

### **Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean**

Mexico City, April 23, 2021

The Escazu Agreement entered into force on April 22, 2021. It means that Mexico and each of the Parties thereto will have to implement the Agreement's provisions on the national level. This shall be accomplished by conducting any required legislative amendments, administrative and institutional adjustments, for the purpose to effectively comply with their commitments and obligations to respect and ensure the rights and guarantees indicated by the Treaty's title.

#### **I. Pioneering treaty**

- This is the first international treaty adopted under the auspices of the Economic Commission for Latin America and the Caribbean (ECLAC).
- It is the only binding agreement enacted from the United Nations Rio+20 Conference of the Parties on Sustainable Development held on 2012 in R o de Janeiro, Brazil.
- This is the first environmental treaty for the region.
- It is the first treaty providing specific measures to assure safety conditions for the defenders in human rights matters involving environmental issues<sup>1</sup>.

#### **II. Relevant dates**

- Adopted on March 4, 2018, in Escazu, Costa Rica.
- Ratified by Mexico on November 5, 2020 and published in the Federal Official Gazette on December 9, same year.
- Entry into force on April 22, 2021.

#### **III. Main objectives**

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<sup>1</sup> In this regard, ECLAC expressly recognizes the violence and frequency of it that environmental defenders face in our region.

The Escazu Agreement aims to serve as an instrument to help prevent conflict, advance environmental decision-making into participative, informed and inclusive processes, and improve States' accountability, transparency and good governance.

The State Parties committed to several actions, including to generate and disseminate environmental information, to strengthen national capacities, international cooperation and even the creation of a fund with voluntary contributions to enable financing for the implementation of the Agreement where needed.

Following is a brief description of some of the most significant rights and obligations, as set forth in the Escazu Agreement.

*(i) Access to Environmental Information*

Pursuant to article 5 of the Escazu Agreement, public have the right to access environmental information in the possession, control or custody of the authority. To this effect, "environmental information" is understood as "any information that is written, visual, audio and electronic, or recorded in any other format, regarding the environment and its elements and natural resources, including information related to environmental risks, and any possible adverse impacts affecting or likely to affect the environment and health, as well as to environmental protection and management" (Escazu Agreement, article 2 section c).

The Agreement sets forth that the exercise of this right is not conditioned, either to proving a legitimate interest or to mentioning any reason for the request. In addition, this right comprises the requested authority's obligation to promptly<sup>2</sup> inform whether the requested information is or is not under its possession, to the gratuitous delivery of the information and about the possibility to challenge and appeal requirements for exercising this right and the refusal to deliver the information. However, the Escazu Agreement does establish pre-requisites to exercise the latter right.

*Refusal to disclose environmental information*

The Agreement allows the refusal of information that falls under domestic legal regimes of exceptions or under 4 specific exceptions set forth in the Agreement where such a regime does not exist. Either case, the requested authority must notify the applicant, in writing, the legal provisions and reasons justifying its decision and inform of the right to challenge and appeal it.

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<sup>2</sup> The Escazu Agreement prohibits reservations. However, Mexico approved it under certain interpretative declarations, including compliance with the foregoing "prompt" notification within the national legal timeframes, as are set forth in the laws and regulations for the transparency and access to public information currently in force in the country.

*(ii)* Public Participation in Environmental Decision-making

Pursuant to article 7 of the Escazu Agreement, public have the right to openly participate in environmental decision-making processes. To this effect, “environmental decisions” mean those granting environmental permits for projects and activities that may have a significant impact on the environment or health and matters of public interest, such as land-use planning, policies, strategies programs, rules and regulations that may affect the environment.

According to the Agreement, authorities must initiate the public participatory processes from the very first stages thereof. To that effect, the competent authority must provide the public with clear and comprehensive information, in a timely manner and through appropriate means. Additionally, the Agreement lists the minimum pieces of information that is considered necessary for effective participation, particularly for authorization-granting procedures, including those on environmental impact, which are the following:

- 1) A detailed description of the area of influence and the physical and technical characteristics of the proposed project or activity; of the main environmental impacts; and, of alternative available technologies and locations that could be used and could host the project or activity under consideration.
- 2) A summary of the above mentioned in a non-technical and comprehensive vocabulary.
- 3) The reports and opinions of other involved entities addressed to the competent authority.
- 4) The measures foreseen and monitoring actions in the execution and results of said measures.

*(iii)* Access to Environmental Justice

Pursuant to article 8 of the Escazu Agreement, fail to respect and guarantee the rights previously mentioned and other rights granted under this treaty confer legal standing to demand environmental justice. To this effect, “environmental matters” shall be interpreted as any decision, action or omission that:

- a) Is related to access to environmental information;
- b) Is related to public participation in environmental decision-making procedures; or
- c) Adversely affects or may affect the natural environment or that contravenes environment-related legal rules.

Therefore, Parties shall guarantee the right to justice in environmental matters and shall ensure access to judicial and administrative mechanisms that allow to challenge and appeal in

substance and procedure the decision, action or omission in question. In addition, State Parties shall be obliged to facilitate access to these mechanisms by vulnerable people and groups, by means of technical and legal assistance, interpretation services and the translation to other languages, free of charge, as necessary to ensure the effective exercise of this right.

(iv) Human Rights Defenders in Environmental Matters

Under the Escazu Agreement, Mexico must guarantee a safe environment for people, groups and organizations that promote and defend human rights associated to environmental issues. This means to enable defenders to act without having to face threats, restrictions and insecurity. For this purpose, the State will take adequate and effective measures to timely prevent, investigate and punish attacks or intimidations that environmental defenders may suffer.

In Galicia Abogados we are at your service for any consultation on the foregoing. Digital versions of official documents on this topic are made available at the following internet links:

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5616505&fecha=22/04/2021](https://www.dof.gob.mx/nota_detalle.php?codigo=5616505&fecha=22/04/2021)

[https://www.dof.gob.mx/nota\\_detalle.php?codigo=5607130&fecha=09/12/2020](https://www.dof.gob.mx/nota_detalle.php?codigo=5607130&fecha=09/12/2020)

[https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf)

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