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First Annual Forum on Human Rights Defenders  
in Environmental Matters  
in Latin America and the Caribbean

Quito, 22-23 November 2022

**SUPPORT MATERIAL FOR IN PERSON AND VIRTUAL BREAKOUT GROUPS  
PREPARED BY THE SECRETARIAT**

This document which has not undergone editorial review, provides, for information purposes, some background information and possible elements to be considered in the discussions of the breakout groups to be held in person and virtually on 23 November 2022 in the framework of the First Annual Forum on Human Rights Defenders in Environmental Matters in Latin America and the Caribbean.

## **a. Introduction**

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (“Escazú Agreement”) is the first regional environmental treaty in Latin America and the Caribbean and the first in the world to include specific provisions for the protection of human rights defenders in environmental matters.

Article 9 of the Escazú Agreement establishes that each Party shall guarantee 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. In addition, each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, as well as take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that they may suffer while exercising the rights set out in the Agreement.

In order to support the implementation of Article 9 of the Agreement, the First Meeting of the Conference of the Parties to the Escazú Agreement (COP1), held in Santiago from 20-22 April 2022, adopted Decision I/6 on Human Rights Defenders in Environmental Matters<sup>1</sup>. This decision established an open-ended ad hoc working group on human rights defenders in environmental matters (hereafter Working Group). The Working Group led and coordinated by Chile, Ecuador and Saint Kitts and Nevis.

One of the main objectives of the Group, according to the Decision, is the preparation of “an action plan in that regard, to be presented at the second ordinary meeting of the Conference of the Parties for consideration and adoption” (in 2024). The Parties to the Escazú Agreement also decided at COP1, “to hold an annual forum on human rights defenders in environmental matters with recognized specialists in the field, with the assistance of the Secretariat (ECLAC) following which a final report will be prepared to serve as an input for drafting and review of the relevant action plan”.

At the first virtual meeting of the Working Group held on 28 October 2022, the coordinating countries presented a work schedule for the elaboration of the Action Plan on human rights defenders in environmental matters. The schedule indicates that, as a first step, an annotated index with the fundamental contents and axes for the development of the Plan of Action will be presented at the Conference of the Parties in 2023.

Consequently, the present document prepared by the Secretariat of the Escazú Agreement aims to contribute with background information and possible elements to consider on the subject for the discussion that will take place at the four breakout groups to be held during the Forum on 23 November 2022.

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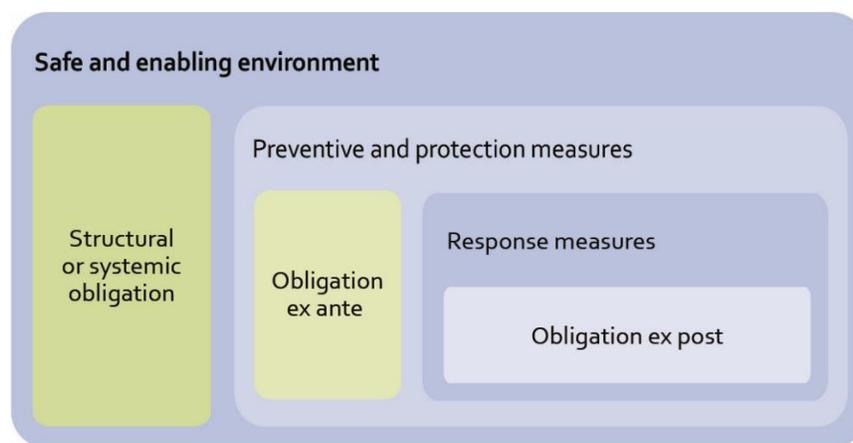
<sup>1</sup> Decision I/6 available at: [https://acuerdodeescazu.cepal.org/cop1/sites/acuerdodeescazu1/files/22-00344\\_cop-ez.1\\_decisions\\_approved\\_4\\_may.pdf](https://acuerdodeescazu.cepal.org/cop1/sites/acuerdodeescazu1/files/22-00344_cop-ez.1_decisions_approved_4_may.pdf)

## b. Overview of Article 9 of the Escazú Agreement

According to ECLAC's Escazú Agreement Implementation Guide, the content of Article 9 can be structured around three main clusters of obligations<sup>2</sup>:

- a. Structural or systemic obligation to ensure a safe and enabling environment (Article 9, first paragraph);
- b. Obligation to take preventive and protective measures *ex ante* (Article 9, second and third paragraphs); and
- c. Obligation to take response or *ex post* measures (Article 9, third paragraph).

### Structure of article 9 of the Escazú Agreement<sup>3</sup>



The breakout groups have been organized around the obligations of Article 9 of the Escazú Agreement, with the addition of a fourth theme on cooperation and follow-up of the action plan to be adopted in 2024.

The Guide elaborated by ECLAC, which is based on the different applicable international and regional standards, such as reports of the UN Special Rapporteurs on the subject and the Office of the High Commissioner for Human Rights (OHCHR)<sup>4</sup>, provides guidance to support the understanding of each of the Article 9 obligations, as well as their implementation in practice.

<sup>2</sup> ECLAC, Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean. Implementation Guide, 2022, LC/TS.2021/221, available at: [https://www.cepal.org/sites/default/files/news/files/21-00641\\_pfc-white\\_paper-escazu\\_implementation\\_guide.pdf](https://www.cepal.org/sites/default/files/news/files/21-00641_pfc-white_paper-escazu_implementation_guide.pdf)

<sup>3</sup> Source: Economic Commission for Latin America and the Caribbean (ECLAC).

<sup>4</sup> See: 1) Human Rights Council, "Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya" (A/HRC/25/55), New York, 2013; 2) United Nations, Situation of human rights defenders: note by the Secretary-General (A/71/281), New York, 2016; 3) United Nations, Human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment: Note by the Secretary-General (A/73/188), New York, 2018; 4) Human Rights Council, "Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society based on good practices and lessons learned: report of the United Nations High Commissioner for Human Rights" (A/HRC/32/20), New York, 2016, among others.

Some of these guidelines are as follows:

### 1) Safe and enabling environment (structural or systemic obligation)

*Article 9.1: Each Party shall guarantee 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.*

Paragraph 1 of article 9 should be read in conjunction with paragraphs 2 and 6 of article 4, which call for the free exercise of the rights contained in the Agreement and reinforce the obligation to guarantee an enabling environment for the work of persons, associations, organizations or groups that promote environmental protection. This can be considered as a **general, structural, or systemic obligation**.

The concept of “safe and enabling environment”, which is broadly recognized in international human rights law, refers to the general, structural or systemic conditions in a given context that make it possible for people to live in a safe and enabling environment:

- To exercise fully and freely all rights, including access rights (information, participation and justice in environmental matters).
- Without discrimination, threats, restrictions or insecurity when exercising these rights.

Some of the elements to be considered in this obligation would include<sup>5</sup>:

- To have in place an **enabling legal, institutional and administrative framework** that allows for the adoption and implementation of legislative, administrative and other measures at all levels needed for the State to guarantee the rights, protect, support and empower human rights defenders in environmental matters.
- To have **strong, independent and effective national human rights institutions** that are responsive to and supportive of the work of defenders.
- To **publicly recognize the contributions of human rights defenders** to society and provide public support for their work.
- To have **human rights education programmes** in place and provide adequate **training for security agents** and officers in charge of law enforcement.
- To provide **long-term support and resources for civil society** and **promote a strong, dynamic and diverse community** of human rights defenders.
- To guarantee **the full and effective implementation of the provisions of the Escazú Agreement** on rights of access to information, participation, and justice as a whole.

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<sup>5</sup> ECLAC, Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean. Implementation Guide, 2022, LC/TS.2021/221.

## Examples of measures for ensuring a safe and enabling environment

### Legal framework

- Human rights treaties, the Escazú Agreement, the Constitution, laws, regulations, decrees, resolutions, or others that recognize, protect and promote the rights of defenders.

### Institutional framework

- Specialised human rights units
- Independent national human rights institutions
- Independent and impartial judicial authorities

### Administrative framework

- Training and capacity-building programmes for security agents and civil servants
- Human rights education programmes and policies
- Protection and early warning mechanisms and programmes
- Support, capacity-building and resource measures for civil society
- Public recognition of the work of human rights defenders, raising awareness activities, etc.

## 2) Protection measures

*Article 9.2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.*

Under Article 9.2 of the Escazú Agreement, States commit to taking into account the international obligations of each Party in the field of human rights, their constitutional principles and the basic concepts of their legal system, to:

- a. **Recognize all the rights of human rights defenders in their national frameworks, both in law and in practice.** The list of rights in article 9.2 is neither exclusive nor exhaustive, as all human rights of defenders must be protected. However, the article also specifically mentions the ability of defenders to exercise their rights of access.
- b. States should also **protect individuals and groups against human rights violations committed by third parties.** To this end, States have designed different **protection measures and programmes** to ensure the security and personal integrity of human rights defenders in situations of imminent risk.
- c. Finally, **promoting these rights is an obligation**, which requires the State to act proactively. The obligation to respect human rights is implicit in the mandate to recognize and protect those rights.

In addition, these **measures must be “adequate and effective”**, which means that they must be appropriate and suitable **in each particular situation and in the context of each Party**<sup>6</sup>.

The former Special Rapporteur Michel Forst on the situation of human rights defenders has identified **seven principles underpinning effective practices for the protection of human rights defenders**:<sup>7</sup>

- Such practices should be rights-based, empowering defenders to know and claim their rights;
- Be inclusive by recognizing the diversity of defenders;
- Take gender issues into account in protection and apply an intersectional approach to risk assessment and to the design of protection initiatives;
- Focus on the “holistic security”<sup>8</sup> of defenders, in particular their physical and digital security, and psychosocial well-being;
- Be people and group oriented, i.e. include the groups, organizations, communities and families who share the risks with them;
- Be flexible, adaptable and appropriate to the specific needs and circumstances of defenders and;
- Be participative in the design, selection, implementation and evaluation of protection strategies and tactics, including the participation of the defenders themselves.

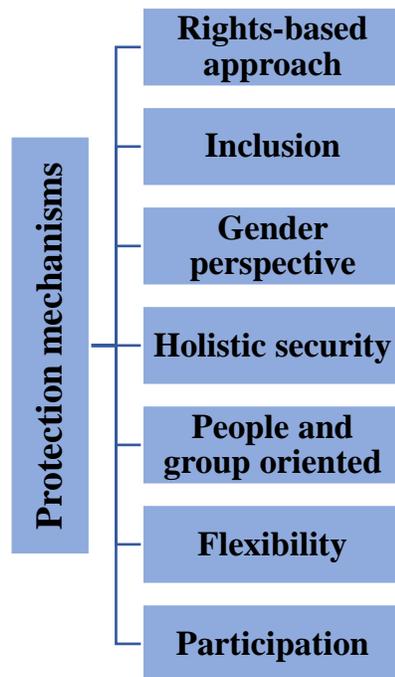
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<sup>6</sup> States have designed different protection measures and programmes to guarantee the security and personal integrity of human rights defenders in situations of imminent risk. These measures include creating specialized units aimed at protecting and investigating crimes against human rights activists, establishing an early warning system and protection provided by police and bodyguards, and creating programmes aimed at urgently relocating defenders to another region or country. See Observatory on Principle 10 in Latin America and the Caribbean, “Defenders”: <https://observatoriop10.cepal.org/en/rights/defenders>

<sup>7</sup> See Human Rights Council, "Report of the Special Rapporteur on the situation of human rights defenders: note by the Secretariat" (A/HRC/31/55), New York, 2016.

<sup>8</sup> In the Report A/HRC/31/55, the Special Rapporteur notes that protection practices should focus on strengthening the security of defenders through a holistic approach. This means that security should not be conceived exclusively as physical security, but as the result of multiple dimensions, such as economic security, political security, environmental security, digital security, and psychosocial well-being (paragraph 44).

### Principles for the Protection of Human Rights Defenders <sup>9</sup>



### 3) Response measures and access to justice

*Article 9.3 Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.*

This paragraph encompasses two dimensions: **prevention and response**. The need for a preventive approach is a cross-cutting element that guides the application of article 9 as a whole and it is intrinsically linked to the protection of defenders and to the establishment of a safe and enabling environment.

If a violation occurs in spite of a safe and conducive environment and prevention and protection measures, States must **take response measures to investigate and punish attacks, threats or intimidation** experienced by human rights defenders in environmental matters while exercising the rights contained in the Agreement and avoid impunity.

The obligation under this paragraph is consistent with universal human rights treaties and the Declaration on Human Rights Defenders, the general comments and observations of the UN Human Rights Committee, and reports of UN Special Rapporteurs on the matter, which state that their main elements include<sup>10</sup>:

<sup>9</sup> See Human Rights Council report A/HRC/31/55, New York, 2016, paragraphs 110 onwards.

<sup>10</sup> See United Nations, Situation of Human Rights Defenders: Note by the Secretary-General (A/71/281), New York, 2016; Human Rights Committee, "General Comment No. 36. Article 6: Right to life" (CCPR/C/GC/36), New York, 2019; United Nations, Situation of Human Rights Defenders: Note by the Secretary-General (A/74/159), New York, 2019; United Nations, Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Note by the Secretary-General (A/75/161), New York, 2020; Human Rights Committee, "General

- Conduct **independent, impartial, prompt, thorough, effective, reliable and transparent investigations of alleged violations (or due diligence in investigating)**<sup>11</sup>.
- The right of all defenders, individually or collectively, to have **effective remedies** and to be protected in case of violation of these rights, **before an independent, impartial and competent judicial or other authority** established by law.
- The possibility of obtaining **full reparation**, including appropriate compensation, when their rights or freedoms have been violated.<sup>12</sup> In addition, the State's obligation to take measures to **prevent similar violations in the future** (or guarantees of non-repetition).<sup>13</sup>
- The decision and **the judgment must be executed without undue delay**.
- Measures necessary to **protect witnesses, victims and their families, and those conducting investigations**, from threats, attacks and any acts of reprisal.
- Finally, according to the Escazú Agreement, all measures must be **effective, appropriate and timely**, in each particular situation and in the context of each Party.

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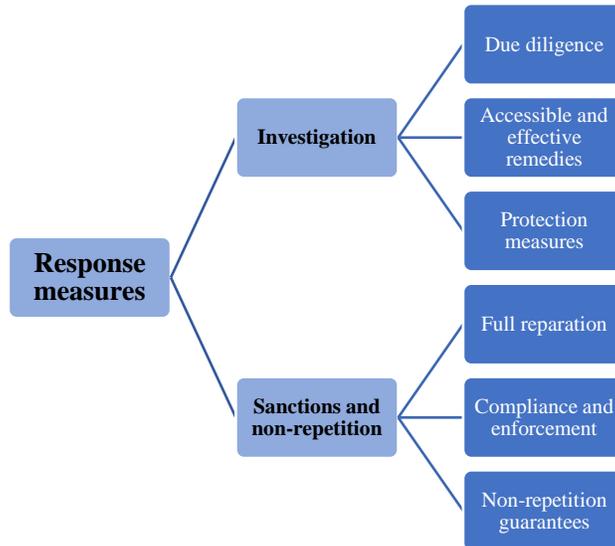
Comment No. 31 [80]: Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (CCPR/C/21/Rev.1/Add.13), New York, 2004.

<sup>11</sup> United Nations, Situation of Human Rights Defenders: Note by the Secretary-General (A/74/159), New York, 2019

<sup>12</sup> Full reparation may consist of measures of compensation, restitution, rehabilitation and satisfaction, "including public apologies and official testimonies, guarantees of non-repetition, and reform of applicable laws and practices, as well as prosecution of perpetrators of human rights violations". See Human Rights Committee, "General Comment No. 31 [80]: Nature of the general legal obligation imposed on States parties to the Covenant" (CCPR/C/21/Rev.1/Add.13), New York, 2004.

<sup>13</sup> See Human Rights Committee, "General Comment No. 31 [80]: Nature of the general legal obligation imposed on States parties to the Covenant" (CCPR/C/21/Rev.1/Add.13), New York, 2004.

## Response measures and access to justice



### 4) Cooperation and follow-up of the Action Plan (cross-cutting)

One of the central features of the Escazú Agreement is its focus on **capacity building and cooperation**, given the different contexts and realities in the Latin American and Caribbean region. The Agreement's approach also understands that sharing and transferring capacities through cooperation between the actors involved is always a good practice. Implementation will be a long-term, ongoing process where capacity building and cooperation will provide opportunities for States Parties to improve themselves and ensure that access rights are effectively implemented. Therefore, capacity building and cooperation are seen as a driving force behind the treaty as a whole. They are **a cross-cutting pillar underpinning the implementation and enforcement of all other provisions** of the Agreement, including Article 9.

Article 10 of the Escazú Agreement is dedicated to capacity building and Article 11 to cooperation specifically. The ultimate **objective of cooperation is to build and strengthen national capacities to implement the Agreement**, based on the priorities and needs of each Party.

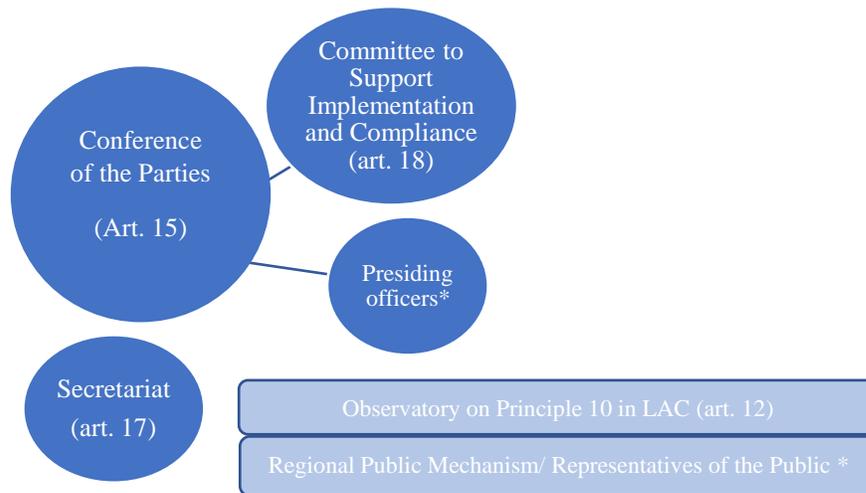
In addition, Article 12 establishes a virtual, universally accessible **clearinghouse on access rights** to support the implementation of the provisions of the Agreement<sup>14</sup>.

In addition to Articles 10, 11 and 12, the Agreement also provides for an **institutional architecture aimed, inter alia, at strengthening capacities and fostering cooperation to support the implementation** of the treaty. It establishes a Conference of the Parties, a Committee to Support Implementation and Compliance, and a Secretariat.

For example, the Conference of the Parties can formulate recommendations regarding the implementation of the treaty, undertake follow up and support resource mobilization, the Secretariat can provide assistance to Parties upon request, and the Committee to Support Implementation and Compliance can assist in capacity building for the protection of human rights defenders.

<sup>14</sup> See Observatory on Principle 10 in Latin America and the Caribbean: <https://observatoriop10.cepal.org/en>

## Institutional architecture of the Escazú Agreement<sup>15</sup>



\* See Decision I/1 of the First Meeting of the Conference of the Parties to the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Santiago, 20-22 April 2022.

As mentioned, the First Meeting of the Conference of the Parties to the Escazú Agreement (COP1), in its Decision I/6, agreed to establish an “open-ended ad hoc working group on human rights defenders on environmental issues”.

One of the main objectives of the Group, according to the Decision, is the elaboration of “an action plan in that regard, to be presented at the second ordinary meeting of the Conference of the Parties for its consideration and adoption” (in 2024).

Hence, the Action Plan to be adopted at the regional level could establish a set of strategic actions to advance towards the full and effective implementation of Article 9 on human rights defenders in environmental matters, identifying guidelines that, in turn, support implementation at the national level in the States Parties to the Escazú Agreement.

### c. Questions for discussion at the breakout groups

The objective of the breakout groups that will meet on the second day of the Forum is to hold an initial dialogue to learn about and gather proposals and comments for the preparation of the annotated index of the Action Plan. For this purpose, the breakout groups will address the following topics:

- Group 1: Safe and enabling environment (structural or systemic obligation)
- Group 2: Protection measures
- Group 3: Response measures and access to justice
- Group 4: Cooperation and follow-up to the Action Plan (in person only)

<sup>15</sup> Source: Economic Commission for Latin America and the Caribbean (ECLAC).

In groups 1, 2 and 3, the following questions will be discussed:

1) Do you have any proposals, with respect to the subject matter of your breakout group, that could be implemented by the following bodies that compose the institutional framework of the Escazú Agreement?

- the Conference of the Parties
- the Committee to Support the Implementation and Compliance with the Escazú Agreement; or
- the Ad Hoc Working Group on Environmental Human Rights Defenders.

2) With regard to the subject of your group, do you identify any good practices or examples of measures to be implemented at the national level?

3) Regarding capacity building, what should be the priority actors whose capacities need to be strengthened to address the issue discussed in your group?

Group 4 will discuss the following questions:

1) How could the Parties or the Conference of the Parties cooperate in the implementation of the future Action Plan?

2) How could the Committee to Support Implementation and Compliance cooperate in the implementation of the future Action Plan?

3) How could the public cooperate in the implementation of the future Action Plan?

After the Forum, the contributions of the breakout groups will be systematized and included in the final report of the Forum, which will be a relevant input for the elaboration of the Action Plan's annotated index.

#### d. Suggested bibliography

##### ECLAC:

- Official website of the Escazú Agreement: <https://www.cepal.org/en/escazuagreement>
- Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, available at: [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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##### Universal system:

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