



**Comments of ARTICLE 19 on Essential Elements of a LAC Regional  
Convention on Access to Environmental Information, Public Participation and  
Access to Justice**

**July 2015**

ARTICLE 19 welcomes the paper prepared by the Economic Commission for Latin America and the Caribbean (ECLAC) and the opportunity given to governments, organisations, and civil society to express their considerations and proposals.

ARTICLE 19 is a human rights charity established in 1987. Its mission is "to promote, protect, develop and fulfil freedom of expression and the free flow of information and ideas in order to strengthen global social justice and empower people to make autonomous choices." Its global headquarters is in London, UK and has regional offices in Brazil and Mexico, as well as in Bangladesh, Kenya, Myanmar, Senegal and Tunisia.

ARTICLE 19 believes that freedom of expression, freedom of the press and access to information is a fundamental human right, central to individual freedoms and human rights. We also believe that freedom of expression is an empowerment or cornerstone right, in that it enables other rights to be protected and exercised. It allows people to demand the right to health, to a clean environment and to effective implementation of poverty reduction strategies. It not only increases the knowledge base and participation within a society but can also secure external checks on state accountability, and thus prevent corruption that thrives on secrecy and closed environments.

ARTICLE 19 works extensively in the environmental field in promoting access to information, freedom of expression, and freedom of association and assembly as enabler rights to achieve a clean and sustainable development. It engages at the international level with Aarhus, UNEP, and the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, as well as projects on human rights defenders, clean air and water in Brazil, Bangladesh and Kenya.

As organisation defending freedom of expression and information, ARTICLE 19 wishes to contribute in this unique process that Latin America and the Caribbean (LAC) is facing regarding environmental democracy. This document provides the inputs that ARTICLE 19 considers must be included as minimum content in the ECLAC document and in the future LAC instrument implementing Principle 10 of Rio Declaration.

**General comments**

ARTICLE 19 strongly recommends to the members of the LAC region to adopt a legally binding convention implementing Principle 10 of Rio Declaration that harmonizes the disparate situations and initiatives across the region which could provide

strong rights of access to information, public participation and access to justice to all persons.

We believe that a non-binding resolution or other non-binding action plan would not be an effective use of the considerable resources that have been used in this regional process. There are already a considerable number of declarations, resolutions, guidelines and plans from CELEC, the Organisation of American States and other regional bodies, the binding decisions of the Inter-American Court of Human Rights on issues relating to access to information, public participation, protection of environmental human rights defenders and access to justice as well as binding bi-lateral and multilateral treaties on trade with environmental protections.

A new convention provides an opportunity for states to weave together the disparate high level statements, guidelines, recommendations, and cases into a comprehensive and effective regime which protects the environment and promotes sustainable development to the benefit of all persons in the region.

## **I) Inputs on the First Part of ECLAC's document**

A future regional instrument should promote a strong protection of the environment within a broader context of sustainable development, a right-based approach, and an inter-related view of environmental protection, human rights, and sustainable development. The regional instrument should also make specific reference to the right to a healthy and clean environment as a principle crosscutting the three pillars of access rights.

For the instrument to be successful, it is necessary to have clarity in some key terms. ECLAC should include a terminology list defining concepts such as 'public', 'public authorities', and 'environmental information', which can be used as a starting point for future negotiations. We believe that it is important that based on the Rio+20 declaration and the Inter-American Court case in *Claude Reyes v Chile* that the definitions are encompassing rather than limiting to ensure that access rights are broadly understood in the context of sustainable development.

The document of ECLAC needs to highlight that a future instrument should include a State's obligation to provide environmental and human rights education and to promote environmental awareness in order to increase the demand of access rights among civil society.

Lastly, the ECLAC document must incorporate a provision on the protection of environmental defenders, activists, and all other members of the public, individually or organised who are seeking or promoting a healthy environment. The regional instrument should state that no person or group of persons shall be threatened or harmed in any way for enforcing their right to a healthy environment including demanding access to information, participation in processes, protest or advocacy against projects, or publication of information.

## **II) Inputs on the Matters to be Considered in Each Right**

### *1) Access to Environmental Information*

Access to information is crucial for the promotion of environmental democracy and for the exercise of public participation and justice. Information must be widely accessible to all members of the public in an effective, timely, and affordable manner. The right should be broadly defined to ensure that information is broadly defined and not withheld on the grounds of not being “environmental enough” as to reflect to consensus in Rio+ 20 that protection of the environment and sustainable development are integrated.

Under the LAC instrument, access to information should be available both actively and passively under the principle of maximum disclosure as set out by the Inter-American Court of Human Rights in *Claude Reyes v Chile*. The instrument should call governments to affirmatively make the information available under the presumption that all information is accessible and subject to a limited system of exceptions. The right should be incorporated in law and States should be encouraged to adopt comprehensive laws on access to all information held by public bodies as are already in place in many countries in the region.<sup>1</sup>

Promotional measures should be adopted by States to promote the right to information and to inform individuals about the processes, spaces and sources for exercising this right. Adequate resources should be secure to ensure that the access to information regime is functional and efficient.

### *1.1) Passive Transparency*

The right of individuals to be able to demand information from public and private bodies that is important to their lives, families and communities is the essential underpinning of the right of information, as well as many other essential human rights including the right to water and sanitation and the right to health. The regional instrument should promote a broad access to information held by public authorities at all levels, and by private organisations, including natural and legal persons acting under public capacity or using public funding. Additionally, the instrument should indicate that all persons have the right to seek, receive, and impart information without any interest to be stated. Under the principle of non-discrimination, the LAC instrument should ensure that all persons have the right to make a request for access information. Likewise, anonymous requests should be accepted as a valid manner to exercise the right.

Information requests should be processed through an easy and swift process. A reasonable limit term should be set for providing a reply to all information requests.

It is extremely important for the regional instrument to have clarity with regard the exceptions on the disclosure of information. Information may be subject to restrictions only when it is provided by unambiguous, clear, and precise legislation and only when it can be proved that is needed by reasons of public interest and is proportional. In addition, the instrument should require that in case of rejection of a request of information, the refusal must be clearly justify and state all the reasons of the decision. The instrument should as well require an independent appeals process available to all those who have their information requests denied.

---

<sup>1</sup> Antigua and Barbuda, Belize, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Peru, Trinidad and Tobago, and Uruguay.

Finally, the instrument should considerate that access to information must be free of charge or, in cases specifically stated the request must be affordable.

### *1.2) Active Transparency*

The instrument should set out State's obligation to create reliable, accurate, and up-to date information (including data and statistics) about all matters relevant to environmental matters such as air and water quality, and to ensure that it is available for the public in different forms including electronic systems, web sites, community meetings, radios, and social media, irrespective of specific demand. Environmental information, including about environmental quality, impacts on health and factors that influence them, in addition to information on legislation and policy, advice on how to obtain information, among others, should be in the public domain. All relevant systems should be established to ensure adequate flow of information in these areas. The information should be made available where possible in open data format and without any restrictions on its republication or use. Mechanisms such as pollution release transfer registers already in place in a number of LAC countries and eco-labels should be promoted by the regional instrument.

The LAC instrument should include specific provision on access to information of vulnerable groups such as indigenous communities. The instrument should promote the accessibility and dissemination of environmental information using understandable language rather than technical, and require the use of communication tools and mechanisms which respect the culture and traditions of communities facing problems on access to information due to technological, economic, language, or other types of barriers.

A regional instrument should ensure that, in the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat is disseminated as widely as possible. Such information must be effectively and immediately disseminated to communities and members of the public who may be affected.

Lastly, the regional instrument must encourage access to environmental information held by private organisations, when it relates to harms or threats to the environment or the public interest.

### *2) Participation of the Public*

Public participation in environmental and other sustainable development decision-making process helps to integrate public concerns into decisions regarding environmental issues. A regional instrument should state that environmental decision-making matters must be democratic and transparent process which and represent the needs of those affected by the decision. The instrument should provide active, free, and meaningful participation of individuals, communities and groups representing them in decision-making processes on environmental issues at national, regional, and local levels when all options are open.

The instrument must ensure that the participation processes are not limited to overall information sharing, but conducted in good faith and provide real and meaningful

opportunities to freely and actively influence decisions. Moreover, the instrument should include, at minimum, the following:

- States have a positive obligation to identify communities and individuals who are affected by projects and engage with them as part of the decision-making process.
- It is crucial that the instrument encourage States to provide all related information in an efficient manner at the start of the decision-making and throughout the process at an appropriate time, through multiple channels and using culturally appropriate procedures.
- Information should be made available and meetings should be held in the language / dialect of those directly and indirectly affected.
- The meetings and the events part of the participation process should be organized in the locality of those affected and in locations that can be easily accessed. The time and agenda, as well as supporting documents, should be released in advance.
- Safe participation must be secured by States to all community members, activists, and all those interested in participating in the discussion.
- Public participation should be duly taken into account when the decisions are being taken. The decision should be informed promptly, indicating the outcome of the public participation process and to explain clearly the reasons of the final decisions and why particular options were chosen over others.
- Appeal mechanisms are available for affected communities if they believe that their opinions were not fairly considered.
- Publicizing the process, reporting their result.

The instrument should include special provisions promoting the participation of individuals and groups who are vulnerable, marginalized, and disadvantaged among the region, in particular indigenous people, in the decision-making processes relating to the environment as required by the Inter-American Court of Human Rights in *Saramaka People v. Suriname*. They should ensure that these individuals and groups are provided with the necessary information and skills to participate meaningfully. Special consideration should be stated in relation to their traditions, culture, and language in the participation process. Furthermore, the instrument should note the obligation to identify vulnerable groups, and to promote participation in the process of decision-making through incentives (financial support, experts, etc.) and capacity –building.

### 3) *Access to Justice*

Access to justice is vital for the enforceability and effectiveness of access to information and public participation. In the future LAC instrument, access to justice should be established as simple, prompt and effective. Moreover, it should indicate the obligation of each country to ensure that all persons have an effective and inexpensive means to enforce their environmental rights at the domestic level. This includes internal mechanisms such as ombudsman and commissions, legal aid schemes, alternative-dispute resolution mechanisms, as well as appeals to court systems.

It is essential for the regional instrument to include provisions on the following issues:

- Broad legal standing, including all natural and legal persons, domestic or foreign, without justification of a specific interest. NGOs promoting environmental protection and human rights should be including also.
- Independence and impartiality of the mechanisms and in the administrative or judicial tribunals.
- Enforceability and binding nature of the rulings.

- Inexpensive procedures, including financial aid to vulnerable groups, or in cases of public interest procedures.
- Inclusion of precautionary measures in order to protect the environment.
- Existence of compensation for victims, and restorations measures.
- Reasonable time frames.
- Mechanisms to enforce access to information, public participation, and to challenge both public and private acts, decisions, plans, programmes, or any other kind of action that violates environmental legislation.

Lastly, it is fundamental for an efficient access to justice to provide capacity-building and training to judges, and judicial and administrative officials.

### *III) Means of Implementation*

For a full implementation of Principle 10 in the LAC region, the regional instrument should promote regional and sub-regional cooperation, technical assistance and training. Firstly, the instrument should provide possibilities to involve all stakeholders coming from the public and private sector, NGOs, non-organised civil society, scientific community among others. Secondly, it should make available technical support for the implementation of the instrument to States and its authorities and officials at all levels, as well as to members of the civil society. Thirdly, it should include a regional system allowing for both peer review and monitoring between states, as well as a complaints mechanism that also allows for individuals or organisations to ask for a review of county's efforts to implement their treaty obligations. Finally, it should include finance cooperation between States members and with other international or regional institutions and organisations.