

**REPORT OF REPRESENTATIVES OF THE PUBLIC  
SECOND 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**

The Second 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 27 to 29 October in Panama City. The Meeting was attended by 20 countries in the region, five elected representatives of the public, 3 independent experts, along with 30 civil society organizations from 18 countries.

The meeting marked the beginning of the negotiations of the Regional Agreement, addressing the preamble and Articles 1 and 2. It is expected that the Third Meeting to be held in April 2016 in Punta del Este, Uruguay can achieve significant progress and thereby lay the groundwork to achieve the goal set by the participating States to conclude negotiations in December 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 start negotiating a regional instrument, for which a negotiating committee was created.

The Negotiating Committee is comprised of the signatory countries, 20 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 1,000 registered individuals and legal entities. These people and organizations are informed regularly on the process and participated in face to face and virtual meetings of the Negotiating Committee.

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

The first meeting of the Negotiating Committee was held in May 2015 in Santiago de Chile. At this meeting the draft document of the regional instrument was presented and the Organization and Work Plan Negotiating Committee was approved. This document is significant for the participation of the public 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 by August 31, 2015, text proposals relating to the preamble and the first 10 articles. During this period 9 States 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 the access rights and sustainable development, and contribute to strengthening the capacities of public institutions and civil society.

#### **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 the activities of the Technical Secretariat and civil society.
2. Start the process of negotiating the preamble and Articles 1 and 10 of the Regional Agreement, based on the draft document prepared by ECLAC and comments that had been submitted by States.
3. To approve the proposed Modalities for the Participation of the Public that had been prepared by the governments of Chile and Costa Rica as co-chair of the Steering Committee of the Negotiating Committee.

#### **WHAT HAPPENED DURING THE SECOND MEETING OF THE NEGOTIATING COMMITTEE?**

##### **Opening Session:**

At the opening session of the Negotiating Committee a relevant message given by Alicia Bárcena ECLAC Executive Secretary who said that as an international community "have taken a civilizing step with the adoption of Agenda 2030 for

Sustainable Development. The balanced integration of economic, social and environmental aspects is essential to ensure an environmentally sustainable future. Access to information, participation and justice are more relevant than ever since they deepen our democracies and reduces local and global imbalances". About the nature of the instrument she said "the future regional instrument must not be merely deliberative, but must be ambitious and set clear and specific obligations that effectively guarantee access rights in environmental matters".

Two representatives of the public, Ms. Sonia Montenegro and Mrs. Danielle Andrade-Goffe gave opening statements reiterating the importance of access rights and the need for a legally binding instrument that will strengthen the capacity of states and help to advance the implementation of the post 2015 agenda, in particular the Sustainable Development Goals.

### **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, to get prepared for the second meeting of the Negotiating Committee.

However, during the meeting it was noted that some countries had not yet completed these consultation processes, or in other cases have done a virtual consultation that does not meet the standards of inclusion and participation.

Chile and Peru, conducted face to face consultations with highly participatory standards, even with meetings in different cities in their respective countries.

Justice Winston Anderson, Judge of the Caribbean Court of Justice (CCJ) stated that the draft document promises to enhance access to environmental justice. In March 2015, the CCJ had partnered with Organisation of American States (OAS), UNEP and IUCN to put on a conference on the environmental rule of law in Jamaica with a session on access rights. Justice Anderson also noted that adoption of a legally binding agreement will help Caribbean courts to interpret and apply environmental access provisions in constitutions and laws.

### **Discussion on the Preliminary Document**

According to the official agenda it was planned that in the second meeting signatory countries would address the Preamble and Articles 1 to 10 of the Preliminary Document. However, the negotiations progressed at a slow pace, because some countries indicated they needed more time to study the document and therefore did not have a final position on the issues under discussion.

Furthermore, the fact that three countries refused to start negotiating from Article 1 and leave the preamble until the end as Chile, Costa Rica and Panama had suggested,

delayed the discussions substantially. Thus the Second Meeting only managed to address the Preamble, Article 1 (objective) and Article 2 (definitions).

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Although governments had reasonable time to make inquiries and submit their comments on these items to the Technical Secretariat, the representative of Brazil said his government needed more time and that during the meeting he would participate in the discussions and not oppose the consensus that was achieved, but could not be part of it.

In addition, Brazil indicated his right to modify any part of the text discussed at future meetings of the negotiating committee and asked to add a footnote that during this meeting he would not be negotiating. In a similar sense the representative of Colombia expressed that the subject of the discussion on the draft document could not prejudice the nature of the future Regional Agreement and Colombia has the right to further comment and review the proposed text, plus additional proposals that arise during the meeting.

Despite not having submitted their proposals by the date set (31 August), surprisingly the representative of Mexico had written proposals prepared for each paragraph discussed (sometimes even several different versions of the same paragraph). Having sent those proposals before so they were compiled in the text rather than presenting them as the text was being discussed, would have allowed for speedier negotiation, and this was known by all countries. New proposals made by Mexico and other countries, which were not submitted prior to the meeting, will be discussed at the next meeting, and may further delay the process.

In addition to the positions of Brazil and Colombia, which limited the progress of the negotiations, the position of Mexico was also a concern. Mexico asked to delete paragraph 9 of the preamble references to democracy and human rights. Also, on paragraph 18 of the preamble (which states that nothing prevents countries to take steps to ensure even broader standards of access to information, participation and environmental justice), Mexico requested to include the phrase "in a manner consistent with national laws."

This proposal attracted the rejection of a number of countries, including El Salvador, Panama, Costa Rica, Uruguay, Peru, Bolivia, Paraguay, Honduras, and Antigua and Barbuda, who requested that the paragraph stays in its original version. On this point Chile made an important contribution by highlighting that the text of this paragraph reflects the spirit of the Agreement to promote substantive public participation, and that this should not be limited to the provisions of existing national legislation.

By contrast, in the three-day meeting many encouraging voices of governments were heard that showed a clear commitment to access rights and environmental

democracy. Such is the case of the Government of Argentina that highlighted the importance of achieving substantial progress in the negotiations during the meeting. Similarly, the voices of Chile and Costa Rica, countries that have been great promoters of the process from the beginning, stressed the interdependence of access rights as a central point of the Agreement.

Panama also stressed the high quality of the participation of the public during negotiations. Panama and St. Vincent and the Grenadines also expressed its preference for a legally binding agreement, joining the list of countries that support the achievement of a legally binding instrument that promotes a truly effective access rights in our region.

Also, no country expressly voiced an objection to a binding agreement. It is expected that other countries that are strongly committed to the process will become evident in this regard in the near future.

Civil society was present at the meeting with the participation of five representatives of the public, and various Latin America and the Caribbean organizations, who actively participated in the discussions. Among other things, representatives of the Public ensured that the definition of public enshrined in the Bali Guidelines was incorporated to the draft which defines the public widely to include “one or more natural or legal persons and their associations, organizations or groups”.

Views of Governments such as Mexico, Bolivia and Ecuador were heard on the role of civil society. These governments requested that the participation of civil society organizations in this process should be in accordance with the national law of each country. This position presents the risk of limiting the participation of civil society when those in power disagree with critical positions, and it is dissonant with Article 71 of the United Nations Charter, which does not include this requirement for the participation of non-governmental organizations.

It is a concern that, in light of some very minor proposals, some countries unknowingly tried to lower the standards set by their own legal frameworks and treaties they have ratified. This applies to the proposal to include the word "gradually" to regulate the full and effective guarantee of civil and political rights (such as access to information, participation and justice) that is recognized by human rights treaties as requiring effective and immediate application. In addition, repeated proposals to base the articles of the agreement in national law would undermine any regional approach.

### **Modalities of Participation**

During the second session countries discussed for their approval the proposed Modalities for the Participation of the Public prepared by Chile and Costa Rica as Co-chairs of the Steering Committee of the Negotiating Committee.

Countries like Colombia, Argentina, Mexico and Brazil raised their concerns with the proposal, and an Ad-Hoc Working Group was created to learn about these apprehensions. Finally, the Working Group did not develop concrete text proposals, which created a procedural situation that diverted attention from the substantive work of the Committee, thereby delaying the progress of the negotiations.

In short, the proposed revision was not adopted.

Specifically, Colombia stated that clearer participation procedures were required, that 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.

It calls to attention that countries expressed their apprehensions at the meeting rather than making their positions known in advance, or, as was in the case of Mexico, to propose changes to the modalities of participation that were approved at a previous meeting held in their own country and under its presidency in 2013.

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 to be too broad.

It is important to remember that the Modalities of Participation of the Public were established in the Plan of Action of Guadalajara, which have been highlighted by the Special Rapporteurs as a good international practice as they have allowed the process to have wide and effective public participation.

In addition, signatory countries committed in Santiago, Chile in May 2015 to the following: "The negotiation process will have the significant participation of the public in accordance with the provisions and procedures contained in the Santiago Decision and the Plan of Action adopted at Guadalajara (Mexico), which will be revised, if necessary, to facilitate their implementation."

## **WHAT WERE THE MAIN HIGHLIGHTS OF THE SECOND MEETING OF THE NEGOTIATION?**

The Second Meeting of Negotiating Committee is an important step towards achieving a Regional Agreement on the Rights of Access to Information,

Participation and Environmental Justice. It is expected that the Regional Agreement contributes to improving standards of environmental democracy in Latin America and the Caribbean, and also constitutes a tool for the prevention of socio-environmental conflicts.

The Second Meeting of the Negotiating Committee also helped to confirm the commitment of the signatory states, now 20, to the process and the need for more States in the region to join so that the Latin American and Caribbean population can participate actively in the negotiations.

With Costa Rica in the Co-Chair and Panama as host country of the meeting it was noted that Central American countries acted in a coordinated manner and with a stronger voice to defend their positions. There was also a good representation of Caribbean negotiators such as Antigua and Barbuda, St. Vincent and the Grenadines and Jamaica.

Civil society has played an important role in this process. Particularly noteworthy is the training workshop on participation in international environmental negotiations, which took place on Monday, October 26 prior to the session of the Negotiating Committee. At the workshop, experts with extensive experience, shared practical tools to have more effective public participation in this process.

In this opportunity Ms. Patricia Madrigal, Vice-Minister of Environment of Costa Rica, said access rights are the best basis for democratic societies and the 20 States which are signatories of the Declaration have shown a strong commitment to move towards a regional agreement, therefore, negotiations need to be proactive, constructive, transparent and open, and especially exceed expectations at the international level.

The Public Declaration of the Special Rapporteurs of the Human Rights Council of the UN, issued days before the meeting, shows how the eyes of the world are on this process. This public statement also shows how the region is building a major path and can take a crucial step towards achieving sustainable development, environmental democracy and protection of human rights through the adoption of Regional Agreement on access rights.

However, the Second Meeting of Negotiating Committee also left the public with the feeling that more progress could have been made, as it had been originally planned that the States would discuss Articles 1 - 10. However, ultimately they only debated up to Article 2.

The next meeting of the Negotiating Committee will be held in April 2016 in Uruguay and will be a four-day session (instead of 3 days), so there will be more time to negotiate and achieve substantial progress in the process.

It is important to remember that the commitment of the signatories in the First

Meeting of Negotiations in Santiago was that the modalities of participation would only be reviewed to be strengthened. Unfortunately, the debate during the meeting in Panama did not develop in this direction, with some governments seemingly unaware and wanting to rewrite the agreements of Santiago on the Organization and Work Plan Committee. There is the apprehension that the discussion on the Modalities of the Participation of the Public will have the effect of delaying the negotiations. Moreover, there were a number of positive messages by governments and civil society, which shed a light of hope and confidence that, although the pace of negotiations has been slow, this is a significant process that will make a difference in the lives of the citizens of Latin America and the Caribbean.

## **NEXT STEPS**

The Third Meeting of the Negotiating Committee will be held in Uruguay from April 5 to 8 April, during which it is expected that negotiation of Articles 2 to 10 will continue.

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

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