



National Legal and
Policy Assessment to
**Support Ratification
and Implementation of
the Escazú Agreement**



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The Access Initiative (TAI) is the world's largest network of civil society organizations working to ensure that people have the right and ability to influence decisions about the natural resources that sustain their communities. Working in their respective countries, TAI partners form national coalitions that assess the performance of their governments to provide the public with

- access to information about government decisions,
- public participation in decision-making, and
- access to justice when their rights to information, participation, and a clean environment are violated.

The right to obtain government information, right to participate in government decision-making, and the right to seek justice are a bundle of valuable rights which we call 'access rights.' TAI Partners use assessments to advocate for legal, institutional, and practice reforms, raise public awareness, and engage their governments in a constructive dialogue to create change within their countries. The World Resources Institute (WRI) functions as the Global Secretariat to TAI.

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ESCAZÚ AGREEMENT ASSESSMENT

OBJECTIVE

The objective of the “*Escazú Agreement* legal and policy assessment” is to assess gaps in national legislation and policy for countries in order to support ratification and implementation of the Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean (hereafter the *Escazú Agreement*). The *Escazú Agreement* has been recognized by the United Nations Economic Commission for Latin America and the Caribbean, the secretariat for the agreement, as a ground-breaking legal instrument for environmental protection and a human rights treaty the main beneficiaries of which are the people of our region, particularly the most vulnerable groups and communities. The assessment tool has been created by The Access Initiative Network and the World Resources Institute in collaboration with regional experts from civil society and governments. The assessment tool is intended to be useful to governments and civil society in the process of assessing readiness for ratification and implementation of the agreement. The assessment can be carried out repeatedly, tracking changes over time as it creates a standardized and replicable approach to assessing a government’s ability to implement the agreement through law and policy.

The *Escazú* Legal and Policy Assessment was inspired by the Aarhus Index methodology prepared by the Access Initiative, TAI European Partners,¹ and the World Resources Institute.

SCOPE

The assessment covers a set of 67 legal and policy indicators responding to articles of the *Escazú Agreement* relating to the Access to Information Pillar, Public Participation Pillar, and Access to Justice Pillar and Capacity Building Pillar of the agreement, as well as provisions on environmental human rights defenders. The assessment does not evaluate practice. The indicators in the assessment will enable researchers to identify gaps in the quality of a country’s laws and policies when compared with the standards set out in the *Escazú Agreement* provisions.

We have excluded from the assessment some listed provisions of the agreement that create very general soft legal obligations, are overlapping with others, or focus on practice in implementation. The articles excluded from the assessment are articles 3, 4.2, 4.3, 4.7, 4.8, 4.9, 4.10, 5.9, 5.14, 5.16, 6.7, 6.8, 6.11, 6.13, 7.1, 7.10, 7.11, 7.12, 7.13, 8.3(a), and 8.7. Article 3 of the *Escazú Agreement* on Principles is excluded as these principles are intended to be guidance for implementing the agreement.

METHODOLOGY

This methodology seeks to support ratification of the *Escazú Agreement* by assessing articles of the agreement that can be interpreted as minimum mandatory requirements for countries seeking to become parties and which would require implementation in law or policy. The methodology also assesses other articles which may not mandate specific legal or policy measures to be taken by parties to the *Escazú Agreement* but which nonetheless support a party’s overall implementation of the agreement.

For the purposes of assessing the minimum requirements for ratification, there may be provisions in national law or policy that are in direct contradiction to the provisions of the agreement. This methodology can be used to identify such contradictory provisions. The *Escazú Agreement* sets a floor, not a ceiling for the types of provisions that should be adopted in national legislation, so it is possible that a country may have already introduced a law that already has broader access to information, more extensive public participation, and/or wider access to justice rights than the agreement requires. This should be considered by the legal or policy researcher. Where a country has no legal or policy provisions it is still important to indicate any relevant guidance (voluntary or otherwise) which addresses the indicator.

LEGAL AND POLICY INDICATORS

While all parties to the Escazú Agreement must perform their obligations in good faith and cannot use their domestic law to justify failure to comply,² some provisions in the Escazú Agreement, by their wording, do not require implementation by law; and such provisions may be fulfilled by policy. This is contemplated in the agreement as it is stated in article 4.3, each party must “adopt the necessary measures, of legislative, regulatory, administrative, or any other nature in the framework of its domestic provisions to guarantee the implementation of the provisions of the [Escazú Agreement].”

There may be cases where express mention is made of national legislation, for example by using terms like “in the framework of its domestic legislation” (e.g., article 8.2); and the implication is that the national law should give effect to the obligation. In other cases where there is no express reference to national legislation, the provision is examined on a case-by-case basis to determine whether the nature of the obligation warrants implementation in national law to be effective, based on the national context and legal system of the country. An example would be the procedural requirements for how to request access to environmental information under article 5, which if not complied with, could give rise to a cause for an appeal or legal challenge.

There are also provisions where obligations are framed using soft language, such as “each party shall encourage” or “promote,” and where the nature of the obligation implies flexibility in the way each party can implement it based on their national system and context by the use of discretionary language, such as “may,” or reference to terms, such as “as appropriate” or “to the extent possible.” In many of these cases, a policy or practice would suffice to ensure implementation (e.g., article 6.1 on creation of environmental information systems).

Where the indicators focus only on a legal question, it can be construed from the agreement’s wording that countries must create rights to information, participation, and access to justice in legislation that is enforceable before the courts.³ While in Latin America many national civil law systems may differ, for the majority of commonwealth countries, with the exception of Suriname and Haiti, the provisions of the Escazú Agreement must be incorporated into domestic legislation to be enforceable in national law by an affected party. The failure to incorporate some provisions into national law, especially those that seek to restrict rights or convey duties by the government or third parties, while attempting to implement them could result in legal claims concerning their enforceability.⁴ A good starting point is to ensure that those rights are recognized and clearly written down in the legal framework including the constitution, national laws, and regulations.

CONDUCT OF THE RESEARCH AND REPORT

The assessment should take no longer than three to four weeks to complete in full. The research should be conducted by an environmental lawyer who is well-versed in laws relating to environmental democracy. There are three stages to the research and review: First the environmental lawyer will have to review environmental protection laws, sectoral laws governing air and water quality, forests, biodiversity, extractive industries and environmental impact assessments,⁵ as well as the general freedom-of-information law(s) or the law(s) that provide for access to environmental information at the national level and the laws concerning administrative and judicial review procedures, including costs, remedies, and injunctive relief. Where they have not considered all of these laws with regard to any indicator, the researcher or reviewer should say so and explain the reason. The researcher should consider primary and secondary legislation.⁶ In cases where a country has no legal or policy provisions, it is still important to indicate any relevant guidance, voluntary or otherwise, that addresses the indicator.

Second, with regard to each legal or policy indicator, the researcher should do a general assessment of complete enactment or gaps in provisions, taking into consideration legislation, legal precedents, policy, and other rules of procedure.

The legal researcher should describe the content of what is in the law or policy and what is missing and then provide a rating of enacted in legislation, incorporated in policy, partial enactment in law or policy, or contradictory enactment with a short explanation.

In relation to each section, researchers should indicate whether there are laws that contradict the Escazú Agreement or go further than its standards in providing greater transparency or rights of participation or justice. This methodology includes assessment of the definition provisions as they relate to each article throughout the agreement.

The researcher should use the following five typologies to rate each result:

Completely Enacted in Legislation	a. Literal enactment in statute
	b. Effective enactment through precedent or other legally binding rules
	c. Enactment in legislation, which goes further than required
Incorporated in Policy	Literally included in policy only
Partial Enactment in Law or Policy	Some but not all elements of the Escazú provision included in national law or policy
Absence of Operational Provisions in Law or Policy	No operational provisions in law or policy
Contradictory Enactment in Law or Policy	Direct contradiction to Escazú provision in law or policy

Definitions

Interpret the word *literal* to mean instances where the provision uses exactly or almost exactly the same language as the relevant provision of the agreement. In cases where the language is almost exactly the same (e.g., where the legislation cross-refers to provisions of the *agreement*, or when the enacting legislation specifies a competent authority in a particular context where the *agreement* refers to "the competent authority"), researchers should quote the language from the enacting legislation in the notes column in providing their reasoning.

Interpret the word *effective* to mean instances where the objective of the relevant provision of the agreement is met. In cases of effective enactment, researchers should quote the language from any enacting legislation, legal precedents, and other rules of procedure in the notes column in providing their reasoning.

Interpret the word *contradictory* to mean instances where the party in question has legislation that contradicts the relevant provision of the agreement, that is, where there may be a possible intention to go directly against Escazú obligations or there is contradictory national legislation or where there is no law or policy.

REPORT

The review and write-up of a report should then be developed as a short document of approximately 10 pages. The report should have three sections, which include the following information:

1. Overall findings of the country's preparedness to ratify or implement the Escazú Agreement in terms of legal and policy framework;
2. A color-coded table outlining a country's performance for each pillar, identifying if the agreement was enacted in legislation, incorporated in policy, partially enacted in law or policy, absence of provision or enactment contradictory to law or policy; and
3. Recommendations for action.

The third stage is the review of the report. The report should then be shared with the general public to discuss a plan of action for reform.

INSTRUCTIONS

To fill out the research templates, in the column on Assessment Results and Provisions, researchers should provide the following information:

- Reference to the relevant national provision(s) (i.e., name of law, article, paragraph, subparagraph, URL to the law if available, etc.). If there are various enacting measures, the first legal act or policy to be cited should be the most relevant instrument enacting the agreement, but all relevant provisions should be cited.
- The complete text of relevant national provision(s).

In addition to referring to enacting legislation, researchers should, where relevant, base their analysis on relevant decisions of judicial and administrative bodies. The researchers need to draw on the decisions of any other national, regional, or international judicial or administrative bodies that are relevant to the analysis. Any decisions on which the researchers have relied should be cited in full in the relevant box. In instances where policy is relied upon, the researchers should include web links to the relevant policy document when available.

I. GENERAL PROVISIONS

Escazú Provision	Legal and Policy Indicators
<p>Art. 4.1</p> <p>“Each Party shall guarantee the right of every person to live in a healthy environment and any other universally recognized human right related to the present Agreement.”</p>	<p>1. Does the law guarantee the right of every person to live in a healthy environment and any other universally recognized human right related to the present agreement?</p> <p>Review and indicate the inclusion of any legislation and jurisprudence, in particular constitutions that specify the right to a healthy environment and other universally recognized human rights, in particular, the right to information, participation, and access to justice. Also specify if there are any other details of the right to live in a healthy environment provided or other specific rights in their own regard: e.g., the right to clean water, air, or natural resources, as well as if the rights for future generations are mentioned. The researchers should also check if these rights are further specified in any other law or court case.</p>
<p>Art. 4.4.</p> <p>“With the aim of contributing to the effective application of the present agreement, each party shall provide the public with information to facilitate the acquisition of knowledge on access rights.”</p>	<p>2. Does any law or policy oblige the government to ensure that the public has information to help people understand their rights to information, participation, and access to justice?</p>
<p>Art. 4.5</p> <p>“Each Party shall ensure that guidance and assistance is provided to the public-- particularly those persons or groups in vulnerable situations—in order to facilitate the exercise of their access rights.”</p>	<p>3. To what extent does the law or policy oblige the government to provide guidance and assistance to the public, particularly those persons or groups in vulnerable situations to exercise their access rights?</p> <ul style="list-style-type: none">• To what extent does the law or policy mention a definition of vulnerable groups? Is the definition consistent with the agreement? <p>According to the agreement, Art. 2: “Persons or groups in vulnerable situations” means those persons or groups that face particular difficulties in fully exercising the access rights recognized in the present agreement, because of circumstances or conditions identified within each party’s national context and in accordance with its international obligations.” Note: Consider this in reference to rights to obtain access to information, public participation, and access to justice.</p>

Art. 4.6

“Each Party shall guarantee an enabling environment for the work of persons, associations, organizations, or groups that promote environmental protection, by recognizing and protecting them.”

4. To what extent does the law or policy oblige the party in question to guarantee an enabling environment for the work of persons, associations, organizations, or groups that promote environmental protection, by recognizing and protecting them?

Review whether there is any law that contains provisions aimed at ensuring that persons, groups, or associations that promote environmental protection are not penalized, persecuted, or harassed unjustly.

Are there any legal provisions or policies that provide recognition and effective protection to persons, associations, organizations, or groups promoting environmental protection?

Consider any laws or policies related to registration of civil society organizations, or laws that restrict freedom of speech and association or that invade privacy, e.g., Strategic Litigation against Public Participation legislation (SLAPP suits). SLAPP suits, which are typically defamation claims, are lawsuits filed with the purpose of intimidating and silencing activists. Anti-SLAPP laws may allow a defendant to apply to dismiss a SLAPP suit on the grounds that the case involves protected speech on a matter of public concern and may also require speedy hearings of claims and allow defendants to obtain punitive damages.

II. ACCESS TO INFORMATION PILLAR

Escazú Provision	Legal and Policy Indicators
<p>Art. 5.1</p> <p>“Each Party shall ensure the public’s right of access to environmental information in its possession, control, or custody, in accordance with the principle of maximum disclosure.”</p>	<p>5. Are there any laws that guarantee the right of the public to access environmental information in the possession, control, or custody of all competent authorities?</p> <p>a. Consider if the law applies to the public, which is defined in the agreement as “one or more natural or legal persons and the associations, organizations, or groups established by those persons, that are nationals or that are subject to the national jurisdiction of the State Party.”</p> <p>b. Please review definitions for the right-holder. For example, is it limited to a citizen or a member of the public? Are there any restrictions related to citizenship, nationality, and domicile that apply in relation to national legislation?</p> <p>c. Please review whether the definition of the right-holder includes unregistered groups or associations.</p> <p>d. Does the duty to provide information apply to all competent authorities? The term, as defined in the agreement, is “any public body that exercises the powers, authority, and functions for access to information, including independent and autonomous bodies, organizations, or entities owned or controlled by the government, whether by virtue of powers granted by the constitution or other laws, and, when appropriate, private organizations that receive public funds or benefits (directly or indirectly) or that perform public functions and services, but only with respect to the public funds or benefits received or to the public functions and services performed.”</p> <p>e. Does the law apply to environmental information, including all formats, as defined in the agreement? The term <i>environmental information</i> means 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.”</p> <p>Note: Review either the general law on access to information or a specific law for access to environmental information in your country.</p> <p>f. Are there any references to the principle of maximum disclosure in the law or a provision that specifies that the right of access to information is the general rule, subject only to strict and limited exceptions?</p> <p>g. Are there any provisions that specify that the right to environmental information applies to information in the possession, control, or custody of the competent authority?</p>
<p>Art. 5.2(a)</p> <p>“The exercise of the right of access to environmental information includes: (a) requesting and receiving information from competent authorities without mentioning any special interest or explaining the reasons for the request.”</p>	<p>6. Does the law specify that the person requesting information does not have to mention a reason for or interest in requesting the information?</p>

Art 5.2(b)

"The exercise of the right of access to environmental information includes: (b) being informed promptly whether the requested information is in possession or not of the competent authority receiving the request."

7. Does the law require the competent authority to promptly inform the requester if information is in its possession?

Art. 5.2(c)

"The exercise of the right of access to environmental information includes: (c) being informed of the right to challenge and appeal when information is not delivered, and of the requirements for exercising this right."

8. Does the law require the competent authority to inform the requester of the right and procedures for challenge and appeal when information is not provided?

Art. 5.3

"Each Party shall facilitate access to environmental information for persons or groups in vulnerable situations, establishing procedures for the provision of assistance, from the formulation of requests through to the delivery of the information, taking into account their conditions and specificities, for the purpose of promoting access and participation under equal conditions."

9. Does the law or policy require competent authorities to help requestors in vulnerable situations to make requests and to obtain information?

Explain the procedures in place to assist persons or groups in vulnerable situations.

Art. 5.4

"Each Party shall guarantee that the above-mentioned persons or groups in vulnerable situations, including indigenous peoples and ethnic groups, receive assistance in preparing their requests and obtain a response."

10. Does the law or policy require that indigenous people and ethnic groups who are in vulnerable situations receive assistance in making requests and obtaining a response?

Comment on whether there is a requirement for requests to be made in the official language or information provided in the official language.

Art. 5.5

"If the requested information or part thereof is not delivered to the applicant because it falls under the domestic legal regime of exceptions, the competent authority shall communicate its refusal in writing, including the legal provisions and the reasons justifying the decision in each case, and inform the applicant of the right to challenge and appeal."

11. Does the law require the competent authority to inform the requester of

- a. the reasons for refusal in writing?
- b. the legal provisions justifying the decision?
- c. the right to challenge and appeal?

Art. 5.6(a) (b) (c) (d)

"Access to information may be refused in accordance with domestic legislation. In cases where a Party does not have a domestic legal regime of exceptions, that Party may apply the following exceptions:

(a) when disclosure would put at risk the life, safety, or health of individuals;

(b) when disclosure would adversely affect national security, public safety, or national defence;

(c) when disclosure would adversely affect the protection of the environment, including any endangered or threatened species; or

(d) when disclosure would create a clear, probable, and specific risk of substantial harm to law enforcement, prevention, investigation, and prosecution of crime."

12. Does the law provide for exceptions where information can be refused?

Review to see if any of the following exceptions are included in the law:

- a. when disclosure would put at risk the life, safety, or health of individuals;
- b. when disclosure would adversely affect national security, public safety, or national defense;
- c. when disclosure would adversely affect the protection of the environment, including any endangered or threatened species; or
- d. when disclosure would create a clear, probable, and specific risk of substantial harm to law enforcement, prevention, investigation, and prosecution of crime.

If your country already has an access-to-information law, you do not need to assess the exception provision against this article of the Escazú Agreement. Note: As the agreement does not require harmonization of exemptions for access to environmental information, this provision must only be strictly applied for countries that do not currently have an access-to-information law. The researchers should also identify whether there are any other exceptions in addition to the ones identified in this provision for countries that have no access to information law.

These provisions are interconnected and so should be reviewed together.

Art. 5.7

“The exception regimes shall consider each Party’s human rights obligations. Each Party shall encourage the adoption of exception regimes that favour the disclosure of information.”

13. Does the law relating to the exceptions include human rights obligations?

Limited exceptions: Parties should only have limited exceptions to the right of information.⁷ In accordance with the principle of maximum disclosure, the law must guarantee the effective and broadest possible access to public information with limited exceptions.⁸

Exceptions established by law: Exceptions to the right to information should be expressly established by law in advance.⁹ In human rights treaties, such as The American Convention on Human Rights and the International Covenant on Civil and Political Rights, exceptions should be limited to the specific exceptions of that treaty, which are objectives that are necessary for respect of the rights or reputations of others, for the protection of national security or of public order, or for the protection of public health or morals.¹⁰ The essence of this requirement is to ensure that public authorities apply the exceptions indiscriminately and not arbitrarily.

Exceptions must confirm to tests of necessity and proportionality: The Inter-American Commission on Human Rights has asserted that Parties to the American Convention on Human Rights should apply tests of necessity and proportionality. The restriction on freedom of information must

- a. be conducive to the attainment of the objective,
- b. be proportionate to the interest that justifies it, and
- c. interfere to the least extent possible with the effective exercise of the right.¹¹

The proportionality test of suitability, necessity, and proportionality has been incorporated into the public interest test of the Escazú Agreement under article 5.9, which is also considered in detail below.

The exceptions should have a reasonable time period for their application. The exception should operate for a limited and reasonable time period when the risk of harm related to disclosure would occur. After this time period, the information must be made available to the public.¹²

In cases of violations of human rights, the state authorities cannot resort to mechanisms, such as official secret or confidentiality of the information or reasons of public interest or national security, to refuse to supply the information required by the judicial or administration bodies.¹³

There is an obligation to guarantee the effectiveness of an appropriate procedure for the processing and resolution of the requests for information, that sets the dates for the resolution and presentation of information, and that this is done under the responsibility of officials that are duly qualified.¹⁴

Art. 5.7

(continued)

Where information has been denied, the state must guarantee the existence of a simple, quick, and effective remedy before an independent organ, distinct from the one that denied the request, that can determine if there was a harm to the right to access information and, where applicable, resolve that the corresponding authority present said information.¹⁵

There are a number of sources to look at to understand a party's human right obligations in relation to information:

<https://www.un.org/en/sections/what-we-do/protect-human-rights/>

<http://www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-information/foi-in-latin-america-and-the-caribbean/>

Enacting a provision that is narrower than the exception contained in the American Convention should not be regarded as an error. Exception regimes that favor the disclosure should be narrowly defined, taking into account the public interest in disclosure.

Art 5.8

"The reasons for refusal shall be legally established in advance and be clearly defined and regulated, taking into account the public interest, and shall thus be interpreted restrictively. The burden of proof will lie with the competent authority."

14. a. Does the law include the exceptions for disclosure, are these clearly defined, and does it require the competent authority to consider the public interest in disclosure?

b. Does the burden of proof for justifying the refusal to disclose information lie with the competent authority?

Researchers should consider if the public interest test is applicable to all exemptions in considering whether a gap exists.

Please note that if the national legal framework does not require the competent authority to consider the public interest served by disclosure, this would amount to a gap, although the means of the application (e.g., proportionality) may not be explicitly provided for.

Art 5.10

"Where not all the information contained in a document is exempt under paragraph 6 of the present article, the non-exempt information shall be provided to the applicant."

15. Does the law require partial disclosure of documents where only a part of the document falls within a category of exemption?

Art. 5.11

"The competent authorities shall guarantee that the environmental information is provided in the format requested by the applicant, if available. If such a format is not available, the environmental information shall be provided in the available format."

16. Does the law require competent authorities to provide information in the format requested by the applicant if it is available?

Art. 5.12

"The competent authorities shall respond to requests for environmental information as quickly as possible and within a period not longer than 30 business days from the date of receipt of the request, or less if so stipulated in domestic legislation."

17. Does the law require competent authorities to respond to requests for information quickly and no longer than 30 business days?

- What is the length of time required?

Note: If this time period is less than 30 business days, this is in compliance with the provisions of the agreement.

Art. 5.13

"Where, in exceptional circumstances and in accordance with domestic legislation, the competent authority requires more time to respond to the request, it shall notify the applicant in writing of the justification for the extension prior to the expiration of the period established in paragraph 12 of the present article. Such an extension will not exceed 10 business days."

18. Does the law provide that the competent authority can extend the time for responding to a request only in exceptional circumstances as stated in the law?

- a. Does the law require the competent authority to notify the applicant in writing of the reason for the extension?
- b. Does the law limit the length of the extension to no more than 10 business days? If so, how many business days?

Art. 5.15

"When the competent authority receiving the request does not have the requested information, it shall notify the applicant as quickly as possible, indicating, if it can determine it, which authority may be in possession of the information. The request shall be forwarded to the relevant authority, and the applicant so informed."

19. a. If the competent authority does not have the information requested, does the law require the competent authority to inform the applicant quickly of the responsible authority that may have the information?

- b. Does the law require the competent authority to transfer the request to the relevant authority that might have the information and inform the applicant of the transfer?

Art. 5.17

“Environmental information shall be disclosed at no cost, insofar as its reproduction or delivery is not required. Reproduction and delivery costs shall be applied in accordance with the procedures established by the competent authority. Such costs shall be reasonable and made known in advance, and payment can be waived in the event that the applicant is deemed to be in a vulnerable situation or to have special circumstances warranting such a waiver.”

20. a. Does the law state that access to environmental information is free with the exception of reproduction or delivery costs?

b. Are the costs reasonable and set out in the law or policy?

Consider whether the reproduction and delivery costs are considerably above the rate charged by private entities that offer reproduction and delivery of documents.

Costs should be limited to the direct reproduction costs, and states should not pass on to those seeking information the entire amount of the costs, in particular indirect ones, actually, incurred for the state budget in conducting an information search. Please provide figures, if possible, in original currency.

c. Does the law allow the party to waive costs if the applicant is in a vulnerable situation or there are special circumstances? If so what are the special circumstances for which the waiver is provided?

Art. 5.18

“Each Party shall establish or designate one or more impartial entities or institutions with autonomy and independence to promote transparency in access to environmental information, to oversee compliance with rules, and monitor, report on and guarantee the right of access to information. Each Party may consider including or strengthening, as appropriate, sanctioning powers within the scope of the responsibilities of the aforementioned entities or institutions. . . .”

21. Does the party have at least one entity or institution responsible for doing the following things:

- promoting transparency in access to environmental information;
- overseeing compliance with rules; and
- monitoring, reporting on, and guaranteeing the right of access to information?

Does the law include provisions to ensure that the entities or institutions are impartial, have autonomy and are independent?

Impartiality: The entities or institutions should be free from any bias, prejudice, or self-interest and should arrive at decisions based solely on the law and facts.

Independence: The entities or institutions should be protected from influence at all levels of government.

Autonomy: The entities or institutions should have control over their internal rules and procedures.

Parameters for ensuring independence and impartiality in adjudicating bodies may include protections against reductions in salary or dismissal from office on account of decisions made, selection and appointment processes that are transparent and objective and free from political interference, fixed budgets, the power to establish the body’s own internal rules and procedures and security of tenure of the judicial or administrative authorities, and provision of adequate budgets to conduct necessary business. Take note that this indicator is about the existence and breadth of application of review procedures before a court or other independent or impartial body against a decision in access-to-information cases, as well as entities that supervise compliance with the rules.

Art. 6.1

"Each Party shall guarantee, to the extent possible within available resources, that the competent authorities generate, collect, publicize, and disseminate environmental information relevant to their functions in a systematic, proactive, timely, regular, accessible, and comprehensible manner, and periodically update this information and encourage the disaggregation and decentralization of environmental information at the subnational and local levels. Each Party shall strengthen coordination between the different authorities of the State."

22. Does the law or policy require competent authorities to regularly generate, collect, publicize, and disseminate environmental information including in a decentralized and disaggregated manner related to their functions?

Art. 6.2

"The competent authorities shall endeavour to ensure, to the extent possible, that environmental information is reusable, processable, and available in formats that are accessible, and that no restrictions are placed on its reproduction or use, in accordance with domestic legislation."

23. Does the law or policy require environmental information proactively disclosed in a reusable, processable format that is accessible?

Does the law or policy ensure that there are no restrictions on the reproduction or use of the information?

Art. 6.3

“Each Party shall have in place one or more up-to-date environmental information systems, which may include, inter alia:

- a. the texts of treaties and international agreements, as well as environmental laws, regulations, and administrative acts.
- b. reports on the state of the environment.
- c. a list of public entities competent in environmental matters and, where possible, their respective areas of operation.
- d. a list of polluted areas, by type of pollutant and location.
- e. information on the use and conservation of natural resources and ecosystem services.
- f. scientific, technical, or technological reports, studies and information on environmental matters produced by academic and research institutions, whether public or private, national, or foreign.
- g. climate change sources aimed at building national capacities.
- h. information on environmental impact assessment processes and on other environmental management instruments, where applicable, and environmental licences or permits granted by the public authorities.
 - an estimated list of waste by type and, when possible, by volume, location, and year; and
 - information on the imposition of administrative sanctions in environmental matters.

Each Party shall guarantee that environmental information systems are duly organized, accessible to all persons, and made progressively available through information technology and georeferenced media, where appropriate.”

24. Is there a law or policy mandating the creation of one or more environmental information systems that are publicly accessible?

25. Is there a list of the type of information defined in law or policy that is to be provided as a minimum?

Art. 6.4

"Each Party shall take steps to establish a pollutant release and transfer register covering air, water, soil, and subsoil pollutants, as well as materials and waste in its jurisdiction. This register will be established progressively and updated periodically."

26. Does the party have a law or policy mandating the creation of a regularly updated pollutant release and transfer register on air, water, soil and subsoil pollutants and waste?

Art. 6.5

"Each Party shall guarantee 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. Each Party shall develop and implement an early warning system using available mechanisms."

27. Does the law or policy require immediate dissemination of all relevant information in possession of competent authorities where there is an imminent threat to public health or the environment?

The harm can be imminent and does not have to have occurred.

Art. 6.6.

"In order to facilitate access by persons or groups in vulnerable situations to information that particularly affects them, each Party shall endeavour, where applicable, to ensure that the competent authorities disseminate environmental information in the various languages used in the country, and prepare alternative formats that are comprehensible to those groups, using suitable channels of communication."

28. Does any policy require the facilitation of access to environmental information in the languages used in the country and mandate for use of other suitable channels for communication?

Art. 6.9

"Each Party shall promote access to environmental information contained in concessions, contracts, agreements, or authorizations granted, which involve the use of public goods, services, or resources, in accordance with domestic legislation."

29. Does the law or policy require the disclosure of information in concessions, contracts, agreements, or authorizations granted involving the use of public goods, services, or resources?

In particular there should be a review of domestic legal provisions that prohibit the release of these documents.

Art. 6.10

"Each Party shall ensure that consumers and users have official, relevant, and clear information on the environmental qualities of goods and services and their effects on health, favouring sustainable production and consumption patterns."

30. Does the law or policy require the publication of official, relevant, and clear information on the environmental qualities of goods and services and their effect on health?

Examples of consumer information on environmental qualities and effects on health are eco-labeling, International Organisation for Standardization standards, and categorization of products, e.g., organic or recyclable. The reference to official information implies that the information should be validated. This validation is sometimes done through government certification bodies. Information should be clear so that consumers and users can easily understand it.

Art. 6.12

"Each Party shall take the necessary measures, through legal or administrative frameworks, among others, to promote access to environmental information in the possession of private entities, in particular information on their operations and the possible risks and effects on human health and the environment."

31. Does the law or policy require access to environmental information held by private entities relating to their operations and effects on human health and the environment?

III. PUBLIC PARTICIPATION IN THE ENVIRONMENTAL DECISION-MAKING PROCESS

Escazú Provision	Legal and Policy Indicators
<p>Art. 7.2</p> <p>“Each Party shall guarantee mechanisms for the participation of the public in decision-making processes, revisions, re-examinations or updates with respect to projects and activities, and in other processes for granting environmental permits that have or may have a significant impact on the environment, including when they may affect health.”</p>	<p>32. Does the law require public participation in decisions, including revisions, reexamination, or updates of</p> <ul style="list-style-type: none">a. projects and activities; andb. other processes that have or may have a significant impact on the environment, including health where an environmental permit is required? <p>When reviewing sectoral legislation, even if it does not explicitly include specific participation requirements, national practice or case law can be reviewed to define the types of development or activities that may have “a significant effect on the environment.”</p> <p>Note: There is no definition within Escazú of an environmental permit.</p> <p>Where there is a restriction or limitation of participation in any permitting legislation, this should be noted—e.g., in cases where only adjoining landowners can participate in a decision-making process or the minister’s decision is final.</p> <p>Consider the following factors:</p> <ul style="list-style-type: none">a. The definition of <i>permitting</i> in environmental or sectoral legislation;b. Whether there is only a requirement for participation in environmental impact assessment procedures;c. If there is a discretionary power to exempt certain projects from environmental impact assessment (EIA) or from public participation; andd. The sectors where environmental permits may be issued—e.g., forestry, water, land, air, mining, waste management, construction, etc.—that are likely to have significant environmental impact. If there are other sectors that are likely to have a significant impact or health impact please indicate that these are applicable in the circumstance.
<p>Art. 7.3</p> <p>“Each Party shall promote the participation of the public in decision-making processes, revisions, re-examinations, or updates other than those referred to in paragraph 2 of the present article with respect to 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.”</p>	<p>33. Are there any policies that promote the participation of the public in decision-making processes or revisions on environmental matters of public interest, such as land-use planning, policies, strategies, plans, programs, rules, and regulations, which have or may have a significant impact on the environment?</p>

Art. 7.4

"Each Party shall adopt measures to ensure that the public can participate in the decision-making process from the early stages, so that due consideration can be given to the observations of the public, thus contributing to the process. To that effect, each Party shall provide the public with the necessary information in a clear, timely, and comprehensive manner, to give effect to its right to participate in the decision-making process."

34. Does the law or policy require that public participation take place from the early stages of decision-making?

- Does it require that all necessary information provided to the public in a clear, timely, and comprehensive manner to allow them to participate?

Consider this provision in relation to the sectors above.

Art. 7.5

"The public participation procedure will provide for reasonable time frames that allow sufficient time to inform the public and for its effective participation."

35. Does the law provide for reasonable time frames for informing the public and for its participation? What are the time frames?

In considering whether the legislation includes this provision for reasonable time frames, consider whether during all phases there are specific time frames, or the time frames may be varied based on the nature, complexity, or size of the proposed activity.

Art. 7.6

"The public shall be informed, through appropriate means, such as in writing, electronically, orally and by customary methods, and in an effective, comprehensible, and timely manner, as a minimum, of the following:

(a) the type or nature of the environmental decision under consideration and, where appropriate, in non-technical language.

(b) the authority responsible for making the decision and other authorities and bodies involved.

(c) 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; and

(d) the public authorities involved from which additional information on the environmental decision under consideration can be requested and the procedure for requesting information."

36. a. Does the law require that the public be informed of the following factors:

1. the type or nature of the environmental decision under consideration and, where appropriate, in nontechnical language;
2. the authority responsible for making the decision and other authorities and bodies involved;
3. the public participation procedure, 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; and
4. the public authorities involved from which additional information on the environmental decision under consideration can be requested and the procedure for requesting information.

b. Does the law require various methods for informing the public based on what is appropriate for the context—e.g., writing, electronic, oral, or customary methods?

c. Does the law require that this information to be provided in a timely and comprehensible manner?

Consider this indicator in relation to projects, activities, and processes requiring environmental permits that may have a significant impact on the environment or health as identified in the indicator for art. 7.2

Consider if there is any mandatory or discretionary requirement for the public to be informed or if it is absent, either by public notice or individually as appropriate, early in the environmental decision-making procedure, and in an adequate, timely, and effective manner, *inter alia*, of all the information set out in subparagraphs a–d.

Art.7.7

"The public's right to participate in environmental decision-making processes shall include the opportunity to present observations through appropriate means available, according to the circumstances of the process. Before adopting the decision, the relevant public authority shall give due consideration to the outcome of the participation process."

37. a. Does the law require that the public has the opportunity to comment on the decision to be taken?

b. Does the law require the public authority to consider public comments?

Consider this indicator in relation to projects, activities, and processes requiring environmental permits that may have a significant impact on the environment or health as identified in the indicator for art. 7.2.

Art. 7.8

"Each Party shall ensure that, once a decision has been made, the public is informed in a timely manner thereof and of the grounds and reasons underlying the decision, including how the observations of the public have been taken into consideration. The decision and its basis shall be made public and be accessible."

38. a. Does the law require that the decision and the grounds and reasons for the decision be publicly available in a timely manner?

b. Does the law require the public authority to explain how the public comments have been considered?

Consider this indicator in relation to projects, activities, and processes requiring environmental permits that may have a significant impact on the environment or health as identified in the indicator for art. 7.2.

Art. 7.9

"The dissemination of the decisions resulting from environmental impact assessments and other environmental decision-making processes in which the public has participated shall be carried out through appropriate means, which may include written, electronic, or oral means and customary methods, in an effective and prompt manner. The information disseminated shall include the established procedure to allow the public to take the relevant administrative and judicial actions."

39. a. Does the law or policy require the decisions resulting from EIAs and other environmental decision-making process to be disseminated promptly using appropriate means—e.g., written, electronic, oral, and customary methods?

b. Does the information required to be disseminated include the procedure for the public to challenge the decision through administrative or judicial actions?

Art. 7.14

"The public authorities shall make efforts to identify and support persons or groups in vulnerable situations in order to engage them in an active, timely, and effective manner in participation mechanisms. For these purposes, appropriate means and formats will be considered, in order to eliminate barriers to participation."

a. Does the law or policy require public authorities to identify and support persons or groups in vulnerable situations to be able to participate in the decision-making process?

b. Does the law require the public authorities or the government to use appropriate means (methods) and formats to remove barriers to participation?

Consider if the information or language, method of dissemination, times and date of participation, and location or venue are required by law to meet the needs of vulnerable persons.

Art. 7.15

"In the implementation of the present Agreement, each Party shall guarantee that its domestic legislation and international obligations in relation to the rights of indigenous peoples and local communities are observed."

40. Has the party passed legislation that recognizes the rights of indigenous and tribal peoples in relation to access to information, participation, and justice?

The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007, recognizes the importance of ensuring that indigenous people have greater participation in decisions affecting their land, including the requirement for free, prior informed consent and legal recognition of their land, territories, and resources.

Art. 7.16

"The public authority shall make efforts to identify the public directly affected by the projects or activities that have or may have a significant impact on the environment and shall promote specific actions to facilitate their participation."

Art. 7.17

"With respect to the environmental decision-making processes referred to in paragraph 2 of the present article, as a minimum, the following information shall be made public:

(a) a description of the area of influence and physical and technical characteristics of the proposed project or activity;

(b) a description of the main environmental impacts of the project or activity and, as appropriate, the cumulative environmental impact;

(c) a description of the measures foreseen with respect to those impacts;

(d) a summary of (a), (b), and (c) of the present paragraph in comprehensible, non-technical language;

(e) the public reports and opinions of the involved entities addressed to the public authority related to the project or activity under consideration;

(f) a description of the available technologies to be used and alternative locations for executing the project or activity subject to assessment, when the information is available; and

(g) actions taken to monitor the implementation and results of environmental impact assessment measures. The aforementioned information shall be made available free of charge to the public in accordance with paragraph 17 of article 5 of the present Agreement."

41. Does the law or policy require public authorities to identify the public directly affected by a project or activity that may have a significant impact on them and to facilitate their participation?

42. Does the law require the proactive disclosure of the following information to the public for free as it relates to projects and activities and environmental decision-making processes that may have a significant impact on the environment?

a. a description of the area of influence and physical and technical characteristics of the proposed project or activity;

b. a description of the main environmental impacts of the project or activity and, as appropriate, the cumulative environmental impact;

c. a description of the measures foreseen with respect to those impacts;

d. a nontechnical summary of the project;

e. the public reports and opinions of the involved entities addressed to the public authority related to the project or activity under consideration;

f. a description of the available technologies to be used and alternative locations for executing the project or activity subject to assessment, when the information is available; and

g. actions taken to monitor the implementation and results of environmental impact assessment measures.

Consider this indicator in relation to projects, activities, and processes requiring environmental permits that may have a significant impact on the environment or health as identified in the indicator for art. 7.2.

The researchers should check whether the national law does not require the public to have to make a request in order to have access to the information relevant to the decision-making.

This is a non-exhaustive list, and it is the minimum to be disclosed. Indicate if there are other types of information required by law to be disclosed in your country that is not listed.

IV. Access to Justice Pillar

Escazú Provision	Legal and Policy Indicators
<p>Art. 8.1</p> <p>“Each Party shall guarantee the right of access to justice in environmental matters in accordance with the guarantees of due process.”</p>	<p>43. Does the law require access to justice in environmental matters with due process?</p> <p>Consider whether the due process guarantees, such as the impartiality of the judges, the opportunity to be heard by the court, presenting, and opposing the evidence or having legal assistance, is stipulated.</p> <p>Most constitutions will include due process guarantees. Due process requires that matters be resolved according to established legal rules and principles and fair procedures. Due process guarantees include notice, an opportunity to be heard, and a determination by a neutral decision-maker according to some fair and settled course of judicial proceeding.</p>
<p>Art. 8.2(a)</p> <p>“Each Party shall ensure, in the framework of its domestic legislation, access to judicial and administrative mechanisms to challenge and appeal, with respect to substance and procedure: (a) any decision, action or omission related to the access to environmental information.”</p>	<p>44. Does the law provide for a right of access to justice to challenge and appeal, in terms of substance and procedure, any decision, action or omission related to access to environmental information?</p> <p>Consider whether there are judicial and administrative mechanisms available.</p>
<p>Art. 8.2(b)</p> <p>“Each Party shall ensure, in the framework of its domestic legislation, access to judicial and administrative mechanisms to challenge and appeal, with respect to substance and procedure: (b) any decision, action, or omission related to public participation in the decision-making process regarding environmental matters.”</p>	<p>45. Does the law provide for a right of access to justice to challenge and appeal, in terms of substance and procedure, any decision, action, or omission related to public participation in environmental decision-making processes?</p> <p>Consider whether there are judicial and administrative mechanisms available?</p>

Art. 8.2(c)

"Each Party shall ensure, in the framework of its domestic legislation, access to judicial and administrative mechanisms to challenge and appeal, with respect to substance and procedure: (c) any other decision, action, or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment."

46. Does the law provide for a right of access to justice to challenge and appeal, in terms of substance and procedure, any decision, action, or omission that affects or could adversely affect the environment or contravene legal regulations related to the environment?

Note: Contravention of legal regulation related to the environment could include a case where a developer starts a development without a permit. Is there a right to challenge this decision or review agencies' decisions to approve the development?

Consider whether there are judicial and administrative mechanisms available.

Art. 8.3(b)

"To guarantee the right of access to justice in environmental matters, each Party shall have, considering its circumstances: (b) effective, timely, public, transparent, and impartial procedures that are not prohibitively expensive."

47. a. Does the law or policy require timely, public, transparent, and impartial procedures?

b. Does the law require that these procedures not be prohibitively expensive (affordable)?

The rules that should be reviewed are rules relating to bringing challenges to court or administrative tribunals

The cost of bringing a challenge for violation of access rights, in relation to a decision, action, or omission that has or could have an adverse impact on the environment or to enforce a national environmental law must not be so expensive that it prevents the public, whether individuals or NGOs, from doing so.

Consider whether the national legislation in relation to rules on levying costs for a legal challenge—e.g., waivers, cost-recovery mechanisms, protective costs orders, exempting NGOs from paying court fees, ability to make an appeal free of charge, not requiring a lawyer to launch an appeal, and reversal of the "the loser pays the costs" rule.

Art. 8.3(c)

"To guarantee the right of access to justice in environmental matters, each Party shall have, considering its circumstances: (c) broad active legal standing in defence of the environment, in accordance with domestic legislation."

48. Does the law provide for broad active legal standing in defense of the environment?

Consider whether those who are not directly affected by a matter have the right to bring an action. This can include the right to bring an action on behalf of those affected or a collective interest—e.g., a community or the public interest.

Note: Very broad legal standing could include that there are no enacted criteria restricting access, or the enacted rules on standing provide for very broad access to justice. Please consider whether the standing applies to individuals and NGOs and whenever restrictive conditions (such as possession of directly neighboring land or any procedural conditions) have developed in practice in the courts, *inter alia*:

- procedural conditions re access to justice (such as a requirement to have participated in the entirety of previous processes, and
- how far the direct impairment of rights is a condition of access to justice, especially in cases where the direct connection to any person is rather difficult to establish, such as wildlife protection.

The researchers should review if there is any legislation at the domestic level that undermines the provision.

Art. 8.3(d)

“To guarantee the right of access to justice in environmental matters, each Party shall have, considering its circumstances: (d) the possibility of ordering precautionary and interim measures, inter alia, to prevent, halt, mitigate, or rehabilitate damage to the environment.”

49. Does the law provide that a claimant can obtain precautionary and interim measures, inter alia, to prevent, halt, mitigate, or rehabilitate damage to the environment?

Consider whether there are provisions that include

- injunctive relief for preventing pollution
- injunctive relief in EIA cases
- an undertaking for damages or any other financial burdens on those persons seeking injunctive relief

Art. 8.3(e)

“To guarantee the right of access to justice in environmental matters, each Party shall have, considering its circumstances: (e) measures to facilitate the production of evidence of environmental damage, when appropriate and as applicable, such as the reversal of the burden of proof and the dynamic burden of proof.”

50. Does the law require the state to ensure measures to facilitate the production of evidence of environmental damage—e.g., the reversal of the burden of proof or dynamic burden of proof?

Art. 8.3 (f)

“To guarantee the right of access to justice in environmental matters, each Party shall have, considering its circumstances:

(f) mechanisms to execute and enforce judicial and administrative decisions in a timely manner.”

51. Does the law require the state to provide mechanisms to execute and enforce judicial and administrative decisions in a timely manner?

The researchers should be cognizant of any decisions of a court that may have defined timeliness in regard to execution of judgments.

Art. 8.3(g)

“To guarantee the right of access to justice in environmental matters, each Party shall have, considering its circumstances: (g) mechanisms for redress, where applicable, 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.”

52. Does the law provide mechanisms for redress—e.g., restitution, restoration, compensation, payment of a financial penalty, satisfaction, guarantees of nonrepudiation, assistance for affected persons, and financial instruments to support redress?

The researchers should seek to evaluate the impact of not having any of these provisions for redress to decide on how to assess whether there is a gap.

Art. 8.4(a)

"To facilitate access to justice in environmental matters for the public, each Party shall establish: (a) measures to minimize or eliminate barriers to the exercise of the right of access to justice."

53. Does the law or policy include measures to minimize or eliminate barriers to access to justice?

Consider ability to give evidence via video or remotely, use of interpreters or translators, legal aid, technical assistance, financial assistance, or measures—e.g., waivers, etc.

Art. 8.4 (b)

"To facilitate access to justice in environmental matters for the public, each Party shall establish: (b) means to publicize the right of access to justice and the procedures to ensure its effectiveness."

54. Does the law or policy require the publicization of the right of access to justice and publication of the procedure for obtaining access to justice?

Art. 8.4(c)

"To facilitate access to justice in environmental matters for the public, each Party shall establish: (c) mechanisms to systematize and disseminate judicial and administrative decisions, as appropriate."

55. Does the law or policy require the systemization and dissemination of judicial and administrative decisions?

Art. 8.4(d)

"To facilitate access to justice in environmental matters for the public, each Party shall establish: (d) the use of interpretation or translation of languages other than the official languages when necessary for the exercise of that right."

56. Does the law or policy require the use of interpretation and translation of unofficial languages when needed for a matter or claim?

Art. 8.5

"In order to give effect to the right of access to justice, each Party shall meet the needs of persons or groups in vulnerable situations by establishing support mechanisms, including, as appropriate, free technical and legal assistance."

57. Does the law or policy require the state to establish support mechanisms, including free technical and legal assistance, to persons and groups in vulnerable situations?

Consider whether the state provides legal aid for environmental matters.

Art. 8.6

"Each Party shall ensure that the judicial and administrative decisions adopted in environmental matters and their legal grounds are set out in writing."

58. Is there any law or policy requiring that decisions adopted in environmental matters and their grounds be set out in writing?

V. ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

Escazú Provision	Legal and Policy Indicators
<p>Art. 9.1</p> <p>“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.”</p>	<p>59. Does the law require the state to provide a safe and enabling environment for environmental defenders?</p> <p>“Environmental human rights defenders (or EHRDs) refers to individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora, and fauna.”</p> <p>Michael Forest, Special Rapporteur in his Report on Environmental Defenders</p> <p>The researchers should review constitutional and other provisions that guarantee right of freedom of speech, expression, protest, etc., and any use of force, persecution, harassment, or defamation or restriction to funding or expression that limits civic space.</p>
<p>Art. 9.2</p> <p>“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.”</p>	<p>60. Does the law require the state to recognize, protect, and promote all the rights of environmental defenders, including the 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?</p> <p>See above at indicator for art. 9.1 for guidance.</p>
<p>Art 9.3</p> <p>“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.”</p>	<p>61. Does the law require the state to prevent, investigate, and punish attacks, threats, or intimidation against environmental defenders exercising their access rights and the right to a healthy environment and rights of indigenous and tribal peoples, etc.?</p> <p>The researchers should review if there are any human rights institutes, ombudsman, or other legal entities with an obligation to support prevention, investigation, or punishment of attacks.</p>

VI. CAPACITY BUILDING

Escazú provision	Legal and Policy indicators
<p>Art. 10.2</p> <p>“Each Party, in line with its capacities, may take, <i>inter alia</i>, the following measures: (a) train authorities and civil servants on environmental access rights.”</p>	<p>63. Does the law or policy require government officials to train authorities and civil servants on environmental access rights?</p>
<p>Art. 10.2</p> <p>“Each Party, in line with its capacities, may take, <i>inter alia</i>, the following measures: (b) develop and strengthen environmental law and access rights awareness-raising and capacity-building programmes for, <i>inter alia</i>, the public, judicial and administrative officials, national human rights institutions and jurists.”</p>	<p>64. Does the law or policy require the development and strengthening of environmental laws and access rights, awareness-raising, and capacity-building programs for, <i>inter alia</i>,</p> <ul style="list-style-type: none">• the public,• judicial and administrative officials,• national human rights institutions• jurists?
<p>Art. 10.2</p> <p>“Each Party, in line with its capacities, may take, <i>inter alia</i>, the following measures: (d) promote education and training on, and raise public awareness of, environmental matters through, <i>inter alia</i>, basic educational modules on access rights for students at all levels of education.”</p>	<p>65. Does the law or policy require the promotion of education and training on, and the raising of public awareness of, environmental matters, through, <i>inter alia</i>,</p> <ul style="list-style-type: none">• basic educational modules on access rights for students• at all levels of education?
<p>Art. 10.2</p> <p>“Each Party, in line with its capacities, may take, <i>inter alia</i>, the following measures: (e) develop specific measures for persons or groups in vulnerable situations, such as providing interpreters or translators in languages other than official languages when necessary.”</p>	<p>66. Does the law require development of specific measures for persons or groups in vulnerable situations, such as providing interpreters or translators in languages other than official languages?</p>
<p>Art. 10.2</p> <p>“Each Party, in line with its capacities, may take, <i>inter alia</i>, the following measures: (f) acknowledge the importance of associations, organizations, or groups that train the public on or raise public awareness of access rights.”</p>	<p>67. Is there a law that supports the activities of associations, organizations, or groups that train the public on, or raise public awareness of, access rights?</p>

ENDNOTES

- 1 Andrew Jackson, Sandor Fülöp, Csaba Kiss, Jesse Worker.
- 2 The Vienna Convention on the Law of Treaties, article 27.
- 3 According to the legal theory of dualism, treaties are not self-executing and require specific legislation to be put in place. <https://www.tandfonline.com/doi/full/10.1080/03050710701747294>.
- 4 *Natural Resources Conservation Authority v. Seafood and Ting and DYC Fishing Ltd.* Suit No C.L. 1999/S-134 Court of Appeal (Jamaica), dated July 1, 1999; *Talisman (Trinidad) Petroleum Ltd. v. Environmental Management Authority*, Dec No. EA3 (Environmental Commission) (2002) (Trinidad and Tobago); see also, W. Anderson, *Principles of Caribbean Environmental Law*, Washington, DC: Environmental Law Institute, 2012, p. 36.
- 5 A proper balance between environmental law in its narrower sense and the related fields of law that are not always called environmental but strongly affect the quality of the environment should be carefully maintained. Legal arrangements, institutional background, and attitudes of the administrative personnel that determine the level and effectiveness of, say, public participation is often quite different in the two areas. While the environmental branch of administration (narrowly understood) may be more supportive toward environmental democracy, other related fields of law may show more resistance in this respect. Therefore, the results of testing the indicators may either be too positive or too negative if one or the other field of law is given a disproportionate representation in the samples examined by the country researchers.
- 6 In the Caribbean context, primary legislation refers to statutes or acts of parliament, and secondary legislation is made by a person or body under authority contained in primary legislation—e.g., ministerial orders.
- 7 The American Convention on Human Rights, article 13; The International Covenant on Civil and Political Rights, article 19; Principle 4 of the IACHR Statement of Principles on Freedom of Expression; I/A Court H.R., Case of *Claude Reyes et al. v. Chile*. Judgment of September 19, 2006, Series C No. 151. Para. 89.
- 8 Office of The Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, Organization of American States Report 2009.
- 9 The American Convention on Human Rights, article 13.2; The International Covenant on Civil and Political Rights, article 19.3.
- 10 The American Convention on Human Rights, article 13.2; The International Covenant on Civil and Political Rights, article 19.3.
- 11 See the Office of the Special Rapporteur for Freedom of Expression, Inter-American Commission on Human Rights, *The Inter-American Legal Framework Regarding the Right to Access to Information* (2nd edition), OEA/Ser.L/V/II.CIDH/RELE/INF. 9/12. March 7, 2011, para. 53.
- 12 *Ibid.*, para 54.
- 13 Cf. Case of Myrna Mack Chang, *supra* note 302, para. 180; Case of *Tiu Tojin v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190, para. 77, and Case of *Radilla Pacheco*, *supra* note 24, para 258; case of *Gomes Lund v. Brazil*.
- 14 Cf. Case of Claude Reyes, para. 163.
- 15 Cf. Case of Claude Reyes, para. 137.