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PRIVATE RIGHTS UNDER THE ENVIRONMENT AND LABOR AGREEMENTS
LIC. LUIS MIGUEL DIAZ*

INTRODUCTION

The texts of the North American Agreements on Environmental and Labor Cooperation (NAAEC and NAALC) were adopted by the Executives of Canada, Mexico and the United States on September 14, 1993. After a negotiating process consisting of nine negotiation rounds (three rounds in each country), the accords were ready for submission to each country’s legislative process. The whole negotiation period extended over approximately six months.

The agreements’ structures are divided into seven parts: I—Objectives; II—Obligations; III—Environment and Labor Commissions; IV—Provisions on Cooperation; V—Dispute Resolution; VI—General Provisions; and VII—Final Provisions. Five annexes to the NAAEC and seven to the NAALC constitute an integral part of the accords. Monetary Enforcement Assessments, Canadian Domestic Enforcement and Collection, Suspension of Benefits, Extent of Obligations, and Country Specific Definitions are annexes considered in both agreements. Labor Principles and Interpretative Ruling are annexes to the NAALC only.

This paper addresses first, the side agreements’ background of public and governmental concern over environmental and labor issues, prior or simultaneous to the North American Free Trade Agreement (NAFTA) negotiations. The NAFTA preamble also considers these two issues.

The next two parts of this paper deal with rights, remedies, and obligations created by the side agreements. The rights and duties created include cooperation, enforcement actions and publication. Rights and remedies created will be discussed with reference to certain provisions as examples of international law strengthening individual rights. Emphasis will be placed on the legal possibilities that the accords may present for providing the Parties’ citizens with means to promote a better government.

* Luis Miguel Diaz is Legal Advisor of the Department of Foreign Affairs of Mexico. J.D., University of Mexico; LL.M. and S.J.D., Harvard University. Mr. Diaz wishes to thank Alejandro Posadas, Council to the Legal Advisor at the Department of Foreign Affairs for his substantial contribution in the preparation of this article, otherwise it would not have been possible. Mr. Diaz appreciates as well the collaboration of Claudia Franco, Council to the Deputy Foreign Minister at the Department of Foreign Affairs.

I. THE SIDE AGREEMENTS BACKGROUND

A. In Canada, Mexico and the United States

On February 5, 1991, the Presidents of Canada, Mexico and the United States formally announced their decision to start negotiations on a Tri-lateral Free Trade Agreement. Almost two years later, on December 17, 1992, the three Presidents signed the NAFTA. Its negotiation and signature raised environmental and labor questions throughout the private, social and governmental sectors of the three countries.

According to Mr. Lee Clark, Parliamentary Secretary to the Minister of the Environment, in 1992 the Canadian environmental community was a key participant in the NAFTA negotiation, both through the formal NAFTA consultative mechanisms and as through outside consultations. An environmental review of the NAFTA was released on November 3, 1992, where such participations were duly considered.2

Honorable Jean Chrétien, Leader of the Opposition in the Canadian Parliament stated: "The American administration is changing. We will have a president there who says 'what about labor conditions; what about environmental protection?' Right on. It is what we were asking in this House for a long time."3

In Mexico, the government has devoted significant attention to environmental issues. It constructed a new legal framework for protecting the environment, and many more resources have been directed to enforcement of environmental regulation. President Salinas has increased the administration's environmental budget sevenfold. In 1992, for example, the number of environmental inspectors was three times the number in 1991.4

Examples of public concern in Mexico can be found in the annuals of the Foro Permanente de Información y Diálogo sobre las Negociaciones del Tratado Trilateral de Libre Comercio entre México, Canadá y Estados Unidos (the Foro), a permanent mechanism of public consultations.5 Different participants proposals include labor and environmental issues in the NAFTA negotiations. For instance, Professor Rosalbine Garavito requested that a social clause regarding the free trade ideal of promoting development and well-being be included. This clause would address workers' rights (including migrant workers), as well as environmental protection.6 Many other similar opinions have been issued by people of the academic, business and social sectors.7

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3. Id. in a debate regarding the motion by the New Democratic Party reading "Let this House reject any North American Free Trade agreement" stated in December 1992.
5. The Foro was held by the Mexican Senate throughout the NAFTA negotiations.
7. Id. at 144-45, 321, 343.
The Mexican and United States business sector also participated in this process. For instance, at a meeting between the Confederation of Chambers of Industry of Mexico (CONCAMIN) and the United States Council for International Business in February 1992, the organizations designed a program of cooperation to support their governments' efforts to improve and enforce labor and environmental standards.\(^8\)

In the United States, the Bush Administration promised in its May 1991 Action Plan to address environmental issues in the NAFTA text and through other cooperation agreements. Soon after, the United States House of Representatives passed the Gephardt-Rostenkowski resolution which bound the administration to meet its commitments regarding labor and environment in the NAFTA talks.\(^9\) For this purpose, the Bush Administration held public hearings in six cities along the U.S.-Mexico border, and solicited public comment, at which over 260 witnesses testified and 400 written submissions were received prior to the elaboration of a comprehensive assessment of United States environmental issues.\(^10\)

In February 1992, an Integrated Environmental Plan for the U.S.-Mexico Border Areas (the Border Plan) was established pursuant to the 1983 Border Environment Agreement (the La Paz Agreement). On September 17, 1992 the three environment ministers met in Washington, where an agreement in principle was reached to promote the creation of a North American Commission on the Environment.

Environmental organizations also joined the fray. The National Wildlife Federation (NWF) called for a NAFTA Commission on the Environment. On September 9, 1992, the NWF met with Ambassador Carla Hills to share their proposal. Conservation organizations, like Pollution Probe in Canada and others in Mexico, pressured their governments to adopt a stronger environmental view in the North American project.\(^11\)

Finally, it is relevant to address Governor Clinton's remarks at the Student Center at the North Carolina State University campus in Raleigh on October 4, 1992. There, Clinton expressed his position of support of the NAFTA and noted its deficiencies. He said that he would address the deficiencies through supplemental agreements with Mexico and Canada, and through several actions at home. The three supplemental agreements he called for were to deal with the environment, labor and safeguard measures.

**B. NAFTA**

The NAFTA preamble includes a commitment to promote sustainable development, to promote expansion of world trade in a manner consistent

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8. The meeting was held in Mexico City, and the program therein developed included technical cooperation and advice, organization of seminars, exchange of information, among others.  
with environmental conservation and protection, and to strengthen the
development of environmental laws and regulations. This is the first trade
agreement to include such declaration.

Additional provisions in the agreement ensure that efforts are made
towards enhancement of standards, explicitly providing for example, that
any effort to make standards of the Parties compatible shall be pursued
without affecting human, animal or plant life or health, the environment
or consumers. Furthermore, it affirms the right of each Party to adopt
higher standards than international levels. Disputes concerning environ-
mental measures must be resolved in an environmentally sensitive manner,
and in the event of conflict between the NAFTA and the key environmental
agreements to which the Parties are signatories, the latter will prevail.\footnote{These environmental agreements are: The Convention on International Trade in Endangered Species of Wild Fauna and Flora; The Montreal Protocol on Substances that Deplete the Ozone Layer; The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; The Agreement Between the Government of Canada and the Government of the United States of America Concerning the Transboundary Movement of Hazardous Waste; and The Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area.}

Parties shall refrain from attracting or retaining investment by waiver
or derogation of environmental standards. The Parties right to ensure
that investment activities be undertaken in an environmentally sensitive
manner, although on a nondiscriminatory basis, was conserved. Regarding
labor, the NAFTA preamble resolves to protect, enhance and enforce
basic workers’ rights to create new employment opportunities and to
improve working conditions and living standards.

II. PARTIES RIGHTS AND OBLIGATIONS

A. Environmental Agreement

1. Cooperation

Cooperation shall be undertaken with due respect of the sovereign right
of each State to exploit its own resources, ensuring environmental con-
servation so as to achieve a sustainable development. This idea is com-
pleted in the preamble by: the acceptance of national policies as the
principal instrument for development and environmental protection; the
recognition of the existence of environment, economic and technological
differences between the Parties; while considering the value of environment
as a patrimony of future generations; and stressing the importance of
honoring environmental obligations arising from proximity, growing re-
lationships and international law covenants and principles.

Several provisions of the NAAEC address the obligation of cooperation.
Article 1 views cooperation as the basis to promote sustainable devel-
opment, as well as an objective in order to protect the environment and
to develop and improve the environmental laws and regulations of each country.\(^{13}\)

Moreover, the creation of the Commission for Environmental Cooperation (the Commission) is the agreement’s strongest commitment to this principle. The commission shall be comprised of a council,\(^{14}\) an administrative body which is the secretariat,\(^{15}\) and a joint public advisory committee.\(^{16}\)

As a forum for the discussion of environmental matters,\(^{17}\) the council fosters cooperation. The council is designed to promote and facilitate cooperation between the Parties with respect to environmental matters,\(^{18}\) to strengthen cooperation on the development and progressive improvement of environmental laws and regulations,\(^{19}\) and to encourage technical cooperation between the Parties.\(^{20}\)

The Agreement includes a separate section entitled Cooperation and Provision of Information (Cooperation). Under Article 20, the Parties reaffirm their commitment to resort to cooperation and consultations to resolve matters affecting the agreement. They also acquire the obligations to: notify appropriate officials of environmental measures possibly affecting the Agreement or other Party’s interest under it; add or provide information under request in this regard; and inquire and respond to other Party’s notification or information on possible violations of its environmental laws. Consequently, each Party has the right to be notified or to ask for additional information on environmental measures possibly affecting it, and the right to provide another Party with information on possible violations of that Party’s environmental laws.

The exchange of information, and the obligation to resort to consultations are included within the general scope of cooperation, as it is expressed in Principle 21 of the 1982 World Charter for Nature.\(^{21}\) The concept of international cooperation is very broad, as its requirement

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13. NAAEC, supra note 1, art. 1(b), (c) & (i).
14. The council shall be comprised of cabinet-level or equivalent representatives of the Parties, or their designees, and among its functions are the implementation of the Agreement, overseeing the Secretariat, developing recommendations regarding environmental matters and cooperating with the NAFTA Free Trade Commission on environmental goals. Id. art. 9.
15. Id. art. 11, paras. 2, 5. The Secretariat shall be headed by an executive director and shall comprise a staff appointed by him. The Secretariat's general function is to provide "technical, administrative and operational support to the Council and to committees and groups established by the Council, and such other support as the Council may direct."
16. The joint public advisory committee shall comprise, on principle, 15 members appointed in equal number by each Party. The general function of this body is providing advice to the council and to the Secretariat, on the matters requested. Id. art. 16, paras. 1, 4 & 5.
17. Id. art. 10, para. 1(a).
18. Id. art. 10, para. 1(f).
19. Id. art. 10, para. 3.
20. Id. art. 10, para. 4(c).
underlies all international environmental law. Therefore, it eventually embraces the whole NAAEC.

2. Information

The NAAEC has several other provisions regarding the Parties exchanging or providing information on environmental matters. The Parties acquire these obligations in respect to other Parties, the commission and the general public.

With respect to Parties, the Agreement establishes that when a Party adopts a restrictive measure regarding the use of pesticide or toxic substances in its territory, it shall notify the other Parties. This notification is relevant in relation to the Parties' promise to consider prohibiting the export to the other Parties' territories of such pollutants. Moreover, the Parties shall issue periodic public reports on the state of their environment, shall make available their general applicable provisions respecting matters covered by the accord, and shall provide a reasonable opportunity to comment on measures they propose to adopt which shall be published in advance.

According to Article 21 (Provision of Information), upon request of the council or the secretariat the Parties shall have the general obligation to take all reasonable steps to make available any information, and specifically to make available any information in their possession, for the preparation of a report or factual record. If the Parties consider the request for information excessive or burdensome, the council may limit its scope.

No obligation regarding availability of information will be construed as covering information that if disclosed would impede environmental law enforcement, or information protected from disclosure by a Party's laws or governmental decisionmaking according to Article 39, nor information connected to national security interests. Finally, it is a council

23. NAAEC, supra note 1, art. 2, para. 3. The NAAEC indicates that the notification can be made either directly to the Parties or through an appropriate international organization.
24. Id. art. 2, para. 1(a).
25. Id. art. 2, para. 1(a). The NAAEC establishes this obligation, stating that the legislation be promptly published or otherwise available with the finality that interested persons and Parties become acquainted with it. Id. art. 4, para. 1.
26. The obligations to publish in advance and to give opportunity to comment on the measures contained in art. 4, para. 2, are subject to a certain degree of discretion by the Party, as expressed by the introductory phrase "to the extent possible." Id. art. 4, para. 2.
27. Id. arts. 12-15. Preparation of reports and factual records are regulated by arts. 12, 13 and 15. They will be elaborated by the Secretariat for final approval by the council. The reports may cover a wide range of matters within the scope of the annual program of the commission or any other matters within the cooperative functions of the Agreement while the factual record will only be produced as a consequence of a public submission asserting that a Party fails to enforce its laws, according to the provisions of art. 14.
28. If the Party does not submit the information requested it shall explain its reasons by writing. Id. art. 21, para. 3.
29. Id. art. 42(a).
function to promote exchange of information on criteria and methodologies used in establishing domestic environmental standards.30

3. Prescription and Enforcement Obligations

In the preamble to the NAAEC, the Parties affirm both the principle of state sovereignty over national resources and the fact that differences in economic, technological, and infrastructural capabilities exist between them. Consequently, they recognize the right of each to establish their own levels of domestic protection, development policies and priorities, and to prescribe laws and regulations accordingly.31

Nevertheless, ensuring high levels of environmental protection is a common objective and obligation which law prescription and enforcement should be tailored to meet.32 Therefore, Parties shall strive both to continue improving their laws,33 and to effectively enforce them through appropriate governmental actions.34 These governmental actions must be absolutely limited to each Party’s territory, as the enforcement principle35 establishes no possible construction of the Agreement to empower a Party’s authorities to undertake environmental law enforcement activities in another Party’s territory.

Enforcement proceedings must be available under the laws of each Party, whether they be judicial, quasi-judicial or administrative. Sanctions and remedies must include compliance agreements, fines, imprisonment, injunctions, the closure of facilities, and the cost of containing or cleaning up pollution.36 Finally, the Article 2 discretionary provision asks each Party to consider legislating any recommendation issued by the council.

4. Other Obligations

The Parties have also committed themselves to develop and review emergency preparedness measures, assess environmental impacts, promote the use of economic instruments for the efficient achievement of environmental goals, promote education, and further scientific research and technology development with respect to environmental matters.37 Express

30. Id. art. 10, para. 3(a).
31. Id. art. 3.
32. Id. arts. 3, 5.
33. Id.
34. Id. art. 5. The NAAEC mentions a non-exclusive list of governmental actions which include appointing and training inspectors, monitoring compliance, seeking assurances of volume compliance and compliance agreements, publicly releasing non-compliance information issuing bulletins or other periodic statements on enforcement procedures, promoting environmental audits, requiring record keeping and reporting, encouraging mediation and arbitration, using licenses and permits, initiating correspondent proceedings to seek appropriate sanctions and remedies, providing for search, seizure or detention, and issuing administrative orders, including orders of a preventive, curative or emergency nature.
35. Id. art. 37.
36. Article 5, paras. 2 and 3, therefore establishes a prescription obligation if such proceedings and sanctions do not exist in a Party’s legislation. Id. art. 5, paras. 2-3.
37. Article 2 of the NAAEC establishes that this activities shall be realize within each Party’s territory. Id. art. 2, para. 1.
reference to environmental law stresses the Parties' concern for awareness and familiarity with the law that is found throughout both Agreements.

B. Labor Agreement

1. Cooperation

Strengthening cooperation in labor matters is pursued by the NAALC to achieve mutual prosperity, thus promoting the general goals of the NAFTA. The word cooperation is used four different times in the preamble, twice referring to labor matters and twice to labor-management relations. The preamble also establishes the resolution to encourage consultation and dialogue between labor, business and government, both in each country and in North America generally.

Within the objectives of the NAALC, Article 1 embodies the promotion of cooperation to foster innovation and productivity, to pursue cooperative labor-related activities, and to encourage the exchange of information, data coordination and joint studies. Cooperation is recognized as being of mutual benefit and helpful in elevating economic efficiency.

Part Four is entitled Cooperative Consultations and Evaluations. Article 20 (Cooperation) contains the rule stating that the Parties shall try to resolve the matters affecting the NAALC through cooperation and consultation. To strengthen this general rule, several mechanisms under the concept of cooperative consultations were created.

Consultations are envisaged by the council in three stages prior to formal mediation of a dispute: at the National Administration Offices (NAO) level, at the Ministerial level, or formally between the Parties. After NAOs and Ministerial consultations have been pursued, the Agreement envisions the establishment of an evaluation committee of experts who presents a final report to the council containing a comparative assessment of the matter, conclusions, and practical recommendations where appropriate.

Presentation to the council of this report is required for the Parties to initiate formal consultations. These mechanisms strengthen the role of consultations and cooperation. Parties have agreed to give themselves multiple opportunities to solve a difference before an arbitral panel is required.

The establishment of the Commission for Labor Cooperation is another source of cooperative obligations. A council and a secretariat are its

38. NAALC, supra note 1, pmbl.
39. Id. art. 1.
40. The NAALC establishes this mechanism, where a Party's NAO, under request of another Party's NAO, shall provide data or information to assist the consulting NAO to better understand and respond to questions about the other Party's labor law, its administration, or its labor market condition. Id. art. 21.
41. The NAALC specifies that the request for this type of consultations has to be in writing and that the subject of the controversy can be any matter within the scope of the Agreement. Id. art. 22.
42. Id. art. 25, para. 1.
governing and administrative bodies, and shall be assisted by the NAO of each Party.

According to Article 11, paragraph 1, the council shall promote cooperative activities between the Parties regarding the fifteen specific issues as well as such other matters as the Parties may agree. It is also a council function to establish priorities for cooperative action and to develop technical assistance programs on the issues set out in Article 11. All cooperative activities shall consider the economic, social, cultural and legislative differences between the Parties.

The NAOs can be viewed as specialized administrative offices to achieve a close relationship between the Parties and each Party’s secretariat. Finally, cooperation is also pursued in relation to the International Labor Organization in order to take advantage of its expertise and to develop the Evaluation Committee of Experts (ECE) procedures.

2. Information

The Agreement considers the mutual understanding of the Parties labor laws and institutions beneficial, and is designed to encourage publication and exchange of information in this regard. To develop this objective, the Agreement includes several provisions. First, it creates obligations for each party to make available to other parties and interested persons, its general laws and regulations regarding any matter covered by the Agreement, and public information related to its labor law enforcement and compliance procedures. Second, it mandates that each Party publish in advance any such measure it proposes to adopt.

Regarding the protection of information, the NAALC is not as specific as the NAAEC. The NAALC’s formulation provides that each Party should treat confidential or proprietary information in the same way the Party providing it treats it. Panels and ECEs will treat the information according to their procedure rules. On the other hand, “publicly available information” must be understood as the information legally available according to the statutory laws of the Party providing the information.

3. Prescription and Enforcement Rights and Obligations

In the same manner as the NAAEC, the NAALC recognizes the Parties’ right to establish their own labor standards and to prescribe laws and regulations accordingly. Nevertheless, the Agreement seeks to assure that
the laws and regulations will provide for high labor standards and encourage the continued improvement of them. Therefore, the NAALC is a reasonable equity standard rule which considers national jurisdiction, Parties' individual economic conditions, and Parties' disposition to achieve good labor conditions.

In contrast to the NAAEC, the NAALC has no expressed recognition of the Parties' economic differences, and national jurisdiction over labor matters is only reaffirmed by the expression of full respect for each Party's constitution and law. However, the Agreement does contain the obligation to promote effective enforcement through governmental action. The importance of this obligation is stressed by its inclusion as a general objective of the Agreement.

The NAALC also requires each Party to ensure that due consideration will be given to an individual request for an investigation of alleged violations of municipal labor law. Finally, the NAALC includes an enforcement principle that prohibits any Party's authorities from enforcing law enforcement activities in another Party's territory.

4. Other Obligations

Promotion of the labor principles listed in Annex I is a commitment of the Parties' general agreement to this provision of the Agreement. Those principles already exist in the Parties' legal and institutional systems. Its inclusion represents their reaffirmation as a North American statement.

III. PRIVATE RIGHTS AND REMEDIES

The NAAEC and the NAALC contain several provisions regarding rights of the people. Although the manner in which these rights will be enforced is a matter of municipal law, they represent the Parties' commitment to foster citizen participation in environmental and labor matters.

A. Environmental Agreement

1. The Preamble and the Objectives

Public participation is addressed in the preamble of the NAAEC by emphasizing its importance in relation to environmental conservation, and in the objectives section so as to foster the development of environmental laws and regulations. Developing these provisions, Article 4 provides an opportunity for interested persons to comment on measures

51. Id. pmbl. & art. 2.
52. Id. art. 3, para. 1. Like the NAAEC, the NAALC also contains a non-limitative list with a new element: encouraging the establishment of worker-management committees to address labor regulation of the workplace. Id. art. 3, para 1; see also NAAEC, supra note 1, art. 5.
53. NAALC, supra note 1, art. 42.
54. NAAEC, supra note 1, art. 1(h).
that a Party proposes to adopt regarding matters covered by the Agreement.  

2. Private Access and Procedural Guarantees

The Agreement entitled Article 6 "Private Access to Remedies" establishes two main provisions. First, all interested persons have the option to ask a Party's authorities to investigate alleged violations of its environmental law.  

A similar right is created in relation to a Party's non-enforcement conduct. Thus, non-governmental organizations and persons have the option to inform the secretariat that a Party has failed to effectively enforce its environmental law. This possibility is available to organizations or persons residing or established in the alleged Party's territory; the Article 6 provision refers to interested persons only.  

Second, Article 6 permits access to administrative, quasi-judicial or judicial proceedings regarding a particular environmental matter to persons having a legal interest. The right to sue another person for damages, to request the authorities to take appropriate action in order to protect the environment, and to seek injunctions from an individual's harmful or tortious conduct must be available in each Party's law.

The council shall consider and develop recommendations regarding private access to the tribunals of a Party for persons in another Party's territory, to the extent such conditions are set out in Article 10, paragraph 9. The Agreement thus provides for the fostering of private access rights.

On the other hand, the Parties obliged themselves not to provide for a private right of action under their laws against another Party, based on alleged noncompliance regarding the Agreement. This provision secures the principle of state sovereignty, providing only for recourse to the procedures available under the Agreement.

The Procedural Guarantees Article ensures that fair, open and equitable administrative, quasi-judicial and judicial proceedings, as well as impartial and independent tribunals to conduct them, be made available by each Party so that relief may be obtained under the private actions ensured.

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55. Id. art. 4, para. 2(b).
56. The agreement also indicates that due consideration, according to law, must be given to such request by the competent authorities of the Party. Id. art. 6, para. 1.
57. Id. art. 14, para. 1.
58. Interested persons shall include all those having a plain interest in relation to the environmental violation, although not necessarily a recognized interest according to the statutory laws of the Party. Id. art. 6, para. 2.
59. The Article states:
   The Council shall consider and, as appropriate, develop recommendations on the provision by a Party, on a reciprocal basis, of access to and rights and remedies before its courts and administrative agencies for persons in another Party's territory who have suffered or are likely to suffer damage or injury caused by pollution originating in its territory as if the damage or injury were suffered in its territory.
   Id. art. 10, para. 9.
60. Id. art. 38.
61. Id. art. 7.
The proceeding provided must also be open to the public as a general rule, not unnecessarily complicated or entailing unreasonable charges, and afford other due process protections. The final decision on the merits of a proceeding shall fulfill certain requirements as well.62

3. Public Submissions

As mentioned above, private persons and non-governmental organizations can submit complaints to the secretariat whenever they determine that a Party is failing to effectively enforce its environmental law. The secretariat may consider the complaint and request a response from the Party. Furthermore, the secretariat can prepare a factual record in light of the response which should be publicly available.63

This provision vigorously promotes individual participation in fostering due observance of each Party's environmental laws. Furthermore, this mechanism respects each Party's sovereign jurisdiction over environmental matters.

4. Information, Public Awareness and Participation

The NAAEC includes several provisions regarding information and public participation which emphasize public awareness in environmental matters. These provisions include (1) the Parties' obligation to provide the public with correct information,64 (2) the council's obligation to make its decisions and recommendations public, except when it otherwise decides not to,65 (3) the council's obligation to release the annual report of the commission and the reports of the secretariat;66 the annual report shall cover relevant views and information provided by nongovernmental organizations and persons,67 (4) the secretariat's obligation to provide the public with information on where to find technical advice and expertise regarding environmental matters,68 and (5) the council's obligation, pursuant to the Agreement, to develop recommendations regarding promotion of public awareness of environmental laws, public access to environmental information that is held by public authorities of each Party, and public participation in decision-making processes related to the issues of public access.69

62. The NAAEC establishes that each Party shall provide that its decisions be in writing, preferably stating the reasoning, and should be promptly available to the parties of the proceeding and to the public. The decision should be based on information or evidence offered by the parties, and that the possibility to seek review regarding the decision must be available. Id. art. 7, paras. 2, 3.
63. The conditions for a submission to be considered by the secretariat are set out in article 14. A request for a response from the Party is envisaged in article 14, and the decision to make the factual report publicly available is taken by the council by a two-thirds vote, according to article 15. Id. art. 14, paras. 1-2; art. 15, para. 7.
64. See supra text accompanying notes 1-2.
65. NAAEC, supra note 1, art. 9, para. 7.
66. Id. art. 12, paras. 1, 3.
67. Id. art. 12, para. 2(d).
68. Id. art. 11, para. 7.
69. Id. art. 10, paras. 2(f), 5(a).
All information submitted by the public to the secretariat shall not be disclosed if so requested, or if the information is designated by the person submitting it as confidential or proprietary.

Finally, another possibility for public participation is envisaged in the proposed constitution of the National Advisory Committees. If constituted, the committees will include representatives of non-governmental organizations and persons.\(^{70}\)

\section*{B. Labor Agreement}

\subsection*{1. Preamble and Objectives}

The NAALC does not emphasize public participation as strongly as the NAAEC, but it does highlight the relationship between economic growth and workforce protection. For example, the NAALC Preamble acknowledges that protecting workers' rights will encourage firms to adopt highly productive and competitive strategies. The NAALC also includes almost the same basic private rights as the NAAEC; a provision regarding the possibility to comment on a Party's proposed measures.\(^{71}\)

\subsection*{2. Private Action and Procedural Guarantees}

The NAALC ensures that due consideration be given by each Party's authorities to any request for an investigation of an alleged violation of the Party's labor law submitted by an employer, employee or their representative.\(^{72}\)

Moreover, access to administrative, quasi-judicial, judicial or labor tribunals for persons with a legal interest must be available under each Party's law.\(^{73}\) And, finally, the NAALC requires that recourse to appropriate procedures be available to seek enforcement of the Party's labor law and collective agreements.\(^{74}\)

With respect to procedural guarantees, the NAALC contains provisions guaranteeing fair, equitable, impartial and independent administrative, quasi-judicial, judicial and labor tribunals, similar to the NAAEC.\(^{75}\) The "private rights principle" is also found with exact wording in both agreements.\(^{76}\)

\subsection*{3. Information, Public Awareness and Participation}

The NAALC contains the same provision regarding public availability of each Party's labor law, enforcement and compliance procedures as the NAAEC.\(^{77}\) In terms of information that is to be given to the public

\begin{footnotesize}
\begin{enumerate}
\item Id. art. 17.
\item See supra text accompanying notes 52-54.
\item NAALC, supra note 1, art. 3, para. 2.
\item Id. art. 4, para. 1.
\item Id. art. 4, para. 2.
\item See supra text accompanying notes 52-54.
\item Id.
\item NAALC, supra note 1, art. 6, para. 1.
\end{enumerate}
\end{footnotesize}
by other bodies created by the Agreement, first, the NAALC envisages that the council approve publication reports and studies prepared for it,78 and promote the collection and publication of comparable data on enforcement, labor standards and labor market indicators.79 Second, the NAALC requires the NAOs to publish a list of other Parties' public communications on labor law matters.80 Third, the ECE final report must be published unless otherwise decided by the council.81 Fourth, the final report of the arbitration panel must be published according to Article 37, paragraph 3.

According to the “Public Information and Awareness Article,” each Party shall, (1) promote awareness through public education regarding its labor laws,82 and (2) to keep information safe from disclosure by the secretariat,83 each Party may convene a National Advisory Committee.84

78. Studies and reports may be prepared by the Secretariat, independent experts or working groups, according to article 10, para. l(e) of the NAALC. Article 14, para. 4 gives the Council the option to decide not to publish a report or study elaborated by the Secretariat. Id. art. 10, para. l(e); art 14, para. 4; art. 7(a).
79. Id. art. 10, para. 1(h).
80. Id. art. 16, para. 3.
81. Id. art. 26, para. 2.
82. Id. art. 7(b).
83. Id. art. 12, para. 6.
84. Id. art. 17.