

Obligations, mechanisms, principles and standards of the Escazu Agreement to inform the International Negotiating Committee (INC) process towards a global legally binding agreement to combat plastic pollution

I. Introduction

The Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (known as the "Escazú Agreement") was adopted in Costa Rica on 4 March 2018. It is a legally binding instrument derived from the United Nations Conference on Sustainable Development (Rio+20), which aims to: "(...) guarantee the full and effective implementation in Latin America and the Caribbean of the Escazú Agreement.) guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in environmental decision-making processes and access to justice in environmental matters, as well as the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person, of present and future generations, to live in a healthy environment and to sustainable development" (Article 1).

The Escazú Agreement has been signed by 24 States¹, of which, currently, 15 have ratified the instrument². The agreement entered into force on 22 April 2021, consolidating itself as an instrument of regional importance for ensuring human rights of access to the environment and environmental health.

In international law, the acts of signature and ratification generate different legal effects. Only in the case of ratification is the treaty fully applicable to the territory, but the signature of an instrument is also an act of legal significance. Thus, Article 18 of the [Vienna Convention on the Law of Treaties](#) contains an obligation for States, both in cases where they have signed or ratified an international treaty, to refrain from acts which defeat the object and purpose of a treaty (Vienna Convention on the Law of Treaties, 1969). Accordingly, and applying the

¹ The signatory states are the following: Antigua and Barbuda, Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, Grenada, Guatemala, Guyana, Haiti, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia and Uruguay.

² The States that have ratified the Escazu Agreement are the following: Antigua and Barbuda, Argentina, Bolivia, Chile, Ecuador, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia and Uruguay.

³In order to ensure that their actions in the negotiation processes of international treaties (such as the legally binding instrument on plastic pollution, INC) do not operate against the minimum standards established through the Agreement, the 24 signatory states of the region should take as a reference its content on participation, access to information and access to justice.

The paper then analyses the obligations, mechanisms, principles and standards of the Escazú Agreement on access to information and public participation in environmental and health matters, which can inform the negotiation and implementation process of the legally binding instrument on plastic pollution. To this end, it describes the obligations, mechanisms, principles and standards of the Escazú Agreement on access to information and public participation in environmental and health matters. It also outlines how the Escazú Agreement can contribute to guarantees of participation and access to information during the negotiation and implementation of the legally binding instrument on plastic pollution. Finally, it offers conclusions on how the Escazú Agreement can inform the process carried out by the Intergovernmental Negotiating Committee (INC)⁴, and provides recommendations based on good practices and lessons learned from other international environmental instruments.

II. Obligations in the Escazú Agreement on access to information

³ The *stoppel* rule refers to situations in which a retrogression on the part of the subjects of law is unacceptable, even in the absence of international obligations. Consequently, estoppel represents a legal mechanism to reinforce the consequences of acts and declarations (Ushakova, 2013), recognising that states should not contradict their previous acts in international law.

⁴ Following the fifth session of the United Nations Environment Assembly (UNEA-5.2), 175 states decided that the most effective response to combat plastic pollution is a new binding international instrument. Thus, through the resolution *Ending Plastic Pollution: Towards an International Legally Binding Instrument*, the United Nations Environment Programme (UNEP) was requested to convene an Intergovernmental Negotiating Committee (INC) with the mandate to develop a legally binding instrument to address plastic pollution throughout the life cycle, including in marine ecosystems. Since then, the first session of the INC (INC-1) took place in Punta del Este, Uruguay from 28 November to 2 December 2022, with the participation of more than 160 States, and an agreement is expected to be reached by the end of 2024, with four additional rounds of negotiations, as well as significant intersessional work, which would open the agreement for adoption from 2025. If such an agreement is reached, it would be the most important environmental treaty adopted since the Paris Agreement. In parallel, the Escazú Agreement establishes provisions to inform environmental decision-making processes, such as the INC and the legally binding instrument's own provisions on plastic pollution.

The Escazú Agreement establishes extensive standards to guarantee access to environmental information⁵ This is defined as "any written, visual, audio, electronic or recorded information in any other format, relating to the environment and its elements and to natural resources, including information relating to environmental risks and possible associated adverse impacts affecting or likely to affect the environment and health, as well as information relating to environmental protection and management" (Article 2.c). Furthermore, the Agreement recognises the existence of a right of the public⁶ to access environmental information held by⁷ of the State⁸ (article 5.1), which it gives content to, establishing that this right includes:

⁵ See also the Kiev Protocol on Pollutant Release and Transfer Registers, whose objective, contained in Article 1, is to "promote public access to information through the establishment of nationally consistent pollutant release and transfer registers". Under the Protocol, private companies are required to report their emissions to government authorities, and the government makes this information available to the public (Orellana, 2013).

⁶ The Agreement provides a broad definition of the public, i.e. one or more natural or legal persons and associations, organisations or groups constituted by those persons, which are nationals of or subject to the domestic jurisdiction of the State Party (Article 2(d)). On the other hand, the 1998 Aarhus Convention, similar in nature to the Escazu Agreement, and whose influence was evident since its negotiation, defines the public concerned as the public affected or likely to be affected by environmental decision-making or having an interest in the decision-making process, and non-governmental organisations working for the protection of the environment and meeting the requirements of domestic law are considered to have such an interest (Article 2(5)).

⁷ It also uses as terminology the control or custody of such information.

⁸ This was recognised in the case of *Claude Reyes v. Chile*, where the Inter-American Court of Human Rights recognised that freedom of expression encompasses the right of access to information of public interest held by the State, as well as the State's duty to provide it. In this case, the information concerned environmental information relating to a logging investment project in Patagonia. As for the European Court of Human Rights, in *Oneryildiz v. Turkey*, which concerned a methane explosion in a landfill, resulting in the death of nine people, the Court found that the right to life entails the right to be informed of life-threatening dangers. And in *Budayeva v. Russian Federation* concerning loss of life as a result of a climatic event, the Court noted that the right to life imposes positive obligations on the state, such as the duty to notify the public about life-threatening emergencies (Orellana, 2013).

a) request and receive information from the competent authorities⁹ without the need to mention any special interest or justify the reasons for the request; b) be informed in an expeditious manner whether or not the requested information is held by the competent authority receiving the request; and c) be informed of the right to challenge and appeal the non-delivery of information and the requirements to exercise this right (Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, 2018).

Escazú establishes the principle of maximum disclosure of information (Article 5.1). This means that the agreement must be interpreted in the way that is most favourable to the dissemination of environmental information. To this end, it specifies the regimes of exceptions for the release of information, which must be duly justified (article 5.6). In addition, it establishes a guarantee that the information will be provided free of charge (Article 7.2), appropriate means and formats for its delivery (Article 7.14), and the use of non-technical and understandable language (Article 7.17.d). It even establishes the provision of information without the need for citizens to mention any special interest or justify the reasons for requesting it (Article 5.2.a)¹⁰.

It also establishes the obligation to apply affirmative measures aimed at persons or groups in situations of vulnerability (Article 5.3), among which ethnic groups and indigenous peoples are explicitly mentioned¹¹ (Article 5.4). To this end, the states must facilitate access to information

⁹ The Agreement provides that, in addition to public institutions, private organisations may be competent authorities, insofar as they receive public funds or benefits directly or indirectly or perform public functions and services, but only with regard to the public funds or benefits received or the public functions and services performed (Article 2(b)). In a similar vein, the Aarhus Agreement provides that public authorities mean natural or legal persons exercising, under national law, public administrative functions, in particular specific tasks, activities or services relating to the environment; and any other natural or legal person having public responsibilities or functions or providing public services relating to the environment under the authority of a body or person falling within the above-mentioned categories. In addition, Directive 2003/4/EC and the EU Regulation implementing the provisions of the Aarhus Convention extended the scope of the definition of public authority to include other persons or bodies performing public administrative functions in relation to the environment under national law, as well as other persons or bodies acting under their control and exercising public responsibilities or functions in relation to the environment.

¹⁰ In the same vein, Article 4 of the Aarhus Convention guarantees the right to environmental information without the public having to invoke a particular interest.

¹¹ In the particular case of indigenous peoples, it is important to mention that the right to information is also protected and guaranteed by other international negotiation instruments that are complementary to the Escazú Agreement. In particular, the United Nations Declaration on the Rights of Indigenous Peoples establishes the right to free, prior and informed consent (art. 11). In addition, it establishes that States should take effective measures to ensure that means of

The agreement also establishes that environmental information must be disseminated in a systematic, proactive, timely, regular, accessible, understandable, periodic, disaggregated and decentralised manner (article 5.1). The agreement also establishes that the dissemination of environmental information must be systematic, proactive, timely, regular, accessible, comprehensible, periodic, disaggregated and decentralised (article 6.1).

In a novel way, it establishes that States must adopt the necessary measures to promote access to environmental information held by private entities, especially information related to their operations and possible risks and effects on human health and the environment¹² (article 6.12); and provides that incentives will be provided for the preparation of sustainability reports by public and private companies, in particular large companies, that reflect their social and environmental performance (article 6.13). In terms of obligations directed towards States, the Escazú Agreement provides:

The state obligation to implement environmental information systems; take measures to implement a pollutant release and transfer register; publish and disseminate at regular intervals, not exceeding five years, a national report on the state of the environment; conduct independent environmental performance assessments with a view to evaluating its national environmental policies; ensure that consumers and users have official, relevant and clear information on the environmental qualities of goods and services and their effects on health; [and] establish and periodically update its filing and document management systems on environmental matters (Government of the Republic of Costa Rica, 2018).

This imposes obligations of active transparency, i.e. the active dissemination of information by the state, as well as passive transparency, understood as the provision of mechanisms and procedures for individuals to request information (Costa and Burdiles, 2019).

To implement such measures, the agreement establishes three mechanisms. The first consists of the creation of one or more impartial, autonomous and independent institutions aimed at promoting transparency and guaranteeing the right of access to environmental information (article 5.18). The second is the construction of Information Systems

The UN Convention on the Rights of Indigenous Peoples (art. 16) states that public information should duly reflect indigenous cultural diversity and that indigenous peoples have the right to establish their own media in their own languages, and to have access to all other non-indigenous media without discrimination (art. 16).

¹² Similarly, Article 5 of the Aarhus Convention provides that each Party shall encourage operators whose activities have a significant impact on the environment to regularly inform the public of the environmental impact of their activities and products, where appropriate, in the framework of voluntary eco-labelling or eco-audit programmes or by other means.

Environmental¹³ (SIA) permanently updated with data on national and international regulations, as well as reports on the environment, lists of contaminated areas, data on the use and conservation of natural resources and ecosystem services, among other items (article 6.3). The third mechanism consists of the publication and dissemination of a National Report on the State of the Environment (Article 6.7).

Finally, at the regional level, it provides for the creation of a virtual Clearinghouse, operated by the Economic Commission for Latin America and the Caribbean (ECLAC) and universally accessible, to enable Parties to share key information, such as legislative, administrative and policy measures, codes of conduct and best practices (Article 12).

III. Obligations in the Escazú Agreement on public participation in environmental decision-making processes

In the same sense as the right to information, the Escazú Agreement sets advanced standards to guarantee public participation in environmental matters¹⁴. Article 1 states that the objective of the agreement is to guarantee full and effective participation, which goes beyond a formalistic approach to this right, classically recognised as a civil and political right, from which would follow a duty of States to refrain from engaging in or tolerating conduct¹⁵. On the contrary, the Escazú Agreement recognises that there are a series of legal conditions that must be guaranteed in order to fully recognise this right.

¹³ Similarly, Article 5 of the Aarhus Convention provides that each Party shall take steps to establish progressively, taking into account international procedures where appropriate, a coherent system at national level, consisting of inventorying or recording pollution data in a structured and publicly accessible computerised database, after collecting such data by means of standardised declaration forms.

¹⁴ In the same vein, the Inter-American Court of Human Rights, through its advisory opinion 23/17 on environment and human rights, considered that States have the obligation to respect and guarantee access to information related to possible environmental impacts (Inter-American Court of Human Rights, 2017).

¹⁵ Although participation is doctrinally regarded as a civil and political right, it is also a right inextricably linked to the satisfaction of other needs and rights. In a *sui generis* way, this right must be preceded by the exercise of a series of other conditions and rights.

Firstly, the Agreement recognises that access to information is a prerequisite¹⁶ to ensure participation (Article 4.4). Furthermore, through the creation of provisions for human rights defenders, it recognises the need to guarantee a number of legal conditions to ensure their participation. These include the creation of a safe and enabling environment, the protection of the rights to life, personal integrity, freedom of opinion and expression, the right to peaceful assembly and association, and the right to freedom of movement. In addition, it recognises the capacity of defenders to exercise their rights of access, and the obligation to prevent, investigate and punish attacks, threats or intimidation against environmental defenders (article 9)¹⁷.

The Escazú Agreement recognises the interrelationship and interdependence between the rights of access to information, participation and environmental justice and their application in a comprehensive and balanced manner, as well as their preponderant role in making other human rights effective, such as health, food, drinking water, sanitation, housing and peace (Government of the Republic of Costa Rica, 2018).

In this case, participation covers environmental issues, but also those that may affect human health (article 7.2), including international forums and negotiations on environmental matters or with environmental impact (article 7.12). It states that participation should occur from the earliest stages¹⁸ (article 7.4), with reasonable timeframes for the public to participate effectively¹⁹ (article 7.5). The agreement states that participation should be adequate, informed, open, inclusive²⁰ (article 7.1), through appropriate means.

¹⁶ Similarly, the preamble of the Aarhus Convention states that in order to be able to assert the right to participation and to fulfil this duty, citizens must have access to information, and be empowered to participate in decision-making.

¹⁷ Similarly, Article 3(8) of the Aarhus Convention provides that each Party shall ensure that persons exercising their rights in accordance with the provisions of this Convention are in no way penalised, persecuted or subjected to vexatious measures for their actions.

¹⁸ This is in line with the Inter-American Court of Human Rights, in its advisory opinion 23/17, which recognised that the State must ensure opportunities for effective participation from the earliest stages of the decision-making process (Inter-American Court of Human Rights, 2017). In the same vein, the Aarhus Convention in Article 6 provides that each Party shall take measures to ensure that public participation begins at the outset of the proceedings, i.e. when all options and solutions are still possible and when the public can exert real influence.

¹⁹ Similarly, Article 6 of the Aarhus Convention provides that reasonable time-frames shall be set for the different stages of the public participation procedure, allowing sufficient time for informing the public and for the public to prepare and participate effectively in the work throughout the environmental decision-making process.

²⁰ In the same vein, the Inter-American Court of Human Rights, in its advisory opinion 23/17, established that the participation of persons under its jurisdiction in decision-making and policies that may affect the environment must be carried out without discrimination, in an equitable, meaningful and transparent manner, for which purpose

and available (Article 7.7) and under conditions that are conducive to the social, economic, cultural, geographical and gender characteristics of the public (Article 7.10).

Escazú obliges states to adopt differentiated approaches according to the population concerned. For example, through the duty to take due account of local knowledge and the interaction of different views and knowledge (article 7.13), states must also establish appropriate spaces for consultation or use existing ones, in which different groups and sectors can participate (article 7.13). The agreement also provides that efforts should be made to identify the public directly affected by projects and activities that have or may have a significant impact on the environment²¹, and promotes specific actions to facilitate their participation (article 7.16). In addition, it establishes the duty of States to identify and support vulnerable persons and groups and to tailor participatory processes to their realities²² (article 7.14).

The Agreement lists different decision-making processes in which participation should be considered, including reviews, re-examinations or updates of projects, activities and other environmental authorisation processes with significant environmental impacts (Article 7.2). It also provides for participation in decision-making on land-use planning and the development of policies, strategies, plans, programmes, rules and regulations, which have or are likely to have a significant impact on the environment (Article 7.3).

Even more ambitiously, it establishes the obligation of the authorities to give due consideration to the comments of those who participate, and that such comments contribute to the decision-making process²³ (Article 7.4). Furthermore, it determines that decisions must be disseminated by appropriate means and in an effective and expeditious manner, indicating the actions that may be brought against them (Article 7.9). It also establishes the right of the public to be informed of the decision, the reasons for the decision and the manner in which their comments have been taken into account (Article 7.8).

must have previously guaranteed access to relevant information (Inter-American Court of Human Rights, 2017).

²¹ While the Escazu Agreement does not list such activities, the Aarhus Agreement does make explicit the activities to be considered from an environmental point of view, such as oil and gas refineries, and facilities for the incineration, utilization, chemical treatment and disposal of hazardous waste.

²² This is particularly relevant for indigenous peoples, who are recognised as subjects of rights in the UN Declaration on the Rights of Indigenous Peoples and Convention 169 of the International Labour Organisation (ILO). In these cases, it is important to establish mechanisms that enable the exercise of indigenous peoples' access rights, take into account their ways of life and organisation, and recognise the collective character of indigenous defenders, based on their right to self-determination.

²³ In the same vein, Article 6 of the Aarhus Convention provides that each Party shall ensure that, when the decision is taken, due account is taken of the results of the public participation procedure.

IV. Elements of the Escazú Agreement that can inform the INC process

First, it is necessary to consider that the Escazú Agreement is not limited to the imposition of *obligations* in national regulatory orders, as it also establishes obligations for international forums and negotiations on environmental matters or with environmental impact. In this sense, **its standards on participation, information and environmental justice are fully applicable to the INC process, not only because of its environmental relevance, but also because of the impacts of plastic pollution on human and environmental health.**

It is key to highlight that the international obligations of the Parties resulting from this agreement are not exclusively obligations to "stop doing", since positive obligations are also established, such as active and passive transparency, and even affirmative actions directed towards people or groups in situations of vulnerability, including indigenous peoples and local communities. This cannot be postponed in the area of plastic pollution, given the scientific evidence of its impacts on the most vulnerable populations (Lynn *et al.*, 2017) (INTERPOL, 2020) (Landrigan *et al.*, 2023).

In terms of its *mechanisms*, the agreement recognises that each Party shall take all necessary measures, whether of a legislative, regulatory, administrative or other nature, within the framework of its domestic provisions, to ensure its implementation²⁴. To this end, the Parties undertake to build and strengthen their national capacities, based on their priorities and needs. This gives greater normative force to the contents of the agreement, because while recognising that in the Latin American region there are many pending challenges in terms of access rights, it is an ambitious agreement for the enforceability of these rights. In particular, it establishes institutions to guarantee transparency and oversight, environmental information systems, and reports on the environmental situation.

The agreement establishes a series of *principles* that could inform both the negotiation and the text of the treaty itself - and even national legislation - such as the principle of equality and the principle of non-discrimination; the principle of transparency and accountability; the principle of non-regression and progressivity; good faith; the precautionary principle; the precautionary principle; the principle of maximum publicity; and the pro persona principle.

²⁴ In a similar vein, see Article 3.1 of the Aarhus Convention, which states: Each Party shall take the necessary legal, legislative, regulatory or other measures, in particular measures to ensure the compatibility of the provisions giving effect to the provisions of this Convention relating to information, public participation and access to justice, as well as appropriate enforcement measures, in order to establish and maintain an accurate, transparent and consistent framework for the purpose of implementing the provisions of this Convention.

In terms of its *standards*, it is relevant to consider that access to environmental information should not be ensured exclusively with respect to environmental impacts that are already being experienced, but also includes environmental risks and possible associated adverse impacts that affect or may affect the environment and health. In other words, the protection framework makes it possible to extend the enforceability of rights to stages prior to the execution of environmental damage, as well as to apply the precautionary principle in ensuring the rights to information and participation. Likewise, access requirements that the information in the hands of citizens must contain are detailed.

Particularly **useful for the legally binding instrument on plastic pollution are the obligation of States to adopt the necessary measures to promote access to environmental information** held by private entities, especially information on their operations and potential risks and impacts on human health and the environment, as well as the provision to encourage sustainability reporting by public and private companies.

As for the right to participate in environmental matters, the promotion of public participation in international fora and negotiations is highlighted, as well as specific actions to facilitate the participation of the public directly affected by projects and activities that have or may have a significant impact on the environment, and the obligation to duly consider the observations of those who participate, so that they contribute to decision-making.

Finally, it is advisable that the interdependence of the human rights of access be mainstreamed and recognised in the INC process, which implies that each and every one of these rights must be promoted and applied in an integral and balanced manner. This, taking into account that there can be no participation without first ensuring the right to environmental information, as well as other first and second generation rights, which are indispensable to guarantee full and effective participation in the negotiation and implementation phases of the instrument.

V. Conclusions

The Escazú Agreement is a legally binding instrument derived from the United Nations Conference on Sustainable Development, of particular importance for securing access rights in environmental matters. It currently has 15 ratifications and 24 signatures, which means that it is binding for some States, and in the second case, that the signatory States must take its content as a reference, so that their international acts do not operate against the minimums established in the Agreement.

Escazú contains obligations, mechanisms, principles and standards that guarantee access to information and public participation of citizens - particularly vulnerable groups such as indigenous peoples and ethnic groups - in the area of plastic pollution, as it establishes positive and negative obligations to ensure human rights, enables public participation in international environmental forums and negotiations, establishes the commitment of States to strengthen their capacities to guarantee the implementation of the Agreement, recognises transcendental principles to inform future international environmental law agreements, and assumes a vanguard position in the definition of standards on participation and access to information.

For these reasons, the Escazu Agreement constitutes a tool for the recognition of access rights at all stages of the INC. Together with the Aarhus Agreement, which aims to guarantee the rights of access to environmental information, public participation in decision-making and access to justice in environmental matters, as well as in conjunction with the various standards of the regional human rights courts cited throughout this document, and other provisions in the framework of the United Nations²⁵ , it is possible to distinguish an international body of law that demands the immediate enforceability of the rights recognised therein²⁶ . Moreover, by virtue of the principle of progressivity, such rights should be taken as a minimum basis for further progress in the expansion of environmental access rights, a process in which the legally relevant instrument on plastic pollution should not show any signs of regression.

VI. Recommendations

1. Provide a human rights and environmental justice approach to the plastics treaty, through the preamble and objective of the treaty, as well as the different sections of the treaty. This implies recognising the need to apply differentiated approaches for groups in situations of vulnerability, as well as establishing mechanisms to strengthen the capacities of diverse populations, in particular those in vulnerable situations.

²⁵ See, for example, the Millennium Declaration, the 2005 World Summit Outcome and General Assembly resolution 68/1 on the review of the implementation of General Assembly resolution 61/16 on the strengthening of the Economic and Social Council.

²⁶ In fact, the Inter-American Court of Human Rights, through the case of *Baraona Bray v. Chile*, developed standards based on the content of the Escazú Agreement. In that case, it recalled that international environmental standards highlight the importance of States adopting adequate and effective measures to protect the right to freedom of opinion and expression and access to information in order to guarantee citizen participation in environmental matters, which is of vital importance in the realisation and protection of the right to a healthy environment, in accordance with the Escazú Agreement (Inter-American Court of Human Rights, 2022).

The reason for the differentiated impacts they perceive as a result of plastic pollution.

2. Establish, as part of the treaty text, a framework of principles to inform compliance with access rights within the treaty, such as the principle of transparency and accountability; the principle of non-regression and progressivity, both in environmental and human rights matters; the preventive principle; the precautionary principle; the principle of maximum disclosure; the principle of equality and non-discrimination; the pro persona principle; and the pro natura principle.
3. Ensure the right of the interested public to participate, as observers, in the negotiation of the international treaty (and the Conferences of the Parties), and to have their comments, including those related to situations of non-compliance, duly taken into account. This should take into account the most vulnerable populations and those already affected by plastic pollution, as well as specific groups that could be affected, positively or negatively, by the legally binding instrument.
4. Mechanisms for compliance, monitoring and information exchange of the legally binding instrument should ensure meaningful participation of the public concerned, as well as provide for the possibility to send submissions and participate in hearings on issues relevant to the instrument. The public should be entitled to nominate persons for the election of experts and members of compliance bodies. The instrument should also provide for an obligation to conduct national consultations and multi-stakeholder dialogues to inform national processes, with sufficient guarantees of participation.
5. Establish obligations of active and passive transparency on the part of Contracting Parties, as well as private organisations that receive public funds or benefits directly or indirectly, perform public functions and services, provide public services related to the environment, carry out operations that generate potential risks and effects on human health and the environment, and recognise the right of the public concerned to have access to such information. The implementation, compliance, monitoring and information exchange mechanisms of the legally binding instrument should ensure public access to the information available to them. The instrument should list exceptions where this is not possible, taking as a reference the principle of maximum disclosure.

Annex 1. Compilation of provisions of the Escazú Agreement that can inform the INC process on participation and information

Right to information	Right to participate	
	During the negotiation of the treaty on plastics	During implementation of the plastics treaty
<p>Preamble²⁷. Principle 10 of the 1992 Rio Declaration on Environment and Development, which states that: "At the national level, all people should have adequate access to environmental information held by public authorities, including information on hazardous materials and activities in their communities, as well as the opportunity to participate in decision-making processes. States should facilitate and encourage public awareness and participation by making information available to the public. available to all' [...].</p>	<p>Preamble. Principle 10 of the 1992 Rio Declaration on Environment and Development, which states that: "environmental issues are best addressed with the participation of all concerned citizens, at the appropriate level".</p>	
<p>The objective of this Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in environmental decision-making processes and access to justice in environmental matters, as well as the right of access to justice in environmental matters. building and strengthening capacities and cooperation [...].</p>		
<p>Article 5.</p> <ol style="list-style-type: none"> Each Party shall ensure the right of public access to environmental information in its possession, control or custody, in accordance with the principle of maximum disclosure. The exercise of the right of access to information environmental information comprises: 	<p>Article 4.6. Each Party shall ensure an enabling environment for the work of persons, associations, organisations or groups promoting environmental protection by providing them with recognition and protection. In a similar vein: Article 9.1. Each Party shall ensure a safe and enabling environment in which individuals, groups and organisations that promote and defend human rights in</p>	

²⁷ According to the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations, adopted on 20 March 1986, for the purposes of interpreting a treaty, the context shall comprise, in addition to the text, its preamble, annexes, among other inputs. In other words, the preamble, although it does not establish legal obligations, constitutes a source of interpretation of the treaty.

<p>(a) request and receive information from the competent authorities without having to state any special interest or reasons for requesting it;</p> <p>(b) be informed promptly whether or not the information requested is held by the competent authority receiving the request; and</p> <p>(c) be informed of the right to challenge and appeal the non-delivery of information and the requirements for exercising this right.</p> <p>3. Each Party shall facilitate access to environmental information for persons or groups in vulnerable situations, establishing procedures from the formulation of requests to the delivery of information, considering their conditions and specificities, with the aim of promoting access and participation on equal terms.</p> <p>4. Each Party shall ensure that such persons or groups in vulnerable situations, including indigenous peoples and ethnic groups, are assisted in formulating their requests and obtaining a response.</p>	<p>issues environmental issues can act without threats, restrictions and insecurity.</p>
<p>Article 4.10. The Parties may promote awareness of the contents of this Agreement in other international fora when they are related to environmental issues, in accordance with the rules provided by each forum.</p>	
<p>Article 6.1. Each Party shall ensure, within available resources, that competent authorities generate, collect, compile, make available to the public</p>	<p>Article 7.1. Each Party shall ensure the right of public participation and, to this end, undertakes to implement an open and inclusive public participation in the</p>

and disseminate environmental information relevant to their functions in a systematic, proactive, timely, regular, accessible and comprehensible manner, and that they regularly update this information and encourage the disaggregation and decentralisation of environmental information to sub-national and local level

[...]

(d) the **list of contaminated sites**, by type of pollutant and location.

f) **scientific, technical or technological reports, studies and information** on environmental matters prepared by academic and research institutions, public or private, national or foreign;

i) an **estimated list of waste by type and, where possible, disaggregated by volume, location and year**; and

j) information on the **imposition of administrative sanctions** in environmental matters.

environmental decision-making processes, based on domestic and international regulatory frameworks.

[...]

3. Each Party shall promote public participation in **decision-making processes, reviews, revisions or updates**, other than those referred to in paragraph 2 of this Article, **concerning environmental matters of public interest**, such as land-use planning and the development of policies, strategies, plans, programmes, rules and regulations, which have or are likely to have a significant impact on the environment.

4. Each Party shall take measures to ensure that **public participation** is possible **from the earliest stages of the decision-making process**, so that public comments are duly considered and contribute to those processes.

7. The right of the public to participate in environmental decision-making processes shall include the **opportunity to comment by appropriate and available means**, in accordance with the circumstances of the process. Prior to the adoption of the decision, **the relevant public authority shall give due consideration to the outcome of the participation process**.

8. Each Party shall ensure that, after a **decision has been taken**, the public is **informed in a timely manner** of the decision and of the reasons and grounds on which it is based, as well as of the manner in which its comments have been taken into account. **The decision and its background shall be publicly available and accessible**.

10. Each Party shall establish conditions conducive to **public participation** in environmental decision-making processes that are appropriate to the social, economic, cultural, geographic and gender **characteristics** of the public.

13. Each Party shall encourage the establishment of **appropriate venues for consultation** on environmental matters or the use of of existing ones, in which **different stakeholders** can participate.

	<p>groups and sectors. Each Party shall promote the valuing of local knowledge, dialogue and interaction of different views and knowledge, where appropriate.</p> <p>14. Public authorities shall make efforts to identify and support persons or groups in situations of vulnerability in order to involve them in an active, timely and effective manner in participation mechanisms. For these purposes, appropriate means and formats shall be considered in order to remove barriers to participation.</p> <p>[...]</p> <p>16. The public authority shall make efforts to identify the public directly affected by projects and activities that have or are likely to have a significant impact on the environment, and shall promote specific actions to facilitate their participation.</p>
<p>Article 6. Each Party shall ensure that environmental information systems are properly organised, accessible to all persons and progressively made available by computerised and geo-referenced means, where appropriate.</p> <p>4. Each Party shall take measures to establish a register of releases and transfers of pollutants into the air, water, soil and subsoil, and of materials and wastes under its jurisdiction, which shall be progressively established and shall be will be updated on a regular basis.</p>	<p>Article 7. 12. Each Party shall promote, as appropriate and in accordance with national legislation, the participation of the public in international forums and negotiations on environmental matters or with environmental implications, in accordance with the rules of procedure for such participation provided for in each forum. Likewise, the participation of the public in national instances to deal with matters of international environmental fora shall be promoted, as appropriate.</p>
<p>Article 6.10. Each Party shall ensure that consumers and users are provided with official, relevant and clear information on the environmental qualities of goods and services and their effects on health, encouraging patterns of consumption and use, and promoting the use of environmental goods and services for the benefit of consumers and users.</p> <p>sustainable production.</p>	<p>Article 9. 2. Each Party shall take appropriate and effective measures to recognise, protect and promote all rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, the right to freedom of opinion and expression, the right to freedom of opinion and expression, the right to freedom of opinion and expression, and the right to freedom of expression.</p>

	peaceful assembly and association and the right to freedom of movement
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	<p>freely, as well as their ability to exercise access rights, taking into account that Party's international human rights obligations, constitutional principles and the basic elements of its legal system.</p> <p>3. Each Party shall take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidation that environmental human rights defenders may suffer in the exercise of their rights under this Protocol.</p> <p>this Agreement.</p>
<p>1. In order to contribute to the implementation of the provisions of this Agreement, each Party undertakes to build and strengthen its national capacities, based on its priorities and needs, by [...]</p> <p>(f) recognise the importance of associations, organisations or groups that contribute to forming or raising public awareness of access rights.</p>	
<p>Article 11.1. The Parties shall cooperate in strengthening their national capacities to implement this Agreement effectively.</p> <p>2. The Parties shall give special consideration to the least developed, developing and least-developed countries, and to the least-developed countries in particular.</p> <p>landlocked and small island developing states in Latin America and the Caribbean.</p>	
<p>Article 6.</p> <p>12. Each Party shall take the necessary measures, including through legal and administrative frameworks, to promote access to environmental information held by private entities, in particular information relating to their operations and potential risks and impacts on human health and the environment.</p> <p>13. Each Party shall encourage, in accordance with its capabilities, the preparation of sustainability reports by public and private companies, in particular large companies, that reflect their social and environmental performance.</p> <p>environmental.</p>	
<p>Article 7.4. [...] Each Party shall provide to the public, at clearly, clearly, timely y</p>	

information necessary to realise their right to participate in the decision-making process.

5. The public participation procedure shall provide for **reasonable time-frames** that allow sufficient time for the public to be informed and to participate effectively.

6. The public shall be informed in an **effective, comprehensible and timely manner**, through appropriate **means**, which may include written, electronic or oral means, as well as traditional methods, at a minimum about: (a) the type or nature of the environmental decision concerned and, where appropriate, in non-technical language; (b) the authority responsible for the decision-making process and other authorities and institutions involved; (c) the procedure envisaged for public participation, including the starting and ending date, the mechanisms envisaged for such participation, and, where appropriate, the places and dates of consultation or public hearing; and (d) the public authorities involved from which further information on the environmental decision concerned may be required, and the procedures for requesting information.

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Annex 1. Possible provisions on participation and information for the international legally binding agreement to end plastic pollution

Recommendation 1: Provide a human rights and environmental justice approach to the plastics treaty, through the preamble and objective of the treaty, as well as the different sections of the treaty. This implies recognising the need to apply differentiated approaches for groups in vulnerable situations, as well as establishing mechanisms to strengthen the capacities of diverse populations, given the differentiated impacts they perceive as a result of plastic pollution.

Possible arrangements:

Objective of the treaty:

- End plastic pollution; and its human, social and environmental impacts throughout the life cycle.

Preamble:

- In taking measures to address plastic pollution, Parties shall respect, promote and take into account their respective obligations relating to human rights, the right to health, the rights of indigenous peoples, local communities, working people, trade unions, farmers, children, youth, persons with disabilities and the right to development, as well as gender equality and intergenerational equity" (based on the Paris Agreement).
- Reaffirming Principle 10 of the Rio Declaration, which recognises that environmental issues are best addressed with the participation of all concerned citizens, at the appropriate level. At the national level, everyone should have adequate access to environmental information held by public authorities, including information on hazardous materials and activities in their communities, as well as the opportunity to participate in decision-making processes. States should facilitate and encourage public awareness and participation by making information available to all. Effective access to judicial and administrative procedures, including redress and remedies, should be provided.

Recommendation 2: Establish, as part of the treaty text, a framework of principles to inform compliance with access rights within the treaty, such as the principle of transparency and accountability; the principle of non-regression and progressivity, both in environmental and human rights matters; the preventive principle; the precautionary principle; the principle of maximum disclosure; the principle of equality and non-discrimination; the pro persona principle; and the pro natura principle.

Possible arrangements

- Gender equality and differentiated perspectives: marginalised and vulnerable communities are disproportionately affected by plastic pollution (*potential elements document*), even if they are not the main culprits.
- Principle of equality and principle of non-discrimination.
- Principle of transparency and accountability: this refers to the obligations to actively disseminate information, as well as providing mechanisms and procedures for individuals to request information. This obligation covers both States and independent or autonomous organs, agencies or bodies owned or controlled by the State, acting under powers granted by the constitution or other laws, and, where appropriate, private organisations, to the extent that they receive public funds or benefits directly or indirectly or perform public functions and services, but only in respect of public funds or benefits received or public functions and services performed.
- Principle of non-regression and progressivity, in environmental and human rights matters: once a certain level of environmental and human rights protection is achieved, States must ensure that it is not abridged, destroyed or derogated from.
- Good faith.
- Preventive principle.
- Precautionary principle.
- Principle of maximum publicity: the (agreement) must be interpreted in a manner that results in more favourable to the dissemination of environmental information. Exception regimes for the provision of information should be exceptional and duly justified.
- Pro persona principle.
- Pro natura principle.
- Source correction: in cases where contamination cannot be prevented at the source, the source of the contamination must be corrected.
In all cases, measures must be implemented at the source of contamination.

Recommendation 3: Ensure the right of the public concerned to participate, as observers, in the negotiation of the international treaty (and the Conferences of the Parties), and to have their comments, including those related to situations of non-compliance, duly taken into account. This should take into account the most vulnerable populations and those already affected by plastic pollution, as well as specific groups that could be affected, positively or negatively, by the legally binding instrument.

Possible arrangements:

- In the (*monitoring mechanism*), international organisations, relevant intergovernmental and non-governmental bodies and groups in situations of vulnerability should have observer status. Observer status implies the following (*possibilities/rights/guarantees*):
 - (a) send representatives to attend meetings and sessions;
 - (b) submit written submissions and make oral statements.
 - (c) share relevant information, publications and materials with the secretariat;
 - (d) submit proposals for side events and hold pre-planned side events;
 - (e) hold pre-scheduled press conferences;
 - (f) participate in and organise pre-planned exhibitions;
 - (g) receive information material and official notifications from the (secretariat);
 - (h) participating in a range of activities promoted by the secretariat or the convention, including science-policy platforms and networks
 - (i) submit proposals at the invitation of the President or the High Contracting Parties.
 - (j) participate in hearings.
 - (k) send communications to the Secretariat.

(j) nominate persons for the election of (expert persons) and (members of compliance bodies).

Recommendation 4: Mechanisms for compliance, monitoring and information exchange of the legally binding instrument should ensure meaningful participation of the public concerned, as well as provide for the possibility to send submissions and participate in hearings on issues relevant to the instrument. The public should be entitled to nominate persons for the election of experts and members of compliance bodies. The instrument should also provide for an obligation to conduct national consultations and multi-stakeholder dialogues to inform national processes, with sufficient guarantees of participation.

Possible arrangements:

- A clearing-house mechanism is established to promote and facilitate scientific and technical cooperation between the Contracting Parties, which considers the participation of international or national, governmental or non-governmental organisations and entities and groups, communities and persons in vulnerable situations, and the public affected by projects and activities that have or may have a significant impact on the environment, which do not have conflicts of interest with the objective of the treaty.
- The Secretariat shall serve as a clearing-house mechanism for information on the impacts of plastic pollution, including information provided by Parties, expert groups, intergovernmental organisations and non-governmental organisations (*Stockholm Convention on Persistent Organic Pollutants*).
- The (Convention Secretariat/ Conference of the Parties/subsidiary bodies) may be supported by international or national, governmental or non-governmental agencies and entities with technical competence in combating plastic pollution (*Convention on International Trade in Endangered Species of Wild Fauna and Flora*).
- The Convention Secretariat shall consult groups in situations of vulnerability on measures (...) that potentially affect the exercise of their human rights.
- Consulting and taking into account ancestral knowledge, cooperation and information that may be provided by international organisations, relevant intergovernmental and non-governmental bodies, and groups in situations of vulnerability.
vulnerability (...)" (*Nagoya Protocol on Access to Genetic Resources and Genetic Resources for Food and Agriculture*).

Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity).

- In accordance with national laws and policies, the Contracting Parties shall promote and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, for the benefit of (subject to be defined). To this end, the Contracting Parties shall also promote cooperation for the training of personnel and the exchange of experts (*Convention on Biological Diversity and its Nagoya Protocol*).
- The Parties shall ensure effective public participation in the (decision-making body) decisions and scientific body) as observers.
- Establish a funding mechanism to facilitate the participation of vulnerable groups and local communities in (meetings of the Convention) (*Convention on Biological Diversity*).
- Parties should consult national stakeholders with a view to facilitating the development, implementation, review and updating of their implementation plans (*Stockholm and Minamata Conventions*).
- (Intergovernmental organisations, non-governmental organisations and groups in vulnerable situations, subject to be defined) may propose to the Contracting Parties, through the Secretariat, the appointment of high-level independent experts, such as special rapporteurs or special procedures systems (depending on the body to be established).

Recommendation 5: Establish active and passive transparency obligations on the part of Contracting Parties, as well as private organisations that directly or indirectly receive public funds or benefits, perform public functions and services, provide public services related to the environment, carry out operations that generate potential risks and effects on human health and the environment, and recognise the right of the public concerned to access such information. The implementation, compliance, monitoring and information exchange mechanisms of the legally binding instrument should ensure public access to the information available to them. The instrument should list exceptions where this is not possible, taking as a reference the principle of maximum disclosure.

Possible arrangements:

- The Secretariat shall make available a clearing-house mechanism for the exchange of information on the (chemicals, precursors, materials, monomers, polymers, materials and

plastic products), including information provided by Parties, intergovernmental organisations, non-governmental organisations and groups in vulnerable situations (*Stockholm Convention on Persistent Organic Pollutants*).

- States should put in place the necessary mechanisms to make transparent the quantity and types of (chemicals, precursors, monomers, polymers, materials and plastic products produced and placed on the market) used by the different companies involved in its life cycle.
- States should take the necessary measures to ensure access to information on the environmental information held by private entities and, especially, information related to their operations and potential risks and impacts on human health and the environment. Dissemination of environmental information must be systematic, proactive, timely, regular, accessible, understandable, periodic, disaggregated and decentralised (*Escazú Agreement*).
- Each Party shall encourage operators, producers and marketers whose activities have a significant impact on the environment to regularly inform the public of the environmental impact of their activities and products (*Aarhus Convention*).
- States should take the necessary measures to make public the reports on sustainability of public and private companies involved in operations linked to all stages of the plastics life cycle, and especially large companies. These reports should reflect their social and environmental performance, as well as the impacts of their operations. to public health (...) (*Escazú Agreement*).
- Each Contracting Party shall guarantee the public's right of access to the environmental information in its possession, control or custody, in accordance with the principle of maximum disclosure (*Escazú Agreement*).
- Local communities and groups in situation of vulnerability have the right to request and receive information from the competent authorities without the need to mention any special interest or justify the reasons for the request (*Escazú Agreement*).
- Where the information requested or part of the information requested is not provided to the applicant because it is under the system of exceptions laid down in national law, the competent authority shall give written notice of the refusal, including the legal provisions and the reasons justifying the decision in each case, and inform the applicant of his or her right to challenge and appeal against it. 6. Access to information may be refused in accordance with national law. In cases where a Party does not have a regime of exceptions provided for in domestic law, it may apply the following exceptions: (a) where making information public would risk the

life, safety or health of a natural person; b) where making the information public would adversely affect national security, public safety or national defence;

c) where making the information public would adversely affect the protection of the environment, including any threatened or endangered species; or d) where making the information public would create a clear, probable and specific risk of significant harm to the prevention, investigation and prosecution of criminal offences.