

# **A Pioneering Platform: Strengthening Environmental Democracy and Justice in Latin America and the Caribbean**

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*Latin America is considered the most dangerous region in the world for environmental defenders due to increasingly deadly conflicts over natural resources. After a six-year negotiation process, on March 4, 2018, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters was approved by 24 countries, as the region's first-ever legally binding treaty on environmental rights. The Regional Agreement, also known as Escazú Convention, represents a pioneering platform supporting global environmental justice. This paper examines how the provisions of this Convention can reduce barriers that undermine vulnerable communities' ability to exercise their environmental rights.*

*Keywords: Environmental Justice, Environmental Democracy, Information Access, Participation, Decision-making, Latin America, Caribbean*

## **INTRODUCTION**

The region of Latin America and the Caribbean faces great challenges in terms of environmental protection and environmental justice. At the local and global levels, environmental degradation has a profound impact on disadvantaged groups that often experience the loss of livelihoods due to the degradation of ecosystems and natural resources (Global Witness, 2017). Other challenges deeply felt in Latin America and the Caribbean are connected to social inclusion, equality, poverty eradication which could be addressed by strengthening the ability of States and institutions to more effectively manage and resolve the growing number of socio-environmental conflicts.

Social, economic, and political relationships between Latin America and the Global North demonstrated in the past three decades increasing forms, tensions, and consequences of global neoliberalism. In this context, scholarly debate and activism over the costs and consequences of economic globalization have incorporated important elements of the environmental justice discourse (Anand, 2005). Environmental injustices cannot be labeled as mere local failures, instead, they represent a systemic tendency of globalization and as such, they need a structured, coherent and inclusive system to address environmental injustices and promote democratic access to information, participation in decision-making and the protection of the actors involved in these processes.

When debating the current forces of international environmental governance, there is a consensus that the current system requires improvement. Greater effectiveness, coordination, and compliance along with political participation and authentic citizenship could improve the quality of the environment and prevent the occurrence of environmental injustices and conflicts (Carruthers, 2008; Schlosberg, 2013). An

important criticism of international environmental governance today has been directed to its lack of coherence and plurality of inefficiencies and overlapping institutions that greatly reduce the potential effectiveness of the system and place unnecessary burdens on countries (Kanie & Haas, 2006). In this paper, the aim is to demonstrate how the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters, approved by 17 countries of the Latin American and Caribbean region and currently signed by 21 countries<sup>1</sup>, could help develop in the near future a conception of global environmental justice. This agreement has the main objective of reducing barriers that undermine vulnerable communities' ability to exercise their environmental rights.

### **Defining the Concept of Environmental Justice**

Despite the importance of a concept as environmental justice, and most likely because of it, there is no consensus regarding an operational definition of this notion. Generally, environmental justice is considered to embrace the fundamental principles of fairness and equity to ensure adequate protection from harmful effects of environmental hazards for everyone, regardless of ethnicity, age, culture, gender or socioeconomic status. Research on environmental justice has a trans-disciplinary nature based on diverse methodological and theoretical approaches and perspectives since environmental justice as a term has resisted a monolithic definition (Schlosberg, 2007).

It is important to highlight that along with distributive justice, a key focus of both quantitative and qualitative analysis of environmental justice and of a growing stream of literature is paying attention to other essential aspects of justice in environmental governance such as procedural and participatory justice, and the interrelations among these dimensions (Schlosberg, 2007). Environmental justice theorists have emphasized procedural justice alongside distributive justice because most advocates of environmental justice are concerned not only with the distribution of environmental goods and problems but also with the fairness of the processes of environmental policy and decision-making.

In this context, the World Social Forum (WSF), first founded in Brazil in 2001, represents one of the first important steps since it has held several multinational forums across Latin America, connecting activists and nongovernmental organizations in the struggle for environmental justice. The Forum provides a communicative arena for people to share their experiences allowing various types of environmental activists and organizations to participate and unite. Documents as the Principles of Environmental Justice (1991), the Bali Principles of Climate Justice (2002), and the Universal Declaration of the Rights of Mother Earth (2010), provide a legislative example of a vision and a path toward a future marked by social justice, ecological sustainability, and democratic governance. These documents work to support social change efforts at the local, regional, national, and global scales from small community level to global treaty negotiations at the United Nations (Ciplet, Roberts & Khan, 2015). Thanks to the emerging of these environmental governance forces, the term "environmental justice" has evolved from referencing to hazardous materials in low income and minority communities to a broader set of issues of equity, into their procedural, geographic and social aspects (Kaneshiro, Lawrence & Chase-Dunn, 2011). Environmental justice today is used to recognize disparities in the burden of the cost of industrial societies on human beings as well as an active effort to prevent injustice.

Nevertheless, the main challenge of environmental injustice has not changed, and inequalities of political authority, power and influence remain the norm in environmental decision-making leading to an unfair distribution of environmental benefits and burdens. Historically, most people have been excluded or marginalized by the institutions that make policies and decisions that change the environmental conditions in which we live usually because the decision that transforms the environment and affect people are taken by those people who enjoy the benefits rather than the burdens (Schlosberg, 2013).

In the academic discourse of environmental justice, procedural injustice can be considered an 'explanation or cause of [distributive] injustice' (Walker, 2012:47) and can promote distributive environmental justice since procedural justice can play a key role in producing inequitable distribution (Schlosberg, 2007). However, procedural environmental justice is important for its own sake since an unfair decision-making process, even if it might produce fair outcomes, must be addressed through political equality that requires that institutional structures that have profound effects on our lives are fair.

Procedural environmental justice and environmental democracy are closely connected since the first is only likely to be achieved as a result of the development of a pluralistic environmental justice movement, which transforms civil society and the formal political institutions to ensure the recognition and inclusion of a plurality of voices in environmental decision-making (Schlosberg, 2007).

Precisely in this context, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean demonstrates its importance in pursuing an agenda that promotes environmental justice in the region. The idea of procedural environmental justice is closely related to public participation in environmental decision-making and environmental democracy. Therefore, the literature on public participation is an important resource for theorists and practitioners trying to understand and promote procedural environmental justice. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean demonstrates its importance in strengthening and furthering an agenda that promotes environmental justice in the region embodies a specific focus on public participation.

### **The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean**

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 Convention (from the city in Costa Rica where it was adopted) is going to be the main object of analysis in this paper in relation to its relevance towards the environmental justice discourse. On March 4, 2018, after a six-year negotiations process, 24 countries approved the Escazú Convention, the region's first-ever legally binding treaty on environmental rights (Praeli, 2018). The Escazú Convention represents a ground breaking multilateral agreement that will be a crucial tool for climate and environmental protection, and, to date, it has been signed by 16 countries.

The Parties of this Convention reaffirm Principle 10<sup>2</sup> of the 1992 Rio Declaration on Environment and Development. Overall, the Escazú Convention reaffirms the commitment to the rights of access to information, participation and justice regarding environmental issues, recognizing the need to make commitments to ensure proper fulfilment of those rights and declaring a willingness to launch a process for exploring the feasibility of adopting a regional instrument. The Convention emphasizes that access rights are interrelated and interdependent, and so each of them should be promoted and implemented in an integrated and balanced manner (ECLAC, 2018).

The Convention also contains innovative provisions such as protecting environmental defenders; guarantees of timely, early participation in decision-making; and facilitating access to justice. Finally, the Convention provides improvements in substantive rights including specific requirements addressing vulnerable groups, including a requirement to provide legal assessment and the establishment of a Committee on implementation and compliance (Article 18) which exists to address the problem of a lack of implementation and compliance, a complex challenge that needs to be addressed in Latin America and the Caribbean (ECLAC, 2018). Another important element defining the relevance of the Escazú Convention concerns the recognition of the multiculturalism of Latin America and the Caribbean and their peoples, identifying also the significant work of the public and of human rights defenders in environmental matters for strengthening democracy, access rights and sustainable development and their fundamental contributions.

The work behind the Escazú Convention is the product of the deep economic, social and environmental imbalances that in the past had prompted the regional and international community to seek answers through instruments like the 2030 Agenda for Sustainable Development and the Paris Agreement. These instruments seek to promote peaceful, fairer societies that are inclusive and protect human rights. To guarantee the right of present and future generations to sustainable development, the Escazú Convention clearly states that its aim is "to strengthen capacities and bolster cooperation among the countries of the region, with significant participation by the public to reach the most vulnerable and

excluded sectors through affirmative measures” (ECLAC, 2018). The agreement aspires to remove the barriers that impede or hinder the full exercise of participation rights.

### **The Regional Agreement, Environmental Justice and Democracy**

Institutional arrangements that realize ideal procedural environmental justice are not a concrete reality yet, but regional and international attempts to create fairer processes for environmental decision-making (Tomlinson, 2015) as the Escazú Convention are of great importance in this strategic context. The right of access to justice is essential in enforcing the right to live in a healthy environment and in fully exercising the rights of access to information and participation in environmental matters. In this context, it is important to highlight the relevance of the work that the Escazú Convention has done in regard to the legal standing for access to justice in environmental matters.

Before, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, the most notable example of a convention addressing environmental justice is probably the Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters, also known as the Aarhus Convention (European Commission, 2015). The Aarhus Convention, established in 1998 and ratified by 47 parties, is based on three ‘pillars’ that establish procedural rights and place correlative duties on states and are very similar to the ones of the Escazú Convention: access to information; public participation in decision-making; and access to justice in environmental matters (European Commission, 2015). However, the Escazú Convention goes even further in strengthening environmental justice and environmental democracy.

The Escazú Convention furthers the principles of environmental justice and democracy in several ways. First, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean will be positioned to accommodate local, national, and regional interests. In this sense, as a regional platform, the Escazú Convention is built on existing forms of regional integration. The simple fact the Convention would have fewer actors involved in the decision-making process suggests that this agreement may prove to be more efficient and effective than wider agreements. Nongovernmental organizations and the public’s participation in regional negotiations such as the ones that have taken a role in drafting the Escazú Convention have a mission to bring their experience, ideas, and expertise and to disseminate the information obtained in the regional arena to their national or local communities in Latin America and the Caribbean region. Regional integration may serve as a stepping-stone to environmental governance even though each Latin American country has its history. Yet, the commodification of natural resources, competing commercial interests, foreign intervention (often through corporations based in the Global North), can be considered common elements. Coordinated action as embodied in the drafting of the Escazú Convention, demonstrates the growing possibilities of transnational collective action in the region with the advance of globalization. Finally, an agreement based on a regional structure as the Escazú Convention will be able to specialize in issues facing their regional members rather than working on a global scale.

As we have already highlighted, the Convention represents a major step forward for Latin America and the Caribbean, demonstrating global leadership from the region. This convention specifically applies to Latin America and the Caribbean, where conflicts over natural resources are increasing since according to a report of Global Witness written in 2017. A number of reports identify Latin America as the riskiest region in the world for those upholding rights relating to territory, the environment and access to land, four environmental defenders are killed every week (Global Witness, 2017). We can argue that the creation of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean has the objective of increasing the number of national laws addressing matters regarding environmental protection and avoiding the criminalization of environmental leaders. The Escazú Convention, in the article 9 “Human rights defenders in environmental matters”, explicitly states that each Party of the agreement “shall guarantee a safe and enabling environment for persons, groups, and organizations that promote and defend human rights in

environmental matters, so that they are able to act free from threat, restriction and insecurity” (ECLAC, 2018).

The Escazú Convention also includes the right to a healthy environment, and in order to ensure it, it guarantees assistance and obligation to minimize barriers related to access to Justice in its objectives (article 1), principles (article 3), and provisions (article 4). Access to environmental justice means that everyone must have access on an equal footing to justice and a fair outcome, both individually and collectively, it also refers to the opportunity to obtain an efficient solution from the authorities, through the courts or other procedures, to any legal conflict of an environmental character (Brañes, 2000). This principle is further highlighted in the article 7 of the Convention “Public participation in the environmental decision-making process”. Access to environmental justice is not limited to the protection of rights of the environment and nature but extends to the protection of the rights of access to information and participation (Brisman, 2013). The Escazú Convention specifically highlights the importance of access to justice by providing concrete procedures in order to ensure full compliance with this right described in the article 8 “Access to justice in environmental matters”.

In terms of the challenges that current forces of environmental governance face and that characterize socio-environmental conflicts, overlapping rights, power asymmetries, regulatory non-compliance, lack of transparency and procedural problems with the environmental impact assessment or environmental licensing system are among the most important. As such, the different articles of the Latin American and Caribbean regions signed the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters are established in order to address effectively these challenges.

These are cases where rights that are legally enshrined in national or international laws or both overlap and there is no clear hierarchy between them. In article 5 of the Convention, it is specifically stated for example of to address the overlapping of rights, between the convention and the domestic legislation, in case of refusal of access to information. As established by the article 5 “Access to environmental information” “if the requested information or part thereof is not delivered to the applicant because it falls under the domestic legal regime of exceptions, the competent authority shall communicate its refusal in writing, including the legal provisions and the reasons justifying the decision in each case, and inform the applicant of the right to challenge and appeal” (ECLAC, 2018).

Power asymmetries and procedural problems with environmental impact assessments or environmental licensing system are often connected to the inadequate citizen involvement, inequality in financial resources, knowledge, influence and access to goods and services. Another important factor is represented by the poor performance of environmental authorities in this coordinating role when they lack the capacity to draw together observations by public agencies on the projects evaluated. Given these problematical aspects, the Convention focuses specifically on capacity-building in article 10 “Capacity Building” in order to ensure the training of authorities and civil servants on environmental access rights and develop and strengthen environmental law and access rights awareness-raising and capacity-building programs for, inter alia, the public, judicial and administrative officials, national human rights institutions and jurists. In this context, regulatory non-compliance is often experienced in conflicts where the project developer fails to comply with agreed commitments, current legislation or both, or where some branch of the State flouts regulations in order to provide the requisite permits. Conflicts present this characteristic when there is a lack of trust between the parties and of timely and reliable information on the impact of the proposed activities. One of the main grievances of people living in territories where natural resource extraction is planned is the lack of access to full, relevant and high-quality information (ECLAC, 2018).

In this context, the effective exercise of the rights of access to information, public participation, and justice in environmental matters is essential in order to implement fair governance of natural resources in the region and can help to forestall and prevent environmental conflicts and injustice. For example, access to information and citizen participation at the early stages of decision-making about natural resources, as proposed in the article 3 “Principles” of the Escazú Convention which ensure transparency principle of accountability (for example, in the distribution of the costs and benefits of decisions between investors, the government and local communities) (ECLAC, 2018).

Access to information can be truly implemented only when ensuring simultaneously the improvement of the flow of information regarding environmental justice through participatory processes ensure that the flow of information about the decision taken and the contributions. The growing demand from citizens or participation in decisions affecting their environment and quality of life and the international agreements that underpin this have spurred progress in the legislation of most of the region's countries towards increased recognition of people's right to take part in environmental decision-making as evident in the case of the Escazú Convention. Enhanced participation and cooperation have the double benefit of reducing the failures associated with imperfect information and information asymmetries in decision-making. Moreover, participatory processes as established by the Escazú Convention promote stability since decisions taken in participatory settings and with a strong flow of information help to ensure more stable State's policies. In a region like Latin America and the Caribbean, we continue to witness a persistent crisis of political representation and social fragmentation, coupled with States' difficulties in reaching out to the entire regional and national territory when addressing environmental injustices.

Finally, the Escazú Convention highlights the importance of cooperation in the article 11 "Cooperation" where it states that "the Parties shall cooperate to strengthen their national capacities, that they shall give particular consideration to least developed countries, landlocked developing countries and small island developing States from Latin America and the Caribbean" (ECLAC, 2018). The article proposes activities and mechanisms as discussions, workshops, expert exchanges, technical assistance, education and observatories and training programs to share experiences of codes of conduct, good practices, and standards. Moreover, the Convention favors partnerships with States from other regions, intergovernmental, non-governmental, academic organizations, civil society, and private organizations to create spaces for discussion, dialogue and constructive participation in preference to confrontation or violence. In a context of increasing uncertainty and profound economic, social and environmental imbalances, Latin American and Caribbean countries demonstrated the value of regional action to advance towards greater environmental rights and protection by acting in a coordinated manner, putting capacity building and cooperation at the service of greater goods and interests (ECLAC, 2018).

### **The Escazú Agreement in Latin America and the Caribbean Region**

The socio-environmental conflicts observed in the region of Latin America and the Caribbean usually arise in a context of growing economies with persistent poverty especially in rural areas due most often to the expansion of extractive activities as mining, oil, and gas, forestry, hydropower and fisheries (ECLAC, 2018). As a region, Latin America still faces the challenge of building and strengthening democracy. One of the most effective paths to achieve this complex goal is to narrow social gaps and ensure that growth is inclusive, that natural resources are exploited in an environmentally and socially responsible manner and that the authorities and citizens adopt dialogue as both a means and an end (UNEP, 2015). It is in this complicated strategic field that the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean can truly play an important role in furthering a sustainable and environmentally democratic agenda for the region.

In the past, the Commission for Latin America and the Caribbean (ECLAC) has included jurisprudence relevant to access rights in the region's countries. Since environmental issues tend to be complex and may require specialized knowledge, many countries have seen the advisability of having a court specializing in them (UNEP, 2015). The elaboration of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean will be the solid foundation to ensure the effective exercise of the right of access to justice in environmental matters by requiring the members States to ensure that proceedings will be fair, open, transparent and equitable (ECLAC, 2018).

## CONCLUSION

The escalation of socio-environmental conflicts is often accompanied by the emergence of new forms of political mobilization and civic participation focusing on defending common resources and the environment (Svampa, 2013). These conflicts potentially lead to the introduction of new forms of governance across multiple scales as well as new forms of participatory democratic decision-making. A regional environmental justice agreement as embodied by the Escazú Convention calls for the need for intercultural communication and acceptance of other worldviews and a plurality of ways of understanding nature first on a regional basis (to further in the future on an international basis). It is clear that conflicts over the environment are actually struggles where hegemonic world-views are questioned and reformulated (Escobar, 2016). Any reform of the current system must take care to preserve the benefits derived from the fragmentation, flexibility, and autonomy of the current system for international environmental governance.

The Escazú Convention, a pioneering regional platform, represents an important step towards the achievement of global environmental justice by bridging national environmental justice matters on a regional partnership's scope of expertise and action. In the numerous socio-environmental cases across Latin America and the Caribbean, claims for justice are already embedded in a myriad of independent forms of popular environmentalism. The language, principles, tactics, and questions posed by environmental justice present an opportunity to reveal new insights, new ideas, and new ways of understanding the tremendous social and environmental challenges facing the region (Carruthers, 2008). Therefore, it is precisely through an agreement as the Escazú Convention that the discourse of environmental justice may be seen as a unifying process, at least initially in Latin American and the Caribbean, and possibly furthering the agenda of global environmental justice and environmental democracy by bringing together diverse situations and sharing understandings and experience in environmental matters.

## ENDNOTES

1. The Agreement will go into effect once it garners 11 ratifications. As in October 2019, half of that figure has already been achieved, and several countries are in the process of ratifying the agreement. The 24 members of the negotiating committee that approved the Regional Agreement on March 2018 were Antigua and Barbuda, Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Honduras, Jamaica, Mexico, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay.
2. "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided" (Rio Declaration, 1992).

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