



FEDERAL PROSECUTION SERVICE  
OFFICE OF THE FEDERAL OMBUDSMAN FOR HUMAN  
RIGHTS

**PUBLIC NOTICE PFDC–GT13–002/2021**

**Theme: Importance of Brazil's ratification of the Escazú Agreement.**

On April 22, 2021, the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica, on March 4, 2018, enters into force at the international level, which is of paramount importance to ensure democratic and sustainable governance of the environment in the region.

At the United Nations Conference on Sustainable Development (Rio+20), held in Rio de Janeiro, in 2012, Latin American and Caribbean countries signed the Declaration on the Application of the Principle 10 of the Rio Declaration, when they made the commitment to begin a process of negotiating a regional agreement on the matter.

Negotiated between 2012 and 2018, with broad participation of civil society organizations in the elaboration of its text, the Escazú Agreement is the first regional agreement on environmental issues in Latin America and the Caribbean. Its objective is to ensure the full and effective implementation of the rights of access to environmental information, public participation in environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation between the States Parties, contributing to the protection of the right of every person, present and future generations to live in a healthy environment and have access to sustainable development.

Brazil signed the Escazú Agreement in September 2018, during the 73<sup>rd</sup> General Assembly of the United Nations, but the country has not yet completed the internal procedures for its ratification, which requires approval in each house of the National Congress, in accordance with Article 49, I, of the Constitution of the Republic, as well as the enactment and publication, by decree of the President of the Republic, to entry into force at the domestic level.



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An instrument that can strengthen environmental democracy in the country, giving greater legitimacy and effectiveness to public policies and processes to repair environmental damage, the Escazú Agreement is pioneer in the inclusion of legally binding provisions on the protection of human rights defenders working in the environmental matters. That is of special importance for environmental defenders working in Brazil and other Latin American countries and the Caribbean, which make up the most violent region in the world for this group [According to the latest Global Witness Report, from July 2020, Brazil is the third most lethal country for environmental defenders, with a record of 24 killings in 2019, 10 of them Indigenous leaders. At the top of the ranking is Colombia, with 64 deaths, followed by the Philippines, with 43. Source: GLOBAL WITNESS Defending Tomorrow: the climate crisis and threats against land and environmental defenders. July 2020. Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow>].

The Escazú Agreement also contributes to achieving the Sustainable Development Goals established in the 2030 Agenda, especially SDG16 – Peace, Justice and Strong Institutions, which are to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

Throughout its 26 articles, the Agreement brings important advances that can complement and strengthen Brazilian legislation on the rights of access to information, participation and justice regarding environmental issues.

Among the guiding principles of the Agreement, listed in Article 3, we should note the principle of non-regression and principle of progressive realization, the principle of good faith, the principle of intergenerational equity, the principle of maximum disclosure and the principle of *pro persona*.

In addition to those, the principles of equality and non-discrimination, the principles of transparency and accountability, the preventive principle and the precautionary principle, the principle of permanent sovereignty of States over their natural resources and the principle of the sovereign equality of States were also expressly provided for.

Articles 5 and 6 of the Agreement deal with the right to



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access, generate and disseminate environmental information, and provides for mechanisms related to transparency to public and private sector acts regarding environmental governance.

In order to facilitate equal access and participation, it establishes that persons or groups in vulnerable situations, including indigenous peoples and ethnic groups, shall receive assistance, from the formulation of requests up to the delivery of the information. For that purpose, it provides that information be disseminated through communication means appropriate to these groups and disseminated in the different languages used in a country.

Furthermore, when applying the public interest test, the competent authorities shall weigh the interest of withholding the information against the public benefit of disclosing it, based on suitability, need and proportionality.

In line with the precautionary principle, the Agreement provides that, in the case of an imminent threat to public health or the environment, "the relevant competent authority shall immediately disclose and disseminate through the most effective means all pertinent information in its possession that could help the public take measures to prevent or limit potential damage." The same provision also obliges States Parties to develop and implement early warning systems. Such systems make it possible to respond more quickly and take actions when faced with socio-environmental damage, minimizing, if effective, its extent and severity.

The Agreement also provides for independent oversight mechanisms, including impartial entities or institutions with autonomy to oversee compliance with rules, and monitor, report on and guarantee the right of access to information.

The right to public participation in the environmental decision-making process is ensured in Article 7 of the Agreement, with potential to strengthening social participation processes in environmental policies in Brazil.

One innovation is the provision of measures to ensure that the public can participate in the decision-making process from the early



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stages, so that due consideration can be given to the observations of the public, thus contributing to the process.

The Agreement provides for the need of effective, comprehensible and timely information on “the procedure foreseen for the participation of the public, including the date on which the procedure will begin and end, mechanisms for participation and, where applicable, the date and place of any public consultation or hearing”. Once a decision is adopted, it shall ensure that the public is informed of its content in a timely manner and the reasons and grounds on which it is based are informed, as well as the manner in which the observations submitted by the company have been taken into account.

Thus, participation is not limited, it should be part of all stages of the decision-making process and should be taken into account when giving reasons for decisions.

In addition, the Agreement obliges States Parties to establish conditions that are favorable to public participation in environmental decision-making processes and are adapted to the social, economic, cultural, geographical and gender characteristics of the public, and imposes the regard for local knowledge, dialogue and interaction of different views and knowledge, where appropriate.

Groups directly affected by projects and activities with the potential for significant impact on the environment are also given special attention in the Agreement, which obliges public authorities to carry out specific actions to identify them and properly and effectively include them in participatory processes.

In providing for access to justice regarding environmental matters, the Agreement lists, in Article 8, specific mechanisms for implementing it, such as measures to facilitate the production of evidence of environmental damage, such as the reversal of the burden of proof and the dynamic burden of proof and mechanisms for redress, such as restitution to the condition prior to the damage, restoration, compensation or payment of a financial penalty, satisfaction, guarantees of non-repetition, assistance for affected persons and financial instruments to support redress.



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With regard to protection of human rights defenders in environmental matters, the Agreement, in Article 9, demand States Parties to guarantee a safe environment, free from threats and restrictions to the activities of persons, groups and organizations; the protection of their own human rights, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly, among others; and to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising their rights.

The historic moment for the approval of the Escazú Agreement in Brazil could not be more appropriate, given that, in addition to the increasing use of violence and threats to environmental defenders, the measures adopted by public and private actors towards the recovery of the environment and compensation of people impacted by environmental damage caused by large construction projects are still insufficient.

In this context, aware of both the relevance of the Escazú Agreement for sustainable development in the Latin American and Caribbean region, and the current scenario of reduction of democratic spaces in national environmental public policies, threats to public transparency and the worsening of socio – environmental conflicts, the Office of the Federal Ombudsman for Human Rights - PFDC understands that the ratification of the Escazú Agreement by Brazil is a measure of extreme urgency, which demands the commitment of the executive and legislative branches for its rapid implementation, in order to reaffirm, for the country and the international community, the commitment of the Brazilian government with the protection of the environment.

Brasília, date of digital signature.

Carlos Alberto Vilhena  
Associate Federal Prosecutor General  
**Federal Ombudsman for Human Rights**

Thales Cavalcanti  
Coelho Federal  
Prosecutor  
**Working Group on Human Rights and Business**  
Coordinator



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Signee: **THALES CAVALCANTI COELHO**

Date and time: **20/04/2021 16:26:48**

Signed with login and password

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Signee: **CARLOS ALBERTO CARVALHO DE VILHENA COELHO**

Date and time: **20/04/2021 18:15:22**

Signed with login and password

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