

April 13, 2016

REPORT OF ELECTED REPRESENTATIVES OF THE PUBLIC
THIRD MEETING OF THE NEGOTIATING COMMITTEE
FOR A REGIONAL AGREEMENT ON ACCESS TO INFORMATION, PUBLIC
PARTICIPATION AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS
IN LATIN AMERICA AND THE CARIBBEAN

EXECUTIVE SUMMARY.

The Third Meeting of Negotiating Committee held from April 5-8, 2016 in Montevideo, Uruguay is an important step towards achieving a Regional Agreement on the Rights of Access to Information, Participation and Environmental Justice.

It is important to highlight that most of the text in the Preliminary Document is not yet finalized, therefore, this presents an opportunity for governments to improve their proposals and for the public to continue influencing the negotiation.

In summary the following elements, achievements and challenges are highlighted:

1. Signatory Countries made progress in the negotiations, and went through Articles: 2 on Definitions, 3 on Principles, 4 Scope of Application, 5 General Obligations and started 6 on Access to Environmental Information.
2. Grenada is the sixth Caribbean country to sign the declaration commencing this regional process.
3. The Modalities of Public Participation were approved. This is a positive development because it had been a pending issue for some time now. However, it is unfortunate that the approved modalities treat the public from Latin America and the Caribbean differently from those in other regions. Despite this, the modalities are more progressive than those in other intergovernmental processes.
4. The meeting helped to confirm the commitment of the majority of Signatory States through the effective progress made in the negotiations, the transparency of their positions, the presentation of specific proposals and the adoption of a collaborative approach to reach consensus. There is also the need to raise the level of awareness of the negotiation process, so that more States in the region will join and actively participate in the negotiations.
5. Public participation was more organized and strategic, the following were achieved:

- (i) a more robust text for the definition of "persons in vulnerable situations",
 - (ii) the incorporation of Principle Pro Persona / Pro Homine and
 - (iii) a sturdy text about the obligation of the States to protect environmental defenders.
6. Several countries showed their commitment to access rights and environmental democracy. Such is the case of Chile and Peru when they insisted that Article 5 should retain its original title of "General obligations". They also defended retaining the first paragraph of Article 5 which establishes the obligation of States to ensure that people live in a healthy environment, are healthy and that their rights are respected. This was against Colombia, Uruguay and Mexico's proposal to omit it.
 7. Also during the debate on environmental defenders, Costa Rica indicated that they did not agree with Colombia and Mexico's proposal to incorporate "in accordance to national legislation". They explained that in several cases national legislation is used to suppress environmental defenders. El Salvador did not support this as well.
 8. The Government of Uruguay as the host country showed commitment to the negotiation process. They led governments to advance the negotiations, showed willingness to reach consensus and suggested concrete proposals for discussion. Also it must be noted that Uruguay was one of the signatory countries that expressed political will to have a legally binding agreement.

Challenges:

The Third Meeting of the Negotiating Committee also revealed the lack of political will of several countries to negotiate a strong and ambitious text on access rights.

For example, Mexico suggested replacing specific definitions with more general ones as was the case with the definition of environmental information. Additionally, Argentina suggested removing that the authority is responsible for providing environmental information.

Another instance was Colombia's proposal to weaken the definition of public participation by changing the verb "influence" to "being part of" decision-making in environmental matters. Unfortunately, this proposal was supported by Bolivia, Jamaica and Mexico.

Another example was Colombia's suggestion to replace the title of Article 5 "General Obligations" with "General Arrangements". Mexico, Uruguay, Costa Rica, Honduras, El Salvador, Guatemala, Bolivia, Jamaica, Trinidad & Tobago and Grenada supported this proposal.

Finally, the representatives of the public appreciate that several Governments supported their proposals, these include Panama, Chile, Costa Rica, Argentina, Brazil, Uruguay, Jamaica, Trinidad & Tobago and Grenada among others.

The Fourth Meeting of the Negotiating Committee will be held in the Dominican Republic from August 8 to 12, during which it is expected that negotiations will resume on Article 6.

It is important for countries that have not yet conducted appropriate national consultation processes, and those who have only done so virtually, to make an effort to involve more citizens, undertake outreach on the process and obtain feedback that contributes to the advancement of effective negotiations.

Since most of the definitions and obligations of the agreement have not yet been agreed upon, countries in the region have the opportunity to improve their proposals and existing drafts. It is essential that countries respect the obligations already in place by international treaties and regulatory frameworks, and that there is no regression in standards and applicability.

The Representatives of the Public will continue working to contribute proposals and analysis to build a robust regional agreement to ensure full implementation of access rights regarding environmental matters in the region.

INTRODUCTION

The Third Meeting of the Negotiating Committee of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean was held from April 5 to 8, 2016 in Montevideo, Uruguay. The 21 Signatory Countries (Grenada joined the process during the meeting and Saint Lucia participated as an observer), six elected representatives of the public, 2 independent experts, 5 representatives of international organizations, along with 29 civil society organizations from 18 countries were in attendance.

The meeting continued with the negotiation of the Regional Agreement, addressing the definitions of Competent Authority, Disadvantaged Groups, Environmental Information and Public Participation in Article 2, Article 3 on Principles, Article 4 on Scope of Application, Article 5 on General Obligations and Articles 6.1 and 6.2 on Access to Environmental Information.

Participating States have set the goal to conclude negotiations by December 2016.

The Fourth Negotiation Meeting will be held in the Dominican Republic during the second week of August, 2016.

BACKGROUND:

In June 2012, within the framework of the United Nations Conference on Sustainable Development, Rio + 20, ten countries signed the Declaration on the implementation of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean (the Declaration). The Declaration recognized that the rights of access to information, participation and justice in environmental matters are essential to promoting sustainable development, democracy and a healthy environment. The Declaration also committed the signatory countries to explore the feasibility of a regional instrument to ensure the full implementation of access rights. After two years of hard work, in November 2014 the signatory countries took the decision to commence negotiating a regional instrument, for which a negotiating committee was created.

The Negotiating Committee is comprised of the signatory countries, 21 to date, and the accession of more countries in the region is expected. The Santiago Decision established that the Negotiating Committee will have the significant participation of the public. To this end, the Economic Commission for Latin America and the Caribbean (ECLAC), which acts as Technical Secretariat of the negotiating process, established and coordinated a Regional Public Mechanism, which houses about 2,000 registered individuals and legal entities. These individuals and organizations are informed regularly about the process and participate in face to face and virtual meetings of the Negotiating Committee.

In addition, a Steering Committee was created, and ECLAC was requested to prepare a draft document of the regional instrument.

The first meeting of the Negotiating Committee was held in May 2015 in Santiago, Chile. The draft document of the regional instrument was presented at that meeting and the Organization and Work Plan of the Negotiating Committee was approved. This document is significant because it establishes the modalities of participation for the Negotiating Committee. Furthermore, in Santiago countries agreed to hold internal consultations on the draft document and submit text proposals relating to the preamble and the first 10 articles by August 31, 2015. During this period 9 countries and a large number of civil society organizations sent their comments to ECLAC, which were integrated into the draft document.

Importantly, on October 22, 2015 a public statement by 15 Special Rapporteurs of the United Nations Human Rights Council expressed strong support for the efforts of the governments of Latin America and the Caribbean for attaining a regional instrument to ensure the rights of access to information, participation and justice in environmental matters. The Special Rapporteurs also urged negotiators to adopt a legally binding instrument that promotes the effective implementation of access rights and sustainable development, and contribute to strengthening the capacities of public institutions and civil society.

At the Second Meeting of the Negotiating Committee held in October 2015 in Panama, the signatory countries began negotiating the Regional Agreement at a slow pace, having negotiated by the end of the meeting the Preamble, Article 1 and a part of Article 2. During this Meeting Chile and Costa Rica as Co-chairs of the Steering Committee of the Negotiating Committee presented the proposal on the Modalities of Participation for countries to approve. While most countries showed their agreement with the proposal, countries such as Colombia, Argentina, Mexico and Brazil raised apprehensions to this proposal, which delayed the progress of the negotiations. As a result, the Modalities were not approved.

OBJECTIVES OF THE MEETING:

The meeting aimed to:

1. Share information on the activities related to national consultations on the draft document conducted by the Signatory States and activities undertaken by the Technical Secretariat and civil society.
2. Resume the negotiations on the regional instrument on Article 2, specifically on the definitions of Competent Authority, Disadvantaged Groups, Environmental Information and Public Participation.

3. To approve the proposed Modalities for Public Participation that had been prepared by the governments of Chile and Costa Rica as co-chairs of the Steering Committee of the Negotiating Committee and by Uruguay as the host country.

WHAT HAPPENED DURING THE THIRD MEETING OF THE NEGOTIATING COMMITTEE?

Opening Session:

The participants at the opening session of the Negotiating Committee were Ambassador Martin Vida - Director General for Political Affairs, Ministry of Foreign Affairs of Uruguay, Ms. Alicia Bárcena - Executive Secretary of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), Ms. Patricia Madrigal - Deputy Minister of Environment of Costa Rica, Ms. Danielle Andrade and Mr. Alberto Gómez - representatives of the public and Ms. Eneida de León, Minister of Housing, Territorial Planning and Environment of Uruguay.

The following is a brief excerpt of the speech by Alicia Bárcena, “the style of development that we have taken so far is not viable because it is not sustainable. This is the goal of the Agenda 2030, which requires a large regional cooperation and large coalitions. She added that “the issues discussed in Principle 10 are "at the heart" of this Agenda and that a new social pact with future vision is needed. (We) must guarantee the population reliable information and access to justice, to advance from a culture of privileges to a culture of equality, with an active governance of natural resources. We owe it to future generations. Let’s inherit a new way to negotiate, a new way of looking at the world.”

Finally Danielle Andrade, Elected Representative of the Public stressed that "this regional instrument must go beyond just reaffirming the status quo, should seek to establish a progressive view on environmental democracy and must reflect the aspirations of the people of Latin America and the Caribbean on environmental governance and respect the right to live in a healthy environment." She also stressed that a number of socio-environmental conflicts have been documented in the region, which threaten social peace and governance. These conflicts can arise from the lack of timely, understandable and culturally relevant information in the context of projects and environmental impacts assessments, and the lack of opportunities for dialogue. She ended by requesting a minute of silence for Ms. Berta Cáceres an environmental defender from Honduras who was murdered.

Presentation of National Actions

In the first meeting of the Negotiating Committee, the Signatory States agreed to hold national consultations on the draft document, both with other government entities as well with civil society.

However, at the meeting most of the countries' reports related to the implementation of access rights in their countries, and not on actions related to dissemination and consultation on the draft document being used for this negotiation process. For example, Paraguay referred to the recent adoption of their Freedom of Information Act; Argentina on the recent creation of the Ministry of Environment, in addition to the decision of the new administration to resume the elaboration of Annual Reports on the Environment while Uruguay highlighted the implementation of a broad social dialogue on various topics in their country.

Regarding consultations for this process, Chile reported that they continued to have consultations with civil society before the Negotiating Committee meetings, additionally they emphasized that this process was part of the commitments made by Chile in its Plan of Action for the Open Government Partnership, where this was evaluated as a transformative commitment.

El Salvador conducted an electronic consultation with the results obtained from the Panama meeting. They also reported the creation of the National Council for Environmental Sustainability comprised of social, economic and political actors. Finally, Jamaica organized a working group on Principle 10 which involved the participation of two members of civil society.

Discussion on the Preliminary Document

The negotiations were launched on the first day with definitions in Article 2 which were outstanding from the Second Meeting of the Negotiation Committee held in Panama. Specifically these definitions were for Competent Authority, Disadvantaged Groups, Environmental Information and Public Participation. During the remaining three days the Principles set out in Article 3, Articles 4 on Scope of Application, Article 5 on General Definitions and paragraphs 6.2 and 6.3 of Article 6 on Access to Environmental Information were revised.

In summary it may be noted that negotiations on outstanding definitions were slow; more progress was made in Article 3 (Principles). The discussion of Articles 4 (Scope of Application), 5 (General Obligations) and 6.1. and 6.2. of Article 6 (Access to Environmental Information) proceeded more quickly, and in several instances, there was substantive debate between governments and the public.

The following is a brief summary highlighting the most substantive discussions presented.

Article 2: Definitions

This Article on Definitions is relevant as it provides a key framework of the concepts contained in the Convention, and establishes the scope of each of these concepts.

The following is the debate on the most relevant definitions:

Disadvantaged Groups:

The original definition in the Preliminary Document (that Governments requested ECLAC to prepare) is as follows:

“**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.

Argentina proposed replacing "disadvantaged groups" with "People in vulnerable situations" regarded as those who, because of their age, gender, physical or mental condition, or because of their social, economic, ethnic or cultural circumstances, have special difficulties to fully exercise the access rights recognized in the present Convention. May constitute causes of vulnerability, among others, the following: age, disability, belonging to indigenous communities or minorities, victimization, migration and internal displacement, poverty, gender and deprivation of liberty, conditions. The actual determination of people in a vulnerable situation in each country will depend on its specific characteristics, or even their level of social and economic development".

The public supported Argentina’s proposal, but recommend to replace "disadvantaged groups" with "persons in vulnerable situations" in addition to the following modifications (in bold):

“Persons in vulnerable situations” means those persons **or groups** who, because of their age, gender, physical or mental condition, or social, economic, **environmental, linguistic, policy affiliation,** ethnic and/or cultural circumstances, **incapacity, colour, race, private of liberty, poverty, illiteracy, internal displacement, sexual orientation, nationality, religion could face difficulties** in fully exercising the access rights recognized in this Agreement. **Specifically, historically, could be in vulnerable situation person or groups indigenous, tribal, afro descendant. Vulnerability grade will be determined by exposition to risk factor and the capacity to face particular situation.**

The public’s proposal aimed to recognize that situations of vulnerability which may affect a person or group are diverse.

Brazil supported this proposal from the public. Meanwhile, Mexico proposed not to speak of individuals and groups whose characteristics and/or circumstances are vulnerable,

but general conditions of vulnerability, and added at the end of the definition "all consistent with national legislation".

Regarding this proposal the public indicated that "according to national laws" can be deemed as restrictive. Secondly, international treaties were mentioned where countries have already adopted this concept.

Chile and Trinidad & Tobago supported the proposal not to include "in accordance with national law". Mexico requested to maintain its proposal.

At the end of the debate the non-edited definition is as follows:

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

The issue of whether a superficial or exhaustive list of the conditions of vulnerability should be made was not resolved. Colombia called for adding armed conflict as a condition of vulnerability.

In summary the modification of the concept "disadvantaged groups" to "individuals and groups vulnerable" is positive because it recognizes that people and groups are not in and of themselves disadvantaged but are products of their specific circumstances or situations.

Environmental information:

The definition is as follows:

“**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:

- (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 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);
- (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.

Mexico proposed replacing this definition with an extensive one that does not specify which elements must be considered as environmental information. Meanwhile, Argentina proposed to remove that the authority should have this information.

These two proposals weaken the definition of environmental information, which in practice affects the ability of citizens of the region to access information. Often the request for information is denied because it is not explicitly considered as environmental information.

The public intervened on this matter to emphasize that it should be clear that the authority is responsible for having the information and it must be detailed, as it is already in most countries' laws in the region.

Colombia requested to delete information on safety and human health, noting that people's health is private information. To refute this point, expert Marcos Orellana made it clear that health is a collective dimension and should therefore be incorporated. This proposal was supported by Uruguay.

Without reaching a consensus, the proposals were as follows:

"Environmental information" means any written, visual or sonorous information, electronic or recorded in any other way related, among others, to the state of the environment and its

elements, natural resources, biodiversity, including genetic resources, and information about potential adverse impacts associated with factors that affect or may affect the environment and human health, and issues related to environmental management.

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

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

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

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

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

Suggestion of suppressing letter c) of the definition of "environmental information"
[Mexico, Colombia, Honduras, Costa Rica, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider incised in other articles of the text]

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

Suggested deletion of letter d) of the definition of "environmental information"
[Mexico, Colombia, Honduras, Costa Rica, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider incised in other articles of the text]

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

Suggested deletion of letter e) of the definition of "environmental information"
[Mexico, Colombia, Honduras, Costa Rica, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider incised in other articles of the text]

- (f) the state of the health and safety of individuals, living conditions, cultural sites and built structures, when these are or could be affected by the state of the

elements of the environment cited in subparagraph (a) or any of the factors or measures indicated in subparagraphs (b) and (c);

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

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

Suggestion of suppressing letter g) of the definition of "environmental information"
[Mexico, Colombia, Honduras, Costa Rica, El Salvador, Brazil, Saint Lucia, Argentina, Panama] [Peru: reconsider incised in other articles of the text]

- (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.

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.

For a better understanding of this debate it is necessary to explain these concepts:

- (i) **The level of specificity that must be contained in the definition of environmental information.** It is essential that the concept of environmental information is as comprehensive as possible and contain all important elements. Thus, when a person requests environmental information, the right to access it is guaranteed. States will need to deliver the information that is part of the definition.

If an item is not listed in the definition, then this might not be delivered.

- (ii) **The inclusion of who is responsible to have and manage this environmental information.** It is also crucial to be clear on who is responsible for managing and delivering information. As mentioned above, if it is not clear who is responsible then it is much more difficult for the individual requesting access to the information.
- (iii) **The inclusion of information on safety and human health.** It is also important to include all information on security and human health in the concept. Security issues and human health are related. For example, information on natural disasters, fires, environmental pollution emergencies such as water, land and air. People's rights to access information that directly affects their health and safety should be guaranteed.

Public Participation.

The original definition is as follows:

“Public participation” means the process by which people individually or collectively, influence decisions on environmental matters through institutionalized ways of participation.

Colombia proposed the next definition:

“Means the process by which natural and/or collective persons, individually or collectively, are being part of the decision making in environmental matter through institutionalized forms of different mechanisms, instances and scenarios of participation in accordance with the national laws and practices.”

This opened a debate about the inclusion of the word “being part” instead of “influence”. Colombia's proposal was supported by Jamaica, Bolivia and Mexico. Chile insisted on keeping the word “influence” instead of “being part”.

The most debated aspects of the concept were: (i) being part/influence, (ii) institutionalized forms/and other ways, and (iii) according to the national laws/or not.

For a better understanding of this debate it is necessary to explain these concepts:

- (i) The term "influence" implies that individuals and groups who engage in a participatory process have a real chance to influence the decision-making process in question. Meanwhile, the concept of "being part" is more vague, whereby people can be part of a participatory process by attending meetings or other activities, but without a real chance to influence decisions. Thus, the concept "influence" is much more robust and accurate than "be part".

- (ii) Institutionalized forms of participation refer to instances and procedures that the State is mandated to create and implement either at the regional or local level according to clear and defined guidelines. On the contrary, non-institutionalized forms refer to instances or forms of participation that the State or other actors can carry out. However, the disadvantage is that it does not come from a clear mandate and can vary greatly depending on the authority that implements it.
- (iii) Adding the phrase "in accordance with national legislation" circumscribes that in the implementation of this Agreement the only public participation processes that are applicable are those already considered in each nation's legislation. Adding this condition is a substantive limitation for environmental participation as it takes into consideration what already exists. Additionally, this Agreement would not have the effect of strengthening all relevant instances of participation throughout the region.

Finally, there was no agreement on this, and governments said they will consult internally.

The text on the screen is as follows:

“Public participation” means the process by which people [Dominican Republic and Argentina: **natural or legal persons**] [Costa Rica: **natural persons or legal entities**][1] 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 mechanism**]. [Mexico, Colombia, Argentina, Brazil, Bolivia: **in accordance with national legislation and practices**] [Costa Rica: **in accordance with the legal system**]

[“Public participation” means the process by which natural or legal persons, individually or collectively, **take part in** [Brazil: **contribute to**] decision-making on environmental matters through participation mechanisms, spheres and scenarios in institutionalized form, in accordance with national practice and legislation. [Colombia, Honduras, Paraguay, Antigua and Barbuda, Mexico]

[“Public participation” means the process by which natural or legal persons, individually or collectively, **take part in** decision-making on environmental matters through different **institutionalized modalities** of participation, in accordance with national practice and legislation. [Jamaica, Grenada, Bolivia]

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

Article 3: Principles

Every legal instrument defines a set of principles that the States are obliged to take into account when implementing the provisions of the established instrument. In this case these principles should be guaranteed by the States in the future implementation of the Regional Agreement.

Uruguay opened a debate indicating that although this coincides with the need for the instrument to count on guiding principles, it is not necessary for this section to have its own definitions, because they are defined and refined in other international instruments already adopted by the governments.

Chile, Paraguay and Argentina supported Uruguay on the point that an exhaustive revision of the principles is not necessary.

The following principles were quickly approved: (i) Equality and non-discrimination, (ii) Cooperation, (iii) No regression and progression, (iv) Good faith, (v) Precautionary Principle and (vi) Precautionary principle.

We will now highlight the debate on the following principles:

Responsible use of the information

Colombia proposed to incorporate this principle and argued that in their country on several occasions individuals and groups have made illegal use of information provided by the State.

The public reacted noting that this proposal weakens current standards on access to environmental information, and also goes against the principle of non-regression.

Costa Rica proposed to include this in the article of access to information. Colombia supported Costa Rica.

What is relevant about this proposal is that the State must somehow weigh whether it is "not responsible use" of information. This would not necessarily be an impartial analysis and can affect people and groups when requesting information. For example, individuals can use information provided by a State to report a case of corruption and to address this the State could react by arguing that this information has been used irresponsibly and as such initiate action against these individuals.

Maximum Publicity of Information

Mexico proposed to add a maximum publicity of information, indicating that it is a proposal from Mexican civil society that they would like to support. They noted that this

principle is incorporated in Mexican law and the Model Law on Access to Information of the OAS¹.

Uruguay stated that it is not necessary to add adjectives to the principles, thereafter, Mexico withdrew the proposal and it remained as a principle of publicity, as originally proposed by Peru.

Principle of Pro Homine / Pro Persona

The public proposed to incorporate the pro homine principle which states that the legal interpretation should always seek the greatest benefit to humans, that is, the broadest interpretation should be made when it comes to protecting rights in contrast to the standard or narrower interpretation, when it comes to setting limits to the exercise of these rights.

This proposal by the public was supported by the several countries in the following order: Panama, Chile, Costa Rica, Argentina, Brazil, Uruguay, Jamaica, Trinidad & Tobago and Grenada.

Colombia indicated that they have to consult internally to determine if they can support the proposal. This is surprising because Colombian legislation already includes this principle.

The application of this principle is essential to ensure access rights to the people of Latin America and the Caribbean, since this principle solicits the States to apply more favourable arrangements for the human person.²

Article 4: Scope of application

Scope means that when this agreement is implemented, people of the signatory countries will have access to information, participation and justice in environmental matters.

Colombia proposed to delete this article indicating that it is not necessary because its content is incorporated in Article 1 and especially in Article 5 on General Obligations.

¹ Note that the principle of maximum disclosure is one of the cornerstones of the resolution of the Inter-American Court of Human Rights in the landmark case of Claude Reyes, where the Court states "in a democratic society it is essential that the state authorities have to be governed by the principle of maximum disclosure." Furthermore, this principle is established in at least the national laws of access to information and transparency of Chile, Guatemala, Mexico and El Salvador.

² http://cdhdfbeta.cdhdf.org.mx/wp-content/uploads/2015/05/1-Principio_pro-persona.pdf

Mexico, Argentina, Guatemala and Jamaica supported the deletion of this article. There was consensus among countries and Article 4 was deleted. The public agreed to remove it because its content will be addressed in Section 5 on General Obligations.

Article 5: General Obligations

This Article is key as it refers to the obligations assumed by each State to implement this instrument.

Mexico proposed to delete this article noting that no state has the capacity to ensure the full enjoyment of rights to everyone.

Regarding this Panama indicated that the Article should be perfected, but that general obligations are needed. Panama proposed to organize a working group on the subject and prepare a proposal for review in a plenary. Chile stated that this article should be addressed in plenary as well as others.

Subsequently, Colombia proposed to change the title to "General Arrangements". Antigua and Barbuda, Mexico, Uruguay, Costa Rica, Honduras, El Salvador, Guatemala, Bolivia, Jamaica, Trinidad & Tobago and Grenada supported this proposal. Chile and Peru insisted that the Article should be kept with the original title.

The most important elements of the discussion on this Article were:

Paragraph 1: refers to the obligation of the States to ensure that people live in a healthy environment, are healthy and that their rights are respected.

Colombia, Uruguay, Mexico proposed to delete this paragraph. Supporters were Antigua and Barbuda, Jamaica, Grenada, Trinidad and Tobago, Costa Rica, Honduras, El Salvador, Guatemala and Bolivia.

Chile and Peru indicated that it is key that this paragraph remains because it is the main purpose of this Agreement.

Paragraph 2: established that each State shall make the necessary legislative and regulatory adjustments to achieve the full implementation of this Agreement.

Colombia proposed to delete this paragraph.

Several governments have questioned the word "guarantee" and also Jamaica requested to add "in accordance with their domestic circumstances".

Paragraph 5: refers to the recognition, protection and support of the environmental defenders.

At the beginning of this debate, a representative of the public emphasized that the organization, Global Witness had registered 116 murders of environmental defenders in 2014. 57% of them are from Latin America and the Caribbean. 40% of the total were members of indigenous groups. This highlighted how imperative it is to address this reality.

The public made the following proposal (underlined below) perfecting the paragraph on environmental advocates:

Each Party shall create an enabling environment and grant recognition, protection and support to associations, organizations, groups and/or individuals that defend the environment and will ensure that they will not be harassed, victimized or afflicted by coercive measures in the exercise of the rights recognized in the present Agreement.

Brazil recognized the seriousness of the situation and endorsed civil society's proposal. Chile expressed their appreciation and support for the public's contribution and indicated that this is one of the key elements of the Agreement. Argentina, Uruguay and Costa Rica also supported.

Mexico agreed to include this proposal in the document, noting that language proposal will be determined on another occasion. In any case they requested to add "in accordance with its domestic law". Mexico also noted that they would prefer if this proposal was not included under General Obligations.

Colombia agreed with the proposal submitted, but expressed concerns about some words such as "support", and questioned whether this meant providing financial support. They emphasized that this is an obligation they would not want to assume and supported Mexico's proposal regarding national legislation.

Paraguay shared Colombia's concern stating that "because we do not want someone to go to the Inter-American Commission and then punish us, economically, we are a poor country and we are not able to provide funding." Jamaica supported Paraguay's proposal that it should be "moral support" and Brazil proposed "institutional support".

The public emphasized that it is critical to provide institutional support through public policies or other channels where the State gives concrete and not merely moral support for environmental defenders so they can continue to undertake their work.

Costa Rica disagreed with Colombia and Mexico to incorporate "according to domestic law" since often the same judicial and administrative means are used to repress defenders. El Salvador also supported this inclusion.

Argentina sought to incorporate work-related organizations such as trade unions. They reported that this is request came from their unions. A discussion ensued and thereafter they proposed to consider the unions in another paragraph and to prepare a proposal.

The final paragraph established:

Each Party shall create an enabling environment and grant recognition, protection and support [Brazil, Chile, Jamaica: institutional support] [Colombia, Jamaica: subject to national capacities and situations] to associations, organizations, groups and/or individuals that defend [Jamaica: and/or protect] the environment [Costa Rica: and the public interest (Antigua and Barbuda, Grenada, Jamaica, Saint Lucia, Trinidad and Tobago: in the public interest)] and ~~exercise the rights recognized in the present Agreement.~~ [will ensure that they will not be harassed, victimized [Costa Rica, Chile: intimidated] or subjected to illegitimate coercive measures in the exercise of the rights recognized in the present Agreement. [Brazil, Chile, Uruguay, Mexico, Paraguay, Costa Rica, El Salvador] [in accordance with its domestic legislation] [Mexico, Colombia, Paraguay (reservation to “support”).

Article 6: Access to Environmental Information

6.1 This paragraph ensures that all information held by the authority, whatever its format is public, with the exceptions contained in this Agreement.

At the beginning of the debate, a representative of the public made the following proposal:

The Parties shall guarantee all environmental information that is in the possession, custody, -control of public authorities is public regardless of format, medium, date of creation, origin, classification or processing, except as provided under this Agreement.

Panama and Chile supported this proposal.

Mexico suggested replacing “guarantee” with “will promote”, even though the Constitution and the Freedom of Information Act in Mexico include the word guarantee.³

Modalities of Participation

During the Third Meeting countries discussed the third proposal on the Modalities for the Participation of the Public prepared by Chile and Costa Rica as Co-chairs of the Steering Committee of the Negotiating Committee, along with Uruguay as the host country.

³ Constitution: Article 60: The right to information is guaranteed by the State

This third proposal included the apprehensions expressed in an open group lead by Colombia and Mexico during the Second Negotiating Meeting held in October 2015 in Panama.

Specifically, Colombia stated the following; clearer participation procedures were required, the Modalities have to establish that this is an intergovernmental process, that these Modalities do not constitute a precedent for other international negotiations, and that governments should have the right to have private meetings without explaining the reasons for a closed meeting to the public.

Meanwhile, Argentina requested that priority has to be granted for the participation of people and organizations from Latin America and the Caribbean. Mexico and Brazil supported these requests and also asked to reconsider the definition of public which they considered was too broad.

This third proposal included the concerns expressed by Brazil, Colombia and Mexico in the Second Negotiating Meeting held in October 2015 in Panama.

There was an intense debate on the Modalities and a representative of the public stated that some individuals do not support certain elements of the proposed modalities. However, they preferred not to open the debate in order to ensure the continued progress of the negotiations, which has made little headway since its inception in May 2015 in Santiago de Chile.

The proposal was not approved in the time spent on the agenda for discussions on this item. The meeting continued its development and on the penultimate day (Thursday, April 8) another proposal was presented for discussion which was quickly approved by the governments. There was insufficient opportunity for the public to respond to the proposal. Therefore, after its approval the public expressed their disagreement with the modalities that established that only individuals and groups from the region will participate in the process and other interested groups must submit a request to the signatory countries to be decided on a case by case basis.

On this decision the public issued a press release entitled “No Equal Rights for ‘Outsiders’” which was shared via social networks. The press release can be accessed at:

http://slunatrust.org/assets/content/documents/PR_on_Modalities_for_Public_Participation_7_Apr_2016.pdf.

NEXT STEPS

The Fourth Meeting of the Negotiating Committee will be held in the Dominican Republic from August 8 to 12, during which it is expected that negotiations will resume on Article 6.

It is important for countries that have not yet conducted appropriate national consultation processes, and those who have only done so virtually, to make an effort to involve more citizens, undertake outreach on the process and obtain feedback that contributes to the advancement of effective negotiations.

Since most of the definitions and obligations of the agreement have not yet been agreed upon, countries in the region have the opportunity to improve their proposals and existing drafts. It is essential that countries respect the obligations already in place by international treaties and regulatory frameworks, and that there is no regression in standards and applicability.

The representatives of the public will continue working to contribute proposals and analysis to build a robust regional agreement to ensure full implementation of the access rights regarding environmental matters in the region.