

LaRutadelClima



Credits

Editorial ©La Ruta del Clima -

This publication is wholly financed by the Government of Denmark. The Government of Denmark does not necessarily share the opinions here within expressed. The authors bears the sole responsibility for the content.



**MINISTRY OF FOREIGN AFFAIRS
OF DENMARK**
Danida

ISBN: 978-9930-9772-3-1

ISBN: 978-9930-9772-3-1



Authors: Sam Goodman, Adrián Martínez Blanco, Jhoanna Cifuentes Gómez, Osver Polo Carrasco, Isatis M. Cintrón, Javier Dávalos, Mariano Villares, Santiago Aldana Rivera, Anaid Velasco, RCOY, Alejandro Aleman.

Editorial: Adrián Martínez Blanco, Sam Goodman.

Editorial, Graphic Design and Cover: Stuart Roldán.

Published in San José, Costa Rica 1st Edition, 2022.

This report results from a research process by La Ruta del Clima.

This work is available under Creative Commons Attribution- NonCommercial-No Derivatives 4.0 International" license.

The license text is available at: <https://creativecommons.org/>



To request a copy of the report or download the article, please go to: www.larutadelclima.org
Asociación La Ruta del Clima. San José, Costa Rica.

Contents

Prologue.....	4
The Challenges to Participation in Argentina	6
The Emergence of New Authoritarianisms and the Challenges for Citizen Participation in the Context of the Global Climate Crisis	9
COP26 Participation: Who was the public?.....	11
The Escazú Agreement Without Costa Rica: The Shameful Absence and (Ir)Responsibility of Its Constitutional Judge.....	18
Puerto Rico: Participation and Climate Justice in a Colonial State	20
Escazú: Progress for Information, Participation and Environmental Justice in Latin America and the Caribbean.....	24
Opponents of the Escazú Agreement in Colombia most at fault for the climate crisis: Reflections on their concerns about guaranteeing participation	27
Activists at Risk: Challenges to exercising access rights and climate governance in Latin America and the Caribbean.....	32
The Right to Public Participation in Mexico: Challenges and Considerations for its Implementation under the Escazú Agreement	35
Climate Litigation and Social Participation in Latin America and the Caribbean.....	37
Participation as a Right – RCOY.....	39

Prologue

Sam Goodman, Climate Policy Lead, La Ruta del Clima

Protecting the right to participate in environmental governance processes is key to delivering outcomes at the national, regional, and international levels that reflect the interests of environmental defenders, frontline communities and civil society organizations (CSOs)

On the global stage, developed nations have consistently had an outsized influence compared to Latin American countries and the rest of the developing world.¹ This has coincided with a regional imbalance in both the number of delegates and CSOs, especially with five of the last six COPs taking place in Europe.

A breakdown of participation at COP26 in Glasgow by La Ruta del Clima and La Data Cuenta shows that over 9,000 badgeholders were from Western Europe, the United States, Canada and other Global North nations, while fewer than 2,000 were from Latin American and Caribbean states.² At the civil society level, the contrast is even starker. There were over 7,300 NGO participants attending COP from Western Europe, the United States, Canada, and other Global North countries, while there were only 501 NGO participants from Latin America and the Caribbean.

In Latin America, governments have often taken a hostile stance toward CSOs, environmental defenders, and journalists. The region is notoriously the most dangerous in the world to be an environmental activist, making participation a formidable task.³ Of the more than 200 environmental defenders killed in 2020, the vast majority were from Colombia (65), Mexico (30), Brazil (20), Honduras (17), Guatemala (13), Nicaragua (12), and Peru (6). In 2022, high profile assassinations, such as the murder of the Dominican Republic's Minister of the Environment over his rejection of a project that did not meet environmental standards,⁴ and the murder of indigenous peoples expert Bruno Pereira and British journalist Dom Phillips in Brazil⁵ have helped draw attention to this dire situation.

Because of the historical underrepresentation at the international level combined with dangers faced at home, it's critical to safeguard the right to participate in the environmental governance process in the region through mechanisms like the Escazú Agreement.

The Escazú Agreement is a regional environmental treaty among Latin American and Caribbean nations and stems from the United Nations Conference on Sustainable Development (Rio+20). The Agreement was adopted in March 2018 in Escazú, Costa Rica and opened for signatures in September of that year. It is the first treaty of its kind in the region.

The treaty identifies access rights as key to strengthening democracy, sustainable development and human rights, calling for each party to "ensure the public's right of access to environmental information in its possession, control or custody, in accordance with the principle of maximum disclosure."

¹ Danielle Falzon, "The Ideal Delegation: How Institutional Privilege Silences 'Developing' Nations in the UN Climate Negotiations," Social Problems, 2021, <https://doi.org/10.1093/socpro/spab040>, 1.

² "COP26 Participation Summary," La Ruta del Clima, <https://larutadelclima.org/cop26-participation-summary>.

³ "Última Línea De Defensa: Las Industrias Que Causan La Crisis Climática y Los Ataques Contra Personas Defensoras De La Tierra y El Medioambiente" (Global Witness, September 13, 2021), <https://www.globalwitness.org/es/last-line-defence-es/>.

⁴ Jean-Michel Hauteville, "Latin America Is Still the Most Deadly Region for Environmental Defenders," Le Monde, June 9, 2022, https://www.lemonde.fr/en/international/article/2022/06/09/dominican-environment-minister-shot-dead-in-his-office_5986212_4.html.

⁵ "Three Charged in Brazil with Murder of Dom Phillips and Bruno Pereira," The Guardian, July 22, 2022, <https://www.theguardian.com/world/2022/jul/22/three-charged-brazil-murder-dom-phillips-bruno-pereira>.

It also provides for "open and inclusive" participation in environmental decision-making processes. The treaty requires parties to guarantee mechanisms to ensure this right is upheld.

Another key element of the treaty is the world's first binding provision to protect human rights defenders on environmental matters. Each party is required to "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."

Although 25 of the 33 nations in the region have signed the treaty, only 14 have ratified it. Chile and Colombia, under the new governments of Gabriel Boric and Gustavo Petro, ratified the treaty this year.

To reinforce our belief that participation is a right, we have invited our friends and colleagues from around the region to contribute to this collective work. We hear from voices in Costa Rica, Mexico, Argentina, Ecuador, Puerto Rico, Peru, and Nicaragua on the threats, challenges, and successes in engaging civil society in environmental governance and protecting defenders in the region.

In each of these submissions, we see a common pattern of argument emerging. The authors hone in on the need to promote public participation on environmental matters, protect access rights, and safeguard environmental defenders. These shared stories show why a framework like the Escazu Agreement is essential to protect these rights in a region where they are constantly under threat.

The Challenges to Participation in Argentina

Mariano Villares, Founder, Sustainability without Borders Foundation (SSF, by its acronym in Spanish)

Participation is a right, but in Latin America and the Caribbean, it is not always easy to practice it, and in many cases, it is dangerous to try to do so. Even more so regarding environmental issues, Latin America is the deadliest region for environmental defenders on the planet, according to the data tracked by the organization Global Witness since 2012. In other words, participating in the region is still very dangerous; almost 3 out of every 4 attacks against environmental defenders that have been registered have taken place in Latin America.⁶

We hope this tragic trend will be reduced rapidly with the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, more popularly known as the Escazú Agreement (EA). Adopted in Costa Rica on March 4, 2018, and effective as of April 22, 2021, it is the first regional environmental agreement in Latin America and the Caribbean and the first in the world to contain specific stipulations on human rights defenders in environmental matters. Although the agreement is open to 33 countries in Latin America and the Caribbean, only 24 of them have signed it to date.

The objectives of the EA are to guarantee the full and effective implementation of the rights to access to environmental information, to promote public participation in the decision-making process, and to favor access to justice in environmental matters, as well as the creation of vehicles to guarantee the protection and safety of environmental defenders. Establishing a minimum budget to enforce these rights throughout the region is a key mechanism.

The first Escazú Conference of the Parties (COP) was held this year in April. Next year an extraordinary COP will be held in Argentina, where the agreement

is expected to be operationalized. Hopefully, the rights enshrined therein can be implemented more concretely in each country that ratified it.

The EA is key to the progress of environmental democracy, understood as the idea that significant participation is key to ensuring that citizens' interests are adequately and equitably addressed when decisions are made about land and natural resources. Environmental democracy fundamentally embodies three rights reinforced and enshrined in the EA: the right to free access to information about environmental matters and concerns, the right to participate in decision-making in a meaningful way, and the right to seek the execution of environmental laws or compensation for damages.⁷

Talking about environmental democracy requires discussing the limitations of representative democracy and the need to move toward participatory democracy. The planetary limits laid out by Johan Rockström of the Stockholm Resilience Centre are more than sufficient evidence that representative democracy cannot guarantee effectiveness and efficiency in public management and environmental protection. Public political decisions, particularly environmental ones, impact all of us. For this reason, it is increasingly urgent and imperative to include citizens in the deliberative, discussion, and decision-making processes of a new environmental public management with greater citizen participation.

The EA makes a crucial contribution to this, even though the bases of the agreement can be found in other international agreements that have been in force for over 30 years. This is the case, for instance, of Principle 10 of the 1992 Rio Declaration on Environment and Development. Also, the United

⁶ "Última Línea De Defensa: Las Industrias Que Causan La Crisis Climática y Los Ataques Contra Personas Defensoras De La Tierra y El Medioambiente" (Global Witness, September 13, 2021), <https://www.globalwitness.org/es/last-line-defence-es/>, 12.

⁷ "Environmental Democracy Index," World Resources Institute, accedido 11 de Septiembre, 2022, <https://www.wri.org/initiatives/environmental-democracy-index>.

Nations Framework Convention on Climate Change (UNFCCC) set forth among its stipulations that the States must "make sure to train the public and raise awareness of climate change issues, allow access to information, and encourage the broadest possible participation in this process, including civil society organizations." Along the same line, Article 12 of the Paris Agreement ratified this commitment by stating that appropriate measures should be taken to improve the education, awareness-raising, training, and participation of the public, as well as their access to information on climate change.

In this context, at Sustainability Without Borders (an NGO based in Argentina but with a regional and global outlook), we advocate for the concrete and efficient implementation of these rights daily. To this end, we carry out national projects, such as campaigns for greater public participation regarding climate issues in Argentina, and regional projects, such as the Regional Conference of Youth (RCOY) 2021/2022.

In Argentina, the right to participate and the right to public information are enshrined in our legislation, especially in Law 25,675, known as the General Environmental Law. Regarding environmental information, it establishes that "Natural and legal persons, public or private, must provide information related to environmental quality and the activities they carry out. Every inhabitant may obtain environmental information handled by the authorities which are not considered legally classified." (Article 16). The country also has a specific law on environmental public information (Law 25,831).

In terms of participation, the General Environmental Law (GEL) establishes that "every person has the right to express their opinion on administrative procedures related to the preservation

and protection of the environment, whether their influence is general or particular, and of a general scope" (Article 19).

In November of this year, it will be 20 years since the GEL was enacted. In other words, Argentina has the advantage compared with the rest of the region of having had these rights enshrined many years ago. However, experience has shown us that the mere existence of these rights does not guarantee their correct and efficient implementation.

On several occasions⁸ in terms of public participation, we have demanded several environmental agencies follow basic rules to guarantee minimally efficient participation. By way of example, the following are some of them::

- Inform about the participation processes at least 15 days in advance and attach supporting documentation about the topics to be discussed.
- Provide clear guidelines for participation to respect and value the commitment and time of all parties involved in the process.
- Provide a space for consultations and feedback on the information provided following the presentation made by the state representatives.

Regarding access to environmental justice, a key pillar to guaranteeing environmental democracy enshrined in the EA is to obtain a complete and expeditious judicial solution to a legal conflict on environmental matters. In this sense, Argentina is characterized by having cutting-edge environmental jurisprudence, such as in the Mendoza court case, and remarkable tools, such as its environmental protection. But it is also a witness to slow justice, without reasonable deadlines, and lacking suitable judges to deal with environmental matters. Environmental courts could contribute to solving these weaknesses.

⁸ "ONGs Ambientales Reclaman Al Gobierno Participación En La Definición De Los Objetivos De Descarbonización Al 2050 (Argentina)." OilGasRenewables.com, 24 de Julio, 2021, <https://www.oilgasrenewables.com/medioambiente/item/2721-ongs-ambientales-reclaman-al-gobierno-participaci%C3%B3n-en-la-definici%C3%B3n-de-los-objetivos-de-descarbonizaci%C3%B3n-al-2050-argentina.html>.

Even today, in many Argentine provinces, the rights enshrined in the EA and on which environmental democracy is founded are not respected, and even when they are, in many cases, there are inefficient information and participation processes and a lack of access to environmental justice.

There have only been a few successful cases of public participation in which the participatory process has enriched the public and public officials. On the contrary, most public participation experiences have ended in consultation processes to comply with regulations, adding no value for the decision-makers or the public participants.

Given the above, the following are the major challenges in the region for the implementation of environmental democracy::

1. Being informed, being involved, and gaining access to environmental justice is still dangerous in the region.
2. In many countries in the region, the right to access public environmental information, public participation, and environmental justice are still not respected.
3. Even in countries where these rights are enshrined in their internal laws and/or where the Escazú Agreement has been ratified, they are not implemented efficiently and within reasonable timeframes. This is the case in Argentina.
4. It is urgent to move from a representative democracy to participatory democracy.

The Emergence of New Authoritarianisms and the Challenges for Citizen Participation in the Context of the Global Climate Crisis

Alejandro Aleman, Coordinator, CAN Latin America

In our experience in recent years, from the secretariat of Climate Action Network Latin America (CANLA), we have observed increasing restrictions on civic spaces and the participation of civil society organizations (CSOs) in our network, in decision-making spaces, from the local to the international level. From the perspective of many of our organizations, these growing restrictions coincide with a growing trend in the rise of political proposals that have led to the establishment and, in some cases, consolidation of regimes with strong autocratic tendencies.

Likewise, we have observed that the establishment and consolidation of this type of leadership in some countries in the region has inspired the formation of a growing number of new regimes with similar characteristics in other countries or sub-regions that had been exempt from this type of calamity until now. To a large extent, we consider that the establishment and consolidation of this type of phenomenon favors its replication and consolidation in a growing number of geographic areas. This has entailed risks not only for the effective participation of CSOs in decision-making spaces but also for the implementation of fundamental first-generation human rights, which are linked to the right to a healthy and clean environment, access to water, and clean energy, among others. When the right to civic protest, freedom of expression, movement, thought, or other first-generation rights have been restricted, our right to sustainable development is compromised too.

The entry into force and implementation of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, better known as the Escazú Agreement, has been a very important event for CANLA organizations. In our network, there is still an extensive interest and commitment to increasing our participation in the processes that will lead to the creation of mechanisms to implement the Regional

Agreement, as they directly impact the possibilities of involvement and participation in decision-making spaces at all levels.

In the context of the United Nations Framework Convention on Climate Change (UNFCCC), the links that can be established between the Escazú Agreement and efforts to strengthen Action for Climate Empowerment (ACE) are also of utmost importance to guarantee the rights of environmental defenders to access information and to participate in decision-making spaces, as well as to protect their rights. If the results of the ongoing negotiations are focused adequately, the synergies where ACE and Escazú complement each other could also strengthen the efforts of CSOs to design and implement policies focused on the climate commitments made by the countries in the Paris Agreement. This agreement largely prioritizes promoting the perspectives and priorities of the most vulnerable sectors affected by the climate crisis.

Despite the opportunities identified within the framework of ACE, we have also identified a series of risks, among which the most salient is that this important mechanism could be exploited by the fossil fuel industry and related stakeholders to wash their image and manufacture opinions favorable to their interests in the global public opinion, without there necessarily being any substantive transformations in the global economic system which is still highly dependent on fossil fuels. We are referring to greenwashing operations that these industries use as part of their strategies of false solutions to the climate crisis, among which we can mention carbon markets and the promotion of genetically modified organisms (GMOs)—most of which are tied to technological packages and highly polluting production processes with very negative consequences for the most vulnerable—, the implementation of high-risk solutions based on geoenvironmental engineering, among others. The fossil fuel industry

and related sectors usually present these as part of the solution to the climate crisis, but in practice, they have only proven to be effective in exacerbating the problem.

In this context, the effective participation of legitimate representatives of grassroots organizations, indigenous communities, and those most affected by the climate crisis is essential to provide real solutions to the climate crisis. Unfortunately, the autocratic tendencies that we observe more and more often in our region do not necessarily favor the effective participation of these actors and the appropriate measures to address the climate and environmental crisis. On the contrary, these tendencies undermine the limited progress that has been made toward building a regional and global establishment that could favor the participation of the organizations and transparency in decision-making processes.

COP26 Participation: Who was the public?

MA. Adrián Martínez Blanco – University of Eastern Finland Doctoral Researcher & Director La Ruta del Clima

A conceptual framework

The public at the United Nations Framework Convention on Climate Change (UNFCCC) conferences has gained a place in the spotlight. Civil society organizations play a significant role in the international climate negotiations. Thousands of civil society representatives from UNFCCC non-governmental organization (NGO) accredited delegations attended the 26th UNFCCC conference of parties (COP26) to observe and, in few instances, participate in the UNFCCC negotiations.

Public participation is a well-known issue that is negotiated under the Action for Climate Empowerment (ACE) item at UNFCCC conferences.⁹ Furthermore, the UNFCCC explicitly calls on parties to promote and facilitate “public participation in addressing climate change and its effects and developing adequate responses” at different levels.¹⁰ Also, the Paris Agreement affirmed the importance of public participation on all matters addressed in this agreement and calls on parties to cooperate by taking measures in recognizing the importance of public participation.¹¹

Participation and admission of observers to UNFCCC conferences is regulated by the rules of procedure.¹² However, public participation and the participation of observers are not the same concept at

the UNFCCC. Furthermore, the UNFCCC website states that COPs are not open to the public.¹³ Therefore, from a narrow interpretation of the UNFCCC regulations, the public is not necessarily observers.

This cognitive dissonance that is encountered in the UNFCCC regulation is of utmost importance if public participation is addressed from an access rights perspective. A public is a group of people with certain procedural rights that specifically address participation at international level as per access rights agreements.¹⁴ At this point, it is not feasible to presume that a reference to public participation at the international climate regime has the same scope and content as per human rights law.¹⁵

From a co-production perspective, it is also important to clarify that a public is an emerging collective that is mutually defined by procedural formats, issues or objects of interest and human agency.¹⁶ This understanding of the public is important when an event such as COP26 is analyzed because it lets us consider the elements that were put in place, the context that existed for a public to be assembled and then have the opportunity to participate. In the case of a UNFCCC COP, one could argue that the idea that COP26 was closed to the public is theoretically incorrect, as it was instead, open to a specific public. The “observers” assemble as a public through the UNFCCC rules of procedure and admission processes.

⁹ UNFCCC. (n.d.). What is ACE. Retrieved October 4, 2022, from <https://unfccc.int/blog/what-is-ace>

¹⁰ United Nations (1992). United Nations Framework Convention on Climate Change. https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf, Art 6.a(ii)

¹¹ UNFCCC (2015). Paris Agreement. https://unfccc.int/sites/default/files/english_paris_agreement.pdf, Prologue; Art. 12.

¹² Acuerdo de París, United Nations Treaty Collection (2015). https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=en Art. 16.8; United Nations. (1992). United Nations Framework Convention on Climate Change. https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf Art. 7.6.

¹³ “How to Engage without Observer Status,” UNFCCC, accessed October 3, 2022, <https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/overview/how-to-engage-without-observer-status>.

¹⁴ UNECE. (1998). Aarhus Convention. UNECE, June.; Acuerdo de Escazú, Cepal 2018 (2018). https://repositorio.cepal.org/bitstream/handle/11362/43595/1/S1800429_es.pdf

¹⁵ Adrian Martínez Blanco, “From Stakeholders to Rightsholders: Assessing Public Participation in the International Climate Regime,” *Carbon & Climate Law Review* 15, no. 4 (2021): pp. 282-301, <https://doi.org/10.21552/cclr/2021/4/5>.

¹⁶ Kearnes, M., & Chilvers, J. (2016). Participation in the making. In M. Kearnes & J. Chilvers (Eds.), *Remaking Participation Science, Environment and Emergent Publics* (1st ed., p. 296). Routledge.

Access Rights at UNFCCC

The UNFCCC has its procedural formats to shape who can be admitted and how they can participate in the governance process. However, it is also true that from a systemic interpretation approach, access rightsholders should have the possibility to question the impact that these internal regulations have on their right to participate at the international climate regime.

More than one-third of UNFCCC parties are access rights signatory parties.¹⁷ This implies that these parties currently have a binding obligation to promote changes in the UNFCCC inner workings to enable public participation and to guarantee the participation of rights holders in the process. Although, access rights agreements are not binding obligations for all UNFCCC parties, these are not the only source of law that backs a human rights approach to public participation.¹⁸

Public participation at the international climate regime can also be understood as the exercise of the right of political participation.¹⁹ As the practice of public participation in international forums expands and access rights agreements consolidate, there is also the argument that public participation in environmental matters is crystalizing into a human right recognized under international customary law.²⁰

Who is the public?

Departing from this conceptual understanding of the public enables us to explore who attended COP26. The Secretariat reported a total of 23,351 persons at the conference.²¹ However, the report includes a list named "Additional Badge" of 15,106 additional persons, and of those, 6,225 were from the party overflow. The total number of persons given a physical badge at the venue would be of 38,457.

It is important to note that there is not an official definition of what is a "party overflow." It is not mentioned in COP Decisions and there is no additional information available from the UNFCCC.²² However, "party overflow" badge holders are commonly known to be from country delegations but with reduced access than "party" badges. Also, according to the official registration procedure "delegation overflow" personnel receive a badge "as part of the host country delegation."²³

Yet, this type of badge was included in the host country staff category under "other." If these totals are categorized differently, accredited NGOs represented 9,529 (24.7%) participants. Party delegation participants (including overflow badges) totaled 15,967 (38.9%), while the staff and host country personnel were 7,956 (20.6%).

¹⁷ Escazú Agreement (n 6) art 4(10); Aarhus Convention (n 6) art 3(7); Aarhus Convention (n 6) preamble.

¹⁸ UNGA, 'Universal Declaration of Human Rights' UN Doc A/RES/3/217A (8 December 1948), art 21; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 171, art 25; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123, art 23; UNGA, 'Declaration on the Right to Development' UN Doc A/RES/41/128 (4 December 1986); UNGA, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' UN Doc A/RES/53/144 (8 March 1999).

¹⁹ Handl, G. (2001). Human Rights and Protection of the Environment. In A. Rosas, C. Krause, & A. Eide (Eds.), *Economic, Social, and Cultural Rights : A Textbook*. (Vol. 2).

²⁰ Szabó, M. (2014). Public Participation – Human Right or an Instrument of International Administrative Law. In B. Gyula (Ed.), *Environmental Democracy and Law : Public Participation in Europe*. Europa Law Publishing. <https://ebookcentral-proquest-com.ezproxy.uef.fi:2443/lib/uef-ebooks/detail.action?docID=1920906.102>, 104; A. Boyle, "Human Rights and the Environment: Where next?," *European Journal of International Law* 23, no. 3 (January 2012):, <https://doi.org/10.1093/ejil/chs054>.

²¹ UNFCCC, 'List of Participants COP26 Part One FCCC/CP/2021/INF.3', vol 3 (2021).

²² Robert McSweeney, "Analysis: Which Countries Have Sent the Most Delegates to COP21?," *Carbon Brief*, August 12, 2015, <https://www.carbonbrief.org/analysis-which-countries-have-sent-the-most-delegates-to-cop21/>.

²³ "How to COP: A Handbook for Hosting United Nations Climate Conferences" (UNFCCC, 2020), <https://unfccc.int/documents/185998>, 45.

If analyzed, the participant list of past COPs does not report data on “party overflow” participants who are also part of official country delegations.²⁴ This data has only been included before in COP3 in the category of Parties and Observer States, and in COP4 in a category of its own.²⁵

However, it has been reported that countries have included as “party overflow” hundreds of participants in past COPs. The party overflow data disrupts the understanding of how many people attend a COP, which has been the basis for many research

efforts to understand participation.²⁶ A study by Carbon Brief does take into account party overflow data from COP3 & COP4 to analyze NGO observer participation.²⁷ A more accurate report on participant data is available for COP23 in a report from the German Environment Ministry in which the number of participants with badges increased to 22,060 from the 16,028 reported by the UNFCCC.²⁸ Thus, these findings make it difficult to validate the UNFCCC Secretariat argument of an increased NGO participation at COP26 as there are gaps in the available data.²⁹

²⁴ Alister Doyle, “Overflowing Brazil Delegation Brings Flair to Climate Talks,” Reuters, December 6, 2015, <https://www.reuters.com/article/climatechange-summit-brazil-idUSKBN0TPoEB20151206>; McSweeney, 229.

²⁵ Robert McSweeney, “Analysis: How Delegations at COP Climate Summits Have Changed over Time,” Carbon Brief, October 27, 2021, <https://www.carbonbrief.org/analysis-how-delegations-at-cop-climate-summits-have-changed-over-time/>; UNFCCC, ‘List of Participants COP4 FCCC/CP/1998/INF.8’ (UNFCCC, 1998); UNFCCC, ‘List of Participants COP3 FCCC/CP/1997/INF.5’ (1997).

²⁶ Miquel Muñoz Cabré, “Issue-Linkages to Climate Change Measured through NGO Participation in the UNFCCC,” *Global Environmental Politics* 11, no. 3 (2011): pp. 10-22, https://doi.org/10.1162/glep_a_00066, 11; Martínez Blanco, 1; Sam Sellers, “Gender and Climate Change: A Closer Look at Existing Evidence” (WEDO, November 2016), <https://wedo.org/wp-content/uploads/2016/11/GGCA-RP-FINAL.pdf>; Ayse Kaya and Lynne Steuerle Schofield, “Which Countries Send More Delegates to Climate Change Conferences? Analysis of UNFCCC COPs, 1995-2015” (2020) 16 *Foreign Policy Analysis* 478; Till Neeff, “How Many Will Attend Paris? UNFCCC COP Participation Patterns 1995-2015” [2013] *Environmental Science and Policy*; Tobias Böhmelt, “A Closer Look at the Information Provision Rationale: Civil Society Participation in States’ Delegations at the UNFCCC,” *The Review of International Organizations* 8, no. 1 (February 2012): pp. 55-80, <https://doi.org/10.1007/s11558-012-9149-6>, 55; Florian Weiler, “Determinants of Bargaining Success in the Climate Change Negotiations,” *Climate Policy* 12, no. 5 (2012): pp. 552-574, <https://doi.org/10.1080/14693062.2012.691225>, 552.

²⁷ McSweeney, 232.

²⁸ “COP23 Environmental Statement UN Climate Change Conference” (Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (November 2017), https://unfccc.int/sites/default/files/resource/COP%2023%20EMAS%20Environmental%20Statement%20-%20initial%20version_EN.pdf; UNFCCC, ‘List of Participants 1. COP23 FCCC/CP/2017/INF.4’ (2017) https://unfccc.int/sites/default/files/resource/info4_o.pdf.

²⁹ “Concept Note: Process to Strengthen Observer Engagement in the UNFCCC Process” (UNFCCC, May 25, 2022), https://unfccc.int/sites/default/files/resource/concept_note_process_strengthen_observer_engagement.pdf.

Category	Group	Participants								
		COP3	COP4	COP20	COP21	COP22	COP23	COP24	COP25	COP26
Parties + Observers States	Parties	1534	1391	6291	19208	15878	9196	11090	11406	9742
	Observer States	29	39	5	52	7	6	10	8	7
	Overflow participants/COP3	710	No data							
Observer Organizations	United Nations Secretariat units and bodies	90	68	245	556	340	465	216	306	361
	United Nations specialized agencies and related organizations	33	83	197	415	362	386	271	400	369
	Intergovernmental organization	79	120	439	1037	618	597	652	625	741
	Non-governmental organization	3663	2357	3104	6306	4155	4095	5054	7471	9529
Media	Media	3712	883	904	2798	1204	1383	1126	2165	2602
Overflow Participants	Overflow participants/COP4	No data	682	No data						
Additional Badges	Party Overflow/COP26	Categories not reported in the UNFCCC participant list until COP26								6225
	Global Climate Action and Momentum for Change	FCCC/CP/2021/INF.3								925
	Staff (technical, local, security and secretariat)									6232
	Other (temporary and host country)									1724
TOTAL		9850	5623	11185	30372	22564	16028	18419	22327	38457

Figure 1: Participant data on selected UNFCCC COP³⁰

A COP26 Public

La Ruta del Clima has analyzed the COP26 final participant list to better understand who attended this conference.³¹ An interesting data visualization dashboard has been made to help illustrate the gender, affiliation, UN Region, country, constituency

and party distribution of those present at COP26 based on available UNFCCC data. This summary illustrates the data included in the UNFCCC COP26 participation list with the gaps mentioned in the prior section.

³⁰ UNFCCC, 'List of Participants COP3 FCCC/CP/1997/INF.5' (n 232); UNFCCC, 'List of Participants COP4 FCCC/CP/1998/INF.8' (n 232); UNFCCC, 'List of Participants COP20 FCCC/CP/2014/INF.2' (2014); UNFCCC, 'List of Participants COP21 FCCC/CP/2015/INF.3' (2015); UNFCCC, 'List of Participants COP22 FCCC/CP/2016/INF.3' (2016); UNFCCC, 'List of Participants 1. COP23 FCCC/CP/2017/INF.4' (n 235); UNFCCC, 'List of Participants COP24 FCCC/CP/2018/INF.3' (2018); UNFCCC, 'List of Participants COP25 FCCC/CP/2019/INF.4' (2019) https://unfccc.int/sites/default/files/resource/cp_inf4.pdf; UNFCCC, 'List of Participants COP26 Part Two FCCC/CP/2021/INF.3', vol 3 (2021).

³¹ UNFCCC, "List of Participants," November 23, 2021, https://unfccc.int/sites/default/files/resource/cp2021_info3p01_adv.pdf.

COP 26 Badge Holder Distribution

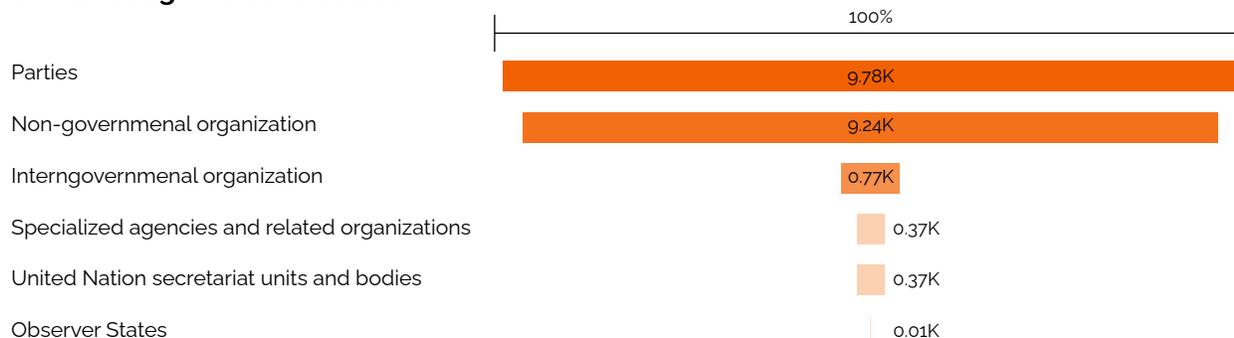


Figure 2: COP26 Badge Holder Distribution

Figure 2 helps illustrate that even if party overflow badges are not accounted for in the participant list, party badge holders still represent the majority of those present at COP26. And if the 6,225 party overflow badge holders would be added to the existing data, the gap between party and NGO participation would be even greater.

After analyzing the provisional list of participants of COP26 reported by the UNFCCC, we determined that there is an error. It was reported that 39,509 participants had registered yet we found only 28,055. This is illustrated by similar inconsistencies mentioned in Quartz last year.³² Furthermore, the review of the final participation list only found 20,351 participants and not the 23,351-figure reported by the UNFCCC Secretariat.

Regional Groups Country UN ³³	Final List Participants	% Total
WesternEuropean and other States	9187	45%
African States	388	19%
Asia-Pacific States	3396	17%
Latina America and Caribbean States	1762	9%
Eastern European States	786	4%
N.A.	1512	7%
TOTAL	20531	100%

Table 1: COP26 Participants per UN Region

If analyzed by region, 45% of COP26 participants were from Western European and other States . However, if we look into party delegations for COP26, 34% were from African States, 27% from

Asia-Pacific States, 19% Western European and other States, 13% from Latin American and Caribbean States and 7% from Eastern European States. This could be explained by the fact that COP27 is set to be held in Egypt in 2022.

³² Amanda Shendruk and David Yanofsky, Quartz, November 5, 2021, <https://qz.com/2084753/the-complete-searchable-list-of-people-and-companies-at-cop26/>.

³³ "Regional Groups of Member States," United Nations Department for General Assembly and Conference Management (United Nations), accessed October 4, 2022, <https://www.un.org/dgacm/en/content/regional-groups>.

This balance changes significantly when addressing the participation of NGOs in COP26 as shown in Table 2. Out of the 9,241 NGO participants 7,312 were from the Global North. In fact, out of the 1,623 NGOs present in COP26, 73% were from the Western European and other States region. Also, the

United States (22%), United Kingdom (17%), France (6%), Germany (6%) and Canada (4%) were the top five countries with more NGOs present at COP26. This demonstrates an important imbalance in participation that may lead to an undue influence of Global North NGOs over the UNFCCC process.

Regional Groups Country UN ³⁴	NGO Participants	% Total
WesternEuropean and other States	7312	79%
African States	780	8%
Asia-Pacific States	578	6%
Latina America and Caribbean States	501	5%
Eastern European States	67	1%
N.A.	3	0%
TOTAL	9241	100%

Table 2: COP26 NGO Participants by UN Region

This over-representation of regions by NGOs is also demonstrated by countries with the most participants. The top seven countries with most NGO participants were from the Global North: United States 22% (2,054), United Kingdom 21% (1,984), Germany 7% (649), France 5% (507), Switzerland 5% (431), Belgium 4% (390), and Canada 3% (297). Nigeria 3% (264) and Brazil 236 (3%) were the only countries from the Global South

to make the top 10 with the most NGOs present at COP26. This is also the case regarding the top 5 NGOs with the most participants: International Chamber of Commerce - 82 (France), Local Governments for Sustainability (ICLEI) - 65 (Germany), CAN Intl. - 48 (Germany), International Trade Union - 46 (Belgium) and CAN Europe - 27 (Belgium).

COP 26 Badge Holder Gender Balance

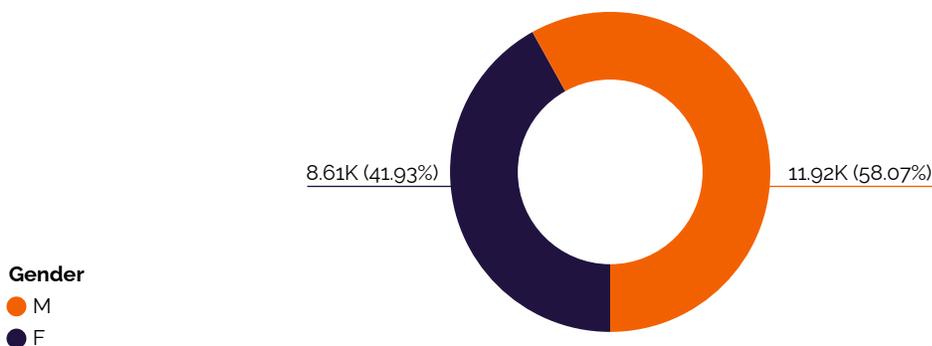


Figure 3: COP26 Participants Gender Balance

³⁴ "Regional Groups of Member States," United Nations Department for General Assembly and Conference Management (United Nations), accessed October 4, 2022, <https://www.un.org/dgacm/en/content/regional-groups>.

The gender balance of participants at COP26 was unequal. 58.07% of participants identified as male and 41.93% identified as female. This is an interesting data point because in the coming COP27 there is the possibility for participants to register under other classifications. The COP26 gender imbalance can be attributed to parties and the UN system participants. Parties registered 34.01% females and 65.99% males. UN participants were distributed in 44.84% females and 55.16% males. In contrast, NGOs were closer to parity reporting 49.85% females and 50.15% males.

Who constitutes the public, parties and UN intermediators is relevant in a participatory process. To consider the structural barriers that determined the emergence of the COP26 public is essential to question how access rights are enabled or obstructed. The public at a COP is emerging and how we ensure fair conditions for attendance and then how it can participate is key to guarantee access rights at the UNFCCC. The data mentioned in this report provides some ideas on who was the public at COP26. To access more detailed data please visit our website at www.LaRutadelClima.org.

The Escazú Agreement Without Costa Rica: The Shameful Absence and (Ir)Responsibility of Its Constitutional Judge

Nicolás Boeglin, Professor of International Law, Law School, University of Costa Rica (UCR).

Since the first pronouncements against the Escazú Agreement by some business organizations in Costa Rica in April 2021, some journalists and Costa Rican jurists took on the task of comparing the content of the Escazú Agreement with the alleged "reasons" put forward against this regional treaty adopted in Escazú in March 2018: the result of the comparison undertaken by the journalists was titled as follows: "UCCAEP uses false arguments to oppose the Escazú Agreement"³⁵ (*Note 1*).

An earlier and more detailed analysis by our colleague Mario Peña Chacón was titled "Demystifying the Escazú Agreement," while other colleagues referred to "fallacies."³⁶ If they are "false arguments," "myths," and "fallacies," we do not consider it necessary to present and analyze them again at all, but, rather, we would like to observe their impact on certain social classes of Costa Rican society.

First, it should be noted that these legendary public figures, surprisingly, reappeared in a famous "note" by a magistrate in the Constitutional Court in March 2020, in a vote by the constitutional judge that is completely unusual (*Note 3*). Contrary to what the constitutional judge maintains in her now famous "note," the reversal of the burden of proof in environmental matters mentioned in the Escazú Agreement in no way affects the presumption of innocence in criminal matters in the Costa Rican legal system: the biodiversity law has enshrined this principle in Costa Rica since 1998, and an article by Mario Peña Chacón illustrates its use by the Costa Rican courts.³⁷ Are such basic things not known in the offices of some magistrates of the Constitutional Court?

Of course, these legendary public figures have found fertile ground in politics, to such an extent that in a recent interview in Spain, the minister of the Ministry of Environment and Energy of Costa Rica (MINAE, by its acronym in Spanish), in response to the persistent questions from the journalist from El País, suggested changing the name of the Escazú Agreement.³⁸

This strange situation concerning such influential public figures in Costa Rica raises several questions about the tension caused by the citizens' right to participate in environmental matters in some economic and political circles in Costa Rica. It also raises questions about the ease with which these sectors can be permeated with false "arguments."

The impossibility, since April 2020, of holding a public debate in the media between legal specialists who promote the Escazú Agreement and the legal experts and detractors appointed by the business organizations raises another concern. When an international treaty is the subject of some controversy, every democratic society accepts the idea that its scope can be debated: How, then, can we make sense of the fact that, for example, the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR FTA) gave rise to countless debates and discussion forums between 2005 and 2007 in Costa Rica, whereas the Escazú Agreement has lacked a public debate among specialists on its content and the scope of its provisions since 2018?

³⁵ David Bolaños, "UCCAEP Usa Argumentos Falsos Para Oponerse Al Acuerdo De Escazú," Doble Check, April 26, 2021, <https://radios.ucr.ac.cr/2021/04/doblecheck/uccaep-usa-argumentos-falsos-para-oponerse-al-acuerdo-de-escazu/>.

³⁶ Mario Peña Chacón, "Desmitificando El Acuerdo De Escazú," Heinrich Böll Stiftung, December 9, 2020, <https://co.boell.org/es/2020/12/09/desmitificando-el-acuerdo-de-escazu>.

³⁷ Mario Peña Chacón, "El Acuerdo De Escazú y La Carga De La Prueba Ambiental," Delfino, October 12, 2020, <https://delfino.cr/2020/10/el-acuerdo-de-escazu-y-la-carga-de-la-prueba-ambiental>; Patricia Madrigal Cordero and Rafael González Ballar, "Acuerdo De Escazú En Costa Rica: Desmitificando Falacias y Construyendo Argumentos" (Friedrich-Ebert-Stiftung, Agosto 2021), <https://library.fes.de/pdf-files/bueros/fesamcentral/18210-20210820.pdf>.

³⁸ Álvaro Murillo, "El Ministro De Ambiente De Costa Rica: 'Decimos Que Somos Un País De Energía Renovable, Pero No Es Cierto,'" El País, September 2, 2022, <https://elpais.com/america-futura/2022-09-02/el-ministro-de-ambiente-de-costa-rica-decimos-que-somos-un-pais-de-energia-renovable-pero-no-es-cierto.html>.

Regarding the right to participate in environmental matters, it should be noted that, once again, the Constitutional Court proceeded to issue an unprecedented vote in 2017 regarding water in Sardinal, in which it held something shameful: according to the Constitutional Court (and only according to it...) citizen participation in environmental matters no longer qualifies as a human right (*Note 3*).

Faced with setbacks like these from the constitutional judge, which are poorly known and much less debated and denounced in Costa Rica, it is clear that the Escazú Agreement has direct enemies in the country's main business organizations, which have found useful tools to slow down its approval.

The resistance in Costa Rica to consolidating, expanding, and specifying the scope of citizen participation contained within the Escazú Agreement is such that 13 States have already ratified this cutting-edge regional treaty with no major problems or controversy (including Argentina, Bolivia, Ecuador, Mexico, Nicaragua, Panama, and Uruguay, Chile being the last to do so by rectifying a reading error by its previous authorities until January 2022). Colombia is expected to be called to join the Escazú Agreement as State Party 14 after Chile joined the Escazú Agreement on June 13, 2022; and as soon as the (sad) parenthesis that President Jair Bolsonaro has meant for human

rights and the environment in Brazil comes to a close, a calm discussion will resume in Brazil on its future accession to the Escazú Agreement.

Therefore, as new ratifications are registered, Costa Rica's position will become increasingly questionable from an international point of view. Its absence is already notorious and calls into question its credibility in multiple international forums where the relationship between protecting the environment and human rights is discussed.

Note 1: It should be noted that the Doble Check team received no reply or rectification from the organization alluded to in the headline of this article, at least at the time of writing this article (September 1, 2022).

Note 2: See the "note" by magistrate Nancy Hernández of the Constitutional Court attached to a vote in March 2020, available at the following link (<https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-978084>) in which the Constitutional Court, in a truly unusual manner, held that clause 5 of article 8 of the Escazú Agreement entails an additional expense for the operation of the Judicial Branch. This "discovery" has not been made by any of the Judicial Branches consulted in the 13 States that have already ratified the Escazú Agreement, including the Peruvian Judicial Branch. In the aforementioned vote of the Constitutional Court in March 2020, in his dissenting vote, Judge Paul Rueda stated: "It is clear that this rule never imposes the obligation to provide free technical assistance on the Judicial Branch, which should be implemented based on the conditions of the legal system of each country. In the case of Costa Rica, this assistance may be provided by any public office related to the issue, such as, for example, the Public Defender's Office, the Social Defenders' Offices of the Bar Association, or the legal offices of the UCR (which does not exclude the cooperation of private universities). Erroneously, the majority voted only with the Judicial Branch in mind and deemed that the text they consulted 'contains, in its articles, explicit norms that stipulate the creation, substantial variation, or suppression of jurisdictional or administrative entities attached to the Judicial Branch, or, rather, that create jurisdictional or administrative functions ex novo, modify them substantially, or physically eliminate them.' Based on the foregoing, I maintain that the express wording of the item referred to above cannot be understood in the way the Majority assumes."

Note 3: Regarding such a disturbing and inappropriate conclusion from the Costa Rican constitutional judge, which can be read in paragraph V of Sentence 1163-2017 (available at the following link <https://nexuspj.poder-judicial.go.cr/document/sen-1-0007-692979>), it is appropriate to point out that it was subject to only two votes (by magistrates Fernando Cruz and Paul Rueda): this means that the remaining five magistrates considered that going against the Constitutional Court's decision for over 15 years as well as the Inter-American Court of Human Rights required no special consideration

Puerto Rico: Participation and Climate Justice in a Colonial State

Isatis M. Cintrón

Puerto Rico, a country-colony, lives in an eternal international limbo between its Latin American roots and its status as a U.S. Territory. Due to its relationship with the U.S.A., Puerto Rico has implemented inadequate strategies from the North and lacks access to opportunities because of the country's development classification, which does not represent its reality but that of its colonizers. Over the past 70 years, Puerto Rico has evolved from a primary economy to an industrial society whose economy has been rooted in tax exemptions for foreign companies. The island's crisis and public debt resulted from public policies dating back to the U.S. invasion in 1898. Both the laws controlling the commerce, tariff, and currency systems (1917) and the congressional authority over Puerto Rico remained intact even after Puerto Rico's constitutional government was established in 1952. This has forced many Puerto Ricans to leave the island searching for opportunities, contributing to the brain drain. In 2017, Hurricane Maria accelerated this massive outflow to the United States due to the deterioration of social services after it hit the island.

Climate events combined with a legacy of disinvestment, public debt, and ineffective governance have provoked serious damage and a life-threatening situation. Besides migration and gentrification threaten Puerto Rico's cultural vitality. Island residents facing an economic crisis that Hurricane Maria deepened are being displaced by wealthy investors taking advantage of tax incentives. Remote work, a consequence of the pandemic, encouraged many Americans to go to idyllic places, and they remembered—or discovered—that they did not need a passport to travel to Puerto Rico. This influx of buyers, contrary to the island's fiscal reality, is creating an affordable housing problem, compounded by the resale of properties at higher prices and the conversion to housing for short-term rentals. In a country where 44% of the population is

considered poor, this gentrification means that many Puerto Ricans cannot obtain proper housing.

Article 6, § 19 of the Constitution declares it shall be the public policy of the Commonwealth to conserve, develop, and use its natural resources in the most effective manner possible for the general welfare of the community, and it also recognizes the rights to education, work, health, and housing. The country's legal framework links rights to values such as freedom, equality, and solidarity. But how can we have a say in our future if we cannot decide on the future of our territory? Since the Spanish invasion in 1493, followed by the U.S. invasion in 1898, Puerto Rico's sovereignty and fundamental rights have been atrophied. In this chapter, we present the legal framework associated with access rights, as well as the limitations in applying the law in relation to climate change issues.

Access to Information

In Puerto Rico, access to public information is a constitutional right endorsed by the Supreme Court of Puerto Rico in *Soto v. Secretary of Justice*, 112 D.P.R. 477 (1982). It is protected by the right to free speech. This right is attached to the transparency of all state, municipal, and public agencies, the Judicial Branch, and those private entities that may pose a risk to the public or the environment.³⁹

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. - Article 19

This is different in the United States, where the right to access information is provided by the *Freedom of Information Act 5 U.S.C., § 552, et seq.*, which is a statutory right adopted via federal legislation. Several laws contain provisions on procedures to facilitate or

³⁹ Article 19. 1999, Principios Artículo 19, Accessed September 2022, <https://www.article19.org/data/files/medialibrary/1797/12-04-26-REPORT-rtk-SP.pdf>.

restrict access to public documents. This right has been expanded, by the same Court, establishing that "every citizen, for the mere fact of being a citizen, has the 'special interest' necessary to request to examine public documentation... the act of denying this access, by itself, causes the requester clear, palpable, and real harm." Recently, after years of organizations, communities, and groups advocating for the right to information, participation, and participatory democracy, two legal instruments were established for these purposes, including the Transparency and Expedited Procedure for Public Records Access Act (Act 141-2019) and the Puerto Rico Open Government Data Act (Act 122-2019).

Despite all these advances in recognizing the right to access information, this information is still not proactively published and disseminated by the corresponding entities and agencies. Even when there are requests, there are often delays or barriers to accessing information. In many cases, this is due to a lack of institutional training, but in the end, it is up to the state to provide training and establish the disclosure of public documents as a priority policy. This has led environmental organizations to rely on lawsuits and *mandamus* to force public officials and agencies to comply with their ministerial duties.

One of the most important environmental struggles on the island was Peace in Vieques. The U.S. Navy used Culebra and Vieques island municipalities for military maneuvers and bombing. After years of protest, the Navy left Culebra (1975) and agreed to protect the environment in Vieques and assist in its economic development, but both promises were inconsistent. In 1999, due to a military maneuver, a U.S. Navy F-8 jet caused the death of David Sanes Rodriguez, a civilian, and wounded 4

others after detonating two 500-pound bombs. This accident, combined with the incidence of cancer due to the detonation of at least 267 grenades with uranium warheads, resulted in protests for the military maneuvers near Vieques to stop. This struggle lasted many years with acts of civil disobedience and protests on the island and among the diaspora in the United States and other countries. A major complaint was the lack of participation, transparency, information, and opportunity to influence the negotiations and agreements between the Navy, the U.S. Department of the Interior, and the Environmental Protection Agency regarding Vieques. This included the complaint that the documents related to the negotiations to clean up Vieques had not been translated into Spanish.

Transparency and accountability are essential for environmental management, managing natural disasters, and ensuring the continuation of essential services during emergencies. The lack of formal mechanisms to address transparency and accountability in an integrated and coherent way hinders the delivery of humanitarian aid, the effectiveness of recovery efforts,⁴⁰ and coordination among government agencies related to Hurricane Maria. Even 30 days after Maria's devastation, work at all levels of government continued to address only basic needs (water, food, life, and property).⁴¹ The federal government's inaction and the state government's lack of liquidity resulted in inefficiency and the slow deployment of the emergency response, which caused more post-hurricane fatalities. This makes it impossible for Puerto Rican society to participate in discussions⁴² and decision-making on emergency management in an informed way and limits the population's ability to oversee the emergency response.⁴³ After Hurricane Fiona (September 2022), re-energization processes have remained obscure. LUMA, the private energy

⁴⁰ Comité Pro Rescate y Desarrollo de Vieques (CPRDV), Comunicado de Prensa, 1999. <http://www.hartford-hwp.com/archives/43/067.html>.

⁴¹ Omayá Sosa Pascual y Patricia Mazzei, "Huracán María: Dónde Falló El Operativo De Respuesta," Metro, October 22, 2017, <https://www.metro.pr/pr/noticias/2017/10/22/huracan-maria-donde-fallo-operativo-respuesta.html>.

⁴² Pascual y Mazzei, 2017.

⁴³ Instituto Caribeño de Derechos Humanos (ICADH), 2017, Justicia Ambiental, Desigualdad y Pobreza en PR. Capítulo VI. Derecho al acceso a la información, libertad de movimiento y expresión, Accessed September 2022, <https://noticiasmicrojuris.files.wordpress.com/2018/05/final-informe-cidh-audiencia-pr-dic-2017.pdf>

service company, established a unilateral protocol, despite calls for open communication and coordination, based on the density of demand that prioritizes tourist areas and affluent settlements over critical areas (e.g., hospitals). Depriving individuals of public documents and information violates the rights to access information and public participation and deepens social injustice.

Political Participation in Climate Issues

Although political participation is expressed classically by the right to vote, it goes beyond this and encompasses the individual and collective capacity to design, promote, and implement “strategies that address the situations that interest or affect us.”⁴⁴ The Bill of Rights of the country’s Constitution recognizes the right to vote, freedom of expression, and free association. The Constitution of Puerto Rico also recognizes the importance of public participation.

We understand the democratic system of government is one in which the will of the people is the source of public power, where the political order is subordinate to the rights of man, and the free participation of citizen in collective decisions is assured. - Preamble to the Constitution

For many years, Puerto Rico could only count on a patchwork of executive and legislative orders to address the impacts of climate change. Unfortunately, these have not been implemented.⁴⁵ Act 33-2019 seeks to establish a public policy on climate change to guarantee “the right to a sound environment and establish the authorities to formulate and enforce public policy on climate change adaptation and greenhouse gas and compound emission mitigation.” However, Puerto Rico does not yet have the Climate Change Mitigation, Adaptation, and Resilience Plan that this law seeks to create. This plan is still being developed, and the agency in charge has only shown a draft. The delay has been partly due to the institutional

incapacity and bureaucracy of the imposed Fiscal Control Board, for whom the safety of the people is secondary to the payment of the public debt.

Environmental management in the country has made progress in the co-management of protected natural areas. Across the island, agreements have been established among agencies and grassroots organizations to promote ecological protection, scientific research, and self-managed strategies for local economic development. The first agreement was executed 25 years ago between the State and Casa Pueblo. El Yunque National Forest created a new Management Plan that democratizes the management of its forests, with citizen participation, sustainable development, and regional management as guiding principles. This brought together a group of citizens involved in the co-management agreement, the extension of recreational areas, and the creation of a new management area for community self-management activities in the forest.

However, this environmental management faces challenges such as the fiscal crisis, institutional bureaucracy, the lack of capacity to implement strategies for compliance and monitoring of environmental regulations, the dependence on federal funds, political instability, and the reduction in human resources.⁴⁶ Energy justice has produced a lot of environmental controversy on the island as a result of the lack of a renewable energy policy, the privatization of energy services and gas pipelines, and the racist pollution of disadvantaged communities. Despite citizen resistance, Applied Energy Services (A.E.S.) in Guayama has irresponsibly polluted the air and groundwater of southern towns for 20 years. The environmental organizations standing against this plant carried out innumerable events, meetings with communities, petitions to revoke the permits, and sent documents to the Environmental Protection

⁴⁴ Espacios Abiertos, “Derecho a La Participación Política,” 2016, <https://espaciosabiertos.org/wp-content/uploads/Opinion-Politica-FINAL.pdf>

⁴⁵ “Islas a La Deriva,” Centro de Periodismo Investigativo, April 9, 2018, <https://periodismoinvestigativo.com/series/islas-a-la-deriva/>.

⁴⁶ Alejandro Torres-Abreu, “Justicia Ambiental, Participación Ciudadana y Política Pública En PR,” 80grados, September 15, 2016, <https://www.80grados.net/justicia-ambiental-participacion-ciudadana-y-politica-publica-en-puerto-rico-recuento-noticioso-del-2015>.

Agency for years. The country's legislature passed a law requiring the company to remove the ash it produces and prohibited it from storing the ash for more than 180 days. A.E.S. Puerto Rico refused to dispose of and safely clean the ash. Finally, with no other alternative, the organizations requested a congressional hearing on the damages caused by A.E.S. Puerto Rico which resulted in the issuance of a letter from the Environmental Protection Agency exposing its deficiencies and requiring an immediate review of A.E.S. Puerto Rico's cleanup plan. There are many similar cases, such as the Sol y Playa Condominium. The construction of its recreational area sparked strong protests from citizen groups and environmentalists who argued that it was located on the public beach and that it was a turtle nesting area. In addition, other facilities in the area were destroyed by Hurricane Maria. After a lot of concerted effort, community organization, pooling of legal resources, and planning, their permits were canceled. Despite the victories, days of struggle like these lead down a trail of exhaustion and prove how inaccessible justice is.

Social Innovation

There is a gap in Puerto Rico between declared rights and their implementation. As a means to compensate for the poorly achieved rule of law on the island, proposals have emerged for:

- **Citizen Assemblies:** After Hurricane Maria, citizen meetings in public squares began to be organized to rethink the country's future. The Citizens' Climate Assembly has emerged from these efforts. This movement seeks to create a Nationally Determined Contribution by and for Puerto Rico, influencing the Mitigation, Adaptation, and Resilience Plan against Climate Change. The most important outcome has been the appetite for decentralized climate planning and the desire for a structure for autonomous political participation that will allow for multi-level support and sharing of lessons learned.
- **Supportive Participation:** Assistance among organizations and communities has been the

most reliable form of emergency response after the various natural disasters impacting the island over the past few years.

- **Collaboration:** Most of the litigation on the economic and financial situation has arisen from efforts between the Center for Investigative Journalism (C.P.I.), *Clínica de Asistencia Legal*, and *Espacios Abiertos*. The collaboration between journalists, lawyers, institutions, organizations, and individuals has catalyzed decisions to improve transparency and accountability.

Hegemony maintains colonial and violent attitudes that restrict the rights of access and, with them, the ability of Puerto Rico to confront Puerto Rico. Climate change presents a new reality that makes it necessary to rethink institutional hierarchies and existing planning and legal instruments. Community efforts are presented as resistance and an alternative form of true democratic practice for good living and common well-being.

Additional References

- Comité Pro Rescate y Desarrollo de Vieques (CPRDV). 2003. *Carta a Presidente del Comité de Transición de Vieques*. September 2022. <http://www.prdream.com/wordpress/topics/2002/11/185/>
- Espacios Abiertos, 2016. *Derecho a la participación política*. Accessed September 2022. <https://espaciosabiertos.org/wp-content/uploads/Opinion-Politica-FINAL.pdf>
- Murphy, C. y Mazzei, P. 2022. 'Nos está creando una desigualdad': *la fiebre de los bienes raíces en PR*. Sept. 22. <https://www.nytimes.com/es/2022/01/31/espanol/puerto-rico-gentrificacion.html>

Escazú: Progress for Information, Participation and Environmental Justice in Latin America and the Caribbean

Osver Polo Carrasco, Monitoring Officer for International Climate Negotiations / Citizen's Movement Against Climate Change (MOCICC, by its acronym in Spanish), Peru

The latest Intergovernmental Panel on Climate Change (IPCC) report, submitted last year, warns that climate change, which is caused by global warming and, in turn, by human activity, is increasingly affecting the lives of people and all regions of the Earth in multiple ways.⁴⁷ Currently, the average temperature has risen 1.1 °C, putting us on the verge of no return. If states and companies fail to make drastic efforts to cap the planet's temperature and take care of nature, reducing greenhouse gas emissions and their root causes, the well-being of the population and the planet will be at risk in the next decade, and trends towards a potential extinction of life on Earth will continue.

This climate and environmental crisis threatens human rights because it leads to human displacement, forcing people to migrate, given the loss of food security and the environmental degradation of their lands. This scenario coincides with the impact of extractive activities that harm people's and nature's health.

In this context, environmental defenders are playing a very important role in the fight to protect the land and the environment, as they are key players in climate action. However, they are not recognized by the States and are left unprotected against human rights violations.

Escazú: Why It Is Important to Environmental Defenders

The Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazú Agreement, was adopted on March 4, 2018. It is the first regional agreement with specific provisions for human rights

defenders in environmental matters. This agreement entered into force on April 22, a very symbolic date because it was Earth Day.

Its main goal is to ensure the full and effective implementation of the rights to access environmental information, to public participation in environmental decision-making processes, and to access justice in environmental matters in Latin America and the Caribbean. It also seeks to develop and strengthen capacities and cooperation, contributing to protecting the rights of every person, from present to future generations, to live in a healthy environment and to its sustainable development.

Latin America is currently considered the most dangerous region in the world for defenders of the environment and the land, especially for indigenous peoples and Afro-descendant communities, due to the number of attacks and murders directed at them. Extractive, tourist, hydroelectric, and agro-industrial activities (e.g., monocultures) are approved and implemented in violation of the right to consultation and without prior, free, and informed consent from indigenous peoples and Afro-descendant communities. Illegal logging, mining, and drug trafficking are also rising. The number of environmental victims of organized crime associated with these interests is increasing daily.

According to the latest Global Witness annual report, 2020 was the most violent year since they began monitoring the murders of environmental leaders in 2012.⁴⁸ The report recorded 227 cases, while the figure was 212 in 2019.

⁴⁷ Aramis Olivos Ortiz, "El Reporte Del IPCC, Una Alerta Para La Humanidad," Nexos, September 6, 2021, <https://medioambiente.nexos.com.mx/el-reporte-del-ipcc-una-alerta-para-la-humanidad/#:~:text=El%20pasado%209%20de%20agosto,informaci%C3%B3n%20actualizada%20sobre%20este%20tema>.

⁴⁸ Antonio José Paz Cardona, "América Latina Todavía Es La Región Más Peligrosa Para Defensores Ambientales," Mongabay, September 13, 2021, <https://es.mongabay.com/2021/09/latinoamerica-asesinatos-defensores-ambientales-global-witness/>.

For the second year in a row, Colombia ranked as the most dangerous country in the world for defenders of the environment and land, with 65 murders. Mexico ranked second with 30 cases. Brazil, Honduras, Guatemala, Nicaragua, and Peru are also in the top 10.

These figures must have increased after the pandemic and the economic recovery in 2021 to today, based on various statements of solidarity and outreach by some media outlets regarding the latest murders of environmental defenders, most of them taking place in the Amazon.

Escazú: A Driving Force for Action

At the 49th session of the Human Rights Council in Geneva, Switzerland, held in March of this year, the High-Level Virtual Event on Environmental Human Rights Defenders discussed the situation and concluded that the States must respect, protect, and fulfill the rights of environmental human rights defenders, as well as those of the communities they represent on their land, that they must ensure accountability for these threats or attacks, especially for women, farmers, and indigenous peoples who speak out against deforestation, extraction, and the loss of their cultural heritage or identity.⁴⁹

There are instruments to protect environmental defenders, but all States do not enforce these. Resolution 40/11 of the Human Rights Council recognizes the contribution of these defenders to the enjoyment of human rights and environmental protection.

Last year, the Human Rights Council and the States recognized "access to a clean, healthy, and sustainable environment" as a universal human right.

The Resolution states it will help reduce environmental injustice, close protection gaps, and

empower people, especially those in vulnerable situations, such as environmental human rights defenders, children, young people, women, and indigenous peoples.

This will enable States to accelerate the fulfillment of their environmental and human rights obligations and commitments, providing vital boundaries for economic policies and business models.

The Escazú Agreement can help ensure compliance with these international instruments to promote the right to a healthy environment and the rights of environmental defenders, contributing to their effective implementation so that States create safe and violence-free environments for the work of people, associations, organizations, or groups engaged in promoting the protection and care of the environment.⁵⁰

With these guarantees in place, citizen participation will be strengthened, which must be open and inclusive from early stages in decision-making processes that may affect the environment, the health of people, or the land, enabling access to information, consultations, or justice for events that affect the environment and human rights. For the first time, States will take specific actions to protect environmental defenders, such as strengthening the preservation and conservation of nature and the environment.

It is also important to recognize and highlight the first meeting of the Conference of the Parties to the Escazú Agreement (COP1), held in April in Santiago, Chile, which brought together State representatives, civil society delegates, and observers. In this meeting, twelve countries had ratified the agreement (24 signed it) and showed progress, having materialized several mechanisms for its proper implementation.

⁴⁹ "High Level Event on Environmental Human Rights Defenders," OHCHR, 1 de Marzo, 2022, <https://www.ohchr.org/en/statements/2022/03/high-level-event-environmental-human-rights-defenders>.

⁵⁰ Juan Carlos Alarcón, "Resultados De La COP1 Del Acuerdo De Escazú," Plataforma Bolivian Frente Al Cambio Climático, 3 de Mayo, 2022, <https://cambioclimatico.org.bo/contenido/resultados-de-la-cop1-del-acuerdo-de-escazu/>.

Civil society has earned a place in this first COP1 Escazú with the creation of the Committee to Support Implementation and Compliance, through which the public and organizations can submit communications and indicate whether or not a State is taking actions to protect people fighting to protect the environment, as in the case of environmental defenders.⁵¹ Civil society has also been taking action at national and local levels in countries that have ratified the Escazú agreement, launching promotion, monitoring, and follow-up initiatives so that States fulfill their commitments, such as the Escazú-Colombia Coalition that has been developing information and education initiatives on the importance of the Escazú agreement and environmental defenders.

⁵¹ Juan Carlos Alarcón, "Resultados De La COP1 Del Acuerdo De Escazú," Plataforma Bolivian Frente Al Cambio Climático, 3 de Mayo, 2022, <https://cambioclimatico.org.bo/contenido/resultados-de-la-cop1-del-acuerdo-de-escazu/>.

Opponents of the Escazú Agreement in Colombia most at fault for the climate crisis: Reflections on their concerns about guaranteeing participation

Santiago Aldana Rivera, Climate Justice Researcher, Asociación Ambiente y Sociedad

Introduction

From the outset, discussions on the Escazú Agreement in Colombia have faced several setbacks. Initially, it was met with resistance from the national negotiating team, which—at the time—opposed the higher standards in the text adopted in 2018.⁵² The country finally signed the agreement in 2019 at the height of the pandemic and at a pivotal moment for the country's economy and society, with mass protests demanding attention to urgent issues for Colombian civil society.⁵³

The concerns that made the 2019 marches some of the largest in the last decade included socioenvironmental issues, specifically the violation of access rights in mining energy projects (such as fracking pilots); protecting protected areas (rising deforestation rate); and the fight against illicit crops, thereby highlighting the discussion on the violation of fundamental rights such as the right to life⁵⁴ which is increasingly important given the relentless threats to and assassinations of environmental defenders. In 2019, at least 64 defenders were murdered, 32 of which were from indigenous peoples.⁵⁵

In response, the incumbent government signed the Escazú Agreement in December 2019. From there, it would eventually be ratified by

Congress and reviewed by the Constitutional Court of Colombia before being included in the national legal framework.⁵⁶ The national government submitted the bill six months after it was adopted. Since then, on two occasions, it has failed due to sabotage by the parties loyal to the former administration, who exhausted the procedure due to a lack of time for discussion and decision.⁵⁷ Despite the foregoing, it was finally approved in the first debate during the last six months of the 2018-2022 Congress. Following the 2022-2026 Congress elections, it was approved by the Senate of the Republic in the second debate on July 26th, after which it was sent to the House of Representatives.⁵⁸

Despite the green light that this new Congress may represent (at least 60% of congressmen were reelected), the traditional parties and past government continue to oppose the Agreement.⁵⁹ This was made clear by the Duque Administration's lack of an explanation and defense in clarifying the questions and myths surrounding it, especially those told by the business associations with ties to these parties. Hence, Colombian civil society has been responsible for defending the Agreement, which has launched mass communication, education, and advocacy campaigns to demystify the comments made and achieve ratification

⁵² María Paula Murcia Huertas, "Estrategias De Dilación y Campañas De Desinformación: ¿Qué Hay Detrás Del Mal Ambiente Para El Acuerdo?," Tierra De Resistentes, April 21, 2021, <https://tierraderesistentes.com/es/2021/04/21/estrategias-de-dilacion-y-campanas-de-desinformacion-que-hay-detras-del-mal-ambiente-para-el-acuerdo-de-escazu-en-colombia/>.

⁵³ Daniel Pardo, "Paro Nacional En Colombia: 3 Factores Inéditos Que Hicieron Del 21 De Noviembre Un Día Histórico," BBC, November 22, 2019, <https://www.bbc.com/mundo/noticias-america-latina-50520302> (último acceso: 29 de agosto de 2022).

⁵⁴ "Movimientos Ambientalistas Se Unirán Al Paro Nacional Del 21 De Noviembre," Semana, 18 de Noviembre, 2019, <https://www.semana.com/medio-ambiente/articulo/paro-nacional-21-de-noviembre-activistas-ambientales-y-sociales-se-uniran/47627/>.

⁵⁵ Tatiana Rojas Hernández, "Ellos Son Los 64 Ambientalistas Asesinados En El 2019," El Tiempo, 6 de Agosto, 2020, <https://www.eltiempo.com/vida/medio-ambiente/lideres-ambientales-ellos-son-los-64-ambientalistas-asesinados-en-el-2019-523908>.

⁵⁶ Marcela Peñaloza, "Colombia Signs the Escazú Agreement," Latin American Post, 13 de Diciembre, 2019, <https://latinamericanpost.com/31281-colombia-signs-the-escazu-agreement>.

⁵⁷ "Desplantes Del Congreso Tienen Nuevamente a Escazú En La Cuerda Floja," Diario Criterio, 18 de Mayo, 2022, <https://diariocriterio.com/escazu-en-la-cuerda-floja-por-desplantes/>.

⁵⁸ "Aprueban En Segundo Debate Del Senado La Ratificación Del Acuerdo De Escazú," Infobae, 26 de Julio, 2022, <https://www.infobae.com/america/colombia/2022/07/26/aprueban-en-segundo-debate-del-senado-la-ratificacion-del-acuerdo-de-escazu/>.

⁵⁹ Angie Garay, "Jamás Había Ocurrido Que Un Partido De Gobierno Se Opusiera a Una Propuesta Del Gobierno Como Con El Acuerdo De Escazú En Colombia," Vanessa Torres | ENTREVISTA," Mongabay, 22 de Mayo, 2022, <https://es.mongabay.com/2022/05/que-ha-pasado-con-el-acuerdo-de-escazu-en-colombia-vanessa-torres-entrevista/>.

under the social purpose of environmental democracy concerning the intrinsic value of nature for the country.

Hence, Asociación Ambiente y Sociedad, one of the civil society organizations that have followed and led the process of ratification of the Escazú Agreement since the beginning, is participating in this collective work organized by Ruta del Clima to reflect on the arguments made by the Agreement's opponents in Colombia. Our goal is to tie their concerns regarding the improvement of standards in terms of access rights—especially of access to participation—to the part they have played in intensifying the national climate crisis and their resistance to transitioning to fair, resilient, and low-carbon activities. This text hopes to illustrate the common pattern in the region and the arguments that have crossed borders creating resistance to the Agreement, despite being a visionary and unprecedented instrument for promoting democracy and environmental and climate justice.

Opponents and arguments against ratification of the Escazú Agreement

In the case of Colombia, the main opponents of ratifying the Escazú Agreement are business associations. Through coalitions such as the National Associations Council, the industrial, services, agricultural, financial, and business sectors have repeatedly asked Congress not to approve the Escazú Agreement.⁶⁰ Similarly, extractive associations have joined a defamation campaign, in which the mining and oil associations have released videos and statements arguing against the regional instrument.⁶¹

Within the different interventions made by these actors, supported by the traditional and

governing parties from 2018–2022, a common pattern has been consolidated in their arguments, which seem to be quite common in the Latin American region, as has occurred in Brazil and Peru. Among these, the following are highlighted:

- It attacks national sovereignty by making the country subject to international economic laws and sanctions.
- It leaves the possibility that international tribunals can pronounce on internal decisions that go against the economic development of the country.
- It grants special powers to international organizations such as ECLAC to intervene in national decisions. - It generates legal uncertainty for investments and development of economic projects, thus jeopardizing investor confidence and delaying the execution of projects.
- It forces the burden of proof to be reversed and violates the right of defense and presumption of innocence.
- It contains nothing new to what is stipulated in the National Political Constitution.
- It can affect the collection of financial resources like royalties from the extractive sectors.

These arguments conceal the deep resistance and antagonism of economic development to environmental democracy and ignore the civil society's many claims that deconstruct them.⁶⁵ During the debates to ratify the Agreement, members of Congress expressed great concern over the possibility of national public interest projects coming to a halt, such as large dams, mines, and roadways. However, their arguments do not consider the agreement's

⁶⁰ "Consejo Gremial Pidió Al Congreso De Colombia No Ratificar El Acuerdo De Escazú," Infobae, 28 de Abril, 2022, <https://www.infobae.com/america/colombia/2022/04/28/consejo-gremial-pidio-al-congreso-de-colombia-no-ratificar-el-acuerdo-de-escazu/>.

⁶¹ "Sector Petrolero Colombiano Emite Alerta Por Acuerdo De Escazú," BNAmericas, 24 de Mayo, 2022, <https://www.bnamericas.com/es/noticias/sector-petrolero-colombiano-emite-alerta-por-acuerdo-de-escazu>.

⁶² "Mitos y Verdades Sobre El Acuerdo De Escazú" (Escazú Ahora! Colombia, 2020), https://escazuahora.com.co/wp-content/uploads/2020/10/Mitos-y-verdades-del-Acuerdo-de-Escaz%C3%BA_compressed.pdf.

support by organizations such as the OECD and IDB, the same bodies behind the very projects they refer to that defend the country's right to development.⁶³

Similarly, the Office of the Executive Secretary of ECLAC has expressed that the Escazú Agreement is not intended to support the approval or rejection of projects, works, or activities (PWAs). In and of itself, it is a framework that seeks to remedy, in future PWAs, the socio-ecological debt of those who have a significant environmental impact, which has historically translated into multiple human rights violations in the territories due to a lack of consideration.

Hence, guaranteeing information to participate and exercise instances of justice and having sufficient guarantees of protection for those exercising their rights to decide how the community is organized concerning its territories and resources is viewed by the opposition as a way of obstructing the "modus operandi" of industries in the most vulnerable territories, thereby widening the gap of environmental injustice.

The European Union has acknowledged this and has sought to establish due diligence processes in projects and investments with the communities in its bilateral relations with the region. They recognize that access rights are fundamental to ensuring their investments' security and reducing any socio-environmental conflicts that may arise.⁶⁴ However, in the region and in Colombia, the rejection of these standards, which ultimately complement the purpose of the political constitution and the vision of a social state based on the rule of law, persists. The fear that generates that participation becomes an act of

intervention and not only of observation, questions the democratic system, despite being considered by the same Political Constitution of 1991 as the way to aspire to the deepening of democracy, as a guide for the creation and application of the law, and for the collective life of the Nation in managing the environment.⁶⁵

Moreover, the unfounded fear of the Agreement's possible attack on national sovereignty or the exposure to economic sanctions by international courts demonstrates a lack of awareness of how international law—particularly international environmental law—works. With or without the Escazú Agreement, the country is part of a human rights framework that seeks to resolve conflicts of interest among different societal actors regarding their rights and duties. Therefore, the Escazú Agreement does not assume the role that must be guaranteed by the human rights agenda.⁶⁶ For this reason, acknowledgment of the absence of the State in guaranteeing the right to participation and its connection to the violation of fundamental rights, while not exactly linked to environmental issues, could be behind this concern, where the Nation would have to respond for the damages caused.

On the other hand, due to its environmental nature, the Escazú Agreement requires parties to attempt to resolve disputes through negotiation or by any means they deem acceptable.⁶⁷ The Agreement offers a framework and standards to help guide the exercise of environmental democracy in accordance with the will of the States and should be seen as a starting point as opposed to strict limits. Furthermore, it cannot be subject to reservations since access

⁶³ "Banca Multilateral y OCDE Consideran Fundamental El Acuerdo De Escazú Para Generar Un Clima De Inversiones Sostenidas y Sostenibles," CEPAL, 8 de Marzo, 2022, <https://www.cepal.org/es/noticias/banca-multilateral-ocde-consideran-fundamental-acuerdo-escazu-generar-un-clima-inversiones>.

⁶⁴ "Economía Justa y Sostenible: La Comisión Establece Normas Para Que Las Empresas Respeten Los Derechos Humanos y El Medio Ambiente En Las Cadenas De Suministro Mundiales," Comisión Europea, 23 de Febrero, 2022, https://ec.europa.eu/commission/presscorner/detail/es/ip_22_1145.

⁶⁵ Gloria Amparo Rodríguez, "Yo Participo, Tú Participas, Otros Deciden: La Participación Ambiental En Colombia," Foro Nacional Ambiental, 9 de Abril, 2021, <https://foronacionalambiental.org.co/publicaciones/detalle/participacionrodriguez/>.

⁶⁶ Mario Peña Chacón, "Desmitificando El Acuerdo De Escazú," Heinrich Böll Stiftung, 9 de Diciembre, 2020, <https://co.boell.org/es/2020/12/09/desmitificando-el-acuerdo-de-escazu>.

⁶⁷ Alicia Bárcena, "Acuerdo Regional Sobre El Acceso a La Información, La Participación Pública y El Acceso a La Justicia En Asuntos Ambientales En América Latina y El Caribe" (CEPAL, 2018), <https://www.iidh.ed.cr/derecho-informacion/media/1079/acuerdoescazu.pdf>.

rights, including provisions protecting environmental defenders, cannot be interpreted separately. Participation is the inclusive social action that, given its integral and articulated nature, enables the interaction of stakeholders by considering social dynamics.⁶⁸

While both opponents and supporters agree that a wide gap exists between practice and discourse in implementing environmental agreements, the Escazú Agreement is proposed as an innovative exercise that will help to improve the standards for dealing with the historical debts that perpetuate in the territories and communities, especially as they relate to the right to a healthy environment and participation. Programs such as the Sustainable Development Goals (SDGs) recognize the environment as the basis for sustaining the purposes of development, which would not be possible without participation.⁶⁹ Thus, whether or not you believe in this development ideology, access rights in socio-environmental discussions help reduce violence among actors. To move forward with the agreements, we need to deal with the crises plaguing our countries, such as the climate crisis.

Relationship between the opponents of the Escazú Agreement and the climate crisis in Colombia

Certainly, the Escazú Agreement has the region questioning how it exercises environmental democracy and governance and how its capacities allow it to deal with the various crises that are harassing our countries. Along this line, in the case of Colombia, a connection has been drawn to the climate crisis since, for the most part, those who oppose the Agreement's ratification are mostly at fault for its intensification.

According to the latest update to the National Determined Contribution (NDC), the country emitted 291.30 million tons of CO₂ equivalent in 2020. The AFOLU (agriculture, forestry, and other land use), Energy, Waste and Industrial Processes, and Product Use sectors generated the most emissions.⁷⁰ The relationship between the emissions inventory and those who oppose ratification of the Agreement shows that it is not possible to separate the interests of these actors from the violence and historical debt generated in the country by failing to guarantee the right of access to information and participation in socio-environmental discussions. In the case of AFOLU, much of the land use and change has been heavily implicated in the armed conflict that persists across several territories.⁷¹ Similarly, the expansion of the agricultural frontier and land grabbing by large-scale landowners and agro-industrial and livestock companies have promoted deforestation, thereby deepening our responsibility in the climate crisis and biodiversity loss.⁷²

Thus, it is no surprise that civil society's main request, especially in the territories farthest from Colombia's urban centers and amid the transition to the Peace Agreement, is to exercise their participation continuously, collectively, and for the long term. The communities see participation as a right to aspire and a duty to be guaranteed under proactive, purposeful, and, above all, preventive notions in the face of activities that the territories cannot sustain due to the accumulation of crises. For this reason, in relation to the climate crisis, participation is strategic given the constant modification of territorial planning that influences impactful climate phenomena, to name just one example from the discussion on climate change that cannot be dissociated from the human rights agenda.

⁶⁸ Rodríguez, 2021.

⁶⁹ "Objetivos De Desarrollo Sostenible," Naciones Unidas, accedido 11 de Septiembre, 2022, <https://www.un.org/sustainabledevelopment/es/objetivos-de-desarrollo-sostenible/>.

⁷⁰ Gobierno de Colombia, "Actualización De La Contribución Determinada a Nivel Nacional De Colombia (NDC)," 2020, <https://www.minambiente.gov.co/wp-content/uploads/2021/10/informe-actualizacion-contribucion-determinada-Colombia-ndc-2020.pdf>, 54.

⁷¹ Juan Carlos Garzón V., "Un Clima Peligroso: Deforestación, Cambio Climático y Violencia Contra Los Defensores Ambientales En La Amazonia Colombiana," Fundación Ideas Para La Paz, 30 de Septiembre, 2021, <https://ideaspaz.org/publicaciones/investigaciones-analisis/2021-09/un-clima-peligroso-deforestacion-cambio-climatico-y-violencia-contra-los-defensores-ambientales-en-la-amazonia-colombiana>.

⁷² José Ospina-Valencia, "La ampliación De La Frontera agrícola Le Abre La Puerta a La desertificación," DW, June 16, 2020, <https://www.dw.com/es/la-ampliacion-de-la-frontera-agricola-le-abre-la-puerta-a-la-desertificacion/a-53826029#:~:text=%22La%20ampliacion%20de%20la%20frontera,bajo%20la%20sombra%20de%20solo>.

Moreover, within the energy sector, while our contribution to emissions from fossil resources exported to other countries is not recognized, even with the cleanest power grid in the region, we continue to exploit fossil fuels that have a proven impact on the generation of environmental liabilities, even to infinity, as is the case with large-scale coal mining.⁷³ Likewise, Amazonian territories have historically been pursued their abundance of hydrocarbons, which deepens socio-environmental conflict.⁷⁴ Scientific and community evidence has demonstrated that, due to this situation, the communities have become more vulnerable and have lost their livelihoods and sovereignty over several natural resources. This has led to hundreds of displacements due to the cultural and traditional loss of these activities in the territories that today are looted legally. As such, the right to know about extractive projects' current and future impacts cannot be overlooked. Transparency within participation is a fundamental axis in taking preventive, precautionary action with the same sense of urgency as the crises themselves.

Therefore, not surprisingly, those who most vehemently oppose the Escazú Agreement are companies like Fedegan, the Colombian Oil and Gas Association, the Colombian Farmers' Corporation, and the National Association of Entrepreneurs of Colombia, among others.⁷⁵ This relationship between those who oppose higher standards in access rights and those who contribute the most to the climate crisis speaks to the shared responsibility of the business sector in exacerbating social, environmental, and climate injustices in the country, those who have usurped

power over the State to reduce participation to a simple act of observation.

This reality shows resistance to transitioning to different ways of relating to nature, the impact of which perpetuates the violation of the rights of communities and their territories. Even in projects that seek to transition to other forms of energy, violence has taken place, such as with the eviction of indigenous communities from their lands to set up wind turbines, as is the case of La Guajira, thereby entering into a perpetual cycle of violence.⁷⁶ In this way, the Escazú Agreement is an opportunity to ensure that neither the causes nor the responses deepen the socio-climatic crisis and that the damage is not repeated. The Escazú Agreement reminds us that participation is a "value and axial principle"⁷⁷, as a cross-cutting axis for guaranteeing fair, resilient territories.

⁷³ Andrés Eduardo Ángel Huertas, "Impactos a Perpetuidad. El Legado De La Minería" (Heinrich Böll Stiftung, Octubre 2019), <https://co.boell.org/es/2019/10/23/impactos-perpetuidad-el-legado-de-la-mineria>.

⁷⁴ Laura Montaña, "Análisis Sobre La Industria De Hidrocarburos En El Piedemonte Amazónico: Caso Putumayo," Asociación Ambiente y Sociedad, 5 de Marzo, 2020, <https://www.ambienteysociedad.org.co/analisis-sobre-la-industria-de-hidrocarburos-en-el-piedemonte-amazonico-caso-putumayo/>.

⁷⁵ Tatiana Duque, "Con Lobby Empresarial En Contra, Escazú Se Empantana En El Congreso," La Silla Vacía, 23 de Septiembre, 2020, <https://www.lasillavacia.com/historias/silla-nacional/con-lobby-empresarial-en-contra-escazu-se-empantana-en-el-congreso>.

⁷⁶ Joanna Barney, "La Guajira, Entre Un Nuevo Aire o Un Desastre' Panorama Actual De La Violencia En La Guajira Con La Llegada De Las Empresas Energéticas Al Territorio Wayuu.," Indepaz, 19 de Abril, 2021, <https://indepaz.org.co/la-guajira-entre-un-nuevo-aire-o-un-desastre-panorama-actual-de-la-violencia-en-la-guajira-con-la-llegada-de-las-empresas-energeticas-al-territorio-wayuu/>.

⁷⁷ Rodríguez, 23.

Activists at Risk: Challenges to exercising access rights and climate governance in Latin America and the Caribbean

Jhoanna Cifuentes Gómez, Co-founder of the NGO Climalab (Colombia). Bachelor of Biology, Master of Education, and Doctorate of Education student.

Civil society's participation in climate governance has been and will always be an essential element in organizing discussions on issues of relevance involving a diversity of stakeholders and successfully driving the implementation of climate actions around the world. Undoubtedly, Principle 10 of the Rio Declaration, adopted in 1992 during the United Nations Conference on Environment and Development, is a clear example of this as it sets out three fundamental rights, known as "access rights" (access to information, public participation, and access to justice), that have emerged as pillars of inclusive, transparent, and sound environmental governance.

About the three access rights, ECLAC⁷⁸ explains that access to information aims to empower citizens to participate in informed decision-making processes; public participation ensures that the needs of communities are taken into account in the formulation of policies and laws; and access to justice contributes to building public capacity to enforce their right to information, to participate, and to hold accountable those who are causing damage to or impacting their environment, the third serving as the basis for the first two.

Several other references reaffirm the importance of these rights in international climate governance, as noted in Article 6 of the United Nations Framework Convention on Climate Change and Article 12 of the Paris Agreement, which has come to be known as "Action for Climate Empowerment" (ACE). More recently, in Latin America and the Caribbean (LAC), the Escazú Agreement has arisen as a powerful tool for climate action from a human

rights perspective since "(...) it serves as the basis for the full exercise of substantive rights such as the right to a healthy environment, the right to life, health or food in the context of climate change. It also focuses on persons and groups in vulnerable situations, to ensure that no one is left behind" (p. 48).⁷⁹ Thus, we can say that access rights are a way of highlighting the connections between human rights, environmental protection, and climate change.

The inevitable connection between climate change and human rights is considered to be extremely relevant today and, as several documents, including a Resolution No. 3/2021 adopted by the Inter-American Commission on Human Rights (IACHR), indicate: "(...) the existence of a directly proportional relationship between the increase in greenhouse gas emissions into the atmosphere and the frequency and intensity of meteorological changes, [is increasingly evident], which implies the amplification of risks to societies, people and natural systems".⁸⁰ In this regard, we can affirm that climate change is affecting people and the ecosystems on which they depend and is significantly diminishing the protection, promotion, and full exercise of a wide range of rights, such as the right to health, food, water, culture, development, adequate housing, a healthy environment and, most worrisomely, the right to life and physical integrity, since this phenomenon threatens people's very survival.⁸¹

However, the climate crisis does not affect everyone equally, and we must consider its differentiated impacts. It is the poorest and most marginalized communities that face the impacts earlier and to a greater degree, while women and girls

⁷⁸ CEPAL, "El Principio 10 de la Declaración de Río: Acceso a información, participación pública y justicia ambiental" (Octubre, 2021), <https://biblioguias.cepal.org/c.php?g=877733&p=6303926>.

⁷⁹ "Cambio Climático y Derechos Humanos: Contribuciones Desde y Para América Latina y El Caribe" (CEPAL/ACNUDH, 2019), <https://www.cepal.org/es/publicaciones/44970-cambio-climatico-derechos-humanos-contribuciones-america-latina-caribe>, 48.

⁸⁰ REDESCA/CIDH, "RESOLUCIÓN No. 3/2021, Emergencia Climática Alcance y obligaciones interamericanas de derechos humanos" (2021), <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/045.asp>, 4.

⁸¹ CEPAL/ACNUDH, *Ibid.*

are also affected unevenly, thereby underlining the importance of the gender perspective in this analysis.

To illustrate the foregoing, Oxfam⁸² mentions three relevant facts:

1. The richest 1% of the planet's population (about 63 million people) accounts for more than twice the carbon emissions than the poorest half of humanity (about 3.1 billion people).
2. People in low- and middle-income countries are five times more likely to be displaced by natural disasters caused by sudden and extreme weather events than people living in high-income countries.
3. Women and girls must walk longer distances to collect water and fuel and are often the last to eat. In addition, during and after extreme weather events, they are at increased risk of becoming victims of violence and exploitation.

Thus, the climate crisis has become an engine of inequality affecting to a greater extent those who have contributed the least to the problem and who, in turn, are among the poorest and most marginalized portion of the planet with the least number of resources and capacity to deal with its consequences.

The role of climate activists in climate governance and challenges facing access rights

In light of the foregoing context, the need arises to highlight the important role of climate activists⁸³ para visibilizar estas realidades y posicionar las demandas de las comunidades más vulnerables y afectadas por la crisis climática en las discusiones a nivel local, regional y global. Sin importar su nivel de educación, profesión, ubicación geográfica, género

o procedencia, coinciden en su labor de denuncia y defensa del territorio, incluso sin ser conscientes de estar actuando como defensores de los derechos humanos ambientales.

In light of the foregoing context, the need arises to highlight the important role of climate activists⁸⁵ in making these realities visible and in positioning the demands of the most vulnerable communities affected by the climate crisis in discussions at the local, regional, and global levels. Regardless of their level of education, profession, geographical location, gender, or provenance, climate activists agree on their work of denouncing and defending the territory, even without realizing that they are acting as environmental human rights defenders.

However, the work of activists implies great responsibility, such as contributing to protecting, promoting, and exercising access rights while facing a variety of challenges to ensure the effectiveness of their actions as they relate to these rights, even for the activists themselves, who often put their own life at risk to defend the cause. In this regard, below are some of the main challenges facing activists in the region of Latin America and the Caribbean. We invite you to reflect on these challenges and contribute to generating guarantees that will enable them to overcome their difficulties.

Vague role of the State: The State is responsible for protecting the right to life, liberty, and security for all people, but especially human rights defenders. Its role often becomes blurred, however, when it ignores calls from activists or may even itself become an actor threatening their rights. In this sense, States must refrain from violating their rights while diligently preventing and investigating human rights violations and bringing those responsible to justice.⁸⁴

⁸² "La Crisis Climática. Una Crisis Nada Igualitaria," Oxfam International, May 25, 2022, <https://www.oxfam.org/es/la-crisis-climatica-una-crisis-nada-igualitaria>.

⁸³ The term "climate activist" is understood and included in the definition of "environmental human rights defenders" proposed in [paragraph 7 of the report of the Special Rapporteurship on the situation of human rights defenders A/71/281](#), as "(...) individuals and groups who, personally or professionally and peacefully, strive to protect and promote human rights related to the environment, in particular water, air, land, flora and fauna" (p. 6).

⁸⁴ ONU "Situación de los defensores de los derechos humanos. Párrafo 11, A/71/281". <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/71/281&Lang=S> (consultado el 17 de agosto de 2022).

Lack of guarantees to carry out their work:

The Aarhus Convention⁸⁵ on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, which entered into force more than 20 years ago, addresses this aspect. The purpose of the Convention has been to ensure that people exercising their rights in accordance with certain provisions are not penalized, persecuted, or otherwise harassed for their participation in such activities. However, according to the UN,⁸⁶ in recent years, there have been several cases in which they are facing heavy fines, dismissals, criminalization, unjustified arrests, violence, and even death, preventing activists from exercising their rights safely and confidently.

Safety: Of the foregoing, threats against people's lives are important to note, it being very alarming the situation facing activists of LAC. In fact, the region is considered one of the most dangerous for those who defend the environment, the land, and the territories (ECLAC, p. 36). According to a report issued by Global Witness,⁸⁷ in 2020, there were 227 fatalities, three-quarters of which took place on this side of the world, with Colombia and Mexico being the deadliest for the activist cause. This brings to the table several reflections and calls for attention not only for States but for collective groups, organizations, communities, and, in general, for all people, especially those involved in climate issues as part of the network that will enable progress on the guarantees needed for those exercising climate activism and territorial defense.

On this subject, it is worth highlighting the importance of networking at the national and regional levels to coordinate collective action and exchange experiences that can serve to promote the work of activists at the local level; to strengthen the capacities

of these groups and individuals, especially local communities and those in remote areas so that they can exercise, defend, and promote access rights; to generate strategies for making information available clearly and transparently; to facilitate processes; and, of course, to implement effective regulations to protect people's integrity and life—an obligation of the State—but also to think of key actions that will allow us to surround and support those who are most at risk. It is everyone's responsibility to contribute so that activism can be exercised to promote effective climate action and considerations from human rights, justice, and inclusion-oriented approach.

⁸⁵ "Convenio De Aarhus: Convenio Sobre El Acceso a La Información, La Participación Del Público En La Toma De Decisiones y El Acceso a La Justicia En Materia De Medio Ambiente" (CEPE, June 25, 1998), https://www.oas.org/es/sla/ddi/docs/acceso_informacion_desarrollos_convenio_aarhus.pdf.

⁸⁶ "Crean Un Mecanismo De Respuesta Rápida Para Proteger a Los Defensores Medioambientales," Noticias ONU, 22 de Octubre, 2021, <https://news.un.org/es/story/2021/10/1498842>.

⁸⁷ "Última Línea De Defensa: Las Industrias Que Causan La Crisis Climática y Los Ataques Contra Personas Defensoras De La Tierra y El Medioambiente" (Global Witness, 13 de Septiembre, 2021), <https://www.globalwitness.org/es/last-line-defence-es/>, 12.

The Right to Public Participation in Mexico: Challenges and Considerations for its Implementation under the Escazú Agreement

Anaid Velasco, Research Manager, Mexican Center for Environmental Law (CEMDA)

The signature and ratification of the Escazú Agreement by Mexico was greatly celebrated by civil society, both at the national and regional levels. Being the eleventh country to deposit the document in the United Nations, the agreement entered into force for all member countries on April 22, 2021, International Mother Earth Day.

However, the effective implementation of the agreement lies ahead, full of challenges that will require the highest commitment from the relevant authorities. From the amendment of the legal framework—not just the environmental section—that regulates activities with an environmental impact, the allocation of budget to implement the mechanisms required for each right, to the development of capacities of all stakeholders, the Escazú Agreement and its standards must be a priority in Mexico's public agenda.

This is even more pressing when *de facto* conditions reveal the urgency with which it needs to be implemented effectively. In the case of Mexico, we can name among these conditions, for example, the responsibility and emergency the State faces regarding environmental and climate justice. Ensuring the right to public participation plays a key role in resolving this.

It is important to mention that, among the 195 countries evaluated by the United Nations, Mexico is among the top 15 countries that emit the most greenhouse gases, ranking 11 to 13 in the last 20 years.⁸⁸ Similarly, temperatures in Mexico have risen about 0.3 °C per decade, a high rate compared to other regions of the planet. It is, then, warming faster than the global average. It exceeded 1.5 °C in 2020.⁸⁹ This means that

Mexico is a country with a key role in terms of mitigation and adaptation to climate change. Ecosystems and communities are already experiencing socio-environmental impacts, not to mention the country's responsibility regarding the globe.

Given this context, the effective implementation of the right to public participation in environmental matters under the Escazú Agreement is highly relevant because it enables and strengthens the implementation of feasible actions for mitigation and adaptation that have staying power. This is accomplished by adopting a bottom-up approach and considering those who may be affected or benefit from them.

A key aspect to consider when implementing this right in Mexico is the existing digital divide. It has a profound impact on the fulfillment of the right to access information and the right to public participation. The legal framework seems to ignore this gap by including many mechanisms for access to information and public participation only under a digital modality, which limits the effective enjoyment of these rights.

In this regard, it is important to mention that in some states in Mexico, such as Chiapas, the internet is available at home for 27.3% of the population. Only 47.7% of people in rural areas across the country have internet access, and only 9.8% of indigenous peoples have access to the internet at home.⁹⁰ Chiapas is also one of the states with the greatest natural wealth in the country and, with Oaxaca and Veracruz, hosts many species.⁹¹ This reveals a long-time unresolved contradiction: the areas with the greatest natural wealth are the most

⁸⁸ Gobierno de Mexico, Contribución Determinada a Nivel Nacional. Actualización 2020, <https://unfccc.int/sites/default/files/NDC/2022-06/NDC-Esp-30Dic.pdf>, 9.

⁸⁹ PINCC, "Por El Cambio Climático, En Menos De Cinco Años México Rebasará Los 1.5 Grados Centígrados De Incremento En La Temperatura Media Anual," (PINCC) Programa De Investigación De Cambio Climático, 25 de Septiembre, 2022, <https://www.pincc.unam.mx/por-el-cambio-climatico-en-menos-de-cinco-anos-mexico-rebasara-los-1-5-grados-centigrados-de-incremento-en-la-temperatura-media-anual/>.

⁹⁰ INEGI, "Encuesta Nacional Sobre Disponibilidad y Uso De Tecnologías De La Información En Los Hogares (ENDUTIH) 2019," 2020, <https://www.inegi.org.mx/programas/dutih/2019/#:~:text=La%20Encuesta%20Nacional%20sobre%20Disponibilidad,y%20m%C3%A1s%20de%20edad%20en>.

⁹¹ SEMARNAT, "Informe De La Situación Del Medio Ambiente En México," 2018, <https://apps1.semarnat.gob.mx:8443/dgeia/informe18/index.html>, 223.

vulnerable and marginalized, and, under the current legal framework, the uneven access to information and public participation mechanisms seems to grow when ignoring aspects such as the digital divide.

Thus, public consultation processes for climate policy instruments such as the Nationally Determined Contribution, the Special Climate Change Program, the Adaptation Policy, and the consultation with civil society on Mexico's diplomatic position regarding the U.N. Framework Convention on Climate Change must follow the standards established in the Escazú Agreement, including, for example, timely information to participate, cultural relevance, and suitable media for those aims.

There is also a challenge in changing public participation processes outside the environmental sector but which have a major impact on the environment and

climate change. For example, processes in the energy sector don't include spaces for public participation when granting allocations and contracts to implement hydrocarbon projects or giving permits for renewable energy projects. An exception in this respect is the free, prior, and informed consultation under Convention 169 of the International Labor Organization, whose scope leaves out non-indigenous communities.

Making these changes to the legal framework is, therefore, a priority, both to include mechanisms that implement the right to participate, given the socioeconomic situation in Mexico, and to amend the regulatory framework for production activities that have a major impact on the environment and climate change to effectively implement the human right to a healthy environment and the environmental rights derived from it.

Climate Litigation and Social Participation in Latin America and the Caribbean

Javier Dávalos, Climate Program Coordinator, Interamerican Association for Environmental Defense (AIDA)

Climate Litigation and Participation in the Climate Agenda

Climate litigation is defined as any action filed before a jurisdictional authority using arguments related to the legal obligations of States and other stakeholders on climate change, which arise from national and international regulatory instruments. These actions may challenge climate policies, mitigation goals, and specific projects that are contrary to the fight against climate change because of their high levels of greenhouse gas emissions.

These efforts come from individuals, organizations, youth groups, women, indigenous peoples, universities, etc., proving that this type of strategic litigation is one of the latest tools available to civil society to take part in climate governance and demand that companies and governments stop and be accountable for actions that exacerbate the climate crisis. This tool is a growing trend worldwide, and Latin America and the Caribbean are no exception.

Thus, climate litigation cases have increased exponentially in our region, proving that the use of law before the courts has great potential to promote the changes needed to achieve climate justice. This calls for greater ambition and a human rights and gender-based approach to ensure our ecosystems and communities are protected. These cases have to do with issues related to mitigation and adaptation to climate change, such as forests and deforestation, the use and exploitation of coal, pollution and poor air quality, damage to fragile ecosystems, the use of fracking, and human rights violations, such as the right to a healthy environment, among others.

There are examples in the entire region of the strategic use of the obligations of States and private entities in court to demand more and better climate ambitions. For example, in Peru, a group of young

people sued the Peruvian government for failing to develop and implement a national policy and plan to stop deforestation in the Peruvian Amazon. Indigenous Wayúu communities in Colombia filed an action to terminate the environmental permit for the coal mine in Cerrejón. Greenpeace filed a precautionary measure to stop air pollution and improve air quality in Mexico. Similarly, nine girls sued the State of Ecuador for allowing oil companies to burn and blow gas from flares in fields in the Ecuadorian Amazon. Last week, several organizations were granted a precautionary measure to stop the approval of offshore fossil fuel exploration in Argentina. The NGO Defensoría Ambiental (Environmental Services) sued the Government of Chile and all companies operating in a sacrificial area for the damage they caused after years of operation. In Brazil, young activists sued the government for lowering greenhouse gas reduction targets adopted in the previous nationally determined contribution.

All these cases can be found in the Climate Litigation Platform for Latin America and the Caribbean database. The common thread in all of them is that they use environmental law, international human rights law, and climate obligations in international treaties and national laws as legal arguments. Thus, climate litigation secures victories to progress toward a real, just energy transition when the States are not willing or able to do so. The cases found on this platform reveal our region's wide range of creative climate litigation strategies.

Challenges to Climate Litigation in Our Region

Despite progress, there are many challenges in the region. A severe lack of financial resources and **information in Spanish** prevents the development of more strategic cases. Besides, few people (lawyers and other professionals) can work full-time on climate litigation, and judges lack expertise in the climate crisis and applicable law.

Corruption and co-optation increase the disparity in power between the parties. In addition, the region's human rights and environmental defenders experience the highest rates of violence and are in the most danger in the world. This is especially true for indigenous communities and peoples. Lastly, implementing favorable judgments when they do take place is, no doubt, a major challenge for this tool.

Therefore, the work of people and organizations—making up a climate litigation community in the region—to promote this tool is key to making progress with it in Latin America and the Caribbean. These efforts throughout the continent have provided a space to exchange information in Spanish. This could strengthen the work needed to respond to these challenges.

Brazil: A Role Model in How to Make Progress in Climate Litigation

The push of civil society in Brazil for climate litigation is key for the region since the country is home to 65% of the Amazon, a key ecosystem for global climate regulation, and home to numerous indigenous peoples. Brazil also emits the most carbon dioxide in South America, and deforestation is the largest source of these emissions.

Therefore, this is a pivotal moment: Brazil is known for a growing community of litigation lawyers and organizations taking the climate fight to court. In this sense, any progress made by Brazil in this area is essential for all of us.

In July 2022, the Federal Court of Brazil set an important precedent for the country and the world. The court recognized the Paris Agreement as a human rights treaty. This may lead courts and judges in other Latin American countries to do the same, thanks to this case that was supported by, among others, organizations such as Observatório do Clima and Instituto Alana. In another case, the organization Conectas Direitos Humanos has filed the first-ever climate action against a national development bank,

inspiring more cases in the region that ask the judiciary to call on public banks or financial institutions to include climate criteria in their decisions.

In Conclusion

It can be stated that climate litigation is the last "institutional channel" to promote the urgent changes needed to achieve the goals of the Paris Agreement. The latest IPCC report states that "there is increasing academic agreement that climate litigation has become a powerful force in climate governance." Using the law and judicial institutions to hold governments and companies accountable for their obligations under climate law is one way to protect nature and human rights in the context of the climate crisis.

In Latin America and the Caribbean, climate litigation is a path towards climate justice, reducing emissions, and a just energy transition with a human rights and gender-based approach. Along these lines, climate litigation can effectively seek rapid changes and address this emergency

Participation as a Right – RCOY

The organizers wrote this text for RCOY Latin America 2022 (Regional Conference of Youth). We are a coalition of civil society organizations composed of youth aged 18 to 35 who decided to band together to carry forward the RCOY process consisting of:

1. **Training** process
2. Online **discussions**
3. **Map of organizations and initiatives** with impact metrics led by youth in the region
4. **Hybrid event** with a face-to-face chapter in September in Cartago, Costa Rica
5. **Advocacy document** entitled "Proposals for Action" with 10 recommendations for national governments and 10 for large global emitters
6. **Communication campaign** and signature collection
7. **COY17 and COP27 Delegation** to Egypt

We are a network of over 200 organizations with a reach of over 10,000 young people in the region!

Those of us who are part of RCOY **know how important the participation of civil society in climate change governance is**. Both public- and private-sector leaders have repeatedly demonstrated their inability to curb rising greenhouse gas emissions that would limit, in turn, the rise in global temperature and avoid the worst consequences of climate change.

We are already experiencing unprecedented climate events. News around the world alerts us to heat waves, droughts, floods, melting glaciers, severe storms, tornadoes, hurricanes, fires, and much more. The impacts of climate change are already being experienced in every corner of the globe. And we know those who suffer most are the least responsible: the poorest, the most vulnerable, and especially the youngest.

Today, there are 1.2 billion young people between the ages of 15 and 24, equal to 16 percent of the world's population ("Youth | United Nations," n.d.). In

this crisis and planetary emergency situation, the need arises for a transformation that has the **necessary scale and speed** so that the worst dystopian films do not become a reality. Transformation requires disruptive processes, and youth movements can be great allies. But they cannot be part of the solution unless they are part of the dialogue and decision-making spaces. Participation is a right in spaces where actions are decided (or not decided) that will impact present and future living conditions. .

We have identified the following points for which the participation of civil society is very relevant:

1. Speaking up for those who can't speak for themselves
2. Pushing the envelope of commitment toward greater ambition
3. Putting topics of relevance on the agenda
4. Providing solutions with an intergenerational and intersectional perspective
5. Achieving greater adherence to and compliance with climate change measures

Speaking up for those who can't speak for themselves

Often, civil society organizations channel spaces to speak out and hear the opinions of marginalized groups such as climate migrants, members of indigenous communities, women whose rights have been undermined, people with disabilities, LGBTIQ+ community members, youth, and minors. If not for the role of civil society organizations, many would never have been able to express their opinion, or that opinion would never have reached decision-makers' ears. And while we can still do much more, the role of civil society is fundamental.

Pushing the envelope of commitment toward greater ambition

The inclusion of civil society in discussion and decision-making spaces allows for actions, demonstrations, talks, or campaigns that call for greater ambition in commitments in the course of negotiations. When there is mention of 2°C, civil society speaks up calling for a goal of 1.5°C. When there is talk of USD 100 billion, civil society asks for more and asks for it now. Civil society calls for environmental and social justice when there is talk of climate emergencies.

Putting topics of relevance on the agenda

It is only thanks to civil society that a topic such as loss and damage is discussed in spaces such as the annual meetings of the United Nations Framework Convention on Climate Change. Had it not been for civil society, the preamble to the Paris Agreement would most likely be very different from what we know today, excluding, once again, historically marginalized groups in our society, such as indigenous peoples, migrants, children, and people with disabilities. Mention of gender equality, women's empowerment, and intergenerational equity would simply not exist.

Providing solutions with an intergenerational and intersectional perspective

Participation, especially of young people, allows for dynamism in public decision-making, who see the problem in a way that often escapes those who hold power to solve it, either because they are too immersed in their reality or ignorance or because of divergent interests. This perspective can help to achieve innovative solutions (think outside the box) that are aligned with the needs of the communities to which they are applied and that elements such as intersectionality and intergenerational justice permeate public policy rather than mere statements of good intentions.

Achieving greater adherence to and compliance with climate change measures

The fight against climate change requires global efforts, so people's awareness of and commitment to the measures taken is a basic requirement for success. Communities excluded from the design and decision-making process are less likely to comply with measures that require action—or omission—on their part, not because of circumstantial rebellion but because a top-down decision-making model has less chance of success when it comes to changing individual behaviors if the opinion of the affected communities has not been incorporated into its design. The literature is full of examples of civil society's greater or lesser willingness to implement the necessary reforms against climate change when its voice is taken into account in decision-making.

For more information, visit our website: www.rcoyla.org