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**TEXT COMPILED BY THE PRESIDING OFFICERS INCORPORATING THE LANGUAGE
PROPOSALS RECEIVED FROM THE COUNTRIES ON THE PREAMBLE AND ARTICLES 1
TO 10 OF THE PRELIMINARY DOCUMENT ON THE REGIONAL AGREEMENT ON
ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN ENVIRONMENTAL
MATTERS IN LATIN AMERICA AND THE CARIBBEAN**

SECOND VERSION

NOTE BY THE SECRETARIAT

As agreed in 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*,ⁱ at the second meeting of the negotiating committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean, held in Panama City from 27 to 29 October 2015, the basis for the negotiations of the regional agreement was the text compiled by the Presiding Officers incorporating the language proposals received from the countries by 31 August 2015 on the preamble and articles 1 to 10 of the preliminary document prepared by the Economic Commission for Latin America and the Caribbean (ECLAC) at the request of the countries.

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.ⁱⁱ

Acknowledging the significant progress made in the negotiations on the preamble and articles 1 and 2 of the text compiled by the Presiding Officers, the representatives of the countries participating in the second 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 second version of the document. They also agreed to resume the negotiations on articles 2 to 10 at the third meeting of the negotiating committee, using the second version of the compiled text, and review outstanding issues from the preamble to article 10.

Pursuant to the agreement adopted by the negotiating committee at its second meeting,ⁱⁱⁱ the secretariat is herewith making available to countries and the public a second version of the compiled text. This version reflects the progress made in the negotiations on the preamble and articles 1 and 2 during the second meeting of the negotiating committee and also includes the language proposals submitted by the countries to the secretariat by 29 October 2015.

(a) Considerations regarding the preamble and articles 1 and 2

During the second meeting, the negotiating committee reviewed the paragraphs of the preamble in the order in which they appeared in the compiled text, article 1 and the definitions of “access rights”, “public participation”, “public”, “directly affected public” and “environmental decision-making” contained in article 2. It was agreed that the country putting forward each new or alternative proposal would be reflected, as would any countries supporting the proposal, on the understanding that any countries not mentioned preferred the original text of the preliminary document prepared by ECLAC at the request of the countries. The points on which consensus was reached in the meeting room were marked as “agreed”. The new language proposals submitted by the countries to the secretariat during the meeting have been included in the second version, with a note indicating that they were not discussed at the meeting. Additional comments by countries are contained in footnotes with roman numerals.

ⁱ LC/L.4011/Rev.1.

ⁱⁱ See LC/L.3970, annex A.

ⁱⁱⁱ See the agreements adopted by the negotiating committee at its second meeting [online] <http://negociacionp10.cepal.org/en/documents/agreements-meeting>.

(b) Considerations regarding articles 2 to 10

New language proposals submitted by the countries to the secretariat by 29 October 2015 have also been included in the sections that were not reviewed by the negotiating committee at its second meeting. These proposals are arranged in alphabetical order according to the name of the submitting country, as identified in the endnotes. The language proposals are grouped into suggested modifications, deletions or additions to the original text of the preliminary document, or suggested redrafts.

Pursuant to the Organization and work plan of the negotiating committee, the secretariat compiled the contributions made by the public into a separate document.^{iv}

All of 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> and <http://negociacionp10.cepal.org/en/additional-input-for-the-meeting>.

^{iv} See Compilation of inputs submitted by the public. Note by the Secretariat (DDR/1).

PREAMBLE

The Parties to the present Agreement^v,

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, [proposal by Brazil, supported by 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, [proposal by 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, [proposal by Mexico] [not revised in the meeting room]

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

^v 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.”

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 highlevel 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 ~~to increase public participation in promoting sustainable development~~ 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 [proposal by Mexico] [not revised in the meeting room]

6 bis *Recalling* ~~as well as regional and global developments in the area of rights of access in forums such as the United Nations Environment Assembly, the Human Rights Council, the Forum of Ministers of the Environment of Latin America and the Caribbean, sessions of ECLAC~~ ***[Recalling the progress made on access through the agreements and declarations adopted in regional and global forums, such as]*** [proposal by Mexico] [not revised in the meeting room] 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, **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** [proposal by Peru] [not revised in the meeting room], 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 redraft 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”, [proposal by Mexico] [not revised in the meeting room]

Suggested redraft of paragraph 7:

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**, [proposal by Mexico] [not revised in the meeting room]

8. ~~*Affirming-Recognizing*~~ that everyone has the right to a healthy environment [Ecuador, Bolivia: **to be exercised in**] in harmony with nature, [Colombia, Mexico: ~~in harmony with nature~~] which is essential for the ~~dignity and~~ 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 democracy and contributes to better protection of the environment and thus of human rights,

Suggested redraft of paragraph 9:

Taking into account that exercising access rights contributes to strengthening democracy and to better protection of the environment, [Mexico]

10. *Reaffirming* the obligations assumed by the Parties to respect, protect and fulfil the right to freedom of thought, expression, assembly and association, and the right to information, participation in public affairs and access to justice, among others, established in international human rights law,

Suggested modification to paragraph 10:

Reaffirming the obligations assumed ~~by the Parties~~ to respect, protect and fulfil the right to freedom of thought, expression, assembly, association **and privacy**, and the right to information, participation in public affairs and access to justice, among others, **in accordance with the obligations enshrined in the relevant instruments** established in international human rights law and **domestic laws of the Parties, of the signatory countries to the declaration,** [Colombia]

Reaffirming the obligations assumed to respect, protect and fulfil **access rights under the present Agreement,** [Mexico]

[Replace paragraph 10 with 1 ante] [Brazil]

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 ~~the cornerstone of~~ **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 ready, rapid, effective and practical access to that information,

Suggested modifications to paragraph 12:

Bearing in mind that access to information is ~~the cornerstone of~~ **fundamental in** all democratic societies and that it is essential to take active measures to bring environmental information into the public domain, **within specific circumstances of individual States,** [Colombia]

Bearing in mind that access to information is ~~the cornerstone of~~ **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 **promote guarantee** ready, rapid, effective and practical access to that information, [Brazil, Saint Vincent and the Grenadines, Argentina]

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,

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 and/or the lack of suitable means by which to access justice **in environmental matters** deprives people of ~~their legitimate right~~ **the "right to rights"** by denying them and/or limiting real ways to exercise them, and that the principles underpinning ~~environmental~~ 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 modification to 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 ~~and political consensus-building through effective mechanisms~~ are essential for the full implementation of access rights,

Suggested modification to 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 ~~awareness and~~ environmental education **in order to, inter alia, raise awareness**^{vi} 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,

^{vi} Colombia expresses reservation on the term "awareness-raising".

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 ~~and tribal~~ [Honduras: **ethnic groups**] peoples and [Ecuador: **and nationalities**] other groups and constituencies in the effective implementation of access rights and the attainment of sustainable development,

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 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^{vii} 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^{viii} 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,^{ix}

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]

^{vii} Colombia expresses reservation on the term “Parties”.

^{viii} Jamaica expresses reservation on the term “cosmovisions”.

^{ix} Colombia and Mexico express reservations on the drafting of the paragraph.

21. *Reiterating Convinced* that the present Agreement will ~~facilitate concerted action and strategies, promote and strengthen~~ [Brazil: ~~that the present Agreement will facilitate~~ **the need to promote and strengthen**] dialogue, cooperation and technical assistance **and help to generate synergies for the implementation of access rights,**^x ~~and promote the creation of a regional agenda in line with national priorities and needs with respect to access rights,~~ [Colombia: **in line with national priorities and needs with respect to access rights**]

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]^{xi}

Have agreed as follows:

Article 1
Objective

The objective of this Agreement is to ensure the full and effective [Colombia: ~~full and effective~~ **progressive**] application of the rights of access as enshrined in Principle 10 of the 1992 Rio Declaration, based on cooperation and capacity-building, [Saint Vincent and the Grenadines: **to guarantee that those rights are fully observed and implemented**] [Brazil: ~~to guarantee that those rights are fully observed and implemented~~] in order to protect the rights of present and future generations to live in a healthy environment, [Mexico: ~~in order to protect the rights of present and future generations to live in a healthy environment~~]

Suggested redraft of article 1:

The objective of the present instrument is the implementation in Latin America and the Caribbean of access rights as enshrined in the Declaration on the application of Principle 10 of the Rio Declaration, [Mexico]

Article 2
Definitions

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**] [Antigua and Barbuda, Argentina, Costa Rica, Jamaica, Panama, El Salvador: ~~in environmental matters~~] and access to justice in environmental matters, as enshrined in Principle 10 of the Rio Declaration

^x Mexico and Panama suggest considering the drafting of paragraph 20. Colombia suggests considering the drafting of paragraph 15.

^{xi} Costa Rica, Panama and Chile express reservations to the inclusion of the new paragraph.

“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 6 the present Agreement, a competent authority shall mean any public authority in any branch of the State (executive, legislative and judicial)¹ 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.²

“Disadvantaged groups” means those persons or groups of persons with a greater likelihood of not knowing the risks related to the environment to which they are exposed, or of not fully exercising their access rights, including, among others, women, indigenous peoples, Afro-descendants, older persons, children, youth, persons with disabilities, in situations of vulnerability due to discrimination, poverty, illiteracy, lack of fluency in the official language, health or any other condition.³

Suggested redraft of article 2, definition of “disadvantaged groups”:

“Persons in vulnerable situations” means those persons 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 age, disability, belonging to indigenous communities or minority groups, victimization, migration and internal displacement, 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.⁴

Suggested modifications to article 2, definition of “disadvantaged groups”:

“Vulnerable groups”~~“Disadvantaged groups”~~ means those persons or groups of persons with a greater likelihood of not knowing the risks related to the environment to which they are exposed, or of not fully exercising their access rights, including, among others, women, indigenous peoples, Afro-descendants, older persons, children, youth, persons with disabilities, minority groups, in situations of vulnerability due to discrimination, poverty, illiteracy, lack of fluency in the official language, health or any other condition.⁵

“Vulnerable groups”~~“Disadvantaged groups”~~ means those persons or groups of persons with a greater likelihood of not knowing the risks related to the environment to which they are exposed, or of not fully exercising their access rights, including, among others, women, indigenous peoples, Afro-descendants, older persons, children, youth, persons with disabilities, in situations of vulnerability due to discrimination, poverty, illiteracy, lack of fluency in the official language, health or any other condition.⁶

“Environmental information” means, non-exhaustively, any information that is written, visual, audio, electronic or recorded in any other form that is in the possession of the competent authority, or should be, in fulfilment of its national obligations and international commitments and that addresses the following matters:⁷

- (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;

- (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;
- (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;
- (d) reports and administrative acts on compliance with environmental legislation;
- (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);
- (f) the state of the health and safety of individuals, living conditions, cultural assets, 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) on the definition of “environmental information”.⁸

Suggested modification to letter (f) on the definition of “environmental information”:

- (f) **the state of the health and safety of individuals, living conditions, cultural 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);**⁹
- (g) acts, resolutions, and decisions on matters related to the environment that are issued by the national judicial and/or administrative bodies; and
- (h) any other information on the environment or on elements, components or concepts related thereto.

Suggested modification to letter (h) on the definition of “environmental information”:

- (h) **Any other information on the environment or on elements, components or concepts related thereto for the protection of the environment for the present and future generations and protection of human health.**¹⁰

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.**¹¹

“**Public participation**” means the process by which people [Dominican Republic and Argentina: **natural or legal persons**] [Costa Rica: **natural persons or legal entities**]^{xii} individually or collectively [Costa Rica: ~~individually or collectively~~], influence [Jamaica, Mexico, Colombia, Argentina, Brazil, Antigua and Barbuda, Guatemala, Bolivia: **engage in**] [El Salvador: **are involved in**] decisions [Antigua and Barbuda, Chile, Panama, Guatemala: **the decision-making process**] on environmental matters through institutionalized ways, of participation [Jamaica and Saint Vincent and the Grenadines: ~~institutionalized ways~~ **various modalities**] [Peru, Colombia, Argentina, Brazil, Bolivia: **and any other participation**]

^{xii} Mexico expresses reservation.

mechanism]. [Mexico, Colombia, Argentina, Brazil, Bolivia: **in accordance with national legislation and practices**] [Costa Rica: **in accordance with the legal system**]

“Public” means one or more natural or legal persons and, their associations, organizations or groups, [Jamaica, Mexico, Brazil, Bolivia, Colombia, Honduras, Argentina: **in accordance with national legislation or practice**] [Chile, Saint Vincent and the Grenadines, Panama, Costa Rica, Honduras, Antigua and Barbuda, Peru, El Salvador, Uruguay, Dominican Republic, Guatemala, Ecuador: ~~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~~].

Suggested redraft of definition of “directly affected public”:

“Directly affected public” means the public that, owing to place of residence or other characteristic, perceives particular advantages or disadvantages as a result of the decision at hand. [Panama] [not revised in the meeting room]

“Public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making. [Uruguay, Peru, Ecuador]

“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.

Suggested deletion of the definitions of “directly affected public” and “public concerned” [Costa Rica, Argentina, Colombia, Bolivia, Brazil, Honduras, Panama, Dominican Republic]

“Decision-making in environmental matters”^{xiii} means the **development**, implementation, compliance [Panama: ~~compliance~~], [Brazil: **monitoring**] and evaluation of laws and regulations [Panama, 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 government structure (central or federal, regional, provincial or municipal), in accordance with national legislation and practices~~] [Costa Rica: ~~in accordance with national legislation and practices~~.]

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

^{xiii} Brazil requests that “environmental decision-making” be replaced with “decision-making in environmental matters” throughout the whole document.

Suggest 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, under equal conditions of the Parties, with a view to obtaining an individual and socially fair outcome.¹²

“Environmental justice” means the possibility of legal conflicts of an environmental nature receiving 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.¹³

Article 3 Principles

The Parties, in the measures they adopt to fulfil the objective of the present Agreement and apply its provisions, shall be guided, inter alia, by the following:

a. Equality and non-discrimination: The Parties should guarantee that all persons are able to exercise their access rights without experiencing any form of discrimination based on social status, gender, age, nationality, race, religion, language, disability, political opinion or any other factor.¹⁴

Suggested redraft of article 3, letter (a):

a. Equality and non-discrimination: The competent authorities should guarantee that all persons are able to exercise their access rights, under equal conditions and without making arbitrary distinctions.¹⁵

b. Inclusion: The Parties should make special efforts to involve all persons and groups and ensure equality of opportunities.¹⁶

Suggested modification to article 3, letter (b):

b. Inclusion: The Parties should make special efforts to involve all persons and groups and ensure equality of opportunities in accordance with provisions in this Agreement.¹⁷

c. Transparency and accountability: The Parties should promote transparency and accountability to ensure that the interests and the objectives of the decisions with environmental impacts of the Parties are explicit and that all necessary information is reliable and provided in a timely manner

Suggested modification to article 3, letter (c):

Transparency and accountability: The Parties should promote transparency and accountability to ensure that the interests and the objectives of the decisions with environmental impacts ~~of the Parties~~ are explicit/transparent/clear and that all necessary information is reliable and provided in a timely manner.¹⁸

d. Proactivity, co-responsibility and mutual trust: The Parties and the public should take initiatives consistent with their respective roles, exercised responsibly, to develop their full potential and enrich the decision-making process for sustainable development in an effective and timely manner based on clearly defined responsibilities, legal certainty, transparency and mutual trust.

Suggested modification to article 3, letter (d):

d. Proactivity, co-responsibility and mutual trust: The Parties and the public should take initiatives consistent with their respective roles, exercised responsibly, to develop their full potential and enrich the decision-making process for sustainable development in an effective and timely manner ~~based on clearly defined responsibilities, legal certainty, transparency and mutual trust.~~¹⁹

e. Collaboration: The Parties should recognize that collaborative efforts between the various stakeholders and between countries at all levels are essential because they facilitate the achievement of common objectives, strengthen and improve the quality of dialogue, enable the exchange of experiences and knowledge and promote prevention and dispute settlement.

Suggested modification to article 3, letter (e):

e. Collaboration: The Parties should recognize that collaborative efforts between the various stakeholders and between countries at all levels are essential because they facilitate the achievement of common objectives, strengthen and improve the quality of dialogue, enable the exchange of experiences and knowledge and promote prevention of conflicts and dispute settlement.²⁰

f. Progressive realization and non-regression: The Parties should advance progressively towards full implementation of Principle 10, building on the agreements already reached in the region and avoid taking any step backward, while recognizing the individual circumstances of each country with regard to access rights.²¹

Suggested modification to article 3, letter (f):

f. Progressive realization and non-regression: The Parties should advance progressively towards full implementation of Principle 10, building on the agreements already reached in the region and avoid taking any step backward, while recognizing the individual circumstances and capacity of each country with regard to access rights.²²

g. Good faith and solidarity: The Parties should cooperate in good faith and in the spirit of solidarity in the implementation of the present Agreement.

h. Prevention: The Parties should take the necessary measures to prevent environmental damage. The causes and sources of environmental problems will be addressed comprehensively and as a matter of priority.

i. Precaution: In order to protect the environment, the Parties should broadly apply the precautionary principle in accordance with their capacities. When there is danger of serious or irreversible damage, the lack of absolute scientific certainty shall not be invoked as a reason for postponing the adoption of cost-effective measures to prevent environmental degradation.

Suggested modification to article 3, letter (i):

i. Precaution: In order to protect the environment, the Parties should ~~broadly~~ apply the precautionary principle in accordance with their capacities. When there is danger of serious or irreversible damage, the lack of absolute scientific certainty shall not be invoked as a reason for postponing the adoption of cost-effective measures to prevent environmental degradation.²³

i. Precautionary: In order to protect the environment, the Parties should broadly apply the precautionary principle in accordance with their capacities. When there is danger of serious or irreversible damage, the lack of absolute scientific certainty shall not be invoked as a reason for postponing the adoption of cost-effective measures to prevent environmental degradation.²⁴

j. Intergenerational equity: The Parties should take steps to ensure appropriate use and enjoyment of the environmental by present and future generations.²⁵

k. Traceability: The Parties should consider the possibility of identifying the origin and different stages of a process related to access rights. They should also recognize that it is essential to guarantee appropriate documentation of attributions, sources, responsible parties and custodians.²⁶

Suggested addition to the principles:

l. Responsible use of information: By virtue of this principle, any person who makes use of the information provided by the competent authorities shall do so responsibly.²⁷

1bis. Principle of publicizing public information.²⁸

Article 4
Scope of application

Within the limits of the scope of application of the relevant provisions of the present Agreement, all persons shall have the right to obtain access to information, to participate in decision-making and to have access to justice in environmental matters.²⁹

Suggested modifications to article 4:

Within the limits of the scope of application of the legislation of the Parties and in accordance with the provisions of the present Agreement ~~relevant provisions of the present Agreement~~, all persons shall have the right to obtain access to the relevant environmental information, to participate in decision-making and to have access to justice in environmental matters.³⁰

Within the limits of the scope of application of the relevant provisions of the present Agreement, all persons shall have the right to ~~obtain~~ access ~~to~~ information, to participate in decision-making and to ~~have~~ access ~~to~~ justice in environmental matters.³¹

Article 5
General obligations³²

1. In order to contribute to sustainable development, the Parties shall ensure the full enjoyment of the right of all individuals to live in a healthy and sustainable environment that enables them to guarantee their health and well-being and the effective enjoyment of their human rights in harmony with nature.

Suggested deletion of article 5, numeral 1.³³

Suggested modification to article 5, numeral 1:

~~In order to contribute to sustainable development, the Parties shall ensure the full enjoyment of the right of all individuals to live in a healthy and sustainable environment that enables them to guarantee their health and well-being and the effective enjoyment of their human rights in harmony with nature.~~³⁴

2. Each Party shall adopt the legislative, regulatory or other measures necessary to guarantee full implementation of the provisions of the present Agreement.

Suggested modification to article 5, numeral 2:

Each Party shall adopt the legislative, regulatory or other measures necessary, consistent with domestic circumstances, to guarantee full the implementation of the provisions of the present Agreement.³⁵

3. Each Party shall endeavour to ensure that its officials and authorities advise the public, especially disadvantaged groups, and provide technical assistance so it can obtain access to information, participate in decision-making and have access to justice in environmental matters.

Suggested modifications to article 5, numeral 3:

Each Party shall endeavour to ensure that its officials and authorities advise the public, especially ~~disadvantaged groups~~ persons in vulnerable situations, and provide technical assistance so it can obtain access to information, participate in decision-making and have access to justice in environmental matters.³⁶

~~Each Party shall endeavour to ensure that its public officials and authorities advise educate the public, where necessary, especially ~~disadvantaged groups~~, and provide technical assistance so it can obtain using a differential approach, advise on how to access information, participate in decision-making and have access to justice in environmental matters.~~³⁷

Each Party shall endeavour to ensure that its officials and authorities advise the public, especially vulnerable ~~disadvantaged~~ groups, and provide technical assistance so it can obtain access to information, participate in decision-making and have access to justice in environmental matters.³⁸

4. Each Party shall promote environmental awareness and education in the public sector and among the public, for the purpose of contributing to the effective application of rights of access to information, participation and justice in environmental matters and providing people with knowledge, capacity and understanding so they can participate in environmental decision-making.

Suggested modification to article 5, numeral 4:

Each Party shall promote environmental awareness and education in the public sector and among the public, for the purpose of contributing to the effective application of rights of access to information, participation and justice in environmental matters, and providing people with information, knowledge, and build capacity where necessary and ~~understanding~~ so they can participate in environmental decision-making.³⁹

5. Each Party shall create an enabling environment and grant recognition, protection and support to associations, organizations, groups and/or individuals that defend and/or protect the environment and exercise the rights recognized in the present Agreement.

Suggested modifications to article 5, numeral 5:

Each Party shall create an enabling environment and grant recognition, protection and support to associations, organizations, groups and/or individuals that defend and/or protect the environment, including labour organizations, and exercise the rights recognized in the present Agreement.⁴⁰

Each Party shall progressively create an enabling environment and grant recognition, protection and support to associations, organizations, groups and/or individuals that defend and/or protect the environment and exercise the rights recognized in the present Agreement.⁴¹

Suggested redraft of article 5, numeral 5:

Each Party shall foster an environment which does not impede the operations of associations, organizations, groups and/or individuals which, compatible with the principles of this Agreement, defend or protect the environment to exercise their rights as recognized in the present Agreement.⁴²

6. The Parties shall encourage the non-Party countries of Latin America and the Caribbean to adhere to the present Agreement.⁴³

Suggested modification to article 5, paragraph 6:

The Parties shall encourage the non-Party countries of Latin America and the Caribbean to observe the provisions and become signatories ~~adhere to the~~ present Agreement.⁴⁴

7. The Parties shall increase cooperation, including cross-border cooperation, in order to fully implement rights of access to information, participation and justice, based on the principles of sovereign equality, territorial integrity, solidarity, mutual benefit and good faith.⁴⁵
8. The Parties shall collaborate within each State, at all levels and with all sectors of society, for implementation of the provisions of the present Agreement. They shall also coordinate the activities conducted in accordance with the present Agreement as well as with any other relevant international agreements to which they may be party, in order to strengthen synergies between the activities carried out under each agreement, while avoiding duplication of efforts

Suggested modification to article 5, numeral 8:

The Parties shall collaborate with all sectors within their respective States for implementation of the provisions of the present Agreement.⁴⁶

Suggested division of article 5, numeral 8, to create a new paragraph:

They shall also coordinate the activities conducted in accordance with the present Agreement as well as with any other relevant international agreements to which they may be party, in order to strengthen synergies between the activities carried out under each agreement, while avoiding duplication of efforts.⁴⁷

9. None of the provisions of the present Agreement shall limit or repeal other rights or standards set forth in any other existing international agreement.

Suggested modification to article 5, numeral 9:

None of the provisions of the present Agreement shall limit or repeal other rights or standards set forth in any other existing international agreement, **including the right of indigenous peoples to consultation and to free, prior and informed consent.**⁴⁸

10. The provisions of the present Agreement shall not prevent the Parties from ensuring broader access to information, participation and justice in environmental matters than provided herein, by means of existing or future national measures.

Suggested deletion of article 5, numeral 10.⁴⁹

11. Each Party shall endeavour to ensure that the principles set out in the present Agreement are applied in international decision-making on environmental matters, as well as in the framework of international forums on the environment.

Suggested modification to article 5, numeral 11:

Each Party shall endeavour to ensure that the principles set out in the present Agreement are applied in international decision-making on ~~environmental matters~~ rights of access, as well as in the framework of international forums on ~~the environment~~ rights of access.⁵⁰

Suggested deletion of article 5, numeral 11.⁵¹

Suggested modification to article 5, numeral 11:

Each Party shall endeavour to ensure that the principles set out in the present Agreement are applied in international decision-making on environmental matters, as well as in the framework of international forums on the environment.⁵²

12. The Parties shall guarantee enjoyment of the rights recognized in the present Agreement under equal conditions without distinctions, in accordance with the principle of non-discrimination. In fulfilling their obligations, the Parties shall give consideration to women, minorities, indigenous peoples and Afro-descendants, children, youth and older persons.

Suggested modification to article 5, numeral 12:

The Parties shall guarantee enjoyment of the rights recognized in the present Agreement under equal conditions without distinctions, in accordance with the principle of non-discrimination. In fulfilling their obligations, the Parties shall give any necessary or required consideration to women, minorities, indigenous peoples and Afro descendants, children, youth and older persons.⁵³

The Parties shall guarantee enjoyment of the rights recognized in the present Agreement under equal conditions without distinctions, in accordance with the principle of non-discrimination. In fulfilling their obligations, the Parties shall give consideration to women, minorities, indigenous peoples and Afro-descendants, children, youth and older persons, among others.⁵⁴

The Parties shall guarantee enjoyment of the rights recognized in the present Agreement ~~under equal conditions without distinctions~~, in accordance with the principle of equality and non-discrimination. In fulfilling their obligations, the Parties shall give special consideration to vulnerable groups. ~~women, minorities, indigenous peoples and Afro descendants, children, youth and older persons~~.⁵⁵

13. In the implementation of the present Agreement, the Parties shall adopt the most favourable interpretation in order to guarantee the fullest effectiveness of access rights and the protection of the environment.

Suggested modification to article 5, numeral 13:

In the implementation of the present Agreement, the Parties shall adopt the most favourable interpretation in order to guarantee the fullest effectiveness of access rights, access to justice and the protection of the environment.⁵⁶

Suggested deletion of article 5, numeral 13.⁵⁷

14. To guarantee access rights, the Parties shall encourage the use of, inter alia, new information and communications technologies, electronic government, social networks and social and telematic media.

Suggested modifications to article 5, numeral 14:

To guarantee access rights, the Parties shall encourage the use of, inter alia, new information and communications technologies, electronic government, social networks and social and telematic media in all languages including those used by indigenous peoples.⁵⁸

To guarantee access rights, the Parties shall encourage the use of, inter alia, new information and communications technologies, electronic government, social networks and social and telematic media. In no circumstances shall the use of electronic media constrain or result in discrimination against the public.⁵⁹

To guarantee access rights, the Parties shall encourage the use of, inter alia, new information and communications technologies, such as electronic government, social networks and social and telematic media.⁶⁰

Article 6
Access to environmental information

Accessibility of environmental information

1. The Parties shall guarantee that all environmental information in possession of, under the control of, or in the custody of competent authorities is public and presumed to be relevant, regardless of format, medium, support, date of creation, origin, classification or processing, except as established in the present Agreement.

Suggested modifications to article 6, numeral 1:

The Parties shall guarantee that, in accordance with existing national regulatory frameworks, all environmental information in possession of, under the control of, or in the custody of competent authorities is public and presumed to be relevant, regardless of format, medium, support, date of creation, origin, classification or processing, except as established in the present Agreement.⁶¹

The Parties shall guarantee that all environmental information that is in the possession or of, under the control of, or in the custody of competent authorities is public and presumed to be relevant, shall be provided at the request of the public, in accordance with national legislation regardless of format, medium, support, date of creation, origin, classification or processing, except as established in the present Agreement.⁶²

The Parties shall guarantee that all environmental information in possession of, under the control of, or in the custody of competent authorities is public ~~and presumed to be relevant~~, regardless of format, medium, support, date of creation, origin, classification or processing, except as established in the present Agreement.⁶³

Suggested redraft of article 6, numeral 1:

Each Party shall ensure that, subject to this Agreement, competent authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation.⁶⁴

2. For effective exercise of the right of access to environmental information, the Parties shall guarantee the following for any person requesting environmental information from competent authorities:⁶⁵
 - (a) to freely request information without demonstrating or even mentioning a special interest or explaining why the information is being requested;
 - (b) to be informed promptly whether the documents that contain the requested information or from which such information can be derived are in the possession or not of the entity, authority or organization receiving the request; and⁶⁶
 - (c) to be informed of the right to appeal if information and requirements are not delivered.⁶⁷

Suggested redraft of article 6, numeral 2, letter c:

- (c) **to be informed of the right to challenge the decision not to deliver the information and the requirements for submitting such an appeal.**⁶⁸

The requests for environmental information should be understood in the broadest possible terms, such that the response includes all other information that can be presumed to be part of the request even if not expressly requested, such as background information, supplemental annexes, clarifications or contextual statements that contribute to a full understanding of the requested information.

Suggested modification to article 6, numeral 2, subparagraph:

The requests for environmental information should be understood in the broadest possible terms, ~~such that the response includes all other information that can be presumed to be part of the request even if not expressly requested, such as background information, supplemental annexes, clarifications or contextual statements that contribute to a full understanding of the requested information.~~⁶⁹

Suggested redraft of article 6, numeral 2, subparagraph:

The requests for environmental information should be understood in the broadest possible terms, and the competent authority shall afford the applicant reasonable opportunity to consult with the authority with a view to identifying the information that may be required to contribute to a full understanding of the requested information.⁷⁰

3. Each Party shall create an environmental information system and keep it up to date, to include, inter alia:⁷¹
- (a) the texts of international treaties and agreements, as well as laws, regulations and administrative acts on or relating to the environment;
 - (b) reports on the state of the environment, referred to in article 7.5;⁷²
 - (c) the list of public authorities that have information with environmental content and that should be publicly accessible;
 - (d) reports on environmental liabilities;⁷³
 - (e) information on the use, conservation and exploitation of natural resources;

Suggested addition to article 6, numeral 3, letter (e):

Research papers and projects presented by climate change bodies or other agencies.⁷⁴

- (f) systematized and updated information on administrative environmental impact assessment files; and
- (g) information on hazardous materials, substances and activities.

Suggested modification to article 6, numeral 3, letter (g):

Information on hazardous materials, substances and disposal and management activities.⁷⁵

The Parties shall guarantee that environmental information systems are duly organized, updated, accessible to all persons and available electronically.

Suggested modification to article 6, numeral 3, subparagraph:

The Parties shall guarantee that environmental information systems are duly organized, updated, accessible to all persons and available electronically, through electronic and georeferenced media, where appropriate. The information shall also be available in indigenous languages.⁷⁶

The Conference of the Parties/secretariat may promote the creation and development of standards in relation to environmental information systems. The Conference of the Parties/ secretariat may also suggest measures to facilitate the best use of resources.

Suggested deletion of article 6, numeral 3, subparagraph two.⁷⁷

Suggested modification to article 6, numeral 3:

Each Party shall may create and keep up to date an environmental information system, whose the content of which shall be defined in accordance with national priorities. ~~to include, inter alia:~~

- ~~(a) the texts of international treaties and agreements, as well as laws, regulations and administrative acts on or relating to the environment;~~
- ~~(b) reports on the state of the environment, referred to in article 7.5;~~
- ~~(c) the list of public authorities that have information with environmental content and that should be publicly accessible;~~
- ~~(d) reports on environmental liabilities;~~
- ~~(e) information on the use, conservation and exploitation of natural resources;~~
- ~~(f) systematized and updated information on administrative environmental impact assessment files; and~~
- ~~(g) information on hazardous materials, substances and activities.~~

The Parties shall guarantee that environmental information systems are duly organized, updated, accessible to all persons and available electronically.⁷⁸

~~The Conference of the Parties/secretariat may promote the creation and development of standards in relation to environmental information systems. The Conference of the Parties/secretariat may also suggest measures to facilitate the best use of resources.~~

4. The Parties shall endeavour to facilitate access to information for disadvantaged individuals and/or groups, making alterations —as their specific challenges require— for the presentation of requests, processing and delivery of information, for the purpose of promoting access and participation under equal conditions. Each Party shall guarantee that members of indigenous peoples have the right to receive assistance for preparing their requests in the official language and to receive a prompt response.

Suggested modifications to article 6, numeral 4:

The Parties shall use their best endeavours to facilitate access to information for disadvantaged individuals and/or groups, making alterations —as their specific challenges require— for the presentation of requests, processing and delivery of information, for the purpose of promoting access and participation under equal conditions. Each Party shall guarantee that members of indigenous peoples have the right to receive assistance for preparing their requests in the official language and to receive a prompt response.⁷⁹

~~The Parties shall endeavour to facilitate access to information for disadvantaged individuals and/or groups, making alterations —as their specific challenges require— for the presentation of requests, processing and delivery of information, for the purpose of promoting access and participation under equal conditions. Each Party shall guarantee that members of indigenous peoples have the right to receive assistance for preparing their requests in the official language and to receive a prompt response.⁸⁰~~

The Parties shall endeavour, subject to the availability of resources, to facilitate access to information for vulnerable disadvantaged individuals and/or groups, making alterations — as their specific challenges require— for the presentation of requests, processing and delivery of information, for the purpose of promoting access and participation under equal conditions. Each Party shall guarantee that members of indigenous peoples have the right to receive assistance for preparing their requests in the official language and to receive a prompt response.⁸¹

Exceptions regime⁸²

5. In the event that the requested information or part thereof is not delivered to the petitioner because it falls under the exceptions regime, the competent authority shall duly justify its refusal and give the petitioner:
- (a) a reasonable estimate of the volume of material that is considered confidential;
 - (b) a specific description of the provisions invoked to withhold it; and
 - (c) information on the petitioner's right to file an appeal and proceedings.

Suggested modifications to article 6, numeral 5:

In the event that the requested information or part thereof is not delivered to the petitioner because it falls under the exceptions regime, the competent authority shall duly justify its refusal ~~and give the petitioner:~~

- ~~(a) a reasonable estimate of the volume of material that is considered confidential;~~

~~(b) a specific description of the provisions invoked to withhold it; and~~

~~(c) information on the petitioner's right to file an appeal and proceedings.~~
in accordance with the provisions of domestic legislation.⁸³

In the event that the requested information or part thereof is not delivered to the ~~petitioner~~applicant because it falls under the ~~exemption~~exceptions regime, the competent authority shall duly justify its refusal and ~~notify~~give the ~~petitioner~~applicant:

- (a) ~~a reasonable estimate of the volume of~~whether the material that is considered ~~confidential~~exempt;
- (b) ~~a of the specific description of the provisions invoked~~ and the reasons relied on to withhold it; and
- (c) ~~information on the~~ applicant's right to file an appeal and proceedings.⁸⁴

In the event that the requested information or part thereof is not delivered to the petitioner because it falls under the exceptions regime, the competent authority shall duly justify its refusal and give the petitioner:

- (a) a reasonable estimate of the volume of material that is considered confidential;
- (b) a specific description of the provisions invoked to withhold it; and
- (c) information on his or her rights.⁸⁵

6. The only circumstances which can be invoked to refuse total or partial access to environmental information are the following:

- (a) when its disclosure, communication or knowledge would affect the rights of individuals, especially as related to their safety, health or private life;
- (b) when its disclosure, communication or knowledge would affect national security or interests, particularly with respect to national defence, public order, public health or international relations;
- (c) when its disclosure, communication or knowledge would affect protection of the environment; and
- (d) when the requested information is classified as secret or confidential by laws in force and their respective regulations.

Suggested modifications to article 6, numeral 6:

~~The only~~ circumstances which can be invoked to refuse total or partial access to environmental information are the following:

- (a) when its disclosure, communication or knowledge would affect the rights of individuals, especially as related to their safety, health or private life;

- (b) when its disclosure, communication or knowledge would affect national security or interests, particularly with respect to national defence, public order, public health or international relations;
- (c) when its disclosure, communication or knowledge would affect protection of the environment; and
- (d) when the requested information is classified as secret or confidential by laws in force and their respective regulations.⁸⁶

Suggested redraft of article 6, numeral 6:

Access to environmental information may be refused in accordance with established national legislation or the following provisions:

- (a) When knowledge of that information would affect the rights of individuals, especially as related to their safety, health or private life;
- (b) When its disclosure, communication or knowledge would affect national security or interests, particularly with respect to national defence, public order, public health, international relations, the prevention, investigation and prosecution of crimes, the effective administration of justice, or the rights of children and adolescents
- (c) when its disclosure, communication or knowledge would affect protection of the environment; and
- (d) when the requested information is classified as secret or confidential by laws in force and their respective regulations.⁸⁷

Suggested modification to article 6, numeral 6:

The ~~only~~ circumstances which can be invoked to refuse total or partial access to environmental information are the following:

- (a) when its disclosure, communication or knowledge would affect the rights of individuals, especially as related to their safety, health or private life;
- (b) when its disclosure, communication or knowledge would affect national security or interests, particularly with respect to national economy, national defence, public order, public health or international relations;
- (c) when its disclosure, communication or knowledge would affect protection of the environment; and
- (d) when the requested information is classified as exempt in accordance with national laws and their respective regulations.⁸⁸

7. The aforementioned 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 competent authority.

8. For the purposes of the present Agreement, information on human and environmental health and safety shall not be considered confidential.⁸⁹

Suggested deletion of article 6, numeral 8.⁹⁰

Suggested modification to article 6, numeral 8:

For the purposes of the present Agreement, information on human and environmental health and safety shall not be considered confidential. The information should also be available in indigenous languages.⁹¹

9. Severability/partial disclosure: When not all information contained in a document is exempt from disclosure under the exceptions set out in article 6.6, a public version may be created that redacts only the indispensable part. The non-exempt information shall be provided to the petitioner and made public. To the extent practicable, the Parties shall ensure that the public knows the nature of the information excluded, including through non-confidential indexes or summaries.⁹²

Suggested modification to article 6, numeral 9:

Severability/partial disclosure: When not all information contained in a document is exempt from disclosure under the ~~exceptions~~exemptions set out in article 6.6, a public version may be created that redacts only the indispensable part. The non exempt information shall be provided to the ~~petitioner~~applicant and made public. To the extent practicable, the Parties shall ensure that the public knows the nature of the information excluded, including through non-confidential indexes or summaries.⁹³

10. The Parties shall encourage the establishment of tests of public interest, instances for mediation or other mechanisms in order to weigh the interest of withholding information against the interest of disclosing it.⁹⁴

Conditions applicable to the delivery of environmental information

11. The Parties shall guarantee that requested information is provided in the format specified by the petitioner at any time in the event that it is available, whether by physical or electronic means.

Suggested redraft of article 6, numeral 11:

The Parties shall guarantee that, in cases where information is in the possession of the competent authority, it shall be provided in the format specified by the petitioner when it is available, whether by physical or electronic means.⁹⁵

Suggested modification to article 6, numeral 11:

The Parties shall guarantee that requested information is provided in the format specified by the ~~petitioner~~applicant at any time in the event that it is available, whether by physical or electronic means.⁹⁶

12. All competent authorities shall respond to requests for environmental information as quickly as possible and avoid any type of delaying formalities. The maximum period for responding to an information request shall be thirty business days from the date of receipt of the request.⁹⁷

Suggested modification to article 6, numeral 12:

Each Party shall establish domestic rules on the maximum period for providing requested information, and the conditions under which that period can be extended.⁹⁸

All competent authorities shall respond to requests for environmental information as quickly as possible and avoid any type of delaying formalities. The maximum period for responding to an information request shall be thirty business days from the date of receipt of the request, or less if so stipulated in the domestic legislation of any of the States parties to the present instrument.⁹⁹

13. Inasmuch as a request requires a search or review of a large number of documents, a search in offices that are physically separate from the office receiving the request or consultations with other obligated entities prior to taking a decision on disclosure, the competent authority handling the request may extend the deadline for responding to the request by up to twenty additional business days.¹⁰⁰

Suggested modification to article 6, numeral 13:

Inasmuch as a request requires a search or review of a large number of documents, a search in offices that are physically separate from the office receiving the request or consultations with other obligated entities prior to taking a decision on disclosure, the competent authority handling the request may ~~extend~~ take the deadline for responding to the request by up to twenty additional business days to respond, or less if so stipulated in the domestic legislation of any of the States parties to the present instrument. This period will be determined by the States, but shall not be longer than the period established for responding to the request.¹⁰¹

14. In the event that the competent authority cannot complete the response process in thirty business days, or within fifty business days if under the conditions set out in paragraph 13 of this article, the lack of response from the competent authority shall be understood as a refusal of the request.¹⁰²

Suggested modification to article 6, numeral 14:

In the event that the competent authority cannot complete the response process in thirty business days, ~~or within fifty business days if under the conditions set out in paragraph 13 of this article, in accordance with paragraph 12,~~ the lack of response from the competent authority shall be understood as a refusal of the request.¹⁰³

15. The competent authority to which the request is made shall respond by either granting access to the information or issuing a reasoned refusal.

16. In the event that the entity to which the request for information is made is not competent to handle the request or does not possess the requested documents, it shall immediately forward the request to the competent authority or the authority that possesses the documents, to the extent that the latter can be identified, and so notify the petitioner. If the competent authority cannot be identified or if the requested information is in the possession of multiple entities, the entity to which the request is made shall notify said circumstances to the petitioner.¹⁰⁴

Suggested modifications to article 6, numeral 16:

In the event that the entity to which the request for information is made is not competent to handle the request or does not possess the requested documents, it shall endeavour, in keeping with applicable legislations, to ~~immediately~~ forward the request to the competent authority or the authority that possesses the documents, to the extent that the latter can be identified, and so notify the petitioner. If the competent authority cannot be identified or if the requested information is in the possession of multiple entities, the entity to which the request is made shall notify said circumstances to the petitioner.¹⁰⁵

In the event that the entity to which the request for information is made is not competent to handle the request or does not possess the requested documents, it shall immediately forward the request to the competent authority or the authority that possesses the documents, to the extent that the latter can be identified, and so notify the ~~petitioner~~applicant. If the competent authority cannot be identified or if the requested information is in the possession of multiple entities, the entity to which the request is made shall notify said circumstances to the ~~petitioner~~applicant.¹⁰⁶

In the event that the entity to which the request for information is made is not competent to handle the request ~~or does not possess the requested documents,~~ it shall immediately forward the request to the competent authority or the authority that possesses the documents, to the extent that the latter can be identified, and so notify the petitioner. If the competent authority cannot be identified or if the requested information is in the possession of multiple entities, the entity to which the request is made shall notify said circumstances to the petitioner.¹⁰⁷

17. When the information does not exist, the petitioner shall be so notified.

Suggested modification to article 6, numeral 17:

When the information does not exist, the ~~petitioner~~applicant shall be so notified.¹⁰⁸

18. The Parties shall guarantee that access to environmental information is free and that no fees are charged other than the cost of reproducing the information and, as applicable, the cost of delivery, if required. No fee may be charged for information delivered electronically.¹⁰⁹

Independent review mechanisms

19. The Parties shall have an autonomous, independent and impartial entity or institution to promote transparency in access to environmental information, oversee compliance with rules and guarantee the right of access to information. This entity may have sanctioning powers.¹¹⁰

Suggested deletion of article 6, numeral 19.¹¹¹

Suggested modification to article 6, numeral 19:

Each party shall charge its existing supervisory and monitoring entities with ensuring the enforcement of access rights.¹¹²

Article 7
Generation and dissemination of environmental information¹¹³

1. The Parties shall endeavour to generate, collect, systematize, make publicly available and disseminate environmental information in a proactive and timely, regular, accessible and comprehensible manner. The Parties shall periodically update this information and encourage the disaggregation and decentralization of environmental information at the subnational and local levels.¹¹⁴

Suggested modifications to article 7, numeral 1:

The Parties shall use their best endeavours to generate, collect, systematize, make publicly available and disseminate environmental information in a proactive and timely, regular, accessible and comprehensible manner. The Parties shall periodically update this information and encourage the disaggregation and decentralization of environmental information at the subnational and local levels.¹¹⁵

The Parties shall endeavour to generate, collect, systematize, make publicly available and disseminate environmental information in a proactive and timely, regular, accessible and comprehensible manner. The Parties shall periodically update this information and encourage the disaggregation and decentralization of environmental information at the subnational and local levels. The Parties shall strengthen the role of coordination between the different authorities of federal States.¹¹⁶

2. All environmental information in the public interest that is produced, handled and disseminated shall be timely, objective, reliable, complete, up-to-date, reusable, processable and available in formats that are accessible to petitioners and interested parties, with no restrictions on its reproduction or use, in accordance with legal provisions and exceptions. Open-data formats shall be encouraged.¹¹⁷

Suggested modification to article 7, numeral 2:

All environmental information in the public interest that is produced, handled and disseminated shall be as practicable timely, ~~objective,~~ reliable, complete, up-to-date, reusable, processable and available in formats that are accessible to petitioner-applicants and interested parties, with no restrictions on its reproduction or use, in accordance with legal provisions and ~~exceptions~~exemptions. Open-data formats shall be encouraged.¹¹⁸

3. Emergencies and disasters: Each Party shall ensure that in the case of an imminent threat to the health or environment, whether attributable to human activities or due to natural causes, all information that might help the public take measures to prevent or limit potential damage that is in the possession of an obligated entity is disseminated immediately and without delay.

Suggested modification to article 7, numeral 3:

Emergencies and disasters: Each Party shall ensure that in the case of an imminent threat to the health or environment, whether attributable to human activities or due to natural causes, all information that ~~could~~might help the public take measures to prevent or limit potential damage that is in the possession of an obligated entity is disseminated immediately and without delay.¹¹⁹

Emergencies and disasters: Each Party shall ensure that in the case of an imminent threat to humanthe health or environment, whether attributable to human activities or due to natural

causes, all information that might help the public take measures to prevent or limit potential damage that is in the possession of an ~~obligated entity~~ competent authority is disseminated immediately and without delay.¹²⁰

4. In order to facilitate access by disadvantaged groups to information that particularly affects them, the Parties shall ensure that obligated entities disclose environmental information in various languages and prepare alternative formats that are comprehensible for said groups. The Parties shall guarantee access to that information for the various ethnic and cultural groups in the country and in particular shall ensure that suitable channels of communication are arranged to provide access to disadvantaged individuals or groups.¹²¹

Suggested modifications to article 7, numeral 4:

In order to facilitate access by disadvantaged groups to information that particularly affects them, the Parties shall ensure that obligated entities disclose environmental information in various languages used in the country and prepare alternative formats that are comprehensible for said groups. The Parties shall guarantee access to that information for the various ethnic and cultural groups in the country and in particular shall ensure that suitable channels of communication are arranged to provide access to disadvantaged individuals or groups.¹²²

In order to facilitate access by disadvantaged groups to information that particularly affects them, the Parties shall ensure that, ~~obligated entities~~ at the request of community authorities, the competent authorities disclose environmental information in various languages and prepare alternative formats that are comprehensible for said groups. The Parties shall guarantee access to that information for the various ethnic and cultural groups in the country and in particular shall ensure that suitable channels of communication are arranged to provide access to disadvantaged individuals or groups.¹²³

In order to facilitate access by ~~vulnerable~~ disadvantaged groups to information that particularly affects them, the Parties shall ensure, where practicable, that ~~obligated entities~~ competent authorities disclose environmental information in various languages and prepare alternative formats that are comprehensible for said groups. The Parties shall guarantee access to that information for the various ethnic and cultural groups in the country and in particular shall ensure that suitable channels of communication are arranged to provide access to ~~vulnerable~~ disadvantaged individuals or groups.¹²⁴

5. 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 will contain at least:

(a) information on the quality of the environment;

Suggested modification to article 7, numeral 5, letter (a):

(a) information on the quality of the environment, including quantitative data;¹²⁵

(b) pressures on the environment;

(c) environmental legislation;

Suggested modification to article 7, numeral 5, letter (c):

(c) environmental legislation and policies;¹²⁶

- (d) national actions to fulfil international commitments;
- (e) number and type of participation mechanisms that were implemented during the period covered by the report and evaluation; and
- (f) specific description of advances in the implementation of access rights.

Suggested additional subparagraph under article 7, numeral 5:

(g) Institutional arrangements among responsible government ministries, departments and agencies.¹²⁷

The reports should be drafted in an easily comprehensible manner and should be accessible to interested parties in different formats on various means. They should also be disseminated through culturally adequate means, including community radios and neighbourhood or community meetings.

The Parties may invite the collaboration of the public in the preparation of these reports and may also request the support of the secretariat, along with other international organizations, for the systematization, publication and dissemination of these reports at the regional level.

Suggested modification to article 7, numeral 5:

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 ~~will~~ could contain ~~at least~~:

- (a) information on the quality of the environment;**
- (b) pressures on the environment;**
- (c) environmental legislation;**
- (d) national actions to fulfil international commitments;**
- (e) number and type of participation mechanisms that were implemented during the period covered by the report and evaluation, as applicable; and**
- (f) specific description of advances in the implementation of access rights.**

The reports should be drafted in an easily comprehensible manner and should be accessible to interested parties in different formats on various means. They should also be disseminated through culturally adequate means, including community radios and neighbourhood or community meetings.

The Parties may invite the collaboration of the public in the preparation of these reports and may also request the support of the secretariat, along with other international organizations, for the systematization, publication and dissemination of these reports at the regional level.¹²⁸

6. The Parties shall encourage independent environmental performance review on the basis of common criteria and indicators on environmental, economic and social matters, with a view to evaluating the efficacy, effectiveness and progress of their national environmental policies in fulfilment of their national and international commitments and generating relevant conclusions and recommendations for said policies. The reviews should include participation by the various stakeholders in society.¹²⁹

Suggested modification to article 7, numeral 6:

The Parties shall encourage independent environmental performance review on the basis of common criteria and indicators, and methodologies adopted by the competent authority, on environmental, economic and social matters, with a view to evaluating the efficacy, effectiveness and progress of their national environmental policies in fulfilment of their national and international commitments and generating relevant conclusions and recommendations for said policies. The reviews should include participation by the various stakeholders in society. The Parties shall promote and recognize communal systems of environmental monitoring, which shall be taken into account, where relevant, for the purposes of carrying out environmental monitoring and oversight by the States parties.¹³⁰

7. Each Party shall create, administer and periodically update a pollutant release and transfer register for the air, water, soil and subsoil, materials and waste in its jurisdiction, among others. The registered information will be public and electronically accessible and will contain disaggregated and standardized data.¹³¹

Suggested redraft of article 7, numeral 7:

Parties are urged to take steps to create emissions and discharge registers that envisage mechanisms for access to information through proper aggregation and standardization.¹³²

8. Each Party shall establish dissemination mechanisms in accordance with its national laws for the purpose of guaranteeing public access to contracts, authorizations or permits signed by public authorities that involve the execution of investment projects subject to environmental assessment.

Suggested modification to article 7, numeral 8:

Each Party ~~shall~~ may establish dissemination mechanisms in accordance with its national laws for the purpose of guaranteeing public access to contracts, authorizations or permits signed by public authorities that involve the execution of investment projects subject to environmental assessment.¹³³

Suggested addition to article 7, numeral 8:

Each Party shall establish dissemination mechanisms in accordance with its national laws for the purpose of guaranteeing public access to contracts, authorizations or permits signed by public authorities that involve the execution of investment projects subject to environmental assessment or the obtention of permits, authorizations or concessions in order to use or otherwise harness renewable natural resources.¹³⁴

9. The Parties shall encourage the implementation of open-data policies at the various levels of government to help improve information systems, enhance transparency, generate inter-operability of data and promote innovation. The Parties shall also encourage the use of new information and

communication technologies, including social networks and media, to disseminate environmental information. In the event of limitations, consideration should likewise be given to alternative dissemination and access mechanisms.

Suggested modification to article 7, numeral 9:

The Parties shall ~~ensure~~ encourage the implementation of open data policies at the various levels of government to help improve information systems, enhance transparency, generate inter operability of data and promote innovation. The Parties shall also encourage the use of new information and communication technologies, including social networks and media, to disseminate environmental information. In the event of limitations, consideration should likewise be given to alternative dissemination and access mechanisms.¹³⁵

The Parties shall encourage the progressive implementation of open- data policies at the various levels of government to help improve information systems, enhance transparency, generate inter-operability of data and promote innovation. The Parties shall also encourage the use of new information and communication technologies, including social networks and media, to disseminate environmental information. In the event of limitations, consideration should likewise be given to alternative dissemination and access mechanisms.¹³⁶

10. The Parties shall ensure that consumers and users have information that is verifiable, relevant, precise, non-deceptive and science-based on the environmental qualities and corresponding health effects of goods and services, in order to promote sustainable production and consumption patterns.

Suggested modifications to article 7, numeral 10:

The Parties shall ensure that the public consumers and users have information that is verifiable, relevant, precise, non-deceptive and science-based on the environmental qualities and corresponding health effects of goods and services, in order to promote sustainable production and consumption patterns.¹³⁷

~~The Parties shall ensure that consumers and users have~~ The Parties shall promote instruments that give consumers and users access to information that is verifiable, relevant, precise, non-deceptive and science-based on the environmental qualities and corresponding health effects of goods and services, in order to promote sustainable production and consumption patterns.¹³⁸

Suggested deletion of article 7, numeral 10.¹³⁹

Suggested modification to article 7, numeral 10:

The Parties shall use their best endeavours to ensure that consumers and users have information ~~that is verifiable, relevant, precise, non-deceptive and science-based~~ on the environmental qualities and corresponding health effects of goods and services, in order to promote sustainable production and consumption patterns.¹⁴⁰

11. The Parties shall develop regulations that promote adequate management and archiving of environmental information and corresponding requests, to help make it available to the public, redistribute and reuse it, except as established in article 6.6 of the present Agreement. In no case may a competent authority destroy information in its possession.¹⁴¹

Suggested modifications to article 7, numeral 11:

The Parties shall develop regulations that promote adequate management and archiving of environmental information and corresponding requests, to help make it available to the public, redistribute and reuse it, except as established in article 6.6 of the present Agreement. ~~In no case may a competent authority destroy information in its possession.~~¹⁴²

The Parties shall develop legislation, policies and guidelines~~regulations~~ that promote adequate management and archiving of environmental information and corresponding requests, to help make it available to the public, redistribute and reuse it, except as established in article 6.6 of the present Agreement. The competent authority may destroy information in its possession in accordance with national legislation, policies and guidelines.~~In no case may a competent authority destroy information in its possession.~~¹⁴³

12. The Parties shall promote, through legal and/or institutional frameworks, the access to environmental information generated by private entities. The Parties shall also encourage the preparation of sustainability reports on State-owned and private enterprises that contain information on the social and environmental performance of their activities.¹⁴⁴

Suggested modifications to article 7, numeral 12:

The Parties shall promote, through legal and/or institutional frameworks, the access to environmental information generated by private entities. The Parties shall also encourage the preparation of sustainability reports on State-owned and private enterprises that contain information on the social and environmental performance of their activities. These reports shall be prepared with the participation of the workers.¹⁴⁵

Suggested separation of numeral 12 into two paragraphs:

The Parties shall promote, ~~through legal and/or institutional frameworks,~~ the access to environmental information generated by private entities. The Parties shall ~~also encourage the preparation of sustainability reports on State-owned entities and private enterprises that contain information on the social and environmental performance of their activities.~~¹⁴⁶

The Parties shall encourage private entities~~enterprises~~ that contain information on the effects of companies' activities on the environment, health and safety, in particular information on dangerous substances or activities to provide such information to the public~~social and environmental performance of their activities.~~¹⁴⁷

13. The Parties shall encourage access to adequate and specific information on the effects of companies' activities on the environment, health and safety, in particular information on dangerous substances or activities.

Suggested modification to article 7, numeral 13:

The Parties shall ~~encourage~~ ensure access to adequate and specific information on the effects of companies' activities on the environment, health and safety, in particular information on dangerous substances or activities.¹⁴⁸

Article 8

Public participation in environmental decision-making¹⁴⁹

1. The Parties commit to implement open and inclusive participation mechanisms for environmental decision-making. These mechanisms shall also apply to processes associated with conservation, use, exploitation and management of natural resources.¹⁵⁰

Suggested modifications to article 8, numeral 1:

The Parties commit to implement open and inclusive participation mechanisms for environmental decision-making, in accordance with their normative frameworks, legal traditions and international instruments. ~~These mechanisms shall also apply to processes associated with conservation, use, exploitation and management of natural resources~~ mechanisms shall apply to processes associated with conservation, use, exploitation and management of natural resources and procedures linked with environmental land management.¹⁵¹

The Parties commit to implement open and inclusive participation mechanisms for environmental decision-making.¹⁵² ~~These mechanisms shall also apply to processes associated with conservation, use, exploitation and management of natural resources.~~¹⁵³

The Parties commit to implement and institutionalize open and inclusive participation mechanisms for environmental decision-making. These mechanisms shall also apply to processes associated with conservation, use, exploitation and management of natural resources.¹⁵⁴

2. Each Party shall adopt measures to ensure public participation when all options and solutions are still possible and when the public is able to exercise real influence.

Suggested modifications to article 8, numeral 2:

Each Party shall adopt measures to ensure public participation when all options and solutions are still possible and when the public is able to participate in an effective manner.¹⁵⁵

Each Party shall adopt measures to ensure timely public participation when all options and solutions are still possible and when the public is able to influence the outcome of the decision-making process~~exercise real influence.~~¹⁵⁶

3. The public shall have access to relevant information for active and effective participation in a timely, comprehensible and objective manner and in a simple and clear format, through suitable means. The information will contain at least the following:
 - (a) the type or nature of the decision, including a non-technical summary thereof;
 - (b) the competent authority for making the decision and other authorities involved; and
 - (c) the procedure specified for participation, including the date on which the procedure will begin, the possibilities offered to the public to participate and the date and place of any public consultation or hearing as applicable.

Suggested modification to article 8, numeral 3:

The public shall have access to relevant information for active and effective participation in a timely, comprehensible and objective manner and in a simple and clear format, through suitable means. The information will contain at least the following:

- (a) **the type or nature of the decision, including where practicable a non technical summary thereof;**
- (b) **the competent authority for making the decision and other authorities involved; and**
- (c) **the procedure specified for participation, including the date on which the procedure will begin and end, the possibilities offered to the public to participate and the date and place of any public consultation or hearing as applicable.¹⁵⁷**

The public shall have access to relevant information for active and effective participation in a timely, comprehensible and objective manner and in a simple and clear format, through suitable means. The information will contain at least the following:

- (a) **the type or nature of the decision, including a non technical summary thereof;**
- (b) **the competent authority for making the decision and other authorities involved; and**
- (c) **the procedure specified for participation, including the date on which the procedure will begin, the possibilities offered to the public to participate and the date and place of any public consultation or hearing as applicable, seeking ease of access for directly involved citizens.¹⁵⁸**

4. For the different phases of the public participation procedure, reasonable periods will be provided that allow sufficient time to inform the public and enable it to prepare and participate effectively throughout the entire environmental decision-making process.
5. Any person may present observations, information, analysis or opinions that he or she considers relevant in writing or through electronic means, at a public hearing or consultation or other established mechanisms.

Suggested modifications to article 8, numeral 5:

~~Any~~ Any individual or group consulted ~~person~~ may present observations, information, analysis or opinions that he or she considers relevant in writing or through electronic means, at a public hearing or consultation or other established mechanisms.¹⁵⁹

Any person may present observations, information, analysis or opinions that he or she considers relevant in writing, orally or through electronic means, at a public hearing or consultation or other established mechanisms.¹⁶⁰

6. The Parties shall ensure that the public is able to participate with full autonomy and that accommodations are made for the social, economic, cultural, geographical and gender characteristics of communities, by implementing differentiated participation processes intended to overcome any barrier. In particular, when groups reside in the involved areas that speak primarily languages other than the official language, the competent authority shall guarantee that the means are provided to facilitate their understanding and participation.

Suggested modifications to article 8, numeral 6:

The Parties shall ensure that the public is able to participate with full autonomy and that accommodations are made for the social, economic, cultural, geographical and gender characteristics of communities, by implementing differentiated participation processes intended to overcome any barrier. In particular, when groups reside in the involved areas that speak primarily languages other than the official language, the competent authority shall guarantee that the means are provided to facilitate their understanding and participation through processes and forms of organization pertaining to their traditions and cultural identity.¹⁶¹

The Parties shall ensure that the public is able to participate with full autonomy and that accommodations are made for the social, economic, cultural, geographical and gender characteristics of individuals or groups ~~of communities~~, by implementing differentiated participation processes intended to overcome ~~any barriers~~ to participation. In particular, when ~~groups reside in the involved areas that~~ the directly affected public speak primarily languages other than the official language, the competent authority shall guarantee that the means are provided to facilitate their understanding and participation.¹⁶²

Suggested addition to article 8, numeral 6:

6 bis. The Parties will help their citizens to understand the future scenarios resulting from decisions that are taken, in order to help citizens give better informed opinions.¹⁶³

7. Each Party shall duly take into consideration the outcome of the participation process when making decisions. When the observations or recommendations of the public are not taken into account, the reason should be reported and substantiated in writing to those who made them.

Suggested modifications to article 8, numeral 7:

Each Party shall duly take into consideration the outcome of the participation process when making decisions. When the observations or recommendations of the public are not taken into account, the reason should be reported and substantiated in writing to those who made them and to the public.¹⁶⁴

Each Party shall duly take into consideration the outcome of the participation process when making decisions. When the observations or recommendations of the public are not taken into account, the reason should be reported and substantiated in writing to those who made them and to the public in general.¹⁶⁵

Each Party shall duly take into consideration the outcome of the participation process when making decisions. A consultation report inclusive of ~~When the observations or recommendations of the public should be disseminated accordingly are not taken into account, the reason should be reported and substantiated in writing to those who made them.~~¹⁶⁶

8. Each Party shall ensure that when a public authority re-examines or updates projects, activities, policies, plans, rules, regulations, programmes or strategies liable to generate environmental impacts, the provisions contained in this article are observed.

Suggested modification to article 8, numeral 8:

Each Party shall ensure that when a public authority or designated authority re-examines or updates projects, activities, policies, plans, rules, regulations, programmes or strategies liable to generate environmental impacts, the provisions contained in this article are observed.¹⁶⁷

Suggested deletion of article 8, numeral 8.¹⁶⁸

9. Each Party shall ensure that once a decision has been made, the public is informed promptly, following the appropriate procedure. Each Party shall communicate to the public the text of the decision, accompanied by the interests and reasons on which the decision is based, including consideration of the observations of the public. The decision and its basis will be public.

Suggested modifications to article 8, numeral 9:

Each Party shall ensure that once a decision has been made, the public is informed ~~promptly~~ as soon as practicable and within 72 hours following the appropriate procedure. Each Party shall communicate to the public the text of the decision, accompanied by the interests and reasons on which the decision is based, including consideration of the observations of the public. The decision and its basis will be public.¹⁶⁹

Each Party shall ensure that once a decision has been made, the public is informed promptly in a timely manner, following the appropriate procedure. Each Party shall communicate to the public the text of the decision, accompanied by the interests and reasons on which the decision is based, including consideration of the observations of the public. ~~The decision and its basis will be public.~~¹⁷⁰

Each Party shall ensure that once a decision has been made, the public is informed promptly, following the appropriate procedure. Each Party shall communicate to the public the text of the decision, and where applicable in-keeping with national laws communicate to the public accompanied by the interests and reasons on which the decision is based, including consideration of the observations of the public. ~~The decision and its basis will be public.~~¹⁷¹

10. The Conference of the Parties may develop manuals and propose guidelines for the implementation of public participation in environmental decision-making.¹⁷²
11. Each Party shall strive to promote effective public participation in international forums and negotiations on environmental matters and/or with an environmental impact.¹⁷³
12. The Parties shall encourage the establishment of permanent formal spaces for consultation on environmental matters in which representatives of various groups and sectors will participate. The Parties shall promote regard for local knowledge, dialogue and interaction of different views and knowledge.

Suggested modification to article 8, numeral 12:

The Parties shall encourage the establishment of ~~permanent formal~~ approved spaces for consultation on environmental matters in which representatives of various groups and sectors will participate. The Parties shall promote regard for local knowledge, dialogue and interaction of different views and knowledge.¹⁷⁴

Suggested deletion of article 8, numeral 12.¹⁷⁵

13. The Parties shall make additional efforts to identify disadvantaged individuals and groups in order to engage them in an active, timely and effective manner. For these purposes, the best media and formats will be considered, to support their participation and ensure respect for their cultural characteristics.¹⁷⁶

Suggested modifications to article 8, numeral 13:

The Parties shall make additional efforts to identify ~~disadvantaged~~ individuals in vulnerable situations and groups in order to engage them in an active, timely and effective manner. For these purposes, the best media and formats will be considered, to support their participation and ensure respect for their cultural characteristics.¹⁷⁷

The Parties shall make additional efforts to identify vulnerable~~disadvantaged~~ individuals and groups in order to remove barriers to participation~~engage them in an active, timely and effective manner. For these purposes, the best media and formats will be considered, to support their participation and ensure respect for their cultural characteristics.~~¹⁷⁸

14. When individuals or groups belonging to an indigenous people are affected, the Parties shall ensure that the applicable national and international standards on this matter are observed.

Suggested deletion of article 8, numeral 14.¹⁷⁹

Suggested modifications to article 8, numeral 14:

When individuals or groups belonging to an indigenous people are affected, the Parties shall ensure that the applicable national and international standards ~~on this matter~~ are observed.¹⁸⁰

When individuals or groups belonging to an indigenous people are affected, the Parties shall ensure that applicable domestic legislation and international standards national and international standards on this matter on exercising their collective rights are observed, especially the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).¹⁸¹

Additional measures for activities and projects

Suggested addition to section on additional measures for activities and projects:

The Parties shall promote additional measures with a view to achieving effective participation in environmental decision-making processes.¹⁸²

Suggested deletion of the heading “Additional measures for activities and projects”, while maintaining numerals 15 to 18.¹⁸³

15. The Parties shall guarantee mandatory public participation procedures for all projects and activities subject to environmental assessment in accordance with national law. In all cases, public participation shall be guaranteed in projects and activities related to mining, electricity generation, production activities and certain uses of hazardous substances and treatment and disposal of waste. In addition, public participation shall be ensured in projects and activities relating to coastal development.

Suggested modifications to article 8, numeral 15:

The Parties shall guarantee mandatory public participation procedures for all projects and activities subject to environmental assessment in accordance with national law. In all cases, public participation shall be guaranteed in projects and activities related to the extraction of minerals and other resources ~~mining~~, electricity generation, production activities and ~~certain~~ uses of hazardous substances and treatment, including but not limited to disposal of waste. In addition, public participation shall be ensured in projects and activities relating to coastal development.¹⁸⁴

The Parties shall guarantee mandatory public participation procedures for all projects and activities subject to environmental assessment in accordance with national law. In all cases, public participation shall be guaranteed in ~~projects and activities related to mining, electricity generation, production activities and certain uses of hazardous substances and treatment and disposal of waste. In addition,~~ public participation shall be ensured in ~~projects and activities relating to coastal development.~~¹⁸⁵

The Parties shall guarantee ~~mandatory~~ public participation procedures for ~~all~~ projects and activities subject to environmental assessment in accordance with national law. In all cases, public participation shall be guaranteed in projects and activities related to mining, electricity generation, production activities and certain uses of hazardous substances and treatment and disposal of waste. In addition, public participation shall be ensured in projects and activities relating to coastal development.¹⁸⁶

The Parties shall guarantee mandatory public participation procedures as contained in the article for all projects and activities subject to environmental assessment in accordance with national law. In all cases, public participation shall be guaranteed in projects and activities related to mining, electricity generation, production activities and certain uses of hazardous substances and treatment and disposal of waste. In addition, public participation shall be ensured in projects and activities relating to coastal development.¹⁸⁷

The Parties shall guarantee mandatory public participation procedures for all projects and activities subject to environmental assessment in accordance with national law. In all cases, public participation shall be guaranteed in projects and activities related to mining, electricity generation, production activities, other activities and certain uses of hazardous substances and treatment and disposal of waste. In addition, public participation shall be ensured in projects and activities relating to coastal development and other relevant or priority projects in each Party.¹⁸⁸

Suggested addition to article 8, numeral 15:

15 bis. The right of vulnerable groups to participate in policies, plans and programmes that have an impact on their territories or populations shall be guaranteed.¹⁸⁹

16. Each Party shall require the competent authorities to make efforts to identify the public directly affected by the project or activity and promote specific actions to facilitate their informed participation in decision-making, including, inter alia, technical and financial assistance.¹⁹⁰

Suggested addition to article 8, numeral 16:

16 bis. None of the foregoing paragraphs shall imply that participation supplants the right of indigenous peoples to consultation and consent.¹⁹¹

Suggested deletion of article 8, numeral 16.¹⁹²

17. The public directly affected will have access, from the point in time at which it is available, to all information of interest for the environmental assessment of projects and activities, which will encompass at least the following:

- (a) description of the site and physical and technical characteristics of the proposed project or activity;
- (b) description of the major effects of the project or activity on the environment;

Suggested modification to article 8, numeral 17, letter (b):

(b) description of the major and minor effects of the project or activity on the environment and people;¹⁹³

- (c) description of the measures established to prevent or reduce those effects;
- (d) a non-technical summary of (a), (b) and (c) of this paragraph; and
- (e) the reports and opinions addressed to the public authority.

Suggested additional letter in article 8, numeral 17:

(f) alternatives and different options.¹⁹⁴

Suggested modification to article 8, numeral 17:

The public ~~directly affected~~ will have access, from the point in time at which it is available, to all information of interest for the environmental assessment of projects and activities, which will encompass at least the following:

- (a) description of the site and physical and technical characteristics of the proposed project or activity;**
- (b) description of the major effects of the project or activity on the environment;**
- (c) description of the measures established to prevent or reduce those effects;**
- (d) a non-technical summary of (a), (b) and (c) of this paragraph; and**
- (e) the reports and opinions addressed to the public authority.**¹⁹⁵

The public ~~directly affected will~~shall have access, ~~from the point in time at which it is available, to all information of interest for the~~ to environmental impact assessments ~~offor~~ projects and activities, which will encompass at least the following:

- (a) description of the site and physical and technical characteristics of the proposed project or activity;**

- (b) description of the major effects of the project or activity on the environment;
- (c) description of the measures established to prevent or reduce those effects;
- (d) a non-technical summary of (a), (b) and (c) of this paragraph; and
- (e) the reports and opinions addressed to the public authority.¹⁹⁶

Suggested additional letter in article 8, numeral 17:

- (f) description of alternative locations and technologies.¹⁹⁷

18. Any public directly affected by a decision in the environmental assessment of projects and activities shall be promptly and specifically informed, and the decision shall be accompanied by the reasons and considerations supporting it. The decisions adopted and the grounds on which they are made will be public.

Suggested deletion of article 8, numeral 18.¹⁹⁸

Article 9
Access to justice¹⁹⁹

1. Each Party shall guarantee the right to access justice in environmental matters within a reasonable period of time through administrative and/or judicial means, in the framework of a process that grants guarantees of due process based on the principles of legality, effectiveness, publicity and transparency, through clear, fair, appropriate and independent procedures. The Parties shall ensure the right of appeal to a superior administrative and/or judicial body.²⁰⁰

Suggested modifications to article 9, numeral 1:

Each Party shall guarantee the right to access justice in environmental matters ~~within a reasonable period of~~ with the shortest time through administrative and/or judicial means, in the framework of a process that grants guarantees of due process based on the principles of legality, effectiveness, publicity and transparency, through clear, fair, appropriate and independent procedures. The Parties shall ensure the right of appeal to a superior administrative and/or judicial body.²⁰¹

Each Party shall ~~guarantee the right~~ facilitate to access to justice in environmental matters ~~within a reasonable period of time~~ through administrative and/or judicial means, in the framework of a process that grants guarantees of due process ~~based on the principles of legality, effectiveness, publicity and transparency,~~ through clear, fair, public, transparent ~~appropriate~~ and independent procedures. The Parties shall ensure the right of appeal to a superior administrative and/or judicial body.²⁰²

Each Party shall guarantee the right to access justice in environmental matters within a ~~reasonable legal period of~~ time frame to be defined through administrative and/or judicial means, in the framework of a process that grants guarantees of due process based on the principles of legality, two hearings, effectiveness, publicity and transparency, through clear, fair, appropriate and independent procedures. The Parties shall ensure the right of appeal to a superior administrative and/or judicial body.²⁰³

2. Each Party shall ensure, in the framework of its national laws, that any person is entitled to have access to a judicial body or other autonomous, independent and impartial body or administrative procedures to challenge the legality of:
- (a) any decision, action or omission related to the access to environmental information;
 - (b) any decision, action or omission, with respect to substance or procedure, related to participation by the public in environmental decision-making; and
 - (c) any decision, action or omission by an individual, public authority or private entity that could affect the environment or violate, with respect to substance or procedure, the environmental laws and regulations of the State related to the environment.

Suggested modifications to article 9, numeral 2:

Each Party shall ensure, in the framework of its national laws, that any person is entitled to have access to a judicial body or other autonomous, independent and impartial body or administrative procedures to challenge the legality of:

- (a) any decision, action or omission related to the access to environmental information;**
- (b) any decision, action or omission, with respect to substance or procedure, related to participation by the public in environmental decision-making; and**
- (c) any decision, action or omission by an individual, public authority or private entity that could affect the environment or violate, with respect to substance or procedure, the environmental laws and regulations of the State related to the environment.²⁰⁴**

Each Party shall ensure, in accordance with ~~the framework of~~ its national laws, that any person is entitled to have access to a judicial body or other autonomous, independent and impartial body or administrative procedures to challenge the legality of:

- (a) any decision, action or omission related to the access to environmental information;**
- (b) any decision, action or omission, with respect to substance or procedure, related to participation by the public in environmental decision-making; and**
- (c) any decision, action or omission by an individual, public authority or private entity that could adversely affect the environment or violate, with respect to substance or procedure, the environmental laws and regulations of the State related to the environment.²⁰⁵**

Each Party shall ensure, in the framework of its national laws, that any person is entitled to have access to a judicial body or other autonomous, independent and impartial body or administrative procedures to challenge the legality of:

- (a) any decision, action or omission related to the access to environmental information;**
- (b) any decision, action or omission, with respect to substance or procedure, related to participation by the public in environmental decision-making; and**

- (c) any decision, action or omission by an individual, public authority or private entity that affects or could affect the environment or violate, with respect to substance or procedure, the environmental laws and regulations of the State related to the environment.²⁰⁶

Suggested addition to article 9, numeral 2:

2bis. The judicial or autonomous body may order the reparation, restitution or compensation of environmental damage.²⁰⁷

3. To guarantee this right, the Parties shall establish:²⁰⁸

- (a) jurisdictional or non-jurisdictional entities specialized in environmental matters;
- (b) effective, reasonable, fair, open, rapid, transparent, equitable and timely procedures;²⁰⁹
- (c) broad active legal standing in defense of the environment, which may include collective actions;
- (d) timely and effective execution mechanisms for decisions;
- (e) timely, adequate and effective mechanisms for redress, including restitution, compensation and other suitable measures, and attention to victims as applicable, and the establishment of funds;²¹⁰

Suggested modification to article 9, numeral 3, letter (e):

(e) timely, adequate and effective mechanisms for redress, including restitution, restoration, compensation and other suitable measures, and attention to ~~victims~~ affected persons, as applicable, and the establishment of funds.²¹¹

- (f) the possibility of ordering precautionary, interim and oversight measures to safeguard the environment and public health;

Suggested modifications to article 9, numeral 3, letter (f):

(f) the possibility of ordering precautionary, interim and oversight measures to safeguard the environment, public health and the livelihood of people, including the traditional and spiritual use of land;²¹²

(f) the possibility of ordering precautionary, interim and oversight measures to safeguard the environment and public health; grounded in the application of preventive and precautionary measures;²¹³

- (g) measures to facilitate the determination of environmental damage, including objective responsibility and reversal of the onus of proof.²¹⁴

Suggested addition of a new letter under article 9, numeral 3:

h) measures to create technical and scientific entities to provide support to jurisdictional and non-jurisdictional bodies on environmental matters, and to strengthen and develop their capacities.²¹⁵

The Parties shall encourage, insofar as possible, the establishment of judicial and/or administrative standards of review in cases pertaining to environmental damage, such as the *in dubio pro natura* principle.²¹⁶

Suggested modifications to article 9, numeral 3:

To guarantee this right, the Parties shall establish:

- (a) **jurisdictional or non-jurisdictional entities specialized in environmental matters, as applicable;**
- (b) **effective, reasonable, fair, open, rapid, transparent, equitable and timely procedures;**
- (c) **broad active legal standing in defense of the environment, which may include collective actions;**
- (d) **timely and effective execution mechanisms for decisions;**
- (e) **timely, adequate and effective mechanisms for redress, including restitution, compensation and other suitable measures, and attention to victims as applicable, and the establishment of funds;**
- (f) **the possibility of ~~ordering~~ introducing precautionary, interim and oversight measures to ~~safeguard~~ prevent and halt damage to the environment and public health; and²¹⁷**
- (g) **measures to facilitate the production of evidence ~~determination~~ of environmental damage, including objective responsibility and reversal of the onus of proof. The inclusion of a dynamic burden of proof in cases where called for by the proceeding, with a view to contributing to access to environmental justice. Mechanisms should be promoted to ensure the production of evidence, even when the Parties do not have the funds to do so.**

The Parties shall encourage, insofar as possible, the establishment of judicial and/or administrative standards of review in cases pertaining to environmental damage, such as the *in dubio pro natura* principle and the prevention principle.²¹⁸

To facilitate access to justice as described in Article 9.1 ~~guarantee this right,~~ the Parties shall ensure where practicable establish jurisdictional or non-jurisdictional entities ~~specialized~~ in environmental matters which have:

- (a) **~~effective, reasonable,~~ clear, fair, public~~open,~~ rapid, transparent, equitable and ~~timely~~independent procedures;**
- (b) **~~broad active~~ rules relating to legal standing ~~in defense of the environment,~~ which may include collective actions;**
- (c) **an enabling environment for timely and effective execution mechanisms for decisions and redress;**
- (d) **~~timely, adequate and effective mechanisms for redress, including restitution, compensation and other suitable measures, and attention to victims as applicable, and the establishment of funds;~~**

- (e) ~~the possibility of power for~~ **ordering precautionary, interim and oversight measures to safeguard the environment and public health; and**
- (f) **measures to facilitate the determination of environmental damage, including objective responsibility and reversal of the onus of proof.**

The Parties shall encourage, insofar as possible, the establishment of judicial and/or administrative standards of review in cases pertaining to environmental damage, such as the *in dubio pro natura* principle.²¹⁹

4. The Parties shall take adequate measures to prevent any attack, threat, coercion or intimidation that any person or group may suffer while exercising the rights guaranteed by the present Agreement and ensure that these acts, should they occur, are investigated, prosecuted and punished in an independent, rapid and effective manner. Victims will be entitled to protection and damages.

Suggested modifications to article 9, numeral 4:

~~The Parties shall take adequate measures to prevent any attack, threat, coercion or intimidation that any person or group may suffer while exercising the rights guaranteed by the present Agreement and ensure that these acts, should they occur, are to investigated, and prosecuted and punished in an independent rapid and effective manner~~ **any attack, threat, coercion or intimidation that any person or group may suffer while exercising the rights guaranteed by the present Agreement. Victims will be entitled to protection and damages.**²²⁰

The Parties shall take adequate measures to prevent any attack, threat, coercion or intimidation that any person or group may suffer while exercising the rights guaranteed by the present Agreement and ensure that these acts, should they occur, are investigated, prosecuted and punished in an independent, rapid and effective manner, with recourse to judicial and/or non-judicial mechanisms. Victims will be entitled to protection and damages.²²¹

5. To facilitate access to justice in environmental matters, the Parties shall establish:
 - a) mechanisms to eliminate and reduce any obstacle that prevents or hinders access to justice and the duration of the processes. The procedures will have no costs and no restrictions of any kind will be allowed;
 - b) mechanisms to publicize the right of access to justice and procedures to ensure its effectiveness; and
 - c) new mechanisms, including virtual, electronic and telephone mechanisms.

Suggested modifications to article 9, numeral 5:

To facilitate access to justice in environmental matters, the Parties shall establish:

- (a) **mechanisms to eliminate and reduce any obstacle that prevents or hinders access to justice and the duration of the processes. ~~The procedures will have no costs and no restrictions of any kind will be allowed;~~**

- (b) mechanisms to publicize the right of access to justice and procedures to ensure its effectiveness; and
- (c) new mechanisms, which may include virtual, electronic and telephone mechanisms.²²²

To facilitate access to justice in environmental matters, the Parties shall establish:

- a) mechanisms to eliminate and reduce any obstacle that prevents or hinders access to justice and the duration of the processes. The procedures will have no costs and no restrictions of any kind will be allowed;
- b) mechanisms to publicize the right of access to justice and procedures to ensure its effectiveness; and
- c) new mechanisms, including virtual, electronic, telephone and other mechanisms.²²³

Suggested addition of a new letter under article 9, numeral 5:

d) The use of interpreters or translators when the petitioner or the defendant speaks an indigenous language.²²⁴

- 6. In order to exercise the right of access to justice, the Parties shall give consideration to disadvantaged groups by establishing, inter alia:
 - (a) support mechanisms, including free technical and legal assistance;
 - (b) channels that are linguistically, culturally, economically, spatially and temporally appropriate; and
 - (c) assistance in case of difficulties with reading and writing.

Suggested modifications to article 9, numeral 6:

In order to ~~exercise~~guarantee the right of access to justice, the Parties shall give consideration to economically disadvantaged groups by establishing, inter alia:

- (a) support mechanisms, including free technical and legal assistance;
- (b) channels that are linguistically, culturally, economically, spatially and temporally appropriate; and
- (c) assistance in case of difficulties with reading and writing and other challenges, including blindness and deafness.²²⁵

In order to ~~exercise the right of~~facilitate access to justice for vulnerable groups, the Parties shall give consideration to ~~disadvantaged groups~~ by establishing, inter alia:

- (a) support mechanisms, including free technical and legal assistance;

(b) channels that are linguistically, culturally, economically, spatially and [temporally] appropriate; and

(c) assistance in case of difficulties with reading and writing.²²⁶

In order to exercise the right of access to justice, the Parties shall give consideration to disadvantaged groups by establishing, inter alia:

(a) Specialized support mechanisms, including free technical and legal assistance;

(b) channels that are linguistically, culturally, economically, geographically ~~spatially~~ and temporally appropriate; and

(c) assistance in case of difficulties with reading and writing.²²⁷

Suggested addition of a new letter under article 9, numeral 6:

(d) The use of interpreters or translators when the petitioner or the defendant speaks an indigenous language.²²⁸

7. The Parties shall ensure that the decisions adopted are set out in writing and duly justified, notified in a timely manner and made available to the public. The Parties shall encourage the generation of public registers of judicial and/or administrative decisions on environmental matters.

Suggested modifications to article 9, numeral 7:

The Parties shall ~~encourage~~ **ensure** that the decisions adopted **and reasons** are set out in writing ~~and duly justified, notified in a timely manner~~ and made available to the public. The Parties shall encourage the generation of public registers of ~~judicial and/or~~ administrative decisions on environmental matters.²²⁹

The Parties shall ensure that the decisions adopted are set out in writing and duly justified, notified in a timely manner and made available to the public. The Parties shall ~~encourage the generation of~~ **generate** public registers of judicial and/or administrative decisions on environmental matters, which shall be easy and free to access.²³⁰

8. The Parties shall develop environmental law awareness and capacity-building programmes for the public, judicial and administrative officials, national human rights institutions, law enforcement officers and other jurists, inter alia.

Suggested modifications to article 9, numeral 8:

The Parties shall progressively develop environmental law awareness and capacity-building programmes for the public, judicial and administrative officials, national human rights institutions, law enforcement officers and other jurists, inter alia.²³¹

The Parties shall develop environmental law awareness and capacity-building programmes for the public; judicial and administrative officials, national human rights institutions, law enforcement officers and other justice sector actors ~~jurists~~, inter alia.²³²

The Parties shall develop environmental law awareness and capacity-building programmes for the public, judicial and administrative officials, national human rights and environmental institutions, law enforcement officers and other jurists, inter alia.²³³

9. The Parties shall promote Latin American and Caribbean regional cooperation for the investigation, prosecution and punishment of environmental crimes.

Suggested modifications to article 9, numeral 9:

The Parties shall promote, adopt and execute mechanisms for Latin American and Caribbean regional cooperation for the investigation, prosecution and punishment of cross-border environmental crimes and environmental crimes with international implications.²³⁴

10. The Parties should encourage the development and use of alternative dispute resolution mechanisms, as applicable and provided that no relinquishment of the right to access to justice is involved.

Suggested modifications to article 9, numeral 10:

The Parties should establish ~~encourage~~ the development and use of alternative dispute resolution mechanisms, as applicable and provided that no relinquishment of the right to access to justice is involved.²³⁵

The Parties ~~shall~~ encourage the development and use of alternative dispute resolution mechanisms, as applicable, ~~and~~ provided that no relinquishment of ~~the right to~~ access to justice is involved.²³⁶

Article 10

Capacity-building and cooperation²³⁷

1. To guarantee implementation of the provisions of the present Agreement, the Parties shall promote capacity-building and cooperation based on national demands and needs, specific regional considerations, flexibility, efficiency and effectiveness, results-based management and consideration of the target audiences. The purpose of capacity-building and cooperation will be to establish a framework for peers to share experiences and carry out activities of common interest.²³⁸
2. The Parties shall cooperate to build capacity and strengthen human and institutional resources to implement the present Agreement in an effective manner, particularly in those Parties that are least developed countries or Caribbean small island developing States.

Suggested modification to article 10, numeral 2:

The Parties shall cooperate to build capacity and strengthen human and institutional resources to implement the present Agreement in an effective manner, particularly in those Parties that are least developed countries or Caribbean small island developing States.²³⁹

3. For the purposes of implementation of the previous paragraph, and within the framework of the commitments established in the present Agreement, cooperation modalities may include, inter alia:

- a) discussions, workshops, exchanges of experts, technical assistance, education and awareness-raising and observatories;
 - b) development, exchange and implementation of educational, training and awareness-raising materials and programmes at the national and international level;
 - c) voluntary codes of conduct, guidelines, good practices and/or standards;
 - d) sharing of experiences at all levels; and
 - e) use of committees, councils and public-private platforms to address cooperation priorities and activities.
4. A clearinghouse on access rights, to be managed by the secretariat, is hereby established for the purpose of promoting synergies and coordination in capacity-building.²⁴⁰

The Parties shall provide to the clearinghouse on access rights whatever may be required in accordance with the decisions adopted by the Conference of the Parties, which may include, inter alia:²⁴¹

- (a) legislative, administrative and policy measures on access rights;
- (b) information on the national focal point and the competent authority or authorities; and
- (c) codes of conduct and good practices.

The Conference of the Parties, at its third meeting at the latest, shall examine operational modalities for the clearinghouse on access rights, including reports on its activities and take decisions with respect to those modalities.

5. In fulfilment of the commitments assumed under the present Agreement, each Party, to the extent of its ability, shall promote and facilitate, at the national level:
- (a) capacity-building and guidance for the competent authorities and entities to help them perform their duties under the present Agreement. These measures may include, inter alia:
 - (i) training for officials and authorities to assist and guide the public in access to information, participation and justice in environmental matters;
 - (ii) provisioning of government offices with human and technological resources, including information and communications technologies, to deliver assistance to the public; and
 - (iii) ongoing evaluation and improvements consistent with the collection of qualitative and quantitative information on the environment.

Suggested addition under article 10, numeral 5, letter (a):

(iv) the hiring of interpreters or translators of indigenous languages.²⁴²

- (b) promotion of environmental education and public awareness concerning environmental matters, so the public will know how to proceed to gain access to information, participate in decision-making and take recourse to justice. These measures may include, inter alia:

- (i) organization of awareness campaigns targeting the general public;
- (ii) promotion, on an ongoing basis, of public access to relevant information, as well as broad public participation, in education and awareness activities;
- (iii) promotion of the establishment of associations, organizations or groups that help raise awareness among the public;
- (iv) development and implementation of training and awareness programmes for the public, especially disadvantages groups on access rights;
- (v) preparation and dissemination of basic educational modules on access rights for students in primary and secondary school; and
- (vi) training for workers, scientists, educators and technical and management personnel.

Suggested modification to article 10, numeral 5, letter (b):

(b) promotion of environmental education and public awareness concerning environmental matters, so the public will know how to proceed to gain access to information, participate in decision-making and take recourse to justice. These measures may include, inter alia:

- i. organization of awareness campaigns targeting the general public;**
- ii. promotion, on an ongoing basis, of public access to relevant information, as well as broad public participation, in education and awareness activities;**
- iii. promotion of the establishment of associations, organizations or groups that help raise awareness among the public;**
- iv. development and implementation of training and awareness programmes for the public, especially ~~disadvantages~~ disadvantaged groups on access rights;**
- v. preparation and dissemination of basic educational modules on access rights for students in primary and secondary school; and**
- vi. training for workers, scientists, educators and technical and management personnel.²⁴³**

6. The Parties shall cooperate, as applicable, with existing global, regional, subregional and national institutions and organizations. In this context, the Parties may partner with, inter alia, non-governmental, academic and private organizations and other relevant stakeholders.

Suggested modification to article 10, numeral 6:

The Parties shall cooperate, as applicable, with existing global, regional, subregional and national institutions and organizations. In this context, the Parties may partner with civil society and indigenous peoples', ~~inter alia, non-governmental, academic and private~~ organizations and other relevant stakeholders.²⁴⁴

Article 11
Resources

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.
2. A fund, to be managed by the secretariat, is hereby established to finance implementation of the present Agreement to be defined at the Conference of the Parties in accordance with article 12.

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.

Article 12
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; and,
 - (c) discuss and approve the rules of procedure and membership of the body created under article 17.4.
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;
 - 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 article 17.4;
 - 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 19; and
 - g) examine and adopt any additional measures needed to achieve the objective of the present Agreement.

Article 13
Right to vote

Each Party to the present Agreement shall have one vote.

Article 14
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.

Article 15
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; and
- (d) perform any other secretariat functions specified in the present Agreement and any other functions as determined by the Parties.

Article 16
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.

Suggested modifications to article 16, numeral 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, which shall include representatives of civil society and indigenous groups in the panels.²⁴⁵

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 17
Implementation, monitoring and evaluation

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.
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 18
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 this 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 this article, the dispute may be submitted only to the International Court of Justice, unless the parties agree otherwise.

Article 19
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 this 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 20

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.

Article 21

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 22

Reservations

No reservations may be made to the present Agreement.

Article 23

Termination

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 terminate the present Agreement by providing written notification to the Depositary.
2. The termination 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 24
Depositary

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

Article 25
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 | - Guyana |
| - Argentina | - Haiti |
| - Bahamas | - Honduras |
| - Barbados | - Jamaica |
| - Belize | - Mexico |
| - Bolivia (Plurinational State of) | - Nicaragua |
| - Brazil | - Panama |
| - Chile | - Paraguay |
| - Colombia | - Peru |
| - Costa Rica | - Saint Kitts and Nevis |
| - Cuba | - Saint Lucia |
| - Dominica | - Saint Vincent and the Grenadines |
| - Dominican Republic | - Suriname |
| - Ecuador | - Trinidad and Tobago |
| - El Salvador | - Uruguay |
| - Grenada | - Venezuela (Bolivarian Republic of) |
| - Guatemala | |

¹ Jamaica. This would include all branches of government and is a major concern for Jamaica.

² Argentina. The article lends itself to confusion upon application of this Agreement, as there is a lack of distinction between those who are bound by the document (the Parties) and those who must fulfil the various obligations it contains (according to art. 4 of Law 25831 in Argentina, “obligated entities” are the competent authorities of public

bodies and owners of companies providing public services, whether public, private or mixed...). This article also fails to take due account of the difference between federal States and centralized States.

Colombia. It is necessary to clarify how private organizations that receive public funds or benefits “indirectly” can be designated as competent authorities. This definition leaves room for subjective interpretation.

Jamaica. Covered under the ATI Act to some extent. ATI Act and/or other local laws would need to be amended to give effect to this. The obligations of the Competent authority would need to be assessed. This bit could be deleted. A definition of “public function” is needed.

3 Colombia. This definition should be revised in order to align it with legally binding human rights instruments.

4 Argentina. This definition should be used throughout the document.

5 Jamaica. In most conventions the term “vulnerable groups” is used and should be adopted for the document. Include “minority groups” to capture other groups as well.

6 Peru.

7 Colombia. The definition of environmental information is very broad and detailed and we believe that it would be better if drafted with a more general scope. For Colombia it is essential that this definition should refer solely and exclusively to information in the possession of the competent authority.

Jamaica. The language from article 6.1 should replace this phrase which is in keeping with the ATI Act. Delete “or should be” if necessary.

8 Colombia. Each person’s health status is considered private.

9 Jamaica. Remove “cultural assets” and replace with “cultural sites and built structures” (as in the Aarhus Convention.)

10 Antigua and Barbuda.

11 Antigua and Barbuda.

12 Argentina.

13 Argentina. The definition of “environmental justice” was taken from the declaration adopted at the Judicial Symposium on Environmental Law and Sustainable Development: Access to Environmental Justice in Latin America, organized by the United Nations Environment Programme (UNEP) from 26 to 28 January 2000.

14 Argentina. This article should be modified in the light of the definition of “persons in vulnerable situations”, incorporating the conditions that are mentioned there.

15 Colombia.

16 Colombia. The relevance of this principle should be evaluated, considering that it is in the same vein as equality and non-discrimination.

17 Jamaica. It is also captured under A and could be removed.

18 Jamaica. Disclaimers are normally used when information is from secondary sources.

19 Jamaica.

20 Jamaica.

21 Argentina. It is important to consider the principle of gradualness as well.

22 Jamaica. Same as before.

23 Colombia. Recommendation to use neutral language in the drafting of the principles.

24 Jamaica. Reference and use the definition from the 1992 Rio Declaration. In addition, the term “precautionary” should be used instead of “precaution”.

25 Jamaica. Intragenerational equity should also be added. Peru: include gender equity in this paragraph.

26 Jamaica. Further clarification needed on the definition provided.

27 Colombia.

28 Peru.

29 Colombia. We think that the drafting of the scope of application is not clear.

30 Argentina.

31 Jamaica.

32 Colombia. Suggestion to change the title to “general provisions”.

33 Colombia. We believe that this obligation is not directly related to fulfilment of the principle. Colombia suggests deleting it and keeping to the obligations that are specifically related to rights of access.

34 Jamaica.

35 Jamaica.

36 Argentina.

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- 37 Colombia.
- 38 Jamaica.
- 39 Jamaica. In keeping with allocation that will be made available throughout this process. Clarity needed from ECLAC.
- 40 Argentina.
- 41 Colombia.
- 42 Jamaica.
- 43 Colombia. Rather than an obligation, this should be an open invitation included in the preamble.
- 44 Jamaica.
- 45 Guatemala. Define what is meant by the provision on “cross-border cooperation”.
- 46 Jamaica.
- 47 Jamaica. New paragraph needed to express this obligation.
- 48 Peru.
- 49 Colombia. This provision is implicit in the principle of progressive realization and non-regression of this Agreement.
- 50 Argentina.
- 51 Colombia. Colombia requests that this paragraph be deleted as it is contrary to the country’s constitutional provisions.
- 52 Jamaica. [Editor’s note: for purposes of standardization, the United Nations uses the plural form “forums” in all official texts]
- 53 Antigua and Barbuda.
- 54 Argentina. It is important to incorporate “among others” since a non-exhaustive list would go against the principle of non-discrimination.
- 55 Jamaica.
- 56 Antigua and Barbuda.
- 57 Jamaica.
- 58 Antigua and Barbuda.
- 59 Argentina.
- 60 Jamaica.
- 61 Argentina.
- 62 Colombia. Contingent on what is agreed in the provisions on exceptions.
- 63 Peru.
- 64 Jamaica.
- 65 Jamaica. Assuming that the Aarhus wording is adopted for 6.1 which speaks to working within the “framework of national legislation” the wording is satisfactory. Otherwise, insert “within the framework of national legislation”.
- 66 Argentina. Although there is no express provision on this obligation, it is a good practice that could avoid additional costs associated with judicial processes undertaken in connection with erroneous requests.
- 67 Colombia. The drafting is confusing.
- 68 Peru.
- 69 Argentina. It does not seem prudent, from the point of view of those who must respond to requests for environmental information, to include in this paragraph the reference to “such that the response includes all other information that can be presumed to be part of the request even if not expressly requested”. This observation is based on the fact that the person responding to the request cannot be charged with the responsibility of making presumptions, which can be subjective.
- 70 Jamaica. In keeping with sections 10 and 7(3) of National Legislation establishes a framework whereby the applicant is afforded an opportunity and assistance to clarify and identify the information that is to be the subject of the application.
- 71 Colombia. The paragraph is very specific in nature. We recommend that it should be drafted in more general terms.
Jamaica. Move to article 7 based on the contents of the paragraph.
- 72 Antigua and Barbuda. Details of the author, source of report should be stated. All the reports should be available in the language of any indigenous groups/people should they be available in Braille (NB Cost implications).
- 73 Guatemala. Before finalizing paragraph 3(d), define what is meant by the provision on “environmental liabilities”.
- 74 Colombia.
- 75 Antigua and Barbuda.
- 76 Peru.

- 77 Colombia. Since the nature of this instrument has not been defined, bodies, such as a conference of the parties, cannot be created. We therefore request that the paragraph following subparagraph (g) be deleted, namely “The Conference of the Parties/secretariat may promote the creation and development of standards in relation to environmental information systems. The Conference of the Parties/ secretariat may also suggest measures to facilitate the best use of resources.”
- 78 Argentina.
- 79 Antigua and Barbuda.
- 80 Guatemala.
- 81 Jamaica. Reference: Inter-American Court of Human Rights (Maroons in Suriname).
- 82 Colombia. With a view to ensuring respect for the exceptions set forth under the exceptions regime in this article, in cases where the the information is not entirely covered under the regime, it is proposed that the petitioner be provided with a version of the public document containing the non-confidential information available, as stipulated in paragraph 5 of the preliminary document.
Jamaica. Replace “exceptions” with “exemptions”. [Editor’s note: term “exceptions” used in Antigua and Barbuda. The term “exemptions” is used in Jamaica, Saint Vincent and the Grenadines and Trinidad and Tobago. In the Inter-American Model Law on Access to Public Information, the terms “*excepción*” in Spanish and “exception” in English.]
- 83 Argentina. An exlusions regime such as that contained in law 25831 offers sufficient guarantees to the petitioner and is broad enough to protect the information that the State deems necessary. The refusal must be founded and reasonability must be applied in the administrative act.
- 84 Jamaica.
- 85 Perú.
- 86 Argentina.
- 87 Colombia.
- 88 Jamaica. The wording at items (a) to (c) is acceptable except that for the categories of exemptions should be expanded to be aligned with internationally accepted/standard list such as those reflected in the Jamaican ATI Act; (d) raises the issue as to whether state sovereignty will be impeded/constrained in its ability to enact legislation that may alter the categories of exemptions as it determines appropriate. If so, there is need to determine whether the Government of Jamaica is willing to be so constrained.
- 89 Argentina. Definitions are lacking in this article. At present, these are insufficient and require greater depth in order to avoid misinterpretations.
- 90 Colombia.
- 91 Peru.
- 92 Antigua and Barbuda. The public should not be given a sanitized version of the document. They should get the document with exempt parts blocked out. This will ensure that they are getting a true redacted copy of the document.
- 93 Jamaica.
- 94 Argentina. A common definition of this concept is needed. It is not clear what the aim is here or the scope.
- 95 Colombia. According to Colombia, these conditions impose very specific guidelines, which should be left in the hands of each country.
- 96 Jamaica.
- 97 Antigua and Barbuda. Thirty business days for a decision seems long but is probably fair. It would not make sense to put too short a time.
Guatemala. These time frames should be consistent with the Law on Access to Information, Decree No. 57-2008 of the Congress of the Republic of Guatemala; and, by extension, with the legislation in force in each Party.
Note by the secretariat: the time frame in the law of Guatemala is 10 days, which can be extended by a further 10 days.
- 98 Colombia. This paragraph would also cover article 6, numeral 13.
- 99 Peru.
- 100 Guatemala. These time frames should be consistent with the Law on Access to Information, Decree No. 57-2008 of the Congress of the Republic of Guatemala; and, by extension, with the legislation in force in each Party.
Note by the secretariat: the time frame in the law of Guatemala is 10 days, which can be extended by a further 10 days.
- 101 Peru: (a) This article would have an impact on the time frame established under national law and therefore a modification should be made in this regard and information must be integrated; (b) Point 2 (b) of this article should be deleted.

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- ¹⁰² Antigua and Barbuda. If the authority does not respond in 50 days then it is deemed a refusal of the request – there be some sanction attached to the refusal or a right to seek reprisal.
- ¹⁰³ Peru.
- ¹⁰⁴ Antigua and Barbuda. The term petitioner could be substituted by the person and or entity making the request.
- ¹⁰⁵ Argentina.
- ¹⁰⁶ Jamaica.
- ¹⁰⁷ Peru.
- ¹⁰⁸ Jamaica.
- ¹⁰⁹ Antigua and Barbuda. Should the information be given free of cost to everyone? What is the position if the documents are voluminous, should the information still be given free of cost? Should we consider a tier system as opposed to the economic cost of reproduction? Do we charge different rates for different persons i.e. CSO and NGO as opposed to business entities
- ¹¹⁰ Antigua and Barbuda. The entity should have sanctioning powers. The entity or institution should be made up of different members of society including NGOs and CSOs.
- ¹¹¹ Argentina. It is excessively rigorous to create an independent body to this end. Perhaps this paragraph could be modified to provide for the creation of an area within the structure of the highest level environmental agency. In our country, Offices of the Ombudsman serve as independent entities in this regard; petitioners of public information also have direct access to the courts.
- ¹¹² Colombia.
- ¹¹³ Colombia. For article 7, we propose that the generation and dissemination of environmental information should be governed by the following principle: the principle of proactive disclosure of information. The right of access to information lies not only in the obligation to respond to petitions by society, but also in the duty of the competent authorities to promote and create a culture of transparency by publishing and disseminating documents and files on State activities that are in the public interest in a routine, proactive, timely, accessible and comprehensible manner, within reasonable limits of human talent and the physical and financial resources of the competent authority.
- Jamaica. It was suggested that article 6.3 be moved to article 7. It could be placed before or after 7.1.
- ¹¹⁴ Jamaica. Capacity concerns.
- ¹¹⁵ Antigua and Barbuda.
- ¹¹⁶ Argentina. [Translator’s note: typically “coordinación” and “articulación” are both translated as “coordination” in English]
- ¹¹⁷ Argentina. It is considered important to define what is meant by “open data formats”.
- Guatemala. Before agreeing on numeral 2, define what is meant by “open data” and “open data formats”.
- ¹¹⁸ Jamaica. Capacity concerns.
- ¹¹⁹ Antigua and Barbuda. “Might” should be removed and replace with “could”. “Might” is not specific enough; “might” means “maybe”.
- ¹²⁰ Jamaica.
- ¹²¹ Guatemala. Care should be taken when regulating matters that favour only one group of persons since this could go against the principle of equality.
- ¹²² Antigua and Barbuda.
- ¹²³ Colombia. In order to maintain the language of the text, in accordance with the agreed definitions, it is requested that “obligated entities” be changed to “competent authorities”.
- ¹²⁴ Jamaica.
- ¹²⁵ Antigua and Barbuda.
- ¹²⁶ Jamaica.
- ¹²⁷ Jamaica.
- ¹²⁸ Argentina.
- ¹²⁹ Argentina. We believe this concept should be discussed in greater depth. Furthermore, it should be specified what is meant by common indicators, who will establish them, etc. As drafted, it seems to indicated that there would be evaluation entities beyond the national level.
- Jamaica. Capacity concerns. Also, seek clarification from ECLAC on the paragraph. What will the review process entail, is it an independent audit? What about review of legislation?
- ¹³⁰ Peru.

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- 131 Jamaica. Not all categories would apply as legislation covers only air and water.
- 132 Argentina.
- 133 Argentina.
- 134 Colombia.
- 135 Antigua and Barbuda.
- 136 Argentina.
- 137 Antigua and Barbuda.
- 138 Argentina.
- 139 Guatemala.
- 140 Jamaica. Reference should be made to “the public”.
- 141 Antigua and Barbuda: Should a competent authority destroy information in its possession? Is the information to be kept forever? Information can be kept in a technological format which does not require a lot of space. It could prove to be very valuable in a historic context. Should the competent authority consult with the public before destroying any information and should the public be able to have the information which the competent authority was going to destroy?
- Colombia. Suggest clarifying that the information may be destroyed provided that its expiry date has been defined, in accordance with the rules of each Party.
- 142 Argentina. [Translator’s note: first change does not affect the English]
- 143 Jamaica.
- 144 Colombia: More information is needed on this proposal.
- Guatemala: Before agreeing on numeral 12, consider and align with the provisions of the Law on Access to Public Information.
- 145 Argentina.
- 146 Jamaica. ECLAC to provide clarification on information that would be included in the sustainability reports.
- 147 Jamaica.
- 148 Antigua and Barbuda. The word shall encourage in line is not showing enough should be replaced by shall ensure.
- 149 Colombia. Colombia reiterates that the preliminary document gives very precise instructions on how this principle should be implemented. In this connection, we reiterate the importance of giving more general guidelines in order to make implementation more simple and effective. This relates to the principle of maintaining the pace of the process.
- Guatemala. Article to be implemented in accordance with the domestic legislation of each Party.
- 150 Colombia. The scope of the proposed paragraph must be specified since the vast majority of government decisions have an impact on the environment.
- 151 Argentina.
- 152 Jamaica. In article 8.1 there is a different commitment to article 8.15.
- 153 Jamaica. Deleted based on the consideration for the definition for environmental decision-making under article 2 and reference to article 8.15.
- 154 Peru.
- 155 Argentina.
- 156 Jamaica.
- 157 Jamaica.
- 158 Peru.
- 159 Jamaica.
- 160 Peru.
- 161 Argentina. This addition is in keeping with our “general observations”.
- 162 Jamaica.
- 163 Peru.
- 164 Antigua and Barbuda.
- 165 Argentina.
- 166 Jamaica.
- 167 Antigua and Barbuda.
- 168 Colombia. Colombia considers that this article repeats the overall sense of the instrument and we therefore suggest deleting it.

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- ¹⁶⁹ Antigua and Barbuda.
¹⁷⁰ Colombia.
¹⁷¹ Jamaica.
¹⁷² Colombia. Conferences of the Parties are traditionally established for instruments of a binding nature. Since the nature of this process has not yet been defined, we request deletion of this paragraph until these discussions have been concluded.
¹⁷³ Jamaica. This provision can be interpreted in two ways: (1) for Parties to include mechanisms for public participation and (2) for Parties to champion the issue of public participation at international and regional meetings. Clarification is needed from ECLAC as to which interpretation should be adopted.
¹⁷⁴ Antigua and Barbuda. “Permanent formal spaces” could be too restrictive for some countries depending on the topography and terrain of the country; maybe wording should be “approved spaces”.
¹⁷⁵ Jamaica.
¹⁷⁶ Guatemala. Care should be taken when regulating matters that favour only one group of persons since this could go against the principle of equality.
¹⁷⁷ Argentina.
¹⁷⁸ Jamaica. It is recommended that this article be merged with article 8.6 which speaks to barriers to participation.
¹⁷⁹ Guatemala. Does not pertain specifically to the article entitled “Public participation in environmental decision-making”.
¹⁸⁰ Jamaica. The status of Maroons in Jamaica will have to be further assessed before a consensus can be reached on this paragraph.
¹⁸¹ Peru.
¹⁸² Colombia.
¹⁸³ Jamaica.
¹⁸⁴ Antigua and Barbuda.
¹⁸⁵ Argentina.
¹⁸⁶ Guatemala.
¹⁸⁷ Jamaica. Such obligations would not apply in all cases and the language used could be softer as “mandatory” suggests that the public would be forced to participate.
¹⁸⁸ Peru.
¹⁸⁹ Peru.
¹⁹⁰ Argentina. It is not clear who would assume these costs. Peru: It is recommended that the implications of financial assistance in contexts of citizen participation should be analysed. Furthermore, “the topic of public participation in environmental oversight and monitoring is absent” in this article and a suggestion is made to include it.
¹⁹¹ Peru.
¹⁹² Jamaica.
¹⁹³ Antigua and Barbuda.
¹⁹⁴ Antigua and Barbuda.
¹⁹⁵ Argentina.
¹⁹⁶ Jamaica.
¹⁹⁷ Jamaica.
¹⁹⁸ Jamaica. This provision is similar to article 8.9 and as such can be deleted. There is also a similar reference in article 6.
¹⁹⁹ Colombia. Provisions on this matter should be more general.
²⁰⁰ Argentina. This article could be broadened to guarantee the right to a second hearing in all procedures and processes in which decisions are taken on environmental rights or obligations, in accordance with international procedural guarantees.
²⁰¹ Antigua and Barbuda.
²⁰² Jamaica.
²⁰³ Peru.
²⁰⁴ Argentina. [Translator’s note: change does not affect English]
²⁰⁵ Jamaica.
²⁰⁶ Peru.

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- ²⁰⁷ Peru.
- ²⁰⁸ Colombia. Colombia considers this paragraph to be very specific on the institutions to be set up in respect of access to justice.
- ²⁰⁹ Guatemala. For those States Parties that already have established legal processes and procedures that recognize environmental crimes, it should be specified that those processes and procedures are effective, reasonable, fair, open, rapid, transparent, equitable and timely.
- ²¹⁰ Peru: It is suggested to have a greater debate and to consider the option of including “financial guarantees.”
- ²¹¹ Antigua and Barbuda.
- ²¹² Antigua and Barbuda.
- ²¹³ Peru.
- ²¹⁴ Peru: The reversal of the onus of proof is unconstitutional under Peruvian law, especially in criminal matters. (Nevertheless it merits discussion).
- ²¹⁵ Peru.
- ²¹⁶ Jamaica. The precautionary principle could be adopted as it is recognized in international and regional agreements provided that is what is being implied.
- ²¹⁷ Argentina.
- ²¹⁸ Argentina.
- ²¹⁹ Jamaica. Clarification needed from ECLAC relating to non-jurisdictional.
- ²²⁰ Jamaica.
- ²²¹ Peru. Includes different types of justice (such as community justice), hence the suggestion to include “judicial and/or non-judicial mechanisms”
- ²²² Jamaica.
- ²²³ Peru.
- ²²⁴ Peru.
- ²²⁵ Antigua and Barbuda.
- ²²⁶ Jamaica.
- ²²⁷ Peru.
- ²²⁸ Peru.
- ²²⁹ Jamaica. Not sure if all administrative decisions are amenable to public disclosure. All judicial decisions are posted on the websites of the Supreme Court and the Court of Appeals. Any decision to create a register for environmental cases will need policy approval.
- ²³⁰ Peru.
- ²³¹ Colombia.
- ²³² Jamaica.
- ²³³ Peru.
- ²³⁴ Peru.
- ²³⁵ Antigua and Barbuda.
- ²³⁶ Jamaica.
- ²³⁷ Antigua and Barbuda. All workshops, seminars and programmes should also be available in all the traditional and indigenous languages used in the country.
- ²³⁸ Jamaica. What kind of “activities of common interest” are envisaged by ECLAC?
- ²³⁹ Colombia. [Translator’s note: change to Spanish does not affect English]
- ²⁴⁰ Jamaica. There is need for further clarification on this paragraph.
- ²⁴¹ Jamaica. Softer language could be used.
- ²⁴² Peru.
- ²⁴³ Jamaica.
- ²⁴⁴ Peru.
- ²⁴⁵ Peru.