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Webinar for Caribbean Governments on the
Regional agreement on access to information,
participation and justice in environmental matters
in Latin America and the Caribbean

Thursday, 23 August 2018

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DRAFT MINUTES – SUMMARY OF THE WEBINAR

1. BACKGROUND

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (C.N.196.2018.TREATIES-XXVII.18), adopted on 4 March 2018 at Escazú, Costa Rica, will open for signature of the 33 countries of the region on 27 September 2018 at United Nations headquarters in New York, in the framework of the 2018 Treaty Event.

To assist Caribbean countries in preparation for possible signature and ratification, UN ECLAC, CARICOM and the OECS convened a webinar for Caribbean governments. Its objective was to present the content of the Regional Agreement to government delegates involved in the signature and ratification process and offer an opportunity to discuss queries with legal experts.

The featured speakers invited to the webinar were Mr. Kishan Kumarsingh, Head of Multilateral Environmental Agreements of the Ministry of Planning and Development of the Government of Trinidad and Tobago and Mr. Santiago Villalpando, Chief of the Treaty Section of the United Nations Office of Legal Affairs.

Participants were encouraged to send their questions and comments to the Escazú Agreement Secretariat by e-mail and through the chat of the Webinar platform.

2. DEVELOPMENT OF THE WEBINAR

In the opening remarks UN ECLAC expressed its high appreciation to the co-organizers of the webinar, the Caribbean Community (CARICOM) and the Organisation of Eastern Caribbean States (OECS), for their continued assistance and support, and mentioned the collaboration with other institutions in the region such as the Caribbean Court of Justice. It also thanked particularly the Government of Trinidad and Tobago for its active leadership in the process, as a Presiding Officer and coordinator of several working groups during the negotiations.

Reference was then made to the relevance of the Escazú Agreement for the region, such as the fact that it is the only treaty stemming from the United Nations Conference on Sustainable Development (Río+20), the first regional environmental treaty of Latin America and the Caribbean and the first to be negotiated under the auspices of UN ECLAC. It also highlighted the active participation of the Caribbean subregion in the negotiations and recalled that for UN ECLAC, the Caribbean remained a priority and would be given preference in the work and activities of the regional commission.

The representative of the OECS mentioned that the Escazú Agreement was of particular importance to that Organisation, as it was aligned with its mandate and foundational instruments. Special attention was drawn to the Revised Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union (RTB) that calls for the incorporation of society in environmental management for optimal social and economic benefits. Article 24 of the RTB Protocol of Eastern Caribbean Economic Union, on “Environmental Sustainability”, makes implementation of the Saint George’s Declaration of Principles for Environmental Sustainability mandatory for the Protocol Member States (principles 1, 3, 4, 5 and 7, address active transparency and the meaningful and informed participation of society in decision-making on the environment, among other matters). The OECS was particularly pleased that the Escazú Agreement had been presented and welcomed by environmental sustainability ministers at their recent 5th Council of Ministers held in Montserrat in July, showing the commitment of Member States with accountability and public participation in sustainable development. He also recalled that the six OECS independent States had been actively involved in the negotiation of the Escazú Agreement and were members of CARICOM, whose Revised Treaty of Chaguaramas had important provisions in this regard, including article 65. He concluded by reiterating the OECS’ readiness to collaborate with UN ECLAC and key partners on the Escazú Agreement and related matters.

The delegate of Trinidad and Tobago delivered a presentation on the context and content of the Escazú Agreement, focusing on the genesis of the process, the evolution in the region, regional, sub-regional and international agreements, national policy and legislative frameworks and the role and provisions of the Escazú Agreement.

He highlighted that the origins of the Escazú Agreement were grounded in Principle 10 of the Rio Declaration on Environment and Development which recognized citizen participation, access to information and access to environmental justice. The spirit and letter of Principle 10 provided for more effective environmental governance in the context of sustainable development, enhancing democracies, economies and justice for society as a whole. In this sense, it was based on the greater recognition of environmental quality as a public good and a fundamental right and the increasing responsibility and role of the State to promote a culture of collective development based on participation and inclusiveness. It also contributed to a strategic vision of long-term development, active State policies and legislation to provide an enabling environment and building upon a system of fundamental values such as coherence, transparency and effectiveness.

International and regional commitments had also enshrined its basic tenets. The 2030 Agenda and the Sustainable Development Goals contained Principle 10 at their core. Furthermore, most Multilateral Environmental Agreements included access to information, public participation and access to justice provisions, such as the Paris Agreement or the Minamata Convention. At the regional level, CARICOM and the OECS had further developed access rights within their respective spheres of action. The 1989 Port of Spain Accord on the Management and Conservation of the Caribbean Environment and the 1991 Port of Spain Consensus both recognized the value of access to information and public participation in development. These were complemented by the Revised Treaty of Chaguaramas and the CARICOM Charter of Civil Society. In the OECS, the Saint George’s Declaration of Principles of Environmental Sustainability and the Revised Treaty of Basseterre were worthy of mention.

The evolution at the national level also reflected the increasing commitment of Caribbean governments with environmental access rights. National constitutions, physical planning laws, environmental laws and freedom of information laws were a few examples. Case law had likewise upheld basic common law principles relevant to the implementation of Principle 10, such as the concepts of legitimate expectations and natural justice and the right to a fair hearing.

In light of the aforementioned international, regional and national developments, the Escazú Agreement gained special importance for the Governments of the region. Not only was it a concrete expression of the ultimate goal of the 2030 Agenda (leaving no one behind), but it also established specific measures in favour of persons and groups in vulnerable situation and sought to overcome barriers to exercise access rights and to prevent any form of discrimination. Furthermore, it focused on basic democratic rights such as governance, transparency, accountability, inclusion, participation and sought to strengthen informed decision-making for governments, individuals and the private sector. It provided legal certainty, channelled public participation and reduced socio-environmental conflict, building legitimacy and social cohesion. Given the centrality of capacity-building and cooperation, Governments of the region could also seek assistance in implementing their national and international legal and policy frameworks, which was key in environmental matters.

Subsequently, Mr. Kumarsingh summarized the content of the regional agreement, paying particular attention to articles 1 (objective), 5 and 6 (environmental information), 7 (public participation in environmental decision-making), 8 (access to justice), 9 (human rights defenders in environmental matters) and articles 10-12 (capacity-building, cooperation and clearinghouse).

Article 1 defined the objective of the agreement, which was “to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, 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.”

Articles 5 and 6 dealt with active and passive transparency and provided for accessibility of environmental information and the conditions applicable to its delivery. In this regard, there was an obligation to ensure the public’s right of access to environmental information in accordance with the principle of maximum disclosure and to facilitate access for persons or groups in vulnerable situations. These had to be implemented considering the causes of refusal of access to environmental information as well as the definition of environmental information. In terms of generation and dissemination of environmental information, mention was made of environmental information systems, Pollutant Release and Transfer Registers, periodic reports on the state of the environment and information on authorizations and permits. Of particular interest to the Caribbean was the obligation to immediately disclose and disseminate through the most effective means all pertinent information in cases of imminent threat to public health or the environment and to develop and implement early warning systems.

Article 7 aimed to ensure the public’s right to participation through open and inclusive participation. This would be implemented through guarantee mechanisms for the participation of the public in decision-making processes with respect to projects and activities as well as the promotion of public participation with respect to other environmental matters of public interest, such as land-use planning, policies, strategies, plans, programmes, rules and regulations, which have or may have a significant impact on the environment. Public participation had to take place from the early stages with reasonable timeframes. In addition, the public had to be provided with the necessary information in a clear, timely and comprehensive manner and had to right to make representations that should be given due consideration. Public participation had to be also adapted to the social, economic, cultural, geographical and gender characteristics of the public and affirmative measures had to be undertaken for the directly affected public.

With respect to article 8 on access to justice, it referred to both judicial and administrative mechanisms in cases related to environmental information, public participation and any other decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment. Such article mandated States to have competent State entities with access to expertise in environmental matters and effective, timely, public, transparent and impartial procedures that are not prohibitively expensive, among others. Furthermore, each Party shall establish measures to minimize or eliminate barriers to the exercise of the right of access to justice and special consideration had to be granted to persons and groups in vulnerable situations.

Article 9 provided guarantees to human rights defenders in environmental matters, providing a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity. This included taking adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters as well as to prevent, investigate and punish attacks, threats or intimidations they may suffer while exercising the rights set out in the agreement.

For their part, articles 10 to 12 contained provisions for the creation and strengthening of national capacities, based on national priorities and needs (training authorities and civil servants on environmental access rights; providing competent institutions with adequate equipment and resources or developing awareness-raising and capacity-building programmes) and on cooperation to strengthen national capacities (workshops, expert exchanges, technical assistance, education and observatories). Particular consideration was given to least developed countries, landlocked developing countries and small island developing States from Latin America and the Caribbean and partnerships with States from other regions, intergovernmental, non-governmental, academic and private organizations, as well as civil society organizations and other relevant stakeholders are fostered. A clearinghouse was also foreseen.

The delegate finalized his presentation by expanding on the added value of the Escazú Agreement from a Caribbean standpoint. In his view, the Escazú Agreement had at its ultimate objective the protection of the environment but it was much more than an environmental agreement as it deepened democracy and set out fundamental rights. It evidenced shared values and interests, enhanced the region's reputation internationally and levelled the playing field in the region. Moreover, it fostered South-South cooperation, assisted in garnering resources and capacity-building and supported the implementation of international agreements. An illustrative example of the latter was precisely the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, as many of their provisions were directly hinged on various aspects of the Escazú Agreement, such as the climate education, public awareness, public participation and public access to information or the enhanced transparency framework. In conclusion, the Escazú Agreement contained all the essential ingredients for effective environmental governance, strengthening responsibility, transparency, and accountability at the national level, thereby increasing confidence for financial investment and economic growth, enhanced environmental quality and ultimately the enhancement of the quality of life for the average citizen.

Mr. Santiago Villalpando, Chief of the Treaty Section of the United Nations Office of Legal Affairs addressed the legal requirements and practical arrangements for States to participate in the Escazú Agreement. He recalled that article 25 of the agreement appointed the Secretary-General of the United Nations as its depositary and that the Treaty Section of the United Nations Office of Legal Affairs discharged such depositary functions on his behalf. This meant that all matters relating to the participation of States in the Agreement (i.e. signing and becoming a party to it) were handled exclusively by the Treaty Section. He further explained that the depositary was the custodian of the original treaty (in that regard it circulated the Certified True Copies of the Agreement, which can be also accessed through <https://treaties.un.org>) and all instruments relating to the States' participation in the agreement, as well as

the authority determining, *inter alia*, when the agreement enters into force and which are the parties thereto.

Mr. Villalpando briefly described the phases in the life of a multilateral treaty, such as the Escazú Agreement. On 4 March, the Negotiating Committee adopted the Agreement at Escazú, in Costa Rica. The adoption of the Agreement signalled the end of the negotiations. From that moment on, the text of the Agreement was final and not subject to further changes, except in the form of amendments (as provided in the Agreement itself). The next step was the opening for signature of the Agreement, which was already set in article 21, paragraph 1, of the Agreement itself providing that it will take place on 27 September 2018. The Agreement was open for participation by any of the countries of Latin America and the Caribbean (which are, for clarity, explicitly enumerated in the Annex to the Agreement) and will remain open for signature for two full years, until 26 September 2020.

By signing the Agreement, a State will signal its political commitment to start the formal procedures required under its domestic law towards becoming a party to the Agreement. According to international law, by signing the Agreement, a State also undertakes the legal obligation to refrain from any acts which would defeat the object and purpose of the Agreement.

However, the signature did not yet express the State's consent to be bound by the Agreement. As article 21, paragraph 2, indicated the Escazú Agreement was "subject to the ratification, acceptance or approval of the States that have signed it". For a State to be bound by the Agreement, it shall not only sign it, but also deposit with the Secretary-General an instrument by which it undertakes faithfully to perform and carry out the stipulations that are contained therein. Such an instrument may have different names (ratification, acceptance or approval) depending on the requirements and processes required under domestic legislation. Internationally, however, they all had the same legal effect: to express the commitment of a State to be bound by the Agreement on the international plane. The internal procedure to do so varied depending on the country: some required a ratification process with the intervention of the legislative body; some other countries allowed, at least in certain areas, for the executive action to take action (acceptance).

He pointed out that ratification by the legislative body and promulgation by a Head of State or Government did not suffice for a State to become a party to the Agreement internationally. This required a deposit of a formal instrument of ratification, acceptance or approval with the Treaty Section.

If a country were not to have signed by the expiry of the two-year period provided for by the Agreement a State could still become a party. As indicated by article 21, paragraph 2, from the day after the date on which it is closed for signature, the Agreement shall remain open to accession. Accession had precisely the same legal effect as a ratification (i.e., it expresses the consent to be bound by the Agreement on the international plane), except that it was not preceded by a signature.

The Escazú Agreement, as most multilateral treaties, requires that a number of States accept to be bound by it for it to enter into force. Under article 22, the Agreement shall indeed enter into force only after the deposit of the eleventh instrument of ratification, acceptance, approval or accession. This meant that the first ten States who will ratify the Agreement shall not yet be bound by it. They will only be bound once this number is reached. It will be up to Treaty Section to inform when this takes place. Thereafter, additional States may continue to adhere to the Agreement and become parties to it.

When the Agreement enters into force, the phase of its implementation begins, one of the first steps of which will be the convening of the first Conference of the Parties. Since this concerns the implementation, this process will be handled by UN ECLAC.

Mr. Villalpando also referred to the logistics of the ceremony for the opening for signature, scheduled to take place on Thursday, 27 September 2018 at 10 a.m. The ceremony is part of the Treaty Event, organized each year in conjunction with the general debate of the General Assembly, and will take place in the Treaty Event Area, which is in the so-called “Kuwaiti Boat Area” in the building of the General Assembly, at the United Nations Headquarters in New York.

The Treaty Event Area is especially set up for treaty ceremonies. The ceremony will be officiated by the Legal Counsel, with Mr. Villalpando’s assistance, with the presence of Ms. Alicia Bárcena, Executive Secretary of UN ECLAC.

In addition to the authority who will sign the Agreement on behalf of the State, two additional officers may comprise each delegation. It will be the responsibility of each delegation to ensure that it is at the location at the appropriate time. The ceremony will start promptly at 10 am. Given the expected very high-level level of representation, which may include Heads of State and Government, any possible delays must be avoided.

Authorities will be called to sign the Agreement in the depositary protocol order: first, Heads of State; then, Heads of Government; followed by Ministers for Foreign Affairs; other Ministers; and other authorities. Within each rank, the protocol is to follow the alphabetical order of the countries’ names in English. The dignitary will be invited to sign at the signature page for his or her State. There will be no speeches, expect some brief words from the Chairs of the process and Ms. Bárcena after the signatures. A group picture will conclude the event.

In his letter inviting Heads of State and Government to the Treaty Event, the Secretary-General has requested that any State wishing to participate in the event shall inform the Treaty Section preferably by 4 September. These communications should reach the Treaty Section through the Permanent Missions in New York.

With regard to the requirements for signature, Mr. Villalpando noted that in accordance with the international law of treaties and the established practice of the Secretary-General as depositary, Heads of State, Heads of Government and Ministers for Foreign Affairs may sign the Agreement without having to present full powers. In this case, therefore, it would be sufficient for the Permanent Mission to inform the Section of a State’s intention to sign the Agreement at the ceremony for the opening for signature, providing the name and title of the authority concerned.

Any other authority aside from the aforementioned may only sign the Agreement upon presentation of appropriate full powers, authorizing them to sign on behalf of the State. This includes any other members of Cabinet, including for example the Minister for the Environment. In this case, together with the communication expressing the State’s intention to sign the Agreement at the ceremony, the Permanent Mission shall send to the Treaty Section the name and full title of the authority and a copy of the signed instrument of full powers.

While the Escazú Agreement will formally open for signature at the ceremony on 27 September at 10 a.m., it will remain open for signature for two years. If a delegation were not able to participate in the ceremony, it may sign the Agreement at any other time, including at a later time on the same date and any other working day of the year until 26 September 2020.

On a final point, it is possible that some States may have already concluded their domestic processes and would be in a position to deposit their instrument of ratification, approval or acceptance on the day of the ceremony for the opening for signature. This may be done at the ceremony, immediately after a representative has signed the Agreement. The instruments of ratification, approval or acceptance are also subject to certain formal requirements. They shall explicitly indicate the title, date and place of conclusion

of the Escazú Agreement and contain an unambiguous expression of the intent of the State to consider itself bound by the Agreement and to undertake faithfully to observe and implement its provisions. It shall be signed by the Head of State, Head of Government or Minister for Foreign Affairs (no other authority is accepted) and contain the date and place where the instrument was issued.

If a State wants to deposit an instrument of ratification, approval or acceptance at the 27 September ceremony, the Permanent Mission must, in addition to the requirements for the signature, send a copy of the signed instrument to the Treaty Section for its review. Once it has ascertained that the instrument is in order, the Section will confirm that the instrument may be deposited at the ceremony.

Finally, Mr. Villalpando made himself and his office available for any questions, additional information or technical assistance that may be required in the signature and ratification process.

After the presentations of Mr. Kummarsingh and Mr. Villalpando, participants were invited to make comments and questions. Participants asked the panellists to clarify the deadline to notify the participation of a State in the opening for signature ceremony; what funding opportunities and resources foresaw the Escazú Agreement particularly in terms of capacity-building and cooperation; if an acting Minister of Foreign Affairs needed full powers to sign; if there were model instruments of signature and ratification; and what happened between the official opening for signature and the entry into force of the agreement.

With regard to the deadline to notify the participation of a State in the official signing ceremony, the suggested date to confirm participation was 4 September 2018 given that the Treaty Event was a broader event involving any multilateral agreement deposited with the Secretary-General, with formal protocol and organization procedures. However, all within reach would be done to allow the participation of a State if it decided to participate at a later stage.

As for the funding opportunities and resources allocated to capacity-building and cooperation, it was noted that the Escazú Agreement provided for a voluntary fund in its article 14 to support the financing of the implementation of the agreement, the functioning of which would be defined by the Conference of the Parties. Furthermore, article 11 established that parties shall give particular consideration to least developed countries, landlocked developing countries and small island developing States from Latin America and the Caribbean. Several international financial institutions, intergovernmental organizations, and countries outside the region had already expressed interest in supporting countries of the region in implementation and it was hoped that such opportunities would be widened with the signature and ratification process.

It was also mentioned that according to article 7 of the Vienna Convention on the Law of Treaties, the only authorities that did not require full powers were Head of State, Head of Government and Minister of Foreign Affairs. However, exceptionally, an authority acting on behalf of one of the said three authorities would not need full powers provided that she/he is at that point in time discharging the functions ad interim. Therefore, the Vice-President, the Vice-Prime Minister or the Deputy Minister of Foreign Affairs or any other authority not acting on behalf of one of the three authorities would require full powers, even if under domestic legislation they have authority to implement the agreement. The list maintained by the United Nations Office of Protocol was the one used for such purposes.

Additionally, participants were informed that a model instrument of full powers and of ratification, approval or acceptance were available at <https://treaties.un.org>.

For its part, the Final Act adopted at Escazú, Costa Rica, on 4 March 2018 contained the rules and procedures that governed the interim period between the opening for signature and entry into force. According to such Final Act, the Presiding Officers of the negotiating committee (two of which were Caribbean countries: Saint Vincent and the Grenadines and Trinidad and Tobago) would continue to steer

and conduct the necessary work, with signatory countries, significant participation by the public and the support of UN ECLAC as technical secretariat. The modalities for the participation of the public would also be applied *mutatis mutandis*. Capacity-building and cooperation would also continue regardless of the entry into force, given that Principle 10 is at the core of the 2030 Agenda and a priority for UN ECLAC and the United Nations system.

The Commonwealth Secretariat congratulated UN ECLAC on the treaty and countries of the region for the adoption of the Escazú Agreement. It expressed its interest on behalf of its member States and stated pointed out that the agreement was aligned with the provisions of the Commonwealth Charter and other instruments of which its Member States were a Party to.

UN ECLAC's Subregional Office for the Caribbean stated that the Escazú Agreement was aligned with the SAMOA Pathway and that this year its midterm review was being conducted. It offered to share the document with interested delegations.

Delegations were thankful to the organizers of the webinar and to the panellists and underscored their resolute commitment to continuing to work towards the implementation of environmental access rights and the Escazú Agreement.

3. CLOSING OF THE WEBINAR

At the end of the session, UN ECLAC thanked the panellists for their useful presentation and clarification of doubts as well as to delegates for their active participation. It invited governments to consider participating at the official signing ceremony at 10 a.m. on 27 September in New York and informed that in the afternoon another event would take place outside the General Assembly building organized by Chile, Costa Rica and UN ECLAC with civil society organizations. Finally, it reiterated its support to delegations in implementing environmental access rights and the environmental pillar of the 2030 Sustainable Development Agenda. More information on the Escazú Agreement was also available at: <http://www.cepal.org/en/escazuagreement>.