]
5. Each Party shall ensure that guidance and assistance is provided to the public —particularly those persons and groups in vulnerable situations— in order to facilitate their access to information, participation in decision-making and justice in environmental matters.<sup>18</sup> [Agreed]
6. Each Party shall guarantee an enabling environment for the work of persons, associations, organizations or groups that promote environmental protection, by recognizing and protecting them.<sup>19</sup> [Agreed]
7. No provision in the present Agreement shall limit or repeal other more favourable rights and guarantees set forth, at present or in the future, in the legislation of a State Party or in any other international agreement to which a State is party, or prevent a State Party from granting broader access to information, participation and justice in environmental matters. [Agreed]
8. Each Party shall seek to adopt the most favourable interpretation for the full enjoyment of and respect for the rights of access to information, participation and justice in environmental matters when implementing the present Agreement. [Agreed]

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<sup>14</sup> Bolivia (Plurinational State of), Colombia and Honduras express reservation.

<sup>15</sup> [Editor's note] The original proposal made by Brazil was: Each Party shall ensure that the rights recognized in the present Agreement are freely exercised before any authority that carries out public functions or whose activities significantly affect the environment.

<sup>16</sup> Colombia expresses reservations.

<sup>17</sup> Mexico: pending harmonization of the text and consistency with other articles.

<sup>18</sup> Mexico: pending harmonization of the text and consistency with other articles.

<sup>19</sup> Mexico: pending harmonization of the text and consistency with other articles.



9. For the implementation of the present Agreement, the use of new information and communications technologies, such as, inter alia, open data, in the different languages used in the country shall be encouraged, as appropriate. In no circumstances shall the use of electronic media constrain or result in discrimination against the public.<sup>20</sup> [Agreed]
10. The Parties may promote knowledge of the provisions of the present Agreement in other international forums related to environmental matters, in accordance with the rules of each forum. [Agreed]

Article 5  
Access to environmental information<sup>21</sup> [Agreed]

*Accessibility of environmental information*

1. Each Party shall ensure the public's right of access environmental information in its possession, control or custody in accordance with the principle of maximum disclosure.
2. The exercise of the right of access to environmental information includes:
  - (a) requesting and receiving information from **public 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 **public authority** receiving the request; and
  - (c) being informed of the right to appeal and the requirements for exercising this right, when information is not delivered.
3. Each Party shall facilitate access to environmental information for individuals and/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.

Each Party shall guarantee that the above-mentioned individuals and/or groups in vulnerable situations, including members of indigenous peoples and ethnic groups, receive assistance in preparing their requests and obtain a response.

*Refusal of access to environmental information*

4. If the requested information or part thereof is not delivered to the petitioner because it falls under the domestic legal regime of exceptions, the **public authority** shall communicate its refusal in writing, including the legal provisions invoked to withhold it and the reasons justifying the decision in each case, and inform the petitioner of the right to appeal.
5. When refusing access to information, domestic legislation may be applied. In cases where a Party does not have a domestic legal regime of exceptions, that Party may apply the following exceptions:

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<sup>20</sup> Mexico: pending harmonization of the text and consistency with other articles.

<sup>21</sup> Text in bold pending harmonization with definitions and consistency with other articles.

- (a) when disclosure would put at risk the life, safety or health of individuals;
  - (b) when disclosure would adversely affect would put at risk the life, safety or health of individuals;
  - (c) when disclosure would adversely affect the protection of the environment, including any endangered or threatened species;
  - (d) when disclosure would create a clear, probable and specific risk of substantial harm to law enforcement, prevention, investigation and prosecution of crime.
6. The exception regimes shall take into account each Party's human rights obligations. Each Party shall encourage the adoption of exception regimes that favour the disclosure of information.
  7. The reasons for refusal shall be legally established in advance, clearly defined and regulated taking into account the public interest and thus interpreted restrictively. The burden of proof will lie with the **public authority**.
  8. When applying the public interest test, the **public authorities** shall weigh the interest of withholding the information against the public benefit of disclosing it, based on suitability, need and proportionality.
  9. Where not all the information contained in a document is exempt under paragraph 5 of the present article, the non-exempt information shall be provided to the applicant.

*Conditions applicable to the delivery of environmental information*

10. The **public authorities** shall guarantee that the environmental information is provided in the format requested by the petitioner, if available. In the absence of such a format, the environmental information shall be provided in the format in which it is available.
11. The **public authorities** shall respond to requests for environmental information as quickly as possible and within a period not longer than 30 business days from the date of receipt of the request, or less if so stipulated in domestic legislation.
12. Where, in exceptional circumstances under domestic legislation, the **public authority** requires more time to respond to the request, it shall notify the petitioner in writing of the justification for the extension prior to the expiration of the period established in paragraph 11 of the present article. Such an extension shall not exceed 10 business days.
13. In the event that the **public authority** does not respond within the periods established in paragraphs 11 and 12 of the present article, **paragraph 2 of article 8 shall apply**.
14. When the **public authority** receiving the request does not have the requested information, it shall notify the petitioner as quickly as possible, indicating, where possible, which authority may be in possession of the information. The request shall be forwarded to the relevant authority, and the petitioner so informed.
15. When the requested information does not exist or has not yet been generated, the petitioner shall be so notified within the period established in paragraphs 11 and 12 of the present article.

16. Environmental information shall be made public at no cost, insofar as its reproduction and/or delivery is not required. Reproduction and delivery costs shall be applied in accordance with the procedures established by the **public authority**. Such costs shall be reasonable and made known in advance, and payment can be waived in the event that the petitioner is deemed to be in a vulnerable situation or to have special circumstances warranting such a waiver.

*Independent oversight mechanisms*

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

Article 6

Generation and dissemination of environmental information<sup>22</sup> [Agreed]

1. Each Party shall guarantee, to the extent possible within available resources, that the **public authorities** generate, collect, publicize and disseminate environmental information relevant to their functions in a systematic, proactive, timely, regular, accessible and comprehensible manner, and periodically update this information and encourage the disaggregation and decentralization of environmental information at the subnational and local levels. Each Party shall strengthen coordination between the different authorities of the State.
2. The **public authorities** shall endeavour to ensure, to the extent possible, that environmental information is reusable, processable and available in formats that are accessible, and that no restrictions are placed on its reproduction or use, in accordance with domestic legislation.
3. Each Party shall have in place one or more up-to-date environmental information systems, which may include, inter alia:
  - (a) the texts of international treaties and agreements, as well as environmental laws, regulations and administrative acts;
  - (b) reports on the state of the environment;
  - (c) a list of public entities competent in environmental matters, and where possible, their respective areas of operation;
  - (d) a list of polluted areas, by type of pollutant and location;
  - (e) information on the use and conservation of natural resources and ecosystem services;
  - (f) scientific, technical or technological reports, studies and information on environmental matters produced by academic and research institutions, public or private, national or foreign;
  - (g) climate change sources aimed at building national capacities;

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<sup>22</sup> Text in bold pending harmonization with definitions and consistency with other articles.

- (h) information on environmental impact assessment processes and on other environmental management instruments, where applicable, and/or environmental licences or permits granted by the competent authorities;
- (i) an estimated list of waste by type and, when possible, by volume, location and year; and
- (j) information on the imposition of administrative sanctions in environmental matters.

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

4. Each Party shall take steps to establish a pollutant release and transfer register for the air, water, soil and subsoil, materials and waste in its jurisdiction. This register will be established progressively and updated periodically.
5. Each Party shall guarantee that in the case of an imminent threat to public health or the environment, the relevant **public authority** shall immediately disclose and disseminate through the most effective means all pertinent information in its possession that could help the public take measures to prevent or limit potential damage. Each Party shall develop and implement an early warning system using available mechanisms.
6. In order to facilitate access by **individuals and/or groups in vulnerable situations** to information that particularly affects them, each Party shall endeavour, where applicable, to ensure that the **public authorities** disseminate environmental information in the various languages used in the country, and prepare alternative formats that are comprehensible to those groups, using suitable channels of communication.
7. Each Party shall use its best endeavours to publish and disseminate at regular intervals, not to exceed five years, a national report on the state of the environment, which may contain:
  - (a) information on the state of the environment and natural resources, including quantitative data, where possible;
  - (b) national actions to fulfil environmental legal obligations;
  - (c) advances in the implementation of the access rights under the present Agreement;<sup>23</sup> and
  - (d) collaboration agreements among public, social and private sectors.

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

Each Party may invite the public to make contributions to these reports.

8. Each Party shall encourage independent environmental performance reviews that include nationally or internationally agreed criteria and guides and common indicators, with a view to evaluating the efficacy, effectiveness and progress of its national environmental policies in fulfilment of their national and international commitments. The reviews should include participation by the various stakeholders.

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<sup>23</sup> To be considered when examining art. 19.

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

#### Article 7

#### Public participation in environmental decision-making<sup>24</sup> [Agreed]

1. Each Party shall ensure the public's right to participation and for that purpose shall commit to implement open and inclusive participation in environmental decision-making processes based on domestic and international normative frameworks.
2. Each Party shall guarantee mechanisms for the participation of the public in decision-making processes, revisions, re-examinations or updates with respect to projects and activities and other processes for granting environmental permits that have or may have a significant impact on the environment, including when they may affect health.
3. Each Party shall promote the participation of the public in other decision-making processes, revisions, re-examinations or updates than those referred to in paragraph 2 of the present article with respect to environmental matters of public interest, which have or may have a significant impact on the environment, such as land-use planning, policies, strategies, plans, programmes, rules and regulations, among others.
4. Each Party shall adopt measures to ensure that the public can participate in the decision-making process from the early stages,<sup>25</sup> so that due consideration can be given to the observations of the public, thus contributing to the process.

To that effect, each Party shall provide the public with the necessary information in a timely, clear and comprehensible manner, to give effect to its right to participate in the decision-making process.

5. The public participation procedure will provide for reasonable timeframes that allow sufficient time to inform the public and for its effective participation.

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<sup>24</sup> Text in bold pending harmonization with definitions and consistency with other articles.

<sup>25</sup> Include "early stage" in the definitions. Panama: When defined include, "when all the options are open".

6. The public shall be informed, through appropriate means, such as in writing, electronic, oral and customary methods, and in a timely, comprehensible and effective manner, as a minimum, of the following:
  - (a) the type or nature of the environmental decision under consideration and, where appropriate, in non-technical language;
  - (b) the authority responsible for making the decision and other authorities and bodies involved;
  - (c) the procedure foreseen for the participation of the public, including the date on which the procedure will begin and end, mechanisms for participation and, where applicable, the date and place of any public consultation or hearing; and
  - (d) the **public authorities** involved from which additional information on the environmental decision under consideration can be requested and the procedure for requesting information.
7. The public's right to participate in environmental decision-making processes shall include the opportunity to present observations through appropriate means available, according to the circumstances of the process. Before adopting the decision, the competent **public authority** shall give due consideration to the outcome of the participation process.
8. Each Party shall ensure that once a decision has been made, the public is informed in a timely manner thereof and of the grounds and reasons underlying the decision, including how the observations of the public have been taken into consideration. The decision and its basis shall be made public and be accessible.
9. The dissemination of the decisions resulting from environmental impact assessments and other environmental decision-making processes, in which the public has participated, foreseen in the present Agreement, shall be carried out through appropriate means, which may include in writing, electronic, oral and customary methods, in an effective and prompt manner.

The information disseminated shall include the established procedure to allow the public to take the relevant administrative and legal actions.

10. Each Party shall establish conditions that are favourable to public participation in environmental decision-making and that are adapted to the social, economic, cultural, geographical and gender characteristics of the public.
11. When the primary language of the directly affected public is different to the official languages, the competent authority shall ensure that means are provided to facilitate their understanding and participation.
12. Where appropriate, and in accordance with national legislation, each Party shall promote public participation in international forums and negotiations on environmental matters and/or with an environmental impact, in accordance with the procedural rules on participation of each forum.

The participation of the public at the national level on matters of international environmental forums shall also be promoted, where appropriate.

13. Each Party shall encourage the establishment or make use of existing appropriate spaces for consultation on environmental matters, in which various groups and sectors are able to participate. Each Party shall promote regard for local knowledge, dialogue and interaction of different views, where appropriate.

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

The aforementioned information shall be made available free of charge to the public in accordance with paragraph 16 of article 5 of the present Agreement.

#### Article 8<sup>26</sup>

#### Access to justice in environmental matters [Agreed]

1. Each Party shall guarantee the right of access to justice in environmental matters in accordance with the guarantees of due process.
2. Each Party shall ensure, in the framework of its domestic legislation, access to judicial and administrative instances to challenge and appeal, with respect to substance and procedure:
  - (a) any decision, action or omission related to the access to environmental information;

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<sup>26</sup> Mexico expresses reservations.

- (b) any decision, action or omission related to public participation in the decision-making process regarding environmental matters; and
  - (c) any other decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment.
3. To guarantee the right of access to justice in environmental matters, each Party shall have, considering its circumstances:
- (a) competent State entities with access to expertise in environmental matters;
  - (b) effective, timely, public, transparent and impartial procedures that are not prohibitively expensive;
  - (c) broad active legal standing in defence of the environment;
  - (d) the possibility of ordering precautionary and interim measures, inter alia, to prevent, halt, mitigate or rehabilitate damage to the environment;
  - (e) measures to facilitate the production of evidence of environmental damage, when appropriate and as applicable, such as the reversal of the burden of proof and the dynamic burden of proof;
  - (f) mechanisms to execute and enforce judicial and administrative decisions in a timely manner; and,
  - (g) mechanisms for redress, where applicable, such as restitution to the condition prior to the damage, restoration, compensation or payment of a financial penalty, satisfaction, guarantees of non-repetition, assistance for affected persons and financial instruments to support redress.
4. To facilitate access to justice in environmental matters for the public, each Party shall establish:
- (a) measures to minimize or eliminate barriers to the exercise of the aforementioned right;
  - (b) means to publicize the right of access to justice and procedures to ensure its effectiveness;
  - (c) mechanisms to systematize and disseminate judicial and administrative decisions, as appropriate; and,
  - (d) the use of interpretation or translation of languages other than the official languages when necessary for the exercise of that right.
5. In order to give effect to the right of access to justice, each Party shall meet the needs of persons and groups in vulnerable situations by establishing support mechanisms, including, as appropriate, free technical and legal assistance.
6. Each Party shall ensure that the judicial and administrative decisions adopted in environmental matters and their legal grounds are set out in writing.
7. Each Party shall promote, where appropriate, alternative dispute resolution mechanisms in environmental matters, such as mediation, conciliation or other means that allow such controversies to be prevented or resolved.



Article 9<sup>27</sup>Human rights defenders in environmental matters [Agreed]

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

Article 10Capacity-building [Agreed]

1. In order to contribute to the implementation of the provisions of the present Agreement, each Party undertakes to create and strengthen national capacities, based on its priorities and needs.
2. Each Party, in line with its capacities, may take the following measures, inter alia:
  - (a) train authorities and civil servants on environmental access rights;
  - (b) develop and strengthen environmental law and access rights awareness-raising and capacity-building programmes for, inter alia, the public, judicial and administrative officials, national human rights institutions and jurists;
  - (c) provide the competent institutions and bodies with adequate equipment and resources;
  - (d) promote education and training on or raise public awareness of environmental matters, through, inter alia, basic educational modules on access rights for students at all levels of education;
  - (e) develop specific measures for persons and groups in vulnerable situations, such as providing interpreters or translators in languages other than official languages when necessary;
  - (f) acknowledge the importance of associations, organizations or groups that train the public on or raise public awareness of access rights; and,
  - (g) strengthen capabilities to collect, retain and evaluate environmental information.

Article 11Cooperation [Agreed]

1. The Parties shall cooperate to strengthen their national capacities with the aim of implementing the present Agreement in an effective manner.

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<sup>27</sup> Jamaica expresses reservations.

2. The Parties shall give particular consideration to least developed countries, landlocked developing countries and small island developing States from Latin America and the Caribbean.
3. For the purposes of implementing paragraph 2 of article 11, the Parties shall promote activities and mechanisms, such as:
  - (a) discussions, workshops, expert exchanges, technical assistance, education and observatories;
  - (b) developing, sharing and implementing educational, training and awareness-raising materials and programmes;
  - (c) sharing experiences of voluntary codes of conduct, guidelines, good practices and standards; and,
  - (d) committees, councils and forums of multisectoral development stakeholders to address cooperation priorities and activities.
4. The Parties shall encourage partnerships with third States from other regions, intergovernmental, non-governmental, academic and private organizations or other relevant stakeholders to implement the provisions of the present Agreement.
5. The Parties recognize that regional cooperation and information sharing shall be promoted in relation to all aspects of illicit activities against the environment.

Article 12  
Clearing house [Agreed]

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

Article 13  
Resources<sup>28</sup>

1. Each Party, to the extent of its ability, subject to budgetary availability and in accordance with its national policies, priorities, plans and programmes, commits to provide the resources for national activities that are needed to fulfil the obligations assumed under the present Agreement.<sup>29</sup>

**Suggested deletion of article 13, paragraph 1. [Mexico]**

2. A fund, to be managed by the secretariat [Jamaica: ~~to be managed by the secretariat~~ **under the guidance of the Conference of the Parties**], is hereby established to finance [Mexico: ~~finance~~ **support the financing of the**] implementation of the present Agreement to be defined at the Conference of the Parties in accordance with article 14.

<sup>28</sup> Colombia expresses reservations about this article.

<sup>29</sup> Jamaica notes that this text is not as comprehensive as in other environmental agreements.

3. The Conference of the Parties shall examine the possibility of establishing other financial provisions by consensus and technical assistance mechanisms to facilitate implementation of the present Agreement. It shall also explore additional means of financing for implementation of the present Agreement.<sup>30</sup> [Chile: **The fund may receive funding from a variety of sources, including contributions from the Parties.**] [Trinidad and Tobago: **The Conference of the Parties shall seek to mobilize financial resources for the implementation of this Agreement.**]

Article 14  
Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The Executive Secretary of the Economic Commission for Latin America and the Caribbean shall convene the first meeting of the Conference of the Parties no later than one year after the entry into force of the present Agreement. Subsequently, ordinary meetings of the Conference of the Parties will be held at regular intervals to be decided by the Conference.
3. Extraordinary meetings of the Conference of the Parties will be held when the Conference deems necessary or when a Party so requests in writing, provided that within six months of the secretariat's notification of the request to the Parties, at least one third of the Parties support the request.
4. At its first meeting, the Conference of the Parties shall:
  - (a) discuss and approve the rules of procedure for subsequent meetings, including the modalities for significant participation by the public;
  - (b) discuss and approve by consensus the Fund and other financial provisions for the functioning of the bodies of the present Agreement;
  - (c) discuss and approve the rules of procedure and membership of the body created under paragraph 4 of article 19 of the present Agreement; and,
  - (d) establish an ad hoc working group, that will prepare a plan of action on creating an enabling environment for the work of environmental defenders, which will be presented at the second meeting of the Conference of the Parties for consideration and adoption. [Agreed to include in paragraph 4 of the current article 14 (ex. 12.4)]
5. The Conference of the Parties shall keep implementation and effectiveness of the present Agreement under permanent review and evaluation. To that effect, it shall:
  - (a) establish such subsidiary bodies as it deems necessary for implementation of the present Agreement;
  - (b) cooperate, as applicable, with the competent international organizations and bodies and intergovernmental and non-governmental entities;

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<sup>30</sup> Mexico requests clarification.

- (c) receive communications from the Parties on the lessons learned from the conclusion and implementation of bilateral and multilateral agreements or other agreements related to the objective of the present Agreement to which one or several of them are party, and share these with all the Parties;
- (d) consider all recommendations made to it pursuant to paragraph 4 of article 19 of the present Agreement;
- (e) prepare and adopt, as applicable, protocols to the present Agreement;
- (f) examine and adopt proposals to amend the present Agreement in accordance with the provisions of article 21; and
- (g) examine and adopt any additional measures needed to achieve the objective of the present Agreement;
- (h) consider the creation and development of standards in relation to environmental information systems,<sup>31</sup> and
- (i) develop manuals and propose guidelines for the implementation of public participation in environmental decision-making.<sup>32</sup>

Article 15  
Right to vote

Each Party to the present Agreement shall have one vote.

Article 16  
Presiding Officers

1. At the Conference of the Parties, the Parties shall elect Presiding Officers consisting of at least one chair and two vice chairs, one of whom will act as rapporteur.
2. The Presiding Officers shall exercise their functions until the next meeting of the Conference of the Parties.
3. The functions of the Presiding Officers will be:
  - (a) to support implementation of the present Agreement, with the support of the secretariat;
  - (b) to convene, along with the secretariat, the meeting of the Conference of the Parties;
  - (c) to chair the meetings of the Conference of the Parties and ensure compliance with the rules of procedure; and
  - (d) to perform other functions derived from agreements reached at the meetings of the Conference of the Parties.

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<sup>31</sup> Originally paragraph 3 of article 7. It was agreed to address this matter under article 12.

<sup>32</sup> Originally paragraph 11 of article 8. It was agreed to address this matter under article 12.

Article 17  
Secretariat

A secretariat is hereby established to exercise the following functions:

- (a) convene and prepare the meetings of the Conference of the Parties and its subsidiary bodies and provide the necessary services;
- (b) implement the rules of procedure for participation by the public in meetings of the Conference of the Parties and its subsidiary bodies;
- (c) provide assistance to the Parties for capacity-building, including the sharing of experiences and exchange of information and the organization of activities in accordance with article 10 of the present Agreement; and
- (d) perform any other secretariat functions specified in the present Agreement and any other functions as determined by the Parties.

Article 18  
Consultative groups or subsidiary bodies

1. The Conference of the Parties may create specialized technical panels or groups to advise the Parties on specific issues relevant to implementation of the present Agreement or other issues related to implementation of access rights [Peru; **which shall include representatives of civil society and indigenous groups in the panels**].
2. The technical panels or groups may be composed of representatives from all the Parties. Meetings of the technical panels or groups will be open.

Article 19  
Implementation, monitoring and evaluation<sup>33</sup>

1. At the meetings of the Conference of the Parties, the Parties shall report on the policies and measures (legal, institutional or otherwise) adopted to implement the present Agreement as well as activities conducted with the public. The Conference of the Parties may adopt individual or collective recommendations to this effect.
2. With a view to implementing the provisions of the present Agreement, those Parties that are least developed countries or Caribbean small island developing States shall be taken into account.
3. The secretariat may prepare periodic implementation guidelines and good practices for promoting the exchange of experiences in fulfilment of the provisions of the present Agreement.

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<sup>33</sup> Consider advances in the implementation of the access rights under the present Agreement (see paragraph 7 (b) of article 7 [agreed]).

4. A Facilitation and Follow-up Committee is hereby established as a subsidiary body of the Conference of the Parties, to promote application and support the Parties with implementation of the present Agreement based on capacity-building and cooperation.

The Committee will be non-adversarial, non-judicial and of a consultative nature to review compliance of the provisions of the present Agreement and formulate recommendations, with special attention to the national capacities and circumstances of the Parties. The Committee will allow appropriate participation by the public and review communications from the Parties, other entities of the present Agreement and members of the public. It may also submit recommendations for the consideration of the Conference of the Parties.

5. The Conference of the Parties shall establish a peer review mechanism to evaluate observance of the provisions of the present Agreement. The rules of operation shall ensure effective participation by the public and will be established by consensus by the Conference of the Parties no later than at its third meeting.
6. The Conference of the Parties shall evaluate the effectiveness of the present Agreement no later than six years after the date of its entry into effect, and periodically thereafter at intervals that it will determine.

#### Article 20 Settlement of disputes

1. If a dispute arises between two or more Parties with regard to the interpretation or implementation of the present Agreement, these Parties shall endeavour to resolve it through negotiation or any other means of dispute resolution they consider acceptable.
2. Upon signing, ratifying, accepting, approving or acceding to the present Agreement, or at any time thereafter, a Party may indicate in writing to the Depositary, with respect to any disputes not resolved in accordance with paragraph 1 of the present article, that it agrees to regard as obligatory one or both of the following means of dispute settlement in its relations with any Party that agrees to the same obligation:
  - (a) presentation of the dispute to the International Court of Justice; and/or
  - (b) arbitration in accordance with the procedures that the Conference of the Parties will establish, as feasible.
3. If the parties to the dispute have accepted both means of dispute settlement mentioned in paragraph 2 of the present article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

#### Article 21 Amendments

1. Amendments to the present Agreement may be proposed by any Party.

2. Amendments to the present Agreement shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the proposed amendment to the signatories to the present Agreement and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to the present Agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.
4. An adopted amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.
5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 of the present article shall enter into force for the Parties having consented to be bound by it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three fourths of the number of Parties that were Parties at the time at which the amendment was adopted. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

#### Article 22

##### Signature, ratification, acceptance, approval and accession

1. The present Agreement may be signed by any of the countries of Latin America and the Caribbean included in annex 1 at (city, country) on (date), and thereafter at the United Nations headquarters in New York until (date).
2. The present Agreement will be subject to the ratification, acceptance or approval of the States that have signed it. The Agreement will be open to accession by any country in Latin America and the Caribbean included in annex 1 starting on the day following the deadline for signing the Agreement. Instruments of ratification, acceptance, approval or accession will be deposited with the Depositary.
3. The States are encouraged to transmit, at the time of their ratification, acceptance, or approval of the Agreement or accession to it, information to the secretariat on the measures they will take to comply with the provisions of the present Agreement.
4. The Parties shall disseminate the existence of the present Agreement, inviting [all] countries of Latin America and the Caribbean to adhere to it. [Agreed to move from current article 4 (ex. 5)]

#### Article 23

##### Entry into force

1. The present Agreement will enter into force on the ninetieth day after the date on which the fifth instrument of ratification, acceptance, approval or accession has been deposited.

2. With respect to each State that ratifies, accepts or approves the present Agreement or accedes to it after the fifth instrument of ratification, acceptance, approval or accession has been deposited, the present Agreement will enter into effect on the ninetieth day after the date on which the State has deposited its instrument of ratification, acceptance, approval or accession.

Article 24  
Reservations

No reservations may be made to the present Agreement.

Article 25  
Withdrawal

1. At any time after a period of three years from the effective date of the present Agreement with respect to a Party, that Party may withdraw the present Agreement by providing written notification to the Depositary.
2. The withdrawal will take effect one year after the date of which the Depositary receives the corresponding notification, or thereafter, on the date indicated in the notification.

Article 26  
Depositary

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

Article 27  
Authentic texts

The original of the present Agreement, whose texts (Spanish and English) are equally authentic, will be deposited with the Secretary-General of the United Nations.

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

DONE at (city, country) on (date).



## Annex 1

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