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Economic Commission for Latin America and the Caribbean

First virtual meetings established under the Plan of Action to 2014 of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development
August 6 and 9, 2013

Access to information, participation and justice in environmental matters in Latin America and the Caribbean

Sustainable Development and Human Settlements Division



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PRINCIPLE 10 OF THE RIO DECLARATION (1992)

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.

Rio Declaration on Environment and Development (1992)



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PRINCIPLE 10: REGIONAL AND INTERNATIONAL COMMITMENTS

- 1992 • Rio Declaration
- 1992 • Agenda 21
- 1994 • Barbados Conference
- 1998 • Aarhus Convention
- 1999 • Inter-American Strategy for the Promotion of Public Participation in SD
- 2002 • Johannesburg Plan of Implementation
- 2006 • Declaration of Santa Cruz
- 2010 • Bali Guidelines
- 2010 • Model Inter American Law on Access to Information (OAS)
- 2011 • Conclusions of the LAC countries Rio+20 preparatory meetings
- 2012 • Rio+20 outcome document “The future we want” (p. 43, 44, 99)
- 2012 • Declaration on the application of Principle 10 in LAC
- 2013 • Santiago Declaration CELAC
- 2013 • Santiago Declaration CELAC - UE



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THE FUTURE WE WANT (RIO +20), 2012

- ▶ 43. We underscore that **broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development.**
 - ▶ 44. We recognize that improved participation of civil society **depends upon**, inter alia, **strengthening access to information, building civil society capacity** as well as an enabling environment.
 - ▶ 99. **We encourage action at regional, national, sub-national, and local levels to promote access to information, public participation, and access to justice in environmental matters, as appropriate.**
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CELAC AND PRINCIPLE 10, 2013

- ▶ "Appreciate initiatives for regional implementation of the 10th Principle of the 1992 Rio Declaration, regarding the rights of access to information, participation and environmental justice, as a significant contribution to the participation of organized community committed to Sustainable Development". *Santiago Declaration of the first CELAC Summit, January 27-28, 2013.*
 - ▶ "...The importance of implementing Principle 10 of the 1992 Rio Declaration at the Earth Summit, and reiterate the importance of advancing initiatives in this matter." They reiterated the right of citizens to participate in the formulation, implementation and monitoring of public policies. *Declaration of the CELAC-EU Summit, January 26-27, 2013.*
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WHY PRINCIPLE 10?

- ▶ There is a growing recognition that access rights are a key issue for environmental protection and sustainable development. = Principle 10: better democracy, better economy and more justice
- ▶ Environmental quality is a public good and a fundamental right
- ▶ The new equation: State – productive sector – society requires:
 - ▶ **Political agreements** for a new social and intergenerational contract, with clear responsibilities, protection of rights and accountability.
 - ▶ Strengthening of **collective development culture**, based tolerance towards differences and diversity.
 - ▶ **Strategic vision of development on the long run**, which stimulates pacts among productive actors.
 - ▶ **State – as opposed to government or administration – policies.** A solid project that last through democratic institutions.
 - ▶ Value system as the basis: coherence, transparency, effectiveness, inclusion
- ▶ **Contributes to mitigate markets and policy failures.**



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AN ADDITION CONCERN IN THE REGION IS THE GROWING NUMBER OF SOCIO-ENVIRONMENTALLY RELATED CONFLICTS. THESE ARE RELATED WITH THE USE OF NATURAL RESOURCES

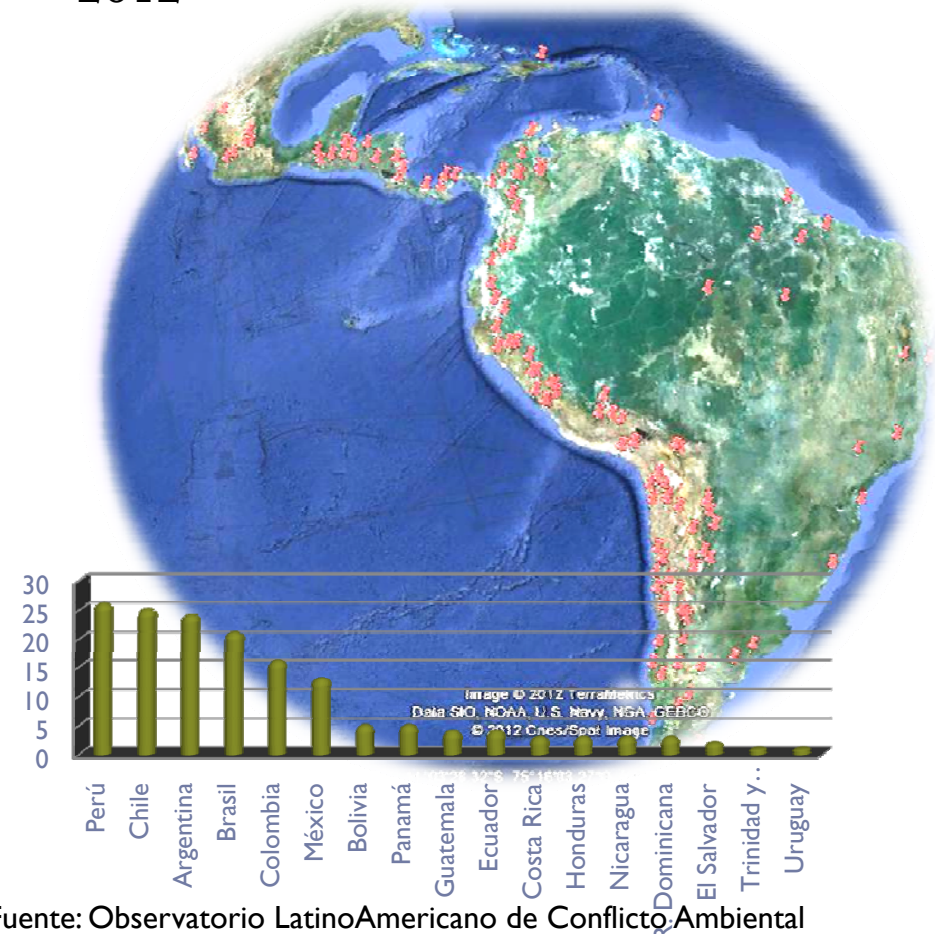
Causes for social conflict:

- Lack of opportunity to set out consequences not taken into account in the first stages of decision-making.
- Lack of official information about the adopted decision.

Why avoid conflict?

- Challenge legitimacy
- Save resources aimed at solving them
- Avoid damages and losses

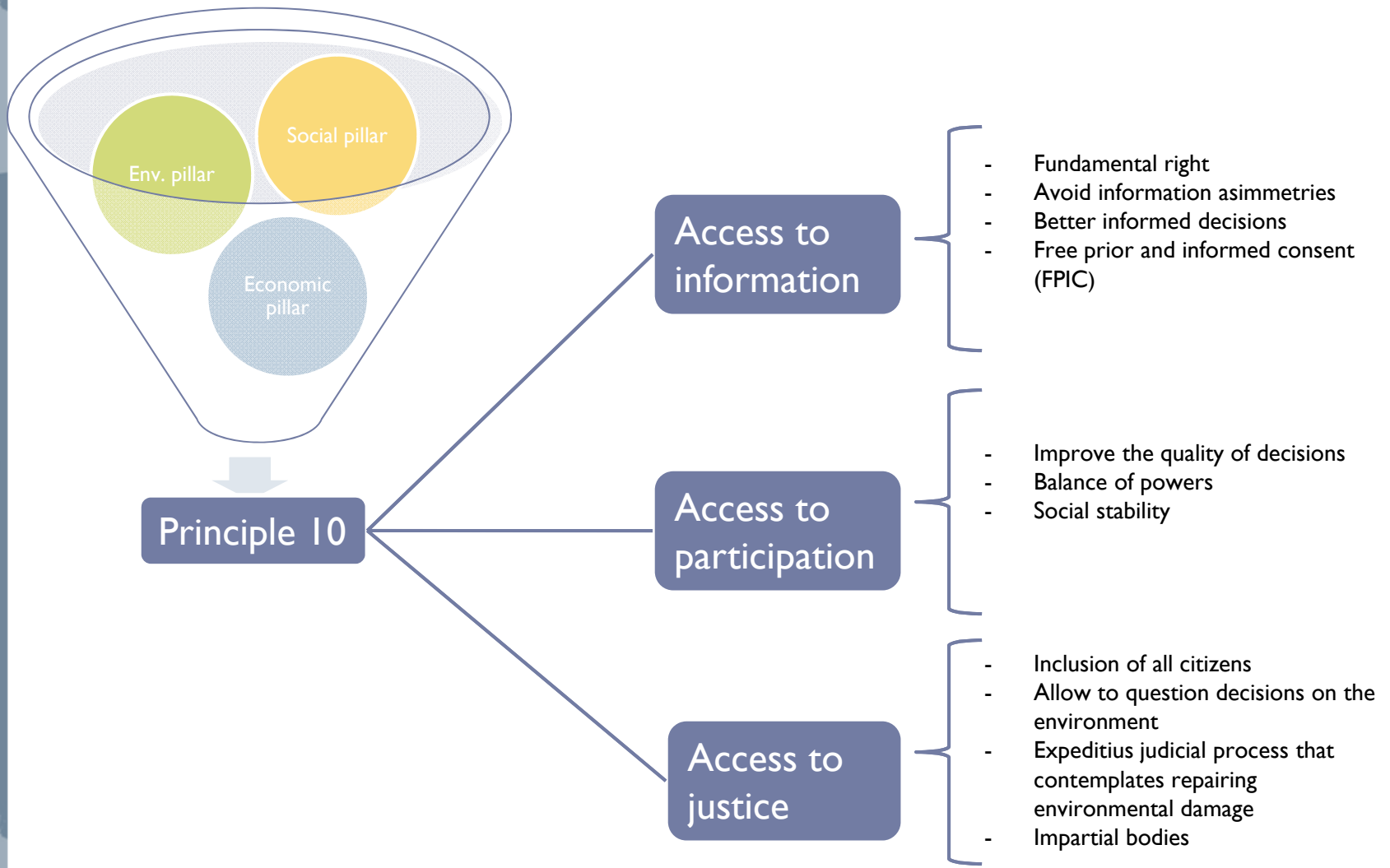
LAC: socio-environmentally related conflicts in the mining sector: 2004-2012





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PRINCIPLE 10 AND SUSTAINABLE DEVELOPMENT





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ACCESS RIGHTS: THE ROLE OF THE STATES

Capacity-building

- ✓ *Education*
- ✓ *Demand generation*

Information

Environmental
information definition
Production
access

Participation

Informed
Timely
Effective

Justice

Legal framework
Impartial arbitrator
Specialized



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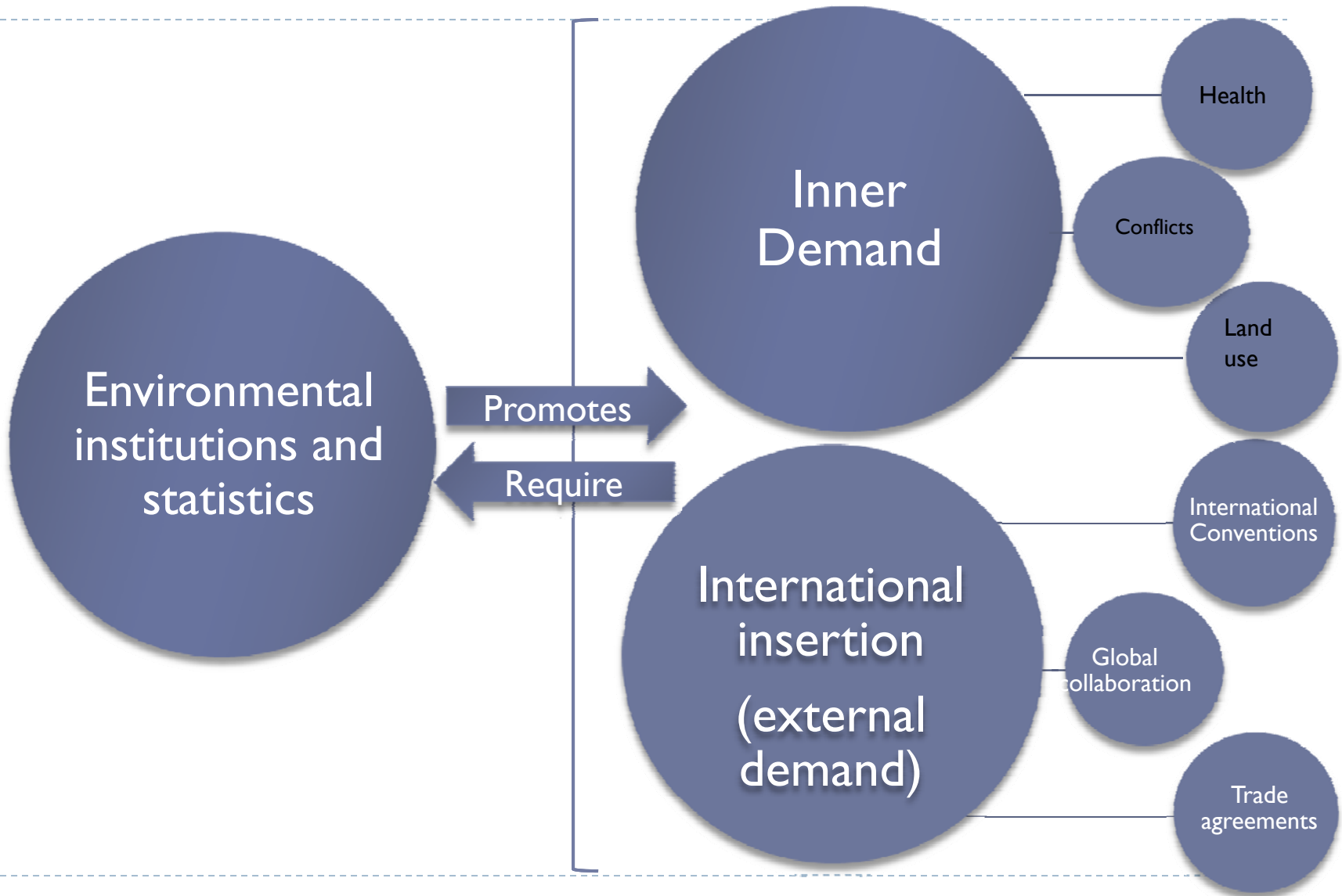
LAC: ACCESS TO INFORMATION, PARTICIPATION AND JUSTICE IN ENVIRONMENTAL MATTERS

- ▶ **ECLAC document: “Access to information, participation and justice in environmental matters in Latin America and the Caribbean: Situation, outlook and examples of good practice”**
 - ▶ Review of the laws and institutions frameworks that safeguard access to information, participation in decision making and justice in environmental matters in the 33 countries of Latin America and the Caribbean.
 - ▶ The information gathered was complemented with a questionnaire on the implementation at the national level of Principle 10 of the 1992 Rio Declaration, which was filled in by 16 countries and 10 civil society organizations.
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ACCESS RIGHTS IN THE LAC REGION: CONTEXT





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LAC: ENVIRONMENTAL MANAGEMENT TOOLS THAT INCORPORATE ACCESS RIGHTS

Access to information

- Periodic reports
- PRTR
- Emergency information systems (fires, tsunamis, earthquakes, volcanic eruptions, etc.)
- Sistematized monitoring systems of environmental quality (urban national)

Access to participation

- EIA
- EAE
- Prevention and decontamination plans
- Emission standards and environmental quality
- Land use plans
- Hearing and planning permissions
- Legislative hearings

Access to justice

- Litigation
- Alternative resolution of conflicts
- Administrative mechanisms
- Specialized authorities in environmental jurisdiction
- Claim procedure



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LAC REGION: ACCESS TO ENVIRONMENTAL INFORMATION (I)

- ▶ Currently, most of the countries of the region grant access to information in their Constitutions or through specific laws
 - ▶ Access to information is guaranteed under the Constitution in 15 countries, while in 11 English speaking Caribbean countries there is a Constitutional provision for freedom to receive information
 - ▶ 18 countries have specific legislation on access to public information and 7 others are engaged in adopting or creating such legislation
 - ▶ 2 countries (Argentina and Brazil) have enacted specific laws for the regime relating to access to environmental information
- ▶ In most countries, the parameters that determine access to information on the environment are distributed between the framework law on the environment and the law on transparency.



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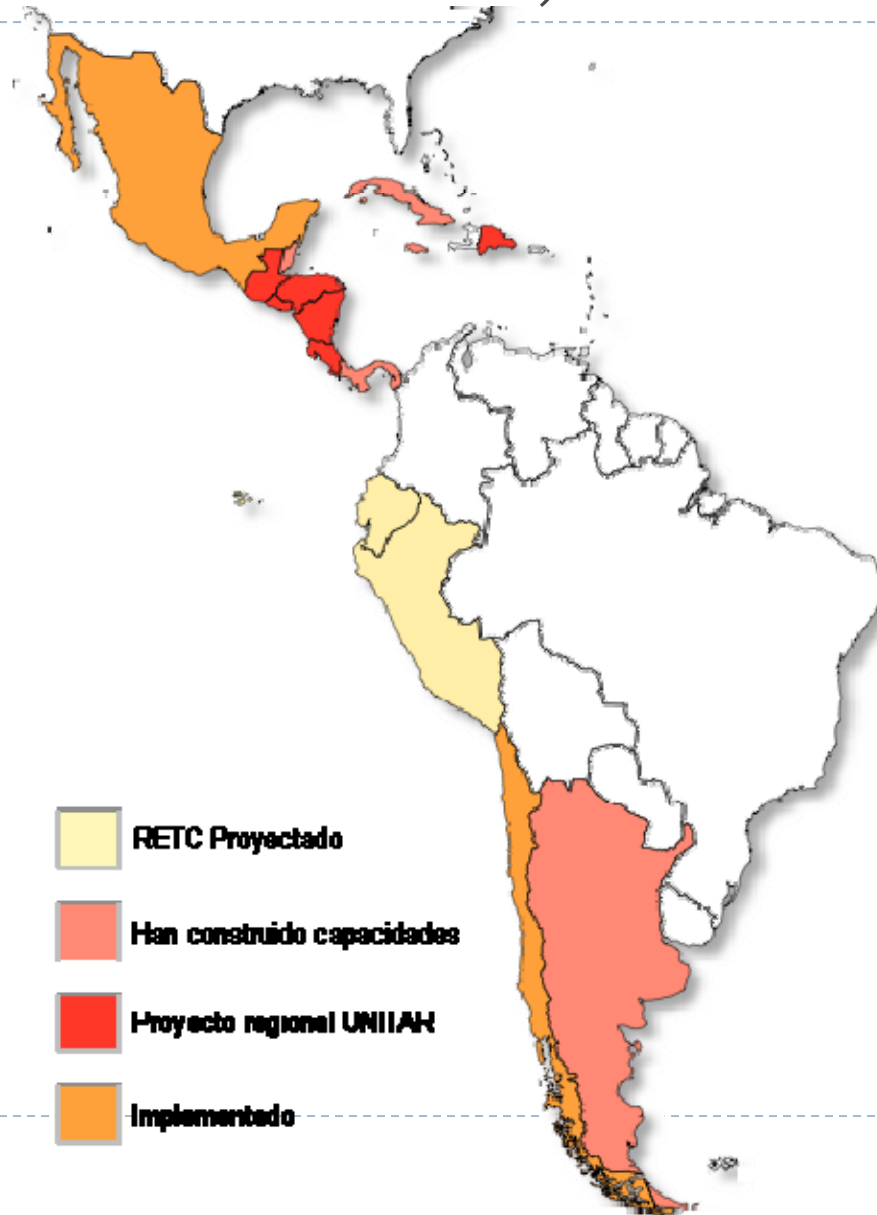
LAC REGION: ACCESS TO ENVIRONMENTAL INFORMATION (II)

- ▶ While most environmental laws in LAC make reference to information on the environment, only 5 countries in the region (Argentina, Brazil, Chile, Mexico and Peru) contemplate in their laws and explicit definition of what is understood by information on the environment.
 - ▶ With regard to the production of environmental information, many countries have introduced into domestic law the obligation for a designated authority to submit information on the State of the Environment at specified intervals. These include: Belize, Bolivarian Republic of Venezuela, Chile, Guyana, Haiti, Mexico, Panama and Uruguay. In Colombia, this obligation is enshrined in the Constitution.
 - ▶ Another positive trend with respect to freedom of information in the region is the creation of pollutant release and transfer registers (PRTRs).
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LAC REGION: STATUS OF THE CREATION OF PRTR, 2013





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LAC REGION: PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS (I)

- ▶ Twenty years on from the Earth Summit, most countries in the region have incorporated provisions on citizen participation into environmental legislation or into thematic or sectoral laws and have created a variety of citizen participation councils.
 - ▶ Most countries also have some degree of citizen participation in environmental impact assessments.
 - ▶ Citizen participation is most limited at the level of policies, plans and strategies, where it is generally at the discretion of the government
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LAC: PUBLIC PARTICIPATION IN THE EIA OF PROJECTS



- Almost all countries include some level of participation in the EIA
- Different levels of implementation
- Different platforms of participation

	Tiene requerimientos definidos para la participación en los procesos de EIA en la ley ambiental.
	Tiene requerimientos para la participación en los procesos de EIA pero no están reglamentados.
	Requerimientos de participación en procesos de EIA sólo en legislación sectorial.
	EIA como instrumento en la legislación sectorial y con participación discrecional o no regulada.
	No dispone de EIA como instrumento de evaluación de impacto ambiental de proyectos.



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LAC: PUBLIC PARTICIPATION IN PLANS, POLICIES AND STRATEGIES



- Citizen participation is most limited at the level of policies, plans and strategies, where it is generally at the discretion of the government

Tiene EAE como instrumento en la legislación ambiental.

Tiene EAE como instrumento en la legislación sectorial o regional.

No dispone de requisitos legales de EAE.



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LAC REGION: ACCESS TO JUSTICE (I)

- ▶ Countries in the region have made strides in creating and setting up specialized bodies with jurisdiction over environmental matters both with the framework of the justice system and as entities falling under ministerial or statutory bodies.
 - ▶ Over the last few years, legislation enacted in several of the region's countries has offered a broader range of procedural remedies, and burgeoning jurisprudence is paving the way towards a more functional form of environmental law.
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LATIN AMERICA AND THE CARIBBEAN (19 COUNTRIES): SPECIALIZED BODIES WITH JURISDICTION OVER ENVIRONMENTAL MATTERS

Country	Specialized authority with jurisdiction over environmental matters
Argentina	Federal Unit for Investigation of Crimes against the Environment
Bolivia (Plurinational State of)	Environmental agencies and agro-environmental courts ^a
Brazil	Public prosecutors for environmental justice
Chile	Environmental prosecutors and environmental courts ^a
Colombia	Prosecutor on environmental and agrarian issues
Costa Rica	Environmental prosecutors and Administrative Environmental Court
Ecuador	Environmental regulatory authorities
El Salvador	Environmental regulatory authorities
Guatemala	Environmental regulatory authorities
Honduras	Environmental regulatory authorities
Jamaica	Office of the Director of Public Prosecutions
Mexico	Office of the Federal Public Prosecutor for Environmental Protection and some regulatory authorities at the subnational (state) level
Nicaragua	Office of the Public Prosecutor on Environmental Matters
Panama	Environmental regulatory authorities
Paraguay	Environmental regulatory authorities
Peru	Environmental regulatory authorities
Dominican Republic	Office for the Protection of the Environment and Natural Resources
Trinidad and Tobago	Environmental Commission of Trinidad and Tobago
Venezuela (Bolivarian Republic of)	Environmental regulatory authorities

Source: Economic Commission for Latin America and the Caribbean (ECLAC), on the basis of R. Merlo, Office of the Attorney-General of Paraguay, 2008 [online] <http://www.pnuma.org/deramb/documentos/VIProgramaRegional/5%20MINISTERIO%20PUBLICO%20FISCAL%20Y%20PROTECCION%20AMB/16%20Merlo%20Ministerio%20fiscal%20en%20Paraguay.pdf>.

^a These agencies are not yet fully operational.



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LAC REGION: ACCESS TO JUSTICE (II)

- ▶ **Countries have also made progress in establishing authorities to whom citizens can appeal if denied access to information.**
 - ▶ In Chile, the Transparency Committee was set up not just to promote the principle of transparency and public participation, but also to serve as an independent body to which appeals can be brought against an institutional decision to withhold information
 - ▶ In Mexico, the recent reform of the Federal Act on Transparency, Access to Public and Governmental Information and Protection of Personal Data affords the Federal Institute for Access to Information (IFAI) greater autonomy and powers similar to those of the Transparency Committee in Chile.
 - ▶ In Uruguay, the Unit for Access to Public Information, while it does not have the authority to deal with complaints of refusal of information, advises citizens on their rights and the next steps to take in their defence.



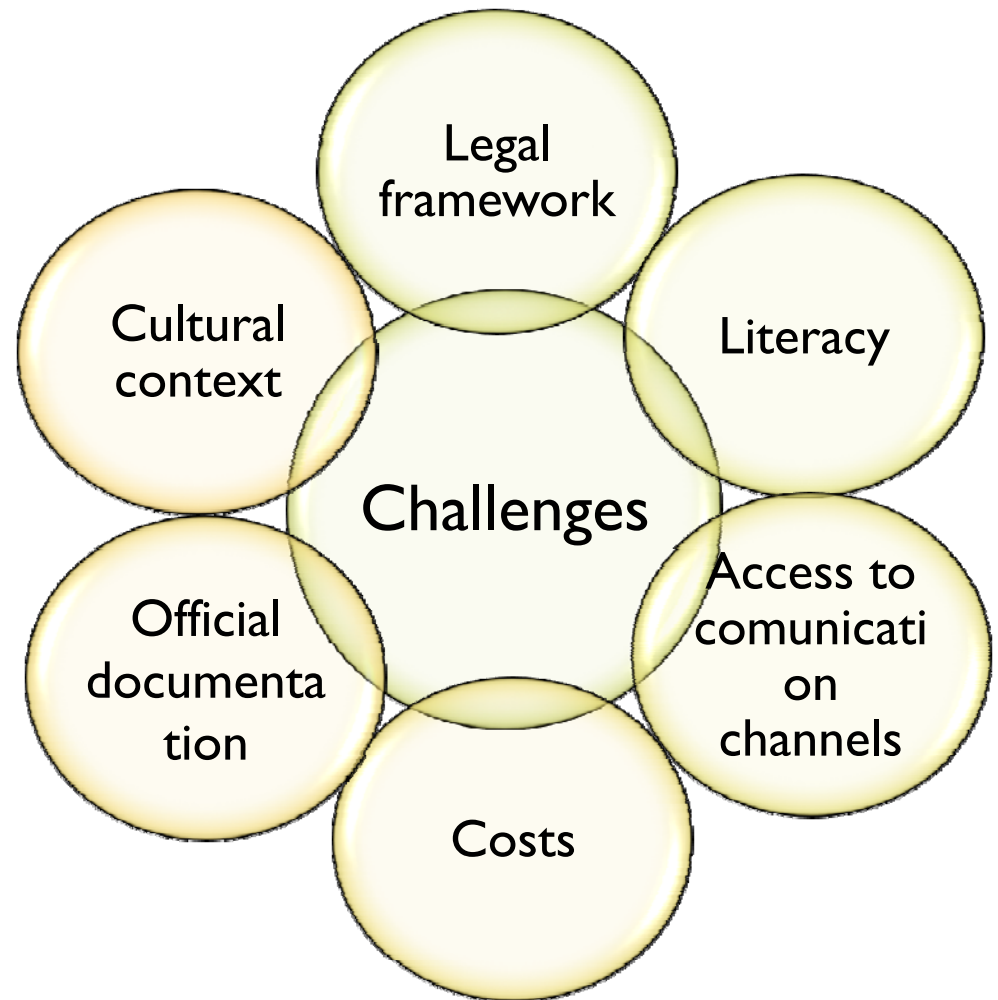
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LAC REGION: CHALLENGES

The region as a whole faces similar challenges with regard to the full implementation of Principle 10.

These challenges require capacity building and education





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CAPACITY BUILDING NEEDS

- ▶ On the basis of a questionnaire which was answered by the governments of 16 countries in Latin America and the Caribbean and 10 civil society representatives from several countries, main capacity building needs on access rights were identified:
 - ▶ Training opportunities both for public officials and general public with regard to access rights
 - ▶ Education
 - ▶ Exchange of good practices
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LAC: TOWARDS A REGIONAL INSTRUMENT FOR THE IMPLEMENTATION OF PRINCIPLE 10

Participate from the beginning

- **Taking into consideration the traits of each country and creating a sense of regional belonging.**
- **LAC countries share cultural bonds that may simplify negotiations and turn into an easier consensus**

Compliance

- **A regional instrument will support the full implementation of Principle 10 as a State policy and just government.**
- **Level the field and give a clear signal to foreign investors on the commitment in the region**

Cooperation

- **Better regional coordination: harmonization of competitiveness grounds**
- **South South cooperation, exchange practices and capacity building**



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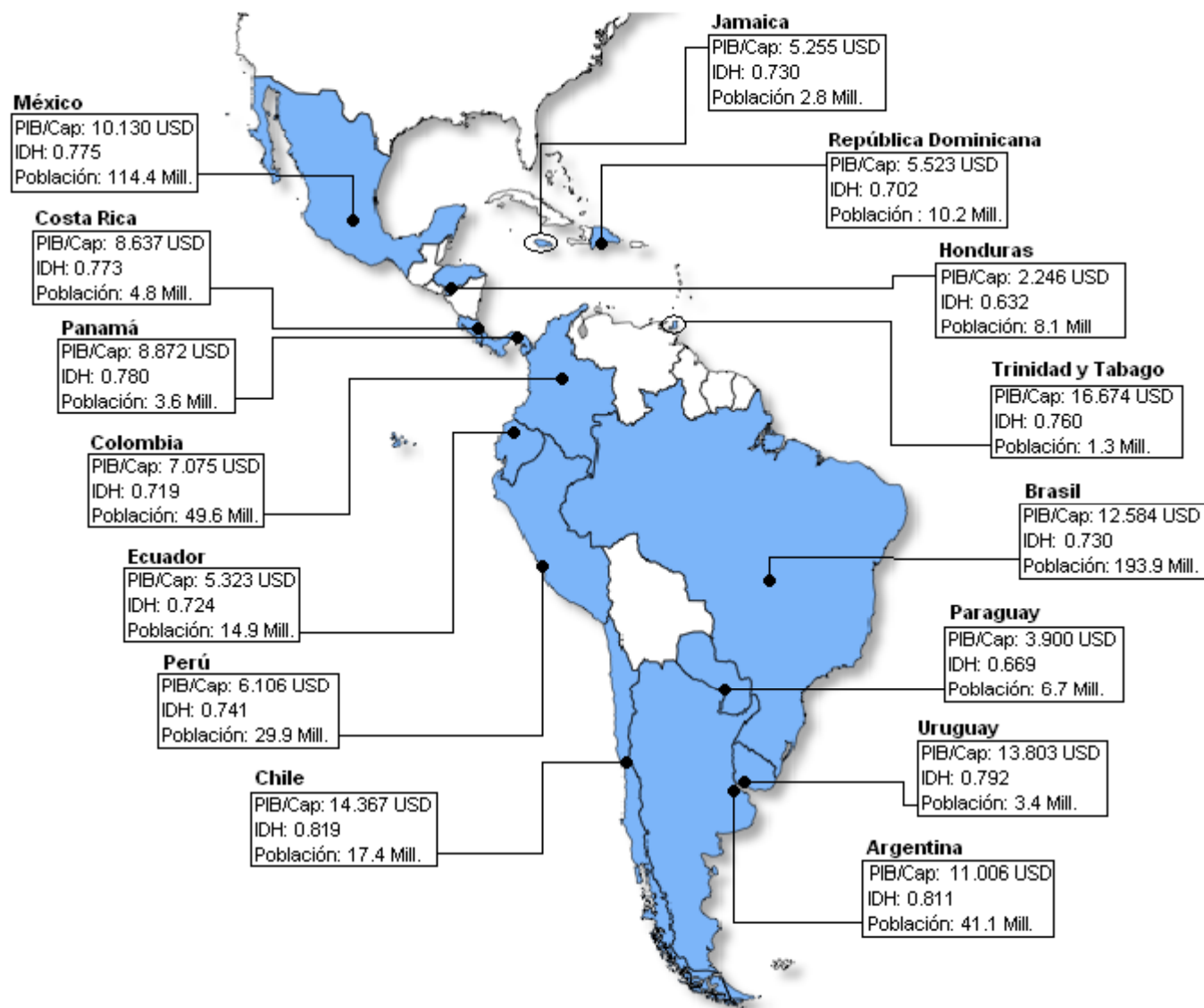
EXAMPLES OF GOOD PRACTICES

- ▶ **Access to information:** The Federal Institute for Access to Information and Data Protection (IFAI) and the National Institute of Indigenous Languages (INALI) signed a cooperation agreement in 2011 to guarantee right of access to information for the 7 million persons who speak indigenous languages in the country, many of them as their sole language.
- ▶ **Access to public participation:** Ecuador's legislation reflects the effort to build the capacities of groups that have traditionally been underrepresented in decision-making. Specific legislation exists that provides for the establishment of bodies for the participation of indigenous and Afro-Ecuadorian communities; the country's environmental legislation contains provisions that operate in the same vein. Article 37 of the regulations issued under the Framework Law on the Environment states that "areas of productive forests of the State that are to be found on community lands of indigenous peoples or black people or Afro-Ecuadorians [...] shall, subject to authorization by the Ministry of the Environment and the provisions of this law, be exploited exclusively by these communities."
- ▶ **Access to justice:** In Ecuador, Argentina and Mexico the burden of proof is reverse to the responsible of the damage, who must prove there was not such damage.



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SIGNATORY COUNTRIES OF THE PRINCIPLE 10 DECLARATION IN LATIN AMERICA AND THE CARIBBEAN





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