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Escazú  
Agreement



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Fourth meeting of the Committee to Support Implementation and Compliance of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean

[This document has not been subject to editorial review]

## MINUTES OF THE MEETING

**Date:** Thursday, 25 April 2024

**Committee members present:**

Guillermo Acuña  
Mariana Blengio  
Rita Joseph-Olivetti  
Patricia Madrigal  
Andrés Napoli  
Carole Stephens  
Félix Wing

### A. Place and date of the meeting

1. The third meeting of the Committee to Support Implementation and Compliance of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) took place in person at the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC), in Santiago, Chile, on April 25, 2024.

### B. Meeting objective

2. The objective of the meeting was to provide information on the working modalities and the new website of the Committee and to hold an open dialogue on support for the implementation of the Escazú Agreement with the Parties and the public.

### C. Agenda

3. The agenda of the meeting was as follows:
  1. Presentation of the Committee's virtual platform
  2. Presentation of the working modalities adopted
  3. Open dialogue on support for the implementation of the Escazú Agreement

### D. Proceedings of the meeting

Presentation of the Committee's virtual platform (item 1 of the agenda)

4. The Escazú Secretariat thanked and congratulated those present for the successful third meeting of the Conference of the Parties to the Escazú Agreement (COP3), highlighting the adoption of six decisions, including an action plan on human rights defenders in environmental matters.
5. The Secretariat then presented the Committee's new website and platform. The virtual platform is the result of the joint work of several teams within ECLAC and had been designed to be accessible and secure, complying with United Nations standards and optimized for different devices and browsers. Security was a key element in its development, since personal and sensitive data will be handled. The automation of the platform facilitates the work of the Committee and users, allowing for an independent technical flow and ensuring transparency with the traceability of communications in real time. The website is user-friendly and is designed to balance security and accessibility. The audience was invited to explore the touch screens that were enabled at the entrance to the room and to visit the website <https://caac.cepal.org/en> and to provide feedback for its continuous improvement.
6. In terms of its structure, the website contains all the information about the Committee, its members, functions, and responsibilities. The menu includes sections on meetings, reports, communications, and additional resources, where more elements will be progressively incorporated to facilitate its use. In addition, on the home page of the platform, the form for submitting communications can be accessed, detailing the necessary documents and stages. Authors and States Parties concerned will have personalized access to review the status of communications and submit comments. The communications repository will contain publicly available elements, determined by the Committee, thus ensuring transparency.

#### Presentation of the working modalities adopted (item 2 of the agenda)

##### By

7. At this point of the agenda, the Committee's Chair recalled that the working modalities had been adopted at the third meeting of the Committee, held on April 22, 2024, and were available in document LC/TS.2024/33. This segment consisted of three presentations by Committee members on the recently approved working modalities, relating to: (1) general aspects and functions of the Committee; (2) detailed review of communications; and (3) on specific provisions for persons or groups in vulnerable situations, rapid response mechanism and amicable solutions. After each presentation, there was space for questions and comments from the public.
8. Committee member Mr. Guillermo Acuña began by presenting the first part regarding general aspects of the working modalities. The modalities include the objective and nature of the Committee, its structure and composition, meetings and organization of work, information functions, support to the Conference of the Parties, and assistance and advice to the Parties.
9. He stressed the importance of clarity and precision in the formal elements of the working modalities and mentioned the legal basis of the Committee established in Article 18 of the Escazú Agreement. Then, the first meeting of the Conference of the Parties (COP1) adopted the Rules relating to the structure and functions of the Committee (Rules), and they established that the Committee would develop its working modalities in accordance with these Rules, and the meaningful participation of the public.
10. The Committee is composed of seven members elected at COP2 following a participatory process. The practical structure of the Committee includes a chair, two vice-chairs and the possibility of establishing subcommittees and rapporteurs. The distribution of positions considers geographical equity, gender parity and rotation. At the third meeting of the Committee, the subcommittee on admissibility of communications, the rapporteur on the rapid response mechanism, and the rapporteur on persons or groups in vulnerable situations were established.
11. The Committee's meetings may be ordinary or extraordinary. Ordinary sessions are held at least three times a year, one of them in person, and are open to the public. Extraordinary meetings are called by the Chair to deal

with urgent matters. The Committee may also hold internal coordination and work sessions. The Committee's decisions are adopted by consensus and, failing that, by a two-thirds majority of its members. Decisions may be made in person, virtually or electronically, detailing their content and the reason behind them. The Committee's working languages are Spanish and English; any intervention in another language must be interpreted. The provisional agendas are prepared by the Secretariat and adopted by the Committee, and the minutes of the meetings are public, unless otherwise decided by a reasoned decision.

12. Finally, the Committee's functions include providing information and support to the Conference of the Parties and advising and supporting the Parties. The Committee will prepare reports on activities, reports on systemic matters and on any aspect related to the implementation and compliance of the Agreement that the COP requests of it.
13. The Chair opened the floor for questions or comments from the public regarding this first part. One audience member suggested that it might be beneficial for the Committee to have some involvement in the development and monitoring of national implementation plans for the Agreement. Another member of the public asked about open dialogues with Parties and the public, to find out how these would work in practice, and how the public could be directly involved. In response to these queries, it was noted that the responsibility for developing national plans rested with each State Party, and that they should define their development and monitoring procedures and their content. The Committee was closely monitoring the processes of developing these plans and was available to support Parties in any necessary ways. The Committee could also look into systemic issues based on what was revealed in the plans.
14. Vice-Chair Andrés Napoli focused on communications and outlined the procedure to be followed. He emphasized that, according to the Rules and modalities, communications can be submitted in three ways: by a Party with respect to itself, by a Party with respect to another Party, or by a member of the public. Communications could request support for compliance with the Agreement or allege non-compliance with one or more provisions of the Agreement.
15. When the Committee receives a communication, it carries out a preliminary analysis of the requirements set out in the Rules and registers it. An admissibility procedure then takes place. At this stage, questions of form are mainly checked (for example, who submitted the communication and whether it relates to the Agreement and to a State Party). A central element is that legal assistance is not required for the submission of communications. In addition, the Committee will have the possibility of establishing confidentiality measures if requested.
16. Regarding the examination of admissibility, both the Rules and the working modalities must be considered. For example, communications must refer to a State Party to the Agreement, one year must have passed since the entry into force for the State Party, the matter must not be or has not been examined within the framework of another binding regional or international procedure, among others, otherwise it will be inadmissible. The steps taken in the State Party concerned to resolve the case (or explanation their absence) must also be described. He emphasized that the Committee is non-judicial and non-punitive in nature. Among other issues, consideration may be given to written exchanges between the person who formulated the communication and the State Party, the administrative and judicial or extrajudicial actions that have been taken, the mechanisms for alternatively resolving conflicts, or any other relevant element that is considered. The exhaustion of the internal procedures will not be required because the Committee's function is to support compliance with the Agreement.
17. Once the admissibility of the case has been established, the State Party concerned may submit observations within a period of four months from the date of notification of the admissibility of the communication. The Committee may then also request a reply by the author, and a rejoinder by the Party concerned. After this, the Committee may proceed to the analysis of the merits. In addition, the Committee may grant requests for public hearings for admissibility.

18. Regarding this second part, a participant from the public asked if the observations that members of the public could send in accordance with section 55 of Title VI would be considered for the final conclusions, or if the observations would simply be received without affecting the conclusions. He also asked if the case could be brought to two forums at the same time, or if it was prohibited to litigate or communicate the case in another forum simultaneously. Finally, he asked if there was an approach with the Environmental Commission of the Treaty between Mexico, the United States and Canada (T-MEC), since the mechanism is similar, and its experiences could be useful.
19. Another member of the public asked if anonymous communication was a reason for inadmissibility, since one of the fields on the form allows this option, which causes confusion. She also asked if the possibility of holding a hearing depends exclusively on a party requesting it or if the Committee can schedule it *ex officio*. She also wanted to know if hearings could be held on site, in addition to in-person and virtually. Finally, she asked if there would be an evidence phase and, if so, how it would be financed.
20. Another participant raised several concerns. First, he asked why the Committee's interpretation is restricted to States Parties and representatives of the public. He also asked about translations for indigenous peoples. In addition, he inquired about inadmissibility, specifically about the restriction on hearing matters that are being discussed in other regional or international bodies. He also sought clarity on who is considered "State Parties concerned" in the context of the time limits for making observations on the State's compliance with recommendations. In addition, he requested confirmation on the inclusion of *amicus curiae* in the process. Finally, he asked whether provisional measures similar to those of the Inter-American Commission on Human Rights are contemplated.
21. In response to questions, the Committee noted that informal discussions were underway with other mechanisms to establish synergies. The criteria for admissibility were set out in the Rules and included that the case has not been heard or has been ruled on through another international procedure of a binding nature. Regarding the adoption of preliminary conclusions or recommendations, the modalities indicate that the preliminary conclusions will be transmitted to the State Party concerned and to the person who made the communication, allowing a period of 2 months for written comments. After this period, the Committee will adopt its final observations. Regarding anonymity, it was clarified that the Committee can maintain confidentiality if requested, but this is different from receiving anonymous communication, which according to the Rules is inadmissible. Hearings are held at the request of the parties. Regarding *amicus curiae*, the Committee will seek to recognize the contributions that arrive as appropriate. Regarding the rapid response mechanism, it was emphasized that it was structured around prioritizing the consideration of cases and appropriate protection measures considering the nature and mandate of the Committee. These measures were related to confidentiality, recommending a national or international protection mechanism and informing States. Regarding translation into other languages and the feasibility of carrying out activities in the field, this was subject to available financial resources.
22. Mr. Felix Wing added that the Committee is not an adversarial or judicial body, but rather acts in an advisory and support role. He explained that the working modalities are not a rigid body, but rather general guidelines written in broad terminology to allow for flexibility, and their application will be aligned with international best practices. He also stressed the need to periodically adjust these modalities as necessary, with transparent and participatory processes for the public and States Parties. He clarified that, although anonymous communications will not be admitted, consideration will be given to protecting identity and privacy in specific cases of risk. He also indicated that the process would allow for receiving opinions from those mentioned in the modalities.
23. Vice-Chair Carole Stephens presented the third part, on specific measures for vulnerable persons and groups, rapid response mechanism and amicable solutions. She highlighted three key provisions of Title VI of the modalities: specific measures for vulnerable persons or groups (paragraphs 41 and 42), the rapid response mechanism (paragraphs 43 to 46) and the provisions on amicable solutions (paragraphs 47 to 54). She emphasized the importance of ensuring guidance and assistance for vulnerable groups, underlining the need

to adapt procedures for their effective use. She specifically addressed how rapid response mechanisms can protect at-risk authors, detailing steps the Committee can take to mitigate such risks through priority processes and appropriate protections. Finally, she explained the provision on amicable solutions, noting its usefulness for the rapid resolution of communications through the consent of both parties. She stressed that these provisions are intended to be flexible and mediated, with subsequent follow-up to ensure their effectiveness. Finally, she invited those present to offer their opinions on these aspects, emphasizing the importance of international cooperation and capacity building for the success of the Committee.

24. The Chair opened the floor to questions or comments from the public. One member of the audience noted the need to distinguish between environmental-scientific effectiveness and legal effectiveness in the implementation of environmental law under the Escazú Agreement. He proposed integrating legal indicators as a tool to improve effective legal implementation, based on previous experiences with the Barcelona Convention. He emphasized the importance of this initiative to support States in resolving specific legal difficulties during the implementation of environmental treaties.
25. Another member of the audience inquired about the rapid response mechanism, asking whether all requests within it must necessarily be related to a specific case, or whether it is also possible to submit a request based solely on the risk situation faced by defenders.
26. Ms. Stephens responded to the questions by first stating that in cases where there is a situation of potential risk, threat or intimidation, a definition of what constitutes a potential risk in the form of a threat, attack or intimidation must be made. The communicator may provide information that enables such an assessment to be made. Paragraph 44 of Title VI of the working modalities states that the author of the communication must provide background information that gives reasonable grounds to believe that the risk mentioned in the communication exists. The author must report all relevant facts and events relating to the risk, as well as any changes in circumstances that gave rise to the risk.
27. The elected representative of the public, Ms. Nicole Leotaud, asked about the rapid response mechanism, in particular what would happen if the urgent and immediate risk was to the natural environment and not to the defenders themselves. The Vice-Chair of the Committee responded by indicating that the rapid response mechanism is directly related to members of the public who submit communications. It was established to address the threat to both the complainant and their immediate family, whether they have submitted a communication and are currently in danger or could be in the future.
28. The elected representative of the public, Ms. Joara Marchezini, asked for further details on the rapporteur's work on the rapid response mechanism. The Vice-Chair of the Committee responded that it is necessary to identify what measures can be taken at the national level and what resources are available. When a communicant submits a communication and has received threats, it is crucial to prioritize the case and determine its admissibility and merits. In addition, the safety of the communicant must be guaranteed during all stages of the process. In the absence of protections at the national level, the use of international mechanisms is being considered to ensure a safe environment for communication. At this initial stage, research is being conducted on what provisions exist in each State Party to protect communicants.
29. The Chair of the Presiding Officers, Mr. Marcelo Cousillas, congratulated the Committee for approving its operating modalities through a transparent and participatory process. He added that the Committee is now fully operational, with approved rules and modalities and with channels of interaction with the Parties and the public through its virtual platform. Finally, he thanked the Committee for its work and commitment, highlighting the importance of continuing to move forward to achieve the established objectives.
30. Other interventions by the public focused on how to bring the Committee's work closer to the public, to which the Chair responded by calling for familiarization not only with the document on modalities but also with the virtual platform and emphasized that progress is expected to be made towards capacity building.

Open dialogue on support for the implementation of the Escazú Agreement (item 3 of the agenda)

31. The open dialogue was organized around three working tables, each moderated by members of the Committee and with questions and topics to be discussed as follows: Group 1. Organization of the Committee and rapporteurs; Group 2. Reports and comments, and observations; and Group 3. Capacity building, training and dialogue.
32. The questions posed to each group were the following:
  - a. Group 1. Rapporteur and organization of work. What do you think should be the key areas of focus for the implementation of the rapid response mechanism, especially considering the status of the development of a protection mechanism for EHRDs in your country? The Working Modalities strongly emphasize our commitment to supporting vulnerable groups. How would you propose implementing this area of work?
  - b. Group 2. Reports and Comments /observations: Suggestions on what issues should be considered for the systemic issues report. The Committee may decide to prepare and adopt general comments on specific subjects related to particular aspects of the Agreement, with a view to supporting the Parties in fulfilling their obligations under the Agreement. Are there any specific topics that came up in COP3 that the State Parties, the members of the public, would find helpful for general comments?
  - c. Group 3: Capacity Building and Dialogues: Are there thoughts on the focus for capacity-building sessions and how they can be scheduled to support State Parties, focal points, and the public? The Committee may hold up open dialogues with State Parties. Are there States interested in a dialogue? How can the committee ensure any open dialogue is effective within a State with significant participation of the public?
33. After a period of dialogue, each group proceeded to share their conclusions. Group 1 pointed out the need to consider the real threats and risks in the region, the urgency of the Committee's response and the importance of involving indigenous peoples.
34. Group 2 identified three themes of recommendations that should be included in the systemic reports. The first theme focused on the general interpretation of the Escazú Agreement as a human rights treaty, the meaning of “significant impacts” in Article 7.2, and clarification on what constitutes a “binding international procedure” under the Committee’s rules. The second theme addresses obstacles to access to rights, such as administrative bureaucracy, delays in receiving information, and the need to resort to judges to resolve petitions. The need for legislation to expand citizen participation in environmental issues and concerns about access to justice, including active legitimation, free of charge, legal assistance, and enforcement of sentences, were also highlighted. Finally, the third theme focused on environmental defenders, pointing out the systematic criminalization and misuse of the judicial system against them.
35. Group 3 discussed the need to continue and deepen training on Escazú and its mechanisms, including the development of educational materials in several languages and adapted to cultural and age issues. They highlighted the importance of ongoing training for States due to the high mobility of officials and governments, as well as the training of local governments and communities to bring the Agreement to the territories. They also suggested conducting targeted training tailored to each audience and forming alliances with local partners to convene these trainings. The group highlighted the need to adapt training to the worldviews of indigenous and traditional peoples. Finally, they discussed training in specific tools for children and in legal indicators for States.
36. Having met the objectives of the meeting, the Committee thanked the public for their participation and the meeting was closed.