

# The Escazú Agreement

*The path to environmental justice in Latin America.*



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## The Case Study

### **History of The Escazú Agreement**

The formation of the Escazú Agreement dates back to the adoption of the Rio Declaration in 1992. The Rio Declaration was the largest environmental conference in history and is said to be the point at which international environmental law started to take form. The Rio Declaration contained 27 principles on environmental policy, serving as a breakthrough for international environmental law. Principle 10 in particular called for the participation of all concerned citizens on environmental issues. More specifically, Principle 10 outlined what would later become the cornerstone of the Escazú Agreement by proposing three rights– the appropriate public access to information related to environmental issues, the opportunity for all peoples to participate in the decision-making process, and the access to judicial and administrative proceedings. Thus, Principle 10 focused on the procedural rights of environmental law in terms of equal access to information, public participation, and access to justice.

Consequently, the Conference of Rio+20 took place in Rio de Janeiro, Brazil in 2012 in which ten states from Latin America and the Caribbean (LAC) convened to enact a regional treaty to implement the three rights through the “Declaration of the Application of Principle 10 in Latin America and the Caribbean” that would later become the backbone of the Escazú Agreement. In turn, in 2014, States entered into negotiations regarding the Escazú Agreement resulting in the adoption of the “Santiago Decision” that pledged a commitment to initiating formal negotiations. While the negotiation committee consisted of Chile and Costa Rica, Argentina, Mexico, Peru, Saint Vincent and the Grenadines, and Trinidad and Tobago, there was an emphasis on public participation maintained throughout the process and received support from ECLAC as technical secretariat. Four years later, the Escazú Agreement was adopted in Escazú, Costa Rica. Representatives of 24 Latin American and Caribbean countries were present and the Agreement was open to signature for 33 countries from September 2018 to September 2020. The Agreement only needed 11 ratifications to enter into force, which it achieved in January 2022 with the ratification of Mexico and Argentina. In turn, the Escazú Agreement has become the only binding international instrument that protects environmental rights as human rights.

### **Content and Objectives of the Escazú Treaty**

The Escazú Treaty represents LAC’s first treaty on environmental matters. Besides guaranteeing the full and effective implementation of the three access rights of access to information on the environment, participation in decision-making on the environment, and access to environmental justice, the Treaty has achieved multiple breakthroughs in progressing global environmental rights. Most significantly, the Treaty links environmental rights to human rights along with including provisions that would protect environmentalists. More specifically, Article 1 of the Treaty declares the Agreement’s objective is to “contribute to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development”. Article 4 further elaborates on this objective by noting how it is the State’s responsibility to ensure the right to a healthy environment for its citizens. While the Inter-American Court of Human Rights previously ruled that the right to a healthy environment is a human right in the case of *Lhaka Honhat (Nuestra Tierra) v. Argentina*, the Escazú Agreement codifies the right to a healthy environment as a human right in law and extends the right to future generations through these provisions.

### *Access to Information*

In terms of fleshing out the three access rights, Article 5 deals with the first being access to environmental information. Article 5 includes the passive obligation, which ensures that when someone requests information from the authority, the authority has to ensure information is shared. The Article further outlines how information should be disseminated with specific formatting and time constraints such as a 30-day limit for the government to provide the information. Moreover, the Article protects those seeking the information from having to disclose why they are pursuing that information. The Article further says the exception to governments withholding information being sought is only if there is an established law that exists preventing the sharing of particular information. Article 6 relates in proceeding to call for the obligation of State governments to not only disclose this information but to also actively collect and disseminate environmental information. In particular, the State is expected to regularly release information that reports on the state of the environment, polluted areas, the use of environmental management instruments, and services that can be used for conserving natural resources and ecosystems. Thus, Escazú not only notes State obligations but requires States to play a proactive role in being transparent by sharing new information with the public regarding the environment.

### *Access to Participation in Environmental Decision-Making*

As for the second access right, Article 7 outlines the right to public participation in environmental decision-making processes. In particular, the Article notes how States must allow for reasonable time frames of when a decision pertaining to the environment is being made and inform the public of the type of a decision, authorities responsible for making the decision, and the type of procedure that will take place. Consequently, any decision regarding planned land use, newly proposed environmental policies, and any rules and regulations pertaining to the environment. Moreover, the Article specifically notes that affected actors by proposed environmental projects or policies must be consulted and summoned to ensure “due consideration” to the public. The Article also states an appeal procedure in which there must be an opportunity for the public to appeal a decision made with a chance to present observations.

### *Access to Justice in Environmental Matters*

Article 8 pertains to the final access right, the right of access to justice in environmental matters. The Article calls for access to effective, public, and impartial procedures that provide the public with competent entities possessing expertise in environmental matters. More specifically, the Article provides a means for the public to challenge a decision made pertaining to the environment on the basis of not providing the public with proper access to information or participation in the decision-making. Thus, this Article is crucial for guaranteeing the other two access rights found in the Escazú Agreement. The Article further notes how State entities must provide mechanisms to enforce judicial and administrative decisions in a timely manner along with mechanisms for redress. Mechanisms for redress can be crucial for environmental rights as they can provide the public with restoration compensation or restitution to the prior condition in regard to the environment.

### *Protection for Environmental Defenders*

Lastly, Article 9 serves as a major development in environmental rights by stating the obligation of States to protect defenders of human rights in environmental matters, the first global

mechanism of its kind. In turn, the Escazú Agreement extends environmental justice to those in society defending environmental justice themselves. The Article specifically calls for a safe environment for environmental defenders to act free from threat; to recognize and safeguard the natural rights of environmental defenders that allow for freedom of expression and speech; and to punish and prevent attacks or threats posed on environmental defenders. With the Latin America and Caribbean region recognized as the most dangerous in the world for environmental defenders to practice in peace, Article 9 represents a critical step for environmental activists to act freely and promote environmental justice.

### **Controversies over Escazú**

Nevertheless, corporations and other actors with vested interests in the fossil fuel industry launched a counter anti-Escazú campaign. Due to economic sectors not wanting the Treaty approved in certain countries, an effective propaganda campaign against Escazú took place across the entire region. The anti-Escazú campaign was successful in countries such as Chile and Costa Rica despite being two of the original negotiators of the Agreement. The campaign established fear in decision-makers over different interpretations of how the Agreement will be implemented and argued the Agreement would hurt commercial interests. In particular, the anti-Escazú campaign argued that Article 8 would lead to a new environmental jurisdiction with overreaching powers that would threaten state sovereignty.

In retaliation, the World Bank and OECD urged LAC countries to ratify the Agreement. Moreover, the Escazú secretariat's Carlos de Miguel has argued that obligations to the Agreement only apply to the state and that citizens, companies, and trade unions will only benefit. Consequently, Chile and Colombia have since ratified. Nevertheless, Costa Rica has recently rejected ratification of the Agreement once again. While fifteen countries have ratified, ten countries have signed but not yet ratified. Thus, there is more work required to convince the signatories to ratify in their respective countries.

### **Implementation of Escazú and its Current State**

In its current state, the Escazú Agreement lacks mechanisms to ensure compliance. In turn, countries that have ratified the Agreement such as Panama have reportedly ignored the Treaty's provisions such as proper consultation with the public. Nevertheless, progress is being made in some of the countries that have ratified such as roadmaps for implementation of the Agreement in several countries.

As the main body of the Agreement, the Conference of the Parties (COP) is responsible for adopting rules of procedure and issuing recommendations. While the first COP took place last year, COP 2 for the Escazú Agreement recently met earlier this month in Buenos Aires, Argentina. 24 delegations were present including States party to the Agreement, signatories, and observer countries along with over 600 accredited participants. The plan going into the Conference was to launch a Committee to Support Implementation and Compliance of the Agreement by electing the Committee's inaugural members as well as implementing a Voluntary Fund for Contributions. In turn, the Committee would help advise the COP and work alongside States in implementing the Agreement while the Voluntary Fund would provide funds necessary for States to carry out their obligations to actively disseminate information.

Argentine President Alberto Fernandez was present at COP 2 and delivered a speech at the end of the Conference's session–

“The Escazú Agreement had the enormous merit of putting the problem of the climate crisis in the public discussion and allowing members of civil society to find out what is happening and what governments are doing to try to emerge from that crisis... we have to understand that we must work together... And we have to take care of environmental activists. They are caring for our lives. The environment does not discriminate between the rich and poor.”

Meanwhile, Raúl García-Buchaca delivered a speech on behalf of ECLAC regarding the Treaty's significance for protecting environmental defenders as human rights defenders:

“Our region remains the world's most dangerous one for those who defend the environment. We know that it is not possible to conserve the environment without protecting these people. The Escazú Agreement is also pioneering in this regard, since it is the first treaty in the world to contain specific provisions for protecting human rights defenders in environmental matters.”

Ultimately, a Plan of Action was produced and sent to civil society organizations for their consultation. The Plan includes holding a second forum on environmental defenders this September in Panama. Moreover, COP 2 concluded with the agreement to reconvene at COP 3 next April in Santiago, Chile. Thus, this Plan of Action and other steps taken at COP 2 represent how State Parties and ECLAC are committed to implementing the Escazú Agreement, which offers a promising future for the Agreement and its protection of environmental rights, justice, and defenders within the LAC region.

## Activity

**Learning Objective:** For students to understand how groundbreaking and significant the Escazú Agreement is for being the first legally binding international instrument linking environmental rights to human rights and protecting environmental defenders. In addition, through the exercise, students will also learn about different signatories' perspectives on and interpretations of the Agreement and what has impeded its ratification in some countries.

### **Background:**

Educators should start by playing [this video](#) by Amnesty International about the assassination of Berta Cáceres, an environmental defender killed for her efforts to stop the construction of a dam project. The video is heartfelt as her daughters speak up about the lack of justice following the death of their mother. The video should have a shock factor and be emblematic of the environmental injustice that has occurred in Latin America.

Educators should play the [following video](#) by Amnesty International for students to see the exigency of the Escazú Agreement and receive a general overview of the Agreement's purpose. The students will be able to link the past video to this video when discussing how the Escazú Agreement protects environmental defenders.

Next, educators should show [this documentary](#) by the Department of Sustainable Development in Saint Lucia that offers a specific country's first-hand perspective of the Agreement and provides the necessary history, context, and background to the Agreement. In turn, students will learn the specific objectives of the Agreement, what the Agreement entails, and hear from environmental activists about the significance of the Treaty.

Lastly, educators should review the three access rights that serve as the backbone of the Escazú Agreement, discuss Article 9 that protects environmental defenders, and provide the current context as to how many have ratified (without yet revealing which States and why). The information can be lectured with an accompanying slideshow and educators can also choose to include recent developments from COP 2.

### **Instructions for the Activity**

Students are going to be assigned one of the twenty-five signatories of the Escazú Agreement or one of the four who have not yet signed the Agreement. Depending on the size of the class, there can be groups of two-four or an individual assigned to each country or one per student. They can either be randomly assigned a State or can sign-up for a specific country via a Google Spreadsheet that lists the twenty-five signatories and four non-signatories.

The students shall be tasked to take ten to fifteen minutes to research their country's stance on the Escazú Agreement. In particular, they should be instructed to answer questions such as– is their country a signatory to the Agreement, a State that has ratified the Agreement, or neither? If they have ratified, when did they ratify– did they recently ratify, or did they ratify years ago? If they have only signed, when did they sign and why have they not ratified? If their country is one

of the four who have not signed, why? Most significantly, the student(s) must be prepared to present for about two minutes regarding their country's stance on the Agreement and whether their State is a signatory, a ratifier, or neither and *why*.

After ten to fifteen minutes, educators should proceed to instruct students to go around the room and speak with individuals and groups on their country's stance. In turn, the activity becomes collaborative and interactive as educators should instruct students to spend ten minutes finding countries who share a similar stance as them when discussing why they have/have not signed or ratified. In turn, blocks of countries can form at different ends of the room, which will lead to three groups (1) countries who have not signed, (2) signatories, and (3) ratifiers. This formation of groups is intended to help the students recall and understand where particular countries stand on the Escazú Agreement and trends amongst the countries.

Finally, each country will present for 1-2 minutes on what their State thinks of the Escazú Agreement and whether they are a non-signatory, signatory, or ratifier. Simultaneously, as each student or students present on behalf of the country they researched, the educator can be writing on the board the different groupings of countries as non-signatories, signatories, and ratifiers.

### **Debrief: Discussion Questions**

For students to reflect on the exercise and draw connections, educators should ask the following questions in addition to answering any questions the students may have. The theme should remain on why countries support or do not support the Escazú Agreement along with bridging similarities and differences as to why individual/groups of countries hold the stance they do. As an extension, the students should reflect on potential solutions or a means to get more countries to ratify the Agreement.

- Given various non-signatories' reasons *for not* ratifying, were there any prominent or overlapping reasons? Were there any countries that had a very specific reason that pertained to their own country and if so, what?
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- Based on the reasons given by the ratifiers, could any of their reasons be used to help persuade a group of signatories or specific signatory to ratify the Agreement?
- What methods do you think ECLAC and other International Organizations can implement to help convince more countries to ratify the Escazú Agreement?
- After researching your country's perspective on the Escazú Agreement, was there anything you learned about the Agreement that you had not known prior to the exercise?
- After watching these videos and conducting research, what are your thoughts on the Escazú Agreement?

## **End: Reasons for Optimism And Escazú's Future**

To end on a note of optimism for what the Escazú Agreement has accomplished, the educator should review the significance of the Escazú Agreement as the first legally binding international instrument for the protection of environmental rights and defenders.

Moreover, the educator should review or touch on recent developments of the Escazú Agreement such as the outcomes of COP 2. In particular, the educator should note the establishment of a Committee to Support Implementation and Compliance of the Agreement and the implementation of a Voluntary Fund for Contributions.



## Sources

Admin. “Member Countries of the Escazú Agreement End Cop 2 in Argentina with a Call for Deepening Its Implementation at the National Level.” *Second Meeting of the Conference of the Parties to the Escazú Agreement*, 22 Apr. 2023, <https://acuerdodeescazu.cepal.org/cop2/en/news/member-countries-escazu-agreement-end-cop-2-argentina-call-deepening-its-implementation>.

Amnistía Internacional Américas, director. *What Is the Escazú Agreement?* YouTube, YouTube, 18 Apr. 2019, <https://www.youtube.com/watch?v=sMdXkXR7U6k&t=8s>. Accessed 28 Apr. 2023.

Boeglin, Nicolas. “Escazu Agreement: On the Second Conference of the States Parties (COP2).” *Pressenza*, 26 Apr. 2023, <https://www.pressenza.com/2023/04/escazu-agreement-on-the-second-conference-of-the-states-parties-cop2/>.

CEPAL. LC/TS.2021/221 6 April 2022 Original: English 21-00641. [https://repositorio.cepal.org/bitstream/handle/11362/47838/S2100641\\_en.pdf?sequence=1](https://repositorio.cepal.org/bitstream/handle/11362/47838/S2100641_en.pdf?sequence=1).

“Documentary - the Escazu Agreement.” YouTube, YouTube, 6 Apr. 2022, <https://www.youtube.com/watch?v=DkpGqX253f0>.

“Earth Defenders under Attack in Latin America.” *Amnesty International Canada*, 9 Sept. 2021, <https://www.amnesty.ca/what-we-do/earth-defenders/>.

Economic Commission for Latin America and the Caribbean. “First Members of the Committee to Support Implementation and Compliance of the Escazú Agreement Will Be Elected in Argentina.” *Economic Commission for Latin America and the Caribbean*, CEPAL, 21 Apr. 2023, <https://www.cepal.org/en/pressreleases/first-members-committee-support-implementation-and-compliance-escazu-agreement-will-be>.

GUERRA, Sidney, and Giulia PAROLA. “Implementing Principle 10 of the 1992 Rio Declaration: A Comparative Study of the Aarhus Convention 1998 and the Escazú Agreement 2018.” *Revista Juridica*, <http://revista.unicuritiba.edu.br/index.php/RevJur/article/view/3382>.

*The Escazú Agreement | Environment Rights*. <https://environment-rights.org/the-escazu-agreement/>.

“Escazú Now: We Celebrate the Entry into Force of the Escazú Agreement, Which Reaffirms the Importance of Rights and Human Rights Defenders in Fighting the Climate Emergency.” *Cejil*, 13 Apr. 2022, <https://cejil.org/en/blog/escazu-now-we-celebrate-the-entry-into-force-of-the-escazu-agreement-which-reaffirms-the-importance-of-rights-and-human-rights-defenders-in-fighting-the-climate-emergency/>.

Huang, Lushan. "Escazú at 2: Major Challenges for Landmark Environmental Treaty." *Dialogo Chino*, 18 Apr. 2023, <https://dialogochino.net/en/article/64765-escazu-at-2-the-key-challenges-for-the-landmark-environmental-treaty/>.

*Law.stanford.edu*.  
<https://law.stanford.edu/wp-content/uploads/2023/03/Next-Steps-on-Protests-and-Free-Speech.pdf>.

"UN, United Nations, UN Treaties, Treaties." *United Nations*, United Nations, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-18&chapter=27&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-18&chapter=27&clang=en).

"What Is the Escazú Agreement?" *YouTube*, YouTube, 14 Aug. 2018, <https://www.youtube.com/watch?v=ohghk-WUmHg&feature=youtu.be>.

"What You Need to Know about the Escazu Agreement." *UNICEF*, <https://www.unicef.org/lac/en/what-you-need-know-about-escazu-agreement>.

Williams, Paul. "Can the Ambitious Escazú Agreement Live up to Its Expectations?" *Public International Law & Policy Group*, Public International Law & Policy Group, 30 Aug. 2021, <https://www.publicinternationallawandpolicygroup.org/lawyering-justice-blog/2021/8/30/can-the-ambitious-escaz-agreement-live-up-to-its-expectations>.