



Latin America and the Caribbean civil society pushes for binding agreement on access to environmental information and rights



CIVICUS speaks to Andrés Nápoli, a lawyer specialising in environmental law and the executive director of the Foundation Environment and Natural Resources (FARN). Founded in 1985, FARN is a civil society organisation dedicated to promoting sustainable development. With an emphasis on citizen participation, FARN promotes inclusive environmental citizenship, the development and implementation of tools to improve the transparency of public policies and access to information on environmental issues. It also builds and leads networks and alliance in collaborative spaces and strategic areas of knowledge.

Q: A few days ago a new round of negotiations took place in Buenos Aires for the adoption of a treaty on sustainable development for Latin America and the Caribbean. What are the contents of this treaty, and what role is civil society playing in the process?

This is a negotiation agreement known as “[Agreement on Principle 10](#)”, in reference to Principle 10 of the [Rio Declaration](#) on Environment and Development (1992), which guarantees access to information, participation in decision making in environmental matters and justice to all stakeholders.

As a result of this declaration, and following a similar process that took place in Europe and in the late 1990s resulted in the [Aarhus Convention](#), ten countries in Latin America and the Caribbean began negotiations at the [United Nations Conference on Sustainable Development](#), also known as Rio+20, which took place in Rio de Janeiro in June 2012. What they were looking for was an agreement, a regional instrument, to guarantee access to environmental information and opportunities for citizens to participate in decision-making processes that might affect their quality of life or their environment, as well as effective access to judicial and administrative procedures, for instance to obtain reparations.

For several years the process progressed through a series of focal point meetings, until the negotiation process finally began in 2015. There are 24 countries currently involved. The process is supported by the Economic Commission for Latin America and the Caribbean (ECLAC), an institution that belongs to the United Nations system and has played a very active role as a Technical Secretariat.

The process has had a very peculiar characteristic: it followed the model established by the Aarhus Convention, which had the aim of consolidating the democratic processes in Eastern Europe and for that purpose included a component of strong civil society participation. Thus, the process currently under way in our region also establishes mechanisms for the active participation of civil society, which has representatives in the

Negotiating Committee that brings together the representatives of the states. Civil society has two representatives elected by their peers who discuss and exchange ideas at the negotiating table of the Convention. They can even propose text to be incorporated into the instrument, which is effectively incorporated if it obtains the support of at least one of the states.

Q: How were civil society representatives selected? Has civil society worked in alliances or networks?

Representatives of civil society (which in this process is called “the public”) were elected in an electronic vote in which the members of the public who had registered before the beginning of the negotiations participated. Representatives of Chilean and Jamaican civil society were elected as full members. Along with four representatives from various countries in the region, I was elected as an alternate member.

As civil society representatives, we established a network through which we carry out our work jointly and in an articulated manner. We also have different spokespersons in the negotiation process, as well as advice of experts from countries from both the region and Aarhus.

Q: Have there been major disagreements between civil society and states in the course of the negotiations?

The negotiation process should be completed by the end of this year, and if this is not achieved there will be some more meetings next year. A text proposed by the Technical Secretariat is being negotiated, and there has been progress on it. Negotiations are entering their final phase.

But there have been many comings and goings, and some important issues have not yet been defined. An issue on which civil society has been insisting a lot, and on which there is an increasingly firm decision, is that the agreement has to be binding, that is, it must be obligatory for the countries that sign it. That is because we believe that a rights-based agreement cannot be otherwise. We don't want this process to yield yet another declaration of principles, or any kind of Model Law: we want an agreement that forces countries to establish and implement certain effective mechanisms for participation and access to environmental information, as well as broad access to justice in order to obtain protection and the enforcement of the right to a healthy environment.

Several countries have spoken in favour of this position, among them Chile, Costa Rica, Panama and Paraguay; Argentina, too, pronounced itself in that regard at the last meeting. Other countries, however, have not yet made their decision public, but they are negotiating the agreement as if a binding mechanism were to be adopted.

Nevertheless, we believe that certain countries are not negotiating the agreement in good faith. First of all, they have not yet expressed a position on whether they are going to sign the document, or whether they would accept the agreement to be binding. In addition, several of those same countries are negotiating the agreement in an attempt to systematically lower the rights protection standards to be established in the agreement – in some cases, by setting standards that are even lower than those established in their own national legislations.

These attempts to lower standards and guarantees held to many discussions that have extended the deadlines of the negotiations and at the same time have created growing discomfort among civil society representatives. This has been very clearly seen in issues of access to public information, where many barriers were erected to make it more difficult for citizens to access information held by the state.

In fact, during the last meeting in Buenos Aires the possibility was raised that civil society could abandon the process if this attitude persisted. But this was mostly a wake-up call for negotiators: civil society set a limit to the discussion, below which we would no longer be willing to remain on board.

We hope that at the next meeting, to be held in Chile towards the end of the year and during which issues related to access to justice will be addressed, standards will remain high. Otherwise, it will be very difficult for countries that already had good standards in their legislations to improve compliance.

Q: Why is civil society participation important? What difference does the presence of civil society in these forums make?

Civil society participation is very important not only because it legitimises negotiation processes; it also allows for greater levels of openness and transparency. Most importantly, civil society brings to the negotiating table many of the issues that the states are unwilling to address, provides a perspective that goes beyond the narrow interests of states, all the while seeking to raise the standards required for the protection of rights. When there is transparency and public attention is placed on these processes, it is much more difficult for states to refuse to address these issues.

An example of the issues that were placed on the agenda as a result of civil society action is the situation of environmental and human rights defenders in the region and the need to provide guarantees to enable them to carry out their work without suffering threats and attacks, which have cost many of them their lives.

Latin America is the region with the largest number of murders of environmental activists. We believe that the Agreement on Principle 10 must contain mechanisms that enable the prevention and effective protection of environmental defenders.

There are countless open environmental conflicts throughout Latin America and the Caribbean, which have been associated to many human rights violations, and for the time being there are no institutionalised mechanisms for negotiation between states and the affected communities. The agreement on Principle 10 could be a very good tool to channel those conflicts.

Q: As shown in numerous reports recently published by CIVICUS, PWYP, Global Witness and Front Line Defenders, civil society dealing with the environment and natural resources faces increasing threats. What can be done to address them?

Indeed, Latin America is the most problematic region in terms of guaranteeing the rights of environmental defenders. The case of Berta Cáceres is emblematic, but it is unfortunately not an isolated case. There have been hundreds of murdered defenders in Brazil, Colombia, Honduras, Peru, Paraguay, Mexico, Nicaragua and Guatemala, among other countries. Most of these processes have involved large investments, as observed in the struggles against mega hydroelectric dams or against the advance of the agricultural frontier or mining exploitation. In these contexts, environmental defenders, who work side by side with the affected communities, have seen their rights violated and suffered attacks on their physical integrity and even their lives.

In the face of this, it is required for states to strongly uphold guarantees and safeguards not only when attacks take place, but also in preventative terms, in order to guarantee the legitimate exercise of the right to defend rights embodied by these environmental defenders. Many of us have the luck and the privilege of working from our capital cities, but environmental defenders are in the frontlines with the affected populations when, for instance, land occupations by extractive companies take place, or when populations are displaced from the territories they inhabit, which is where the worst human rights

violations occur. Hence the need for international instruments and active prevention policies and protection mechanisms for these defenders.

Q: What trends, positive or negative, do you observe regarding civil society participation in decision-making processes?

There is a trend that I think is irreversible: the discussion among states that excludes civil society has not yielded many results and does not have much of a future. However, these processes are not linear; often times there is progress in some spaces while there are regressions on others. This process is a good example of the fact that active civil society participation in the process can be virtuous and that agreements are possible; it also shows that this takes time, knowledge and, above all, trust-building.

At the same time, these processes make it clear that many states “do as if” they participate, “do as if” they inform, but this is fictional. Many countries guarantee rights in their legislations but fail to enforce them. That is why our struggles are focused on ensuring the effective enforcement of rights.

Q: What resources does civil society need to become stronger and better respond to the challenges it faces?

On this point I would refer again to the topic we discussed at the beginning of this conversation: the negotiations around Principle 10. This is a process that is open to all civil society in Latin America and the Caribbean, so I would like to make a direct request to all of civil society – not just organisations but also individual activists and professionals in various areas – so that they get informed and participate actively in the process. This is a very simple thing to do: you need to start by registering in www.cepal.org/es/register/p10. The idea is for the process to grow more and more by building a good community of participants that will in turn contribute to consolidate the process.

In terms of strengthening civil society, it is very important for each of us to attend to topics that are of our interest and specialty, but that we can also jointly choose topics on which to work together. Collective work strengthens each of our claims and every single one of our struggles. In this sense, civil society always has element to contribute and to build the agenda. But this is an agenda that will not be realised in the short term, so it must be sustained over time. This is why it is good to work collectively, so that the day when one of us cannot sustain it, another one of us can do it instead and the process doesn't stop.

In relation to the rights defended by organisations such as ours, no results of public and collective interest can be obtained in the short term. Continuity over time, and therefore collective work, is required. We hope that our struggles for human rights, sustainable development and a healthy environment will be consolidated into international instruments and will form a virtuous circle. This will happen as more and more citizens mobilise, are informed and get involved in the decision-making process, leading to more and better institutional and legal mechanisms guaranteeing those very rights to mobilisation, access to information and participation at both national and international levels, leading in turn to more concrete results being obtained through these processes.

Civic space in Argentina is rated as “narrowed” by the [CIVICUS Monitor](#).

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