

Annex B

SAN JOSÉ CONTENT FOR THE REGIONAL INSTRUMENT**FIRST PART****Preamble**

1. The region and its countries have made progress in this area, as shown in the ECLAC document *Access to information, participation and justice in environmental matters in Latin America and the Caribbean: Situation, outlook and examples of good practice* (LC/L.3549/Rev.1). This has left the region in a good position to make further headway in the full implementation of access rights.
2. Reference is made to international documents on access rights, including the following: the Declaration of the United Nations Conference on the Human Environment, the Rio Declaration on Environment and Development, Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Declaration on Sustainable Development, the Plan of Implementation of the World Summit on Sustainable Development, the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro in June 2012, entitled “The future we want”, the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making, the Model Inter-American Law on Access to Public Information, the Open Government Partnership, the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, 1998), and the Protocol on Pollutant Release and Transfer Registers (2002).
3. Reference is also made to the documents adopted as part of the regional process: Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development (Rio de Janeiro, 2012), Road Map (Santiago, 2012), Plan of Action to 2014 (Guadalajara, April 2013), Lima Vision for a Regional Instrument on Access Rights Relating to the Environment (October 2013), and the priority lines of action for capacity-building and cooperation (October 2013).
4. The process will be open to the countries of the region; it aims to be relevant to all of them and will benefit from the widest possible regional participation.
5. Capacity-building and cooperation is an essential element of this instrument.
6. The instrument shall allow for the creation of synergies at all levels and shall support implementation of the post-2015 development agenda.
7. Rights-based approach: the instrument shall be based on recognition of the rights of access to information, participation and justice in environmental matters.
8. Right to a healthy environment: everyone has the right to a healthy environment, which is essential for the full development of human beings and for the achievement of sustainable development,

poverty eradication, equality, and the preservation and stewardship of the environment for the benefit of present and future generations (Lima Vision).

9. Acknowledgement of the participation and the fundamental role of the public in environmental protection and the effective implementation of access rights.

10. Recognition of the region's diversity and multiculturalism.

11. Interrelation and interdependence of access rights: access rights are interrelated and interdependent, and so each should be promoted and implemented in an integrated and balanced manner (Lima Vision).

12. Link between human rights and the environment: exercising rights of access to information, participation and justice in environmental matters deepens and strengthens democracy and contributes to better protection of the environment and thus of human rights (Lima Vision).

13. Importance and benefits of access rights:

- (i) Rights of access to information, participation and justice in environmental matters are essential to the promotion of sustainable development, democracy and a healthy environment (Lima Vision).
- (ii) They represent an important contribution to the formulation and implementation of informed, transparent and appropriate measures for furthering the well-being of the population and contributing to accountability and the effective rule of law (Lima Vision).
- (iii) They contribute to greater public awareness and allow the public to express its concerns regarding environmental problems and challenges and this, duly acknowledged by the authorities, leads to greater public involvement and support for the decisions taken (Lima Vision).
- (iv) Adequate access to these rights is essential for the governance of natural resources in the region and contributes to the promotion of dialogue between authorities and citizens in natural resource management (Lima Vision).
- (v) They contribute to inclusiveness, social cohesion and environmental equity.

Use of terms or definitions

These include terms and expressions such as party, competent national authority, environmental information, public participation, access to environmental information, access to participation in environmental matters, access to environmental justice, public, and capacity-building and cooperation.

Objective

The full implementation of access rights in environmental matters, under a capacity-building and cooperation approach (that is, the contributions of a regional instrument as outlined in the Lima Vision).

Principles

The principles of the Lima Vision shall be taken into consideration: equality, inclusion, transparency, proactivity, collaboration, progressive realization and non-regression.

OPERATIVE PART

General provisions

(For examples corresponding to each matter, see annex 1)

- Right to live in a healthy environment and link to human rights
- Open nature of the instrument
- Awareness-raising and environmental education
- Basic instrument that does not preclude further development
- Collaboration between the countries in the region
- Protection, recognition and support of organizations, groups and/or individuals that aim to protect the environment and that exercise the rights recognized in the instrument
- Maximum dissemination of access rights and the duty incumbent upon authorities and public officials to facilitate the exercise of these rights
- Promotion of the instrument's objective in regional and international forums
- Scope of application
- National measures and institutions for implementation of the instrument, including public participation
- Non-discrimination

Access to environmental information

(For examples corresponding to each matter, see annex 2)

Guidelines

Countries may consider the following with regard to access to environmental information:

- Relevance
- Freedom of information
- Openness and transparency
- Maximum dissemination/publicity
- Non-discrimination
- Opportunity to obtain information
- Control/oversight bodies
- No-cost
- Accessibility
- Severability

Passive transparency

- Accessibility of information
 - Presumption of public access
 - Extent
 - Refusal/exceptions
- Mechanisms to facilitate access to information and appeal mechanisms in the event of refusal
 - Format
 - Deadline
 - Language
 - Guarantee of reply
 - Costs
 - Systems
 - Independent national body / institution to ensure compliance

Active transparency

- Generation and dissemination of environmental information
- Periodic reports on the state of the environment and environmental performance reviews
- Consideration of specific issues, encompassing matters such as:
 - Environmental emergencies
 - Public pollutant release and transfer registers
 - Information on dangerous materials, substances and activities
 - Information on permits relating to projects and activities that could have a significant environmental impact
 - Information on environmental enforcement and compliance
- Use of new information and communication technologies
- Special consideration of specific or vulnerable groups
- Information relating to the private sector, encompassing matters such as:
 - Information for consumers
 - Promotion of the production of sustainability reports and environmental compliance by private parties
 - Minimum standards for information quality and participatory environmental monitoring
- Document management and archiving, encompassing matters such as:
 - Management and archiving of administrative documents

Public access to participation in environmental decision-making

(For examples corresponding to each matter, see annex 3)

Guidelines

Countries may consider the following with regard to public access to participation in environmental decision-making:

- Openness and inclusion
- Autonomy

- Respect for cultural diversity
- Co-responsibility
- Institutions
- Modes of and mechanisms for participation
- Types of activities, encompassing matters such as:
 - Applicability to the formulation, execution and evaluation of projects, policies, plans, standards, regulations, programmes and strategies in environmental decisions
 - Applicability to activities that may have a significant environmental impact
 - Applicability also to processes linked to the conservation and management of natural resources
 - Applicability to international forums and negotiations
- Mechanisms and instruments for public participation, encompassing matters such as:
 - Institutions and policy frameworks
 - Forms of participation
- Facilitation of public participation, encompassing matters such as:
 - Notification
 - Identification
 - Information and logistics channels
 - Technical support
 - Possibility of early public participation, to enable the public to provide background information in the early stages of a project's development
 - Public participation in oversight and complaint processes
 - Promotion of guides / frameworks to implement public participation and support for public participation
- Access to information, encompassing matters such as:
 - Relevant and timely information
 - Summary
- Consideration of observations made by the public and grounds for the decision taken
- Decision taken, encompassing matters such as:
 - Communication of the decision
 - Means of appeal and follow-up
- Special consideration of specific or vulnerable groups

Access to justice

(For examples corresponding to each matter, see annex 4)

Guidelines

Countries may consider the following with regard to access to justice in environmental matters:

- Justice and equity
- Publicizing and ensuring transparency
- Prompt response

- Prevention
- Independence and impartiality
- Effective remedy
- Appeal mechanisms when access to information has been denied
- Appeal mechanisms when access to participation has been denied
- Appeal mechanisms to deal with infringement of the rules and claims relating to environmental damage and compensation
- Facilitating access to justice, encompassing matters such as:
 - Opportunity
 - Communication channels
 - Costs
 - Official mechanisms for complaints and for cases where access has been denied, including use of new technologies
 - Broad legal standing
- Special consideration of specific or vulnerable groups
- Decisions adopted
- Mechanisms for implementing decisions
- Training of judicial and administrative officers, public prosecutors, ombudsmen and cooperation
- Public awareness-raising and training
- Alternative dispute resolution

CAPACITY-BUILDING AND COOPERATION

Capacity-building and cooperation shall provide tools to help States and the general public strengthen their capacities and foster cooperation to achieve the full exercise of rights of access to information, participation and justice in environmental matters.

Guidelines

Countries may consider the following with regard to capacity-building and cooperation:

- Demand-driven principle, based on national needs
- Flexibility and effectiveness
- Results-based management
- Reflection of regional specificities
- Mainstreaming of capacity-building
- Transparency and accountability
- Promotion of South-South cooperation
- Consideration of the specificities of cooperation for each access right

- Recognition of the importance and need for capacity-building of both the public and governments.
- Consideration of specific needs, circumstances, capacities and priorities of countries and Governments.
- The instrument shall constitute the framework for capacity-building activities.
- Consideration of the participation of the private sector, civil society organizations and other regional and international organizations, taking into account their role as multiplier agents and existing synergies within public-private initiatives.
- Capacity-building and cooperation shall take account of the target audiences, particularly where groups may have specific needs or require special attention.
- Synergies with other environmental instruments and provisions.
- Self-assessment of national needs and capacities.

Forms of capacity-building and cooperation

- Between States (bilateral, triangular and/or multilateral)
- Between bodies of the instrument and States
- Of the public, public officials and national authorities
- Regional and international cooperation

Modalities

- Discussions, workshops, exchanges of experts, technical assistance, education and awareness-raising, observatories and clearinghouses, among others.
- Development, exchange and implementation of educational, training and awareness-raising materials and programmes at the national and international level.
- Voluntary codes of conduct, guidelines, best practices and/or standards.
- Sharing of experiences at all levels.
- Use of committees, councils and public-private platforms to address cooperation priorities and activities.

Implementation, follow-up and evaluation

- Periodic reports
- The follow-up mechanism can establish or suggest capacity-building measures to support implementation by both the public and Governments

Resources

- Mobilization of various types of resources from different sources

RULES OF PROCEDURE

- Rules for public participation, taking into consideration the experience gained during the regional Principle 10 process, and based on the Plan of Action
- Publicizing and ensuring transparency
- Resource efficiency and use of information and communication technologies

INSTITUTIONAL FRAMEWORK

- Meeting/conference of the signatory countries with participation from the public
- Presiding Officers
- Secretariat
- Advisory group or subsidiary bodies
- Facilitation and/or follow-up mechanism
- Final provisions
- Financial resources and mechanisms

ANNEXES (FOR REFERENCE PURPOSES)

Annex 1

POSSIBLE APPROACHES TO THE MATTERS LISTED IN THE SECTION “GENERAL PROVISIONS”

Examples are presented below of possible approaches to certain issues concerning the general provisions to illustrate how they may be further developed.

- Open nature of the instrument: recognizing the need for and the importance of strengthening access rights in a broad manner, the instrument will be open to all the countries of Latin America and the Caribbean (Plan of Action)
- Awareness-raising and environmental education: as set out in the Lima Vision.
- Basic instrument that does not preclude further development: regardless of the measures that we, the signatory countries, agree upon in order to strengthen the full implementation of access rights, nothing shall preclude our ability to take additional measures to ensure even broader access to information, participation and justice in environmental matters (Lima Vision).
- Protection, recognition and support of organizations, groups and/or individuals: countries can explore modalities for supporting associations, organizations or groups that aim to protect the environment and that exercise the rights recognized in this instrument.
- Maximum dissemination of access rights and the duty incumbent upon authorities and public officials to facilitate the exercise of these rights: mechanisms and procedures for accessing information, participation and justice shall facilitate the exercise of these rights, and shall exclude requirements that may obstruct or impede it.
- Promotion of the instrument's principles in regional and international forums.
- Scope of application and national measures for the implementation of the instrument.

Annex 2

**POSSIBLE APPROACHES TO THE MATTERS LISTED IN THE SECTION
“ACCESS TO ENVIRONMENTAL INFORMATION”**

Examples are presented below of possible approaches to certain issues concerning access to environmental information to illustrate how they may be further developed.

Guidelines

- **Relevance:** any information held by the bodies under obligation is assumed to be relevant, regardless of its format, medium, date of creation, origin, classification or processing, with due regard for the exceptions provided for in law.
- **Freedom of information:** everyone has the right to access the information held by the bodies under obligation, without prejudice to the exceptions and limitations established by law.
- **Openness and transparency:** any information held by the bodies under obligation is presumed public, unless it is subject to regulated exceptions.
- **Maximum dissemination:** information should be provided in the broadest possible terms, excluding only that which is subject to constitutional or legal exceptions.
- **Non-discrimination:** the bodies under obligation shall provide information to anyone that requests it, under equal conditions, without making arbitrary distinctions and without requiring any justification for the request, always in accordance with national law.
- **Opportunity to obtain information:** the bodies under obligation shall reply to information requests within the legal deadlines, as quickly as possible and without introducing any kind of procedural delay; extensions must be clearly stated and justified.
- **Control:** compliance with the rules governing the right of access to information will be constantly monitored and decisions taken regarding information requests can be appealed.
- **No-cost:** access to information held by the bodies under obligation is free, without prejudice to justified exceptions.
- **Accessibility of information systems.**
- **Severability:** if an administrative act contains both information that can be known and information that must be withheld on legal grounds, access will be granted to the former but not to the latter.

Passive transparency

- **Accessibility of information**
 - **Presumption of public access:** this applies to any environmental information held by the public authorities, with clear, limited and regulated exceptions.
 - **Extent:** it is not necessary to demonstrate (or mention) a special interest or provide any reason.

- Refusal: public bodies must justify their refusal to answer an information request and, if access to information is denied, there must be independent mechanisms to review the decision.
- Mechanisms to facilitate access to information
 - Format: obligation to provide information in the required format if available.
 - Deadline: timeframe for providing information.
 - Language: language shall not constitute a barrier, and special consideration must be accorded to the languages of indigenous peoples.
 - Guarantee of reply: assistance and/or redirection if a request falls outside the sphere of competence.
 - Costs: if there are costs, these must not exceed what is reasonable for the request.
 - Systems: establishment and/or development of information systems with a view to promoting greater user access.

Active transparency

- Generation and dissemination of environmental information

Examples:

- Parties shall seek to generate environmental information and make it publicly available in a proactive, timely, regular, accessible and comprehensible manner.
- All information of public interest that is produced, managed and disseminated should be timely, objective, reliable, complete, up-to-date, reusable, processable and available in formats that are accessible to petitioners and other interested parties with no restrictions on its reproduction or use, in accordance with legal provisions and exceptions.

- Consideration of specific issues

Examples:

- Environmental emergencies: information shall be effectively and immediately disseminated to communities affected by environmental emergencies.
- Public pollutant release and transfer registers
- Information on dangerous materials and activities
- Information on permits relating to large projects or activities that could have a significant environmental impact

- Use of new communication technologies

Examples:

- Development of mechanisms aimed at encouraging the implementation of open-data policies at the various government levels so as to improve information systems, increase transparency, generate data interoperability and promote innovation.
- Owing to the possible limitations, alternative mechanisms for dissemination and access should also be considered.

- Special consideration of specific or vulnerable groups

Examples:

- Consider channels that are culturally, economically, spatially and temporally appropriate and used by vulnerable groups.

- Information held by private parties

Examples:

- Information for consumers: Product information to ensure consumers make informed choices in environmental matters.
- Promotion of the production of sustainability reports and environmental compliance by private parties: Compliance with principles, guidelines, human rights and socio-environmental responsibility.
- Minimum standards for information quality and participatory environmental monitoring.

- Document management and archiving

Examples:

- Management and archiving of administrative documents so that they can be retrieved and made available if required, in accordance with legal provisions and exceptions.

Annex 3

**POSSIBLE APPROACHES TO THE MATTERS LISTED IN THE SECTION
“PUBLIC ACCESS TO PARTICIPATION IN ENVIRONMENTAL
DECISION-MAKING”**

Examples are presented below of possible approaches to certain issues concerning public access to participation in environmental decision-making to illustrate how they may be further developed.

Guidelines

- Openness and inclusion: public participation must be open and inclusive.
- Autonomy: the public must have complete autonomy to participate and organize.
- Respect for cultural diversity: respect for the particular conditions and plurality of all, especially vulnerable groups and indigenous peoples, and promotion of the value of local knowledge.
- Co-responsibility: participation must be exercised on the basis of the co-responsibility of Governments and the public; both parties must take an active role and act in good faith in the process of constructing public policies as a society.
- Institutions: institutions and mechanisms should enable the effective and transparent exercise of the public's right to participate in public management.
- Opportunity to have an impact: participation should be significant and should take place at a time when options are still open.

Examples for each matter

- Types of activities
 - Applicability to the formulation, execution and evaluation of environmental decisions (cases in which this would be compulsory and discretionary to be determined)
 - Applicability to activities that may have significant environmental impacts
 - Applicability also to processes linked to the conservation and management of natural resources
- Mechanisms and instruments for public participation
 - Institutions and policy frameworks: These will be based on regulatory frameworks, legal and institutional traditions, and international instruments.
 - Forms of participation: Consider comments made in writing or at public hearings and differentiated and gradual mechanisms that are consistent with the potential degree of impact of the project.
 - Impact forums: Establishment of permanent forums with representatives of different sectors (representatives of civil society and public authorities).
- Facilitation of public participation
 - Timely notification, appropriate deadlines and prior information
 - Identification of those directly affected
 - Appropriate information and logistics channels
 - Technical support for participants and resources for participation

- Possibility of early public participation, to enable the public to provide background information in the early stages of a project's development
- Public participation in oversight and complaint processes
- Promotion of guides/frameworks to implement public participation and support for public participation
- Access to information
 - Relevant information: The public must have access to relevant information for their participation to be active and effective
 - Summary: A summary of the issue must be disseminated
- Consideration of observations received from the public and decision taken
 - Extent of public participation and justification of the consideration given to the comments from the public
- Decision taken
 - Communication of the decision: the public must be promptly informed of the decision taken and the reasons for it must be made public and be accessible
 - Means of appeal and follow-up
- Special consideration of specific or vulnerable groups:
 - Identify communities in a situation of vulnerability.
 - Consider the best means and formats for providing information to vulnerable communities, including language when appropriate.
 - Seek to support participation at the lowest cost possible.
 - Raise awareness and build capacities to ensure informed participation.
 - Ensure that the characteristics of vulnerable communities are taken into account.
 - Encourage active and timely participation.

Annex 4

**POSSIBLE APPROACHES TO THE MATTERS LISTED IN THE SECTION
“ACCESS TO JUSTICE”**

Examples are presented below of possible approaches to certain issues concerning access to justice to illustrate how they may be further developed.

Guidelines

- Justice and equity: Right to be heard, within a reasonable time, through legal and/or administrative means, in a process that grants guarantees of due process; right to be judged on the basis of the principle of legality; clear, fair, appropriate and independent procedures; right of appeal in respect of superior court rulings; and, where these exist, specialized courts.
- Publicizing and ensuring transparency of judicial proceedings and of rights in environmental matters, in accordance with legal provisions and exceptions.
- Appeal mechanisms in cases where access to information and/or participation has been denied or environmental regulations have been violated.
 - Active legal standing
 - Victim support
 - Environmental and access rights defenders (such as the right to promote and defend, individually or in association with others, environmental protection and access rights; the need for States to take the necessary measures to ensure that this right is properly guaranteed).
 - Precautionary, interim and oversight measures to safeguard the environment
 - Specialized courts/chambers to deal with environmental matters
 - Liability of public officials in cases where access to information and/or participation has been denied
 - Execution and remedy mechanisms (for example, funds to repair damage)
- Facilitating access to justice (such as cost and opportunity)
 - Broad dissemination of mechanisms to facilitate access
 - Effective communication channels between authorities
 - Reducing the cost of litigation and the duration of court cases, supporting and building the capacities of affected communities and the public
 - New mechanisms, including virtual, electronic and telephone mechanisms
- Special consideration of specific or vulnerable groups, including indigenous and Afro-descendent peoples
 - Free legal assistance
 - Consideration of channels that are culturally, economically, spatially and temporally appropriate and used by vulnerable groups
- Decisions adopted
 - Notification and justification
 - Judicial decisions shall be made available to the public

- Training of judicial and administrative officers and cooperation
 - Promotion of capacity-building programmes on environmental law for judicial officials and law enforcement officers, other jurists and other stakeholders
 - Regional cooperation for the investigation and prosecution of environmental crimes
- Alternative dispute resolution
 - Promote the development and use of alternative dispute resolution mechanisms, in appropriate cases, for example hearings, mediation and arbitration
 - Alternative and inexpensive methods such as commissions and ombudsmen

Annex 5

POSSIBLE APPROACHES TO MATTERS CONCERNING FINANCING AND THE INSTITUTIONAL FRAMEWORK

Examples are presented below of possible approaches to certain issues concerning financing and the institutional framework to illustrate how they may be further developed.

- Financing:
 - Possibility of a specific fund to finance the capacity-building and cooperation component.
 - Provisions regarding financial cooperation from the States Parties and relevant international organizations or bodies, cooperation between the States Parties and financial resources managed by the body responsible for the instrument.

INSTITUTIONAL FRAMEWORK

- Meeting/conference of the signatory countries (with significant participation from the public)
- Presiding Officers
- Secretariat
 - As set out in the Plan of Action
 - Training and relations with other multilateral bodies
- Advisory group or subsidiary bodies
 - Specialized technical groups or panels to provide advice to States
- Compliance and/or follow-up mechanism
 - Voluntary non-adversarial and non-judicial mechanisms of a consultative nature to review compliance with the instrument's provisions
 - Appropriate participation by the public and review of communications from members of the public on matters related to the instrument
 - Consideration of capacities and national legislation
 - Compliance and follow-up methods (such as periodic reports, monitoring, communications from members and peer review)
- Final provisions dealing with aspects such as adoption, amendments, right to vote, signature, ratification, entry into force, reservations, withdrawal, depositary and authentic texts.