

CLIMATE CHANGE, ENERGY AND ENVIRONMENT

THE ESCAZÚ AGREEMENT

The negotiation process and the role of stakeholders
in the run-up to the first COP

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February 2022

What is the origin of the Escazú Agreement?

On April 22, 2021, within the framework of the International Mother Earth Day celebrations and with the ratification of 12 countries, the Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters for Latin America and the Caribbean, came into force. Its final text was adopted on March 4, 2018, at the last meeting of the Negotiating Committee, with the participation of 24 of the 33 countries in the region. This meeting was held in the canton of Escazú in the City of San José, Costa Rica, which is why it is also known as the Escazú Agreement.

The Agreement seeks, as stated in Article 1, "...to guarantee the full, effective implementation in Latin America and the Caribbean of the rights of access to information, public participation in environmental decision-making, and access to justice in environmental matters... thereby contributing to the protection of the right of every person, of present and future generations, to live in a healthy environment and to sustainable development." It is legally binding for countries

that have ratified or adhere to it. It is an agreement on human rights and the rights of all persons to live in a healthy environment. It is the first human rights and environmental instrument exclusive to the region. It is also the first agreement of its kind in the world to contain specific provisions for individuals and organizations that defend human rights in environmental matters.

It is the only international treaty that is a direct result of the United Nations Summit on Sustainable Development, known as Rio+20, held in 2012, on the occasion of the 20th anniversary of the Rio 1992 Earth Summit, with the support at that time of the governments of Chile, Costa Rica, Ecuador, Jamaica, Mexico, Panama, Paraguay, Peru, Dominican Republic, and Uruguay. It was precisely at the Rio 92 Summit that several fundamental international legal instruments were created, such as the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, Agenda 21, and the Rio Declaration.

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INNOVATIONS IN THE EA NEGOTIATION PROCESS

Its innovations in both the negotiation process and its contents make the Escazú Agreement the most important regional instrument on the issue in decades. It represents the possibility of national, regional, intra- and extra-regional cooperation and the strengthening of national, state, and municipal capacities. Escazú has created hope and expectation in Latin America and the Caribbean, a region with a growing number of socio-environmental conflicts and extremely high rates of violence and harassment against people, organizations, and communities defending natural resources, land, and territory as well as their rights.

It incorporates principles and precepts that are extremely relevant today, such as the principle of non-regression and progressiveness, the precautionary principle, and the principle of intergenerational equity. It also includes precepts such as legal standing, or standards for the delivery of environmental information for potentially affected communities

or the right to participate from the initial stages of the projects, among others.

The Escazú Agreement is also innovative as regards the participation of civil society, which has been a constant throughout the process, from its inception to the approval of the final text and its entry into force, as well as the role it is expected to play in future conferences of the parties. This participation took place through the Modalities for Public Participation and the Regional Public Mechanism. All natural or legal persons may participate in the process and its spaces under the generic denomination of "the public." For the entire negotiation phase, six people were elected as representatives of the regional public to participate, with a voice but no voting rights, and with the possibility that the proposals of the public, when taken up by a government, would be part of the texts to be negotiated.

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CONFERENCE OF THE PARTIES

The first Conference of the Parties is scheduled to take place from April 20-22, 2022, at the ECLAC headquarters in Santiago, Chile. Due to the health emergency caused by the COVID-19 pandemic, this meeting will initially be held in a hybrid format, with the presence of the delegations of countries that have ratified the agreement, elected representatives of the public, and expert individuals and institutions. Signatory and non-signatory countries will be observers and will participate remotely. At this 1st COP agreements will be sought on the Rules of Procedure, the rules on the Committee to Support Implementation and Compliance, and the Voluntary Fund. The election of the following Regional Public Representatives and their new functions will also take place. Countries are also expected to report on progress made towards the implementation of the Agreement.

In some countries, such as Paraguay, Peru, and Colombia, there have been aggressive disinformation campaigns about the scope of the Agreement that have negatively affected its national ratification processes in their congresses. Questionable arguments by legislators were presented at these deliberations. These included the fact that the Escazú Agreement infringes on the sovereignty of countries over their natural resources, or that the Agreement thwarts commercial interests and economic development, or that it promotes the creation of a special construct to protect and empower environmental defenders so that they can halt any development project, thereby slowing down economic growth. The absence of the private sector in the entire negotiation process of the Escazú Agreement is striking.

Where is the Escazú Agreement headed?

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INTERNATIONAL COOPERATION

Regional bodies such as the European Parliament, financial and cooperation organizations such as the Organization for Economic Cooperation and Development (OECD), the Inter-American Development Bank (IDB), the World Bank, and the Central American Bank for Economic Integration (CABEI) have expressed their support for the Escazú Agreement.

In addition, in Mexico, public and private international cooperation has also taken an interest in the Agreement, as is

the case of German cooperation through GIZ in Mexico and the French Development Agency, AFD, which have established the process of implementing the Agreement as one of their priorities for the coming years. Other relevant actors such as the Friedrich-Ebert-Foundation, the Konrad Adenauer Foundation, the Ford Foundation, and the Open Society Foundations have also supported various Escazú initiatives in the region.

2

GENERAL RECOMMENDATIONS FOR STRENGTHENING THE ESCAZÚ PROCESS

The context of the pandemic, which has encouraged the use of technology for meetings, has energized remote or virtual interactions around the Escazú Agreement. This, in turn, has allowed more events to be held and therefore, to reach more people with access to an internet connection, compared to the pre-pandemic in-person event schemes. Given the uncertainty as to how much longer the health emergency will last, the following recommendations assume that at least during the first half of this year, virtuality will continue to be the standard work format.

The Agreement poses national challenges for its implementation, beginning with the dissemination and knowledge of the Agreement by an increasing number of people, organizations, and institutions. Diagnoses will enable us to have a clear idea of where the institutions, laws, regulations, and public policies of our countries are *vis-à-vis* the standards established by Escazú. This, in turn, will reveal where the windows of opportunity are for updating our regulatory and public policy frameworks and being able to prioritize the actions to be carried out.

PROMOTING ADHERENCE TO THE AGREEMENT.

One of the outstanding challenges is to ensure that most of the countries in the region participate in Escazú. We can help support these efforts, as several countries have yet to join the Agreement, as shown below.

In Central America, Belize, Guatemala, and Costa Rica have signed the agreement, whereas Honduras and El Salvador have not. In the Caribbean, Dominica, Grenada, Haiti, Jamaica, and the Dominican Republic have already signed it, whereas Barbados, The Bahamas, Cuba, and Trinidad and Tobago have not. In South America, only Colombia, Peru, Paraguay, and Brazil have signed, while Chile, Suriname, and Venezuela have yet to do so.

DISSEMINATION AND PUBLICATION OF THE AGREEMENT.

Recent experiences of dialogue with various sectors and stakeholders indicate that many are still not fully aware of the Escazú Agreement or have limited knowledge of it. Continuing to disseminate information to broaden the knowledge base is therefore required. It will be important, as soon as possible, due to the pandemic, for in-person activities be scheduled to reach the public with limited connectivity, whose participation is equally important in the implementation of the Agreement.

CAPACITY BUILDING.

It is also important to resume and continue the efforts made in various parts of the world with specialized audiences and sectors such as youth, women and advocates for women, communicators, environmental human rights defenders, academics, civil servants, civil society, and indigenous groups. Special emphasis should be placed on the work to gradually incorporate sectors that have not been very present in dissemination or capacity-building efforts, which the Agreement cites as being crucial to its implementation, such as the judiciary branch, education sector officials, and the private sector.

ATTENTION TO ADVOCATES.

It is essential to make the issue more visible and share experiences regarding mechanisms and protocols in this area. It is therefore recommended that the efforts by FES to link groups of advocates to the Escazú Agreement be continued and intensified.

STRENGTHENING SYNERGIES AND LINKS WITH OTHER PROCESSES.

It is recommended that the Escazú Agreement be linked to issues such as climate change, water, forestry, mining, and public works. It is also recommended that the intensification of links with the implementation of the 2030 Agenda be explored. Other possible synergies can be found in the Open Government Partnership, OGP, which has 17 member countries in the region. Another agenda for synergies is the Human Rights and Business agenda, established more than 10 years ago.

DISSEMINATION AND COMMUNICATION.

It is recommended to continue with the development of dissemination materials on the Agreement, its scope, and its links and interconnections with other agendas to facilitate the process of dissemination of the Agreement. Video capsules, infographics, podcasts, community radio, and thematic guides on access rights have proved useful for reaching an increasing number of sectors, actors, and groups associated with human and environmental rights and governance in environmental issues in general.

INSTITUTIONAL REFORMS.

It is necessary to have specific diagnoses of strategic legal reforms that will allow for structural improvements in guaranteeing access rights, such as the procedures for environmental impact assessments, a key instrument in the Agreement. It is also recommended that the discussion be opened on the national capacities required to establish or improve environmental information systems, particularly those corresponding to subnational or local levels.

MONITORING AGREEMENTS.

The national action reports to be submitted by countries must be monitored. These national reports are expected to provide elements that will provide more detailed country-by-country knowledge, at least for the twelve countries that have already ratified the Agreement, on the priorities and routes to implementation that have been determined at the national level. These elements will make it possible to complement the action strategies to be implemented in the various countries.

To make the Escazú Agreement a success, significant contributions should be made by encouraging more countries to join the Agreement, by inviting more actors to join in the implementation and exchange of experiences, and by strengthening capacities through the generation of materials and communication resources. Areas that will also have an impact are the potential strategic reforms for implementation and the work on activists. In all these issues or areas, civil society organizations in the various countries are strategic allies, with experience not only in the Escazú Agreement but also particularly in working with individuals and sectors, developing training and materials, and in contacts with the various bodies associated with implementation.

ABOUT THE AUTHOR

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