

## **Achievements of LAC countries in implementing Principle 10: Legislation and best practice examples**

### **Speaker Notes**

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The Argentinian National Legislation counts with high standards regarding the right to public participation in environmental matters. Some of these standards have been taken as base of the articles proposed in the preliminary document written by ECLAC, in order to move forward in the negotiations of the regional document.

Some rules considered relevant are the General Law of Environment N° 25.675/02 and the Regulation Decree N° 1.172/03 that approves the General Regulations of Public Audiences for the National Executive Branch, for the Publicity of the Interests' Management in the scope of the National Executive Branch, for the Participatory Elaboration of Rules, of Access to Public Information for the National Executive Branch and of the Open Meetings of Regulating Bodies of the Public Services, Registration forms, register and presentation of opinions and proposals (2003).

### **Specifically, we want to indicate that:**

- The preliminary document makes reference to **an open and inclusive participation**. The Law n° 25.675 in its 19th article states "*Any person has the right to be consulted and to give his opinion (...)*" The regulation decree mentioned progresses in specifying that **any natural person and legal entity, public or private, can request a public audience or be participant of it.**

- The preliminary document states that "*When the observations or recommendations of the public are not taken into account, **information and explanations of the reason of it must be given in writing to those who have formulated them***". A similar and more cumbersome order can we find in the Argentinian legislation, where in the article 38 of the decree 1172/2003 it is established that in a 30 days period the authority of implementation "*must base its final resolution and explain in what way it has taken into account the opinions of the citizens*".

and, if it is the case, the reasons for which they are rejected”.

We also want to indicate that the law of Argentina has made a progress in guaranteeing obligatory procedures of public participation for high relevance issues, such as the territorial ordering of native forests. It is established in the Law of Minimum Budget for Protection of Native Forests, Law 26.331 that the ordering of existing native forests must be carried out "through a participative process".

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The Caribbean has a progressive history of development of environmental law from the early 90's with national apex environmental laws passed in Belize, Trinidad and Jamaica most recently Antigua. A number of countries the Caribbean have recognition of a right to a healthy environment including, Jamaica, Guyana, Cayman, Dominican republic. However the recognition of procedural rights or access rights has been fragmented through-out sectoral legislation. There is innovation to be found in the region e.g. Innovative provisions to support public participation in Guyana

**Public Scoping Detail:**

"Before any environmental impact assessment is begun, the Agency shall at the developer's cost publish in at least one daily newspaper a notice of the project and make available to members of the public the project summary[.]" EP Act. 11(6). The public has 28 days to make written submissions "setting out those questions and matters which they require to be answered or considered in the environmental impact assessment." EP Act, sec. 11(7). The TOR must be prepared with consideration of these submissions.

**Public Comments on Final EIA Detail:**

EP Act, sec. 11(10) provides 60 days to file submissions to the EPA.

**Response to Public Comments Detail:**

The Agency must take public submissions into account when deciding whether to approve or reject a project. EP Act, sec. 12(1)

While in a few countries they have adopted more comprehensive frameworks laws for access rights like ATI laws including Guyana, JA , Trinidad and Antigua.

The Dominican Republic stands out as having the most comprehensive legislation recognizing procedural rights and meeting the requirements of the Bali Guidelines across the three pillars or access rights in the region e.g. Law No. 64-00 Article 54.- The Ministry of Environment and Natural Resources, based on the results of inspections, shall take the necessary measures to correct the irregularities found, notifying the interested party and giving a reasonable period for regularization.

Article 55.-In environmental emergencies, the Ministry of Environment and Natural Resources and the corresponding municipality, in coordination with the Ministry of Public Health and Social Assistance and related agencies, established immediately the security measures adopted for the common good.

Article 181.-The magistrate prosecutor for the protection of the environment and natural resources of the relevant jurisdiction, acting as judge of the complaint, is obliged, if it considers that the case is unlikely to be serious, to give expeditious course of trade or to complaints, complaints or referrals provided in this Act, within a period not exceeding three (3) business days, so that anomalies or environmental damage will be corrected as soon as possible and violations of the laws environmental are known to the appropriate court.

Where the region really shines however is in relation to Access to Justice. Caribbean Government have adopted judicial review legislation that provides most of the basic **procedural rights, standing and legal enforcement mechanisms** in the domestic legal framework of many of the countries in the Region including Haiti, st lucia, Trinidad and Tobago, Belize and Jamaica.

Notable strong legal regimes for access to justice exist in the Dominican Republic, Jamaica , St. Lucia with exceptions relating to removing barriers for the poor to be able to access these services. But innovative provisions allow for

- Access to a court of law or other independent and impartial body or administrative procedures to **challenge any decision, act or omission** by public authorities or private actors **that affects the environment or allegedly violates the substantive or procedural legal norms** of the State related to the environment. (see guideline 17)
- A **broad interpretation of standing** in proceedings concerned with environmental matters with a view to achieving effective access to justice. (see guideline 18)Jamaica and St lucia
- Haiti A framework for prompt, **adequate and effective remedies** in cases relating to the environment, such as **interim and final injunctive relief**. States should also consider the use of compensation and restitution and other appropriate measures. (see guideline 21) As a result of civil liability, the authors, sponsors and accomplices of the environmental offenses are obliged to repair the damages caused to the victims, in both the private and public sector, both at individual and collective scale and in public, with:a. payment of damages to those affected and/or b. the obligation to cover the costs associated to restoring the state of the environment as it was before the environmental violation.
- **Timely and effective enforcement of decisions** in environmental matters taken by courts of law, and by administrative and other relevant bodies. (see guideline 22) Trinidad

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### **La ley 1712 de 2014 sobre Transparencia y acceso a la información en Colombia**

En el Marco Constitucional Colombiano el derecho de acceso a la información es reconocido en la Constitución Política y por la jurisprudencia de la Corte Constitucional como un derecho fundamental.

A pesar de este reconocimiento, Colombia no contaba con una legislación específica en materia del derecho de acceso a la información hasta marzo del año pasado cuando se sancionó la ley 1712 sobre transparencia y acceso a la información pública, la cual entró a regir en septiembre. Esta ley incluye importantes definiciones sobre el derecho de acceso a la información pública, los procedimientos para su ejercicio y garantía y las excepciones frente a la publicidad de la información.

No obstante de que por su poco tiempo de vigencia es difícil evaluar su implementación, la ley sí ha significado un avance importante en materia de derechos de acceso. En un país que vive en un constante conflicto armado es fundamental que el gobierno tome en cuenta los vínculos existentes entre la gestión de los recursos naturales, los derechos de acceso, la protección de los derechos humanos y la consolidación de la paz, y por eso creemos de vital importancia para Colombia un convenio regional sobre principio 10.

In the Colombian Constitutional Framework the right of access to information is recognized by the Constitution and the decisions of the Constitutional Court as a fundamental right.

Despite this recognition, Colombia did not have a specific legislation on the right of access to information until last March when the 1712 law on transparency and access to public information was sanctioned, which entered into force in September. This law includes important definitions of the right of access to public information, the procedures for their exercise and guarantee, and exceptions from the publicity of the information.

Regardless that because of its short time it is difficult to assess effective implementation, the law has been an important step forward in terms of access rights. In a country that lives in constant conflict it is essential that the government take into account the links between the management of natural resources, access rights, the protection of human rights and peace, and that's why we believe a regional convention on principle 10 is vital to Colombia.