

The Earth Charter and the Regional Treaties

Implementing Access Rights –

Principle 10 of the Rio Declaration

Maksim Lavrik, Alicia Jimenez and Mirian Vilela¹

Earth Charter International Secretariat²

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Abstract

The level of protection of the environment interconnects with the implementation of access rights: right to access information concerning the environment, public participation in decision-making and access to justice in environmental matters. Principle 10 of the Rio Declaration is a starting point for the evolution of this concept. This article provides an analysis of the implementation of Principle 10 of the Rio Declaration from different perspectives. First, from the perspective of the Earth Charter as a comprehensive ethical framework of global governance based on the principles of sustainability. Secondly, from the perspectives of two regional treaties on access rights: the Aarhus Convention celebrating its twentieth anniversary in 2018 and the Escazú Agreement adopted in March 2018. The article claims that regional treaties on access rights not only contribute to the implementation of Principle 10 of the Rio Declaration, but also are complementary to the broader approach of governance expressed in the Earth Charter.

¹ Maksim Lavrik, Alicia Jimenez and Mirian Vilela are associated with the Earth Charter International Secretariat.

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Principle 10 of Rio Declaration, Regional Treaties and Earth Charter

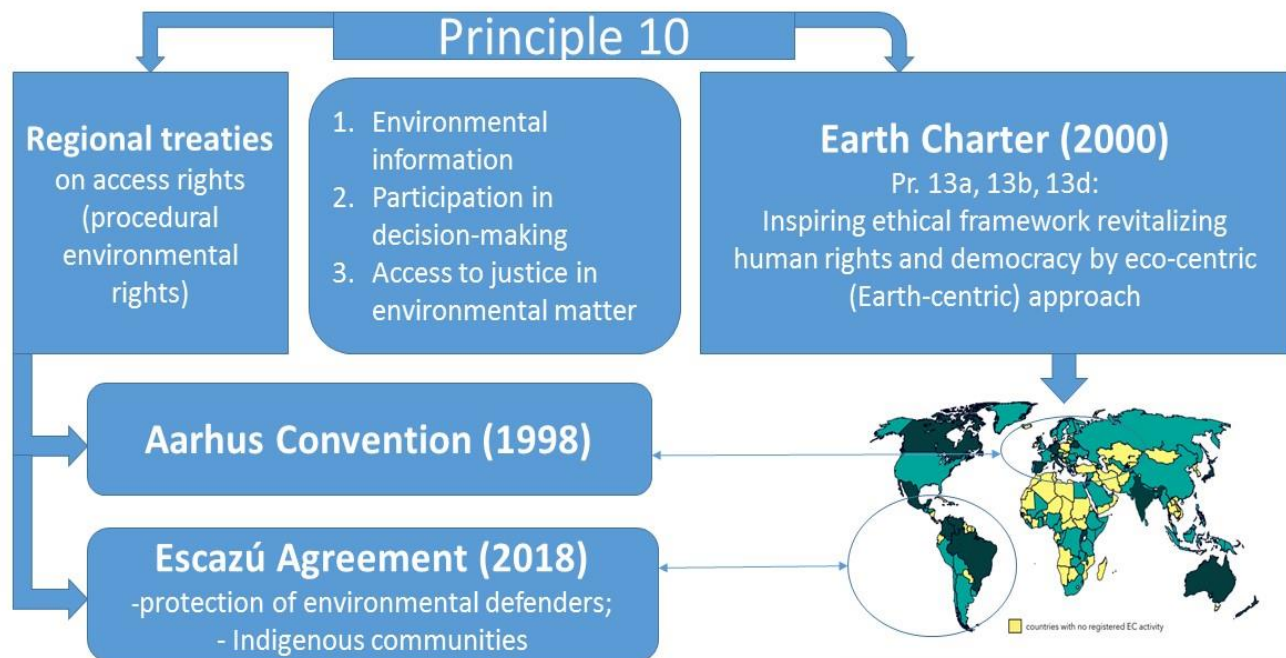


Figure 1: Overview of Principle 10 of Rio Declaration, the Regional Treaties and the Earth Charter

Introduction

The United Nations Conference on Environment and Development in 1992 recognized participation of all concerned citizens, access to information concerning the environment, and access to justice in environmental matters as significant conditions to deal with environmental issues (Principle 10 of the Rio Declaration).³

S. Duyck (2015) believes that Principle 10 was one of the main innovations of the Rio Declaration, while its other provisions reflected the ideas of treaties and other documents, which had already been in existence. Different soft law documents including Rio+20 Declaration on the application of Principle 10 reflect and develop the provisions of Rio Principle 10.

The Earth Charter as a comprehensive ethical framework for global sustainability incorporated environmental procedural rights⁴ in its Principle 13 on strengthening democratic institutions, transparency, accountability, inclusive participation and access to justice. Principle 13a, 13b and 13d explicitly articulates the classical trinity of environmental procedural rights of Principle 10 of the Rio Declaration. Notwithstanding, the Earth Charter also embeds under its Principle 13 the protection of rights to freedom of opinion and expression (Principle 13c), elimination of corruption (Principle 13e) and strengthening of local communities enabling them to care for their environments (Principle 13f).

The Aarhus Convention adopted in 1998 in Aarhus, Denmark, became the first multilateral legally binding instrument for the implementation of Principle 10 of the Rio Declaration. On March 2018, Latin American and Caribbean Principle 10 Agreement was adopted in Escazú, Costa Rica (further - the Escazú Agreement). Its adoption is a milestone in proliferation of Principle 10 around the globe (Signing on September 2018).

³ Principle 10 of the 1992 Rio Declaration “Environmental issues are best handled with the 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.”

⁴ The distinguishing line between procedural and substantive human rights is not straightforward. Nevertheless, one usually uses a term “substantive right” when he or she means that a core of the right is valuable as such like for example, life in case of right to life. The term “procedural right” usually means right to some procedures, which support implementation of substantive rights. In this context, “right to a healthy environment” is substantive right, because healthy environment is the final goal of this concept, otherwise “right to participate in decision-making” is procedural right, because such participation can facilitate the implementation of substantive rights including right to a healthy environment.

The Aarhus Convention and the Escazú Agreement are the only regional treaties to Principle 10 of the Rio Declaration.

The process of disseminating Principle 10 was not easy. Article 3.7 of the Aarhus Convention obliges its parties to promote the application of its provisions in the international environmental decision-making process. The climate change negotiating process in Copenhagen with its restrictions on public participation led to the claim of 50 non-governmental organizations (NGOs) against Denmark as the host country and other parties of the Aarhus Convention. Nevertheless, the Compliance Committee rejected the evaluation of the issue due to procedural requirements, which the claimant did not meet (Duyck, 2015).

Notwithstanding, the international recognition of Principle 10 of the 1992 Rio Declaration at the international level continues to be important. This is illustrated through a wide participation of NGOs and indigenous communities in the negotiations of the Paris Agreement and the process of the adoption of the Escazú Agreement.

The Escazú Agreement, as the Aarhus Convention, reaffirms the commitments of the parties to promote the document in international forums but softens the commitments by changing the word “shall” (Article 3.7 of the Aarhus Convention) to “may” in its Article 4.10.

The implementation of Principle 10 will be analyzed from different perspectives. First, from the perspective of the Earth Charter, which is a comprehensive ethical framework of global governance for sustainability, we will present correlations between the Earth Charter and the Rio Principle 10. Secondly, from the perspectives of the regional treaties: the Aarhus Convention (1998) and the Escazú Agreement (adopted in March 2018), we will highlight basic features of the Aarhus Convention, analyze the Escazú Agreement in detail, and identify differences and similarities of these documents in relation to Principle 10 of the Rio Declaration (See Figure 1 above for an overview).

The Earth Charter and Principle 10 of the Rio Declaration

The relationship between human rights and protection of the environment is not straightforward in international environmental law. In this sense, Principle 10 is a significant step towards the integration of environmental protection with human rights concepts (Boyle, 2015).

The Escazú Agreement, after its entering into force and the Aarhus Convention are legally binding regional and international instruments for the implementation of Principle 10, while national regulations of different countries also establish norms concerning procedural environmental human rights. Thus, Chinese Environmental Protection Law contains procedural environmental rights, and, according to the Chinese scholars, more efforts will focus on the implementation of these rights in the near future (Zhu et al, 2017).

Procedural environmental rights are broadly recognized, but there is no consensus about possible contribution of such legal mechanisms to the protection of environment. One of the reasons for doubts is a general failure of environmental law. G. Parola (2013) believes that environmental law “were never fully aligned with ecological reality”.

In this sense, the appearance of procedural environmental rights is considered as an attempt to revitalize the effectiveness of legal instruments for protection of the environment. Thus, G. Reese (2010) believes that the promotion of environmental procedural rights is a reaction to the current environmental crisis. The reasons for the promotion are at least threefold. First, human rights concept provides the environmental protection with already existing working mechanisms. Second, one cannot fulfil existing human rights for example right to life, right to health without a healthy environment. Third, the environmental human rights are an alternative form of the conceptualization of both human rights and the environment (Reese, 2010).

Another argument for procedural environmental human rights is the necessity to attempt to overcome a narrow approach to human rights, which have gone too far from the original idea of human rights. J. Hancock (as cited in Reese, 2010) believes that a dominating narrow approach to human rights mechanisms does not allow them to address vital and basic human concerns.

It is quite clear nowadays, that establishing adequate relations between humans and the environment along with the appropriate ethical and legal frameworks, is an urgent and crucial task.

The anthropologist P. Descola (as cited in Raftopoulos, 2017) believes that human-nature relationship “will, in all probability, be the most important question of the present century”.

In this context, societies need to transform the existing legal patterns. G. Parola (2013) claims that it should be a normative shift from a human-center to an eco-center approach where long-term Earth interests balance short-term considerations of human welfare. This shift does not necessarily require leaving the human rights concept; instead, it should be an attempt to reestablish the human rights approach on the basis of a stronger environmentalism, which, in turn would revitalize democracy. This will be at the core of a new ecological civilization.

This process of “greening” the concept of citizenship is to embed new rights and duties related to the environment and correlate to the ideas of Earth democracy (Parola, 2013; Hrynkow, 2017) or planetary citizenship. The Earth democracy requires a new identity where humans feel part of a larger community, and the protection and promotion of the interests of the Earth is meaningful for them (Hrynkow, 2017). The ecofeminist and environmentalist, V. Shiva (as cited in Hrynkow, 2017), discussing the resilience of the Earth and the Earth communities claims, “resilience comes from diversity... The diversity of knowledge, economics and politics is what I call Earth Democracy”.

The Earth Charter, a civil society document containing basic ethical foundation for sustainable ways of living, could help to revitalize democracy from a planetary perspective and existing legal instruments including human rights mechanisms to flourish the Earth and humans in the years to come.

N. A. Robinson (2010) claims that the establishment of social norms is a difficult task and the establishment of principles for the relationship between humans and nature is even more problematic. While the Rio Declaration focuses on human wellbeing in its provisions on sustainable development, the Earth Charter highlights the centrality of the community of life (Bosselmann, Engel, 2010).

According to K. Bosselmann and J. R. Engel (2010), the first four principles of the Earth Charter in its Section I “Respect and Care for the Community of Life” are the fundamental principles for the whole document. These are:

1. Respect Earth and life in all its diversity;
2. Care for the community of life with understanding, compassion, and love;

3. Build democratic societies that are just, participatory, sustainable, and peaceful; and
4. Secure Earth's bounty and beauty for present and future generations.

K. Bosselmann and J. R. Engel (2010) believe that “all the principles of the Earth Charter are related to environmental issues, but they do not all deal exclusively with environmental issues”. Thus, Principles 13a, 13b and 13d of the Earth Charter correlated to Principle 10 concern on environmental matters but are incorporated in Pillar IV “Democracy, Nonviolence, and Peace”. It illustrates interconnectedness of different elements and the importance of principles for both environmental protection and maintaining democratic, just and peaceful societies.

G. Reese (2010) points out that the Earth Charter offers a systemic integration of the protection of environment, human rights, development, peace and justice. According to J.R. Engel (2010), the Earth Charter incorporates the sense of transcendence of different laws, ideas, and meanings. It includes a perception of nature as a “gift” which has not been created by humans but they received it as such in all its beauty and vitality.

As mentioned above, the revitalization of human rights and democratic institutions is what is needed for overcoming the ecological crisis. Traditional approaches towards understanding democracy describe it as a competition of different values and approaches without a predefined common good (Engel, 2010). The ecological crisis described in the Earth Charter could be the common ground to reestablish democracy without undermining its basic ideas: individuals and their organizations are still free in their choices but with a sense of universal responsibility in relation to the Earth, and integrating this into their ethical paradigm. Such combination of democracy, human rights and universal responsibility is in the essence of the Earth Charter and, in this term, the document is a “reconstruction of the democratic faith” (Engel, 2010).

K. Bosselmann and J. R. Engel (2010) highlight that the Earth Charter draws attention to the fundamental importance of ethical values and choices in the process of sustainable development. They believe that the Earth Charter is also a legal document in the sense “that it produces a framework of legally relevant ethical principles and values”.

The Earth Charter principles can be an inspirational starting point to understand better Principle 10 of the Rio Declaration and relevant regional treaties. The Charter provides an overall

landscape for people to realize that democracy and human rights are what matters for building societies that are respectful to the Earth and the community of life.

In this context, B. Apple (as cited in Reese, 2010) states that environmental rights are a “hybrid new idea of rights” and they combine features of rights of different types and generations, both from anthropocentric and eco-centric approaches.

Such rights are in the process of realization: environmental values are being introduced in policy agenda, and the role of citizens who care about the environment is being enhanced (Parola, 2013).

The Earth Charter embeds procedural environmental rights, substantive⁵ environmental rights, and environmental duties (Reese, 2010). The Earth Charter correlates to Principle 10 of the Rio Declaration through its Principles 13a, 13b, and 13d. Nevertheless, the Earth Charter uses the word “right” only in the context of right to receive information (Principle 13a – “uphold the right of everyone to receive clear and timely information”). The provisions of Principles 13b and 13d do not contain the word “right”. Notwithstanding, the meaning of the Principles (Principles 13b -“promote the meaningful participation”, Principle 13d – “institute effective and efficient access to administrative and independent judicial procedures”) suggests that implementation of the principles requires that individuals should have corresponding procedural rights. Among substantive environmental rights, the Earth Charter incorporates the right to potable water, clean air, food security, uncontaminated soil, shelter, and safe sanitation (Principle 9a). This leads to duties, such as the duty to prevent environmental harm (Principle 2a).

G. Parola (2013) claims that the delegation of power is not a solution anymore. Human life integrates the environmental issues so deep that deliberation and participation of concerned individuals is critical for democratic and sustainable societies. In this context, procedural human rights is a democratic response to environmental problems.

To summarize, the Earth Charter integrates procedural environmental human rights based on Principle 10 of the Rio Declaration. It provides a deeper meaning to these rights and revitalizes the concepts of human rights and democracy as they correlate strongly to the environment. G. Reese (2010) rightly points out that this is due to a combination of the global interconnectedness,

⁵ Refer to footnote 2 for an explanation on substantive rights.

the anthropocentric approach of human rights, and the eco-centric approach of the Earth Charter. This combination will promote a more effective implementation of the access rights as legal obligations.

General remarks on the Aarhus Convention

The Aarhus Convention has detailed procedural environmental rights and a compliance mechanism. A recent publication of D. Weaver (2018) has assessed the ethical potential that the Aarhus Convention would bring through its connection with cosmopolitanism.

According to D. Weaver (2018), political science identifies two models of international society: pluralist (communitarian) and solidarist (cosmopolitan). The first model is based on an idea of sovereignty in a Westphalian sense, and the protection of interests of states is in its core. This model maintains closeness of states and some authors figuratively call it an “egg box” (Weaver, 2018; Figure 2).

The second model shifts from states to humans. Their interests and values thereby provide the new ethical high ground for a collective sense of belonging (Weaver, 2018). By empowering people concerning their environmental interests, the Aarhus Convention not only contributes to better environmental protection, but also forges a more cosmopolitan world by forming a new sense of belonging between its parties (Weaver, 2018).

D. Weaver (2018) believes that the values of the Aarhus Convention do not lead to the cosmopolis as a community without borders but instead makes sovereignty more human and responsible by giving its citizens ownership on the information, which is significant for creating their sustainable future.



Figure 2. Pluralism vs. solidarist society

(Pictures: Framepool. A RighthSmith Company (2007-2010). An egg box (photograph). Lukkoor, R. (2013). The Earth (photograph).

As Principle 10 of the Rio Declaration, the Aarhus Convention uses the trinity model of procedural environmental rights:

- access to environmental information, its collection and dissemination;
- public participation in decision-making; and
- access to justice in environmental matters.

Figure 3 illustrates the interaction between these elements based on explanations of D. Weaver (2018). The researcher claims that the first pillar – information is a prerequisite for good governance and a base for the two other pillars – public participation and access to justice. Justice in this trinity is both the outcome and safeguard for the antecedents. All the pillars are interconnected, thus, on the one hand, without appropriate information actors could not engage in public participation and neither start possible litigation. On the other hand, the lack of environmental information could lead to litigation with negative results for the claimants while receiving this information in advance could avoid litigations (Weaver, 2018).



Figure 3. Three pillars of the Aarhus Convention

The Aarhus Convention is not the only legal instrument for protection of environmental procedural rights in Europe at the international level, but it is the most comprehensive (Peters, 2018). The European Court of Human Rights (ECtHR) addresses environmental procedural rights only where there is a breach of substantive rights under the Convention for the Protection of Human Rights and Fundamental Freedoms. The status of victim under the Human Rights Convention and limitations of the range of claimants mainly by individuals are critical for the ECtHR case law (Peters, 2018). The Aarhus Convention uses a broader approach in terms of both beneficiaries concerning environmental issues and requirements for access to its mechanism in environmental matters (Peters, 2018).

This may explain that the ECtHR refers to the Aarhus Convention as the international standard in environmental matters even in the case against Turkey – the state that is not a party to the Aarhus Convention (Peters, 2018).

In summary, the Aarhus Convention, as a legal document, promotes new standards of good responsible governance and a new sense of identity, based on three pillars approach and high degree of recognition by other international forums. These features will be considered to further understand the Escazú Agreement and compare these treaties with the Earth Charter.

Main features of the Escazú Agreement

It is useful to understand the regional context in which the Escazú Agreement has been adopted. Major countries in the region, such as, Brazil, Colombia, Guatemala, Mexico, and Peru increase their mining industry and extraction of natural resources (OHCHR, 2016).

Historically natural resources in Latin American countries have been explored by external powers or by elites inside the countries. This has led to political, financial, social and other forms of instability – so called “curse of abundance” (Raftopoulos, 2017). In this context, Latin America remains one of the most hostile regions for environmental defenders. They are imprisoned and threatened and their activities are discredited as “anti-development” (OHCHR, 2016). According to M. Raftopoulos (2017), even such progressive governments as the government of Ecuador show zero-tolerance towards those who oppose natural resources extraction, naming them “environmental extremists” and “terrorists”.

Among all nature defenders killed across the world, 60 % of incidents took place in Latin American countries (Neslen, 2018). One of the most resonated incidents was the killing of anti-dam and indigenous rights campaigner Berta Cáceres in Honduras in 2016 (OHCHR, 2016; Watts, 2018).

Against this background in the region, some Latin American countries have taken countermeasures, for example, they include the concept of rights of nature in their legislation and even in their constitutions (GARN, n.d). The adoption of the Escazú Agreement also demonstrates this trend towards more inclusiveness of natural protection into the legal and political realm.

The Escazú Agreement contains a Preamble, twenty-six Articles and an Annex with the list of Latin American and Caribbean countries, which can sign the treaty. The Preamble of the document recognizes the interrelation of access rights and highlights the necessity of a balanced and integrated implementation.

Broader interrelation of access rights with the social context predefines the objective of the Agreement. The objective of the Agreement contained in Article 1, is to implement access rights, and, to create and strengthen capacities and cooperation for the right to live in a healthy environment and sustainable development.

The structure and substance of the Agreement reflect this dual objective. The Agreement explicitly focuses on access rights (Articles 5-8), it contains the provisions concerning different

aspects of capacity building of the states and cooperation between them for maintaining the right to a healthy environment and sustainable development. Thus, Article 10 addresses capacity building including education and training, Article 11 is dedicated to cooperation, encouraging civil society organizations to implement the Agreement. The Preamble highlights the necessity to promote and strengthen dialogue, awareness raising, education and technical assistance; meanwhile, it recognizes multiculturalism of the region, which requires finding unique solutions to meet specific needs of respective countries and communities.

Article 3 of the Escazú Agreement embeds a list of 11 guiding principles to implement the Agreement, including:

- general principles of law (Article 3 (d) – good faith);
- principles of good governance (Article 3 (b) – transparency and accountability);
- principles of classical international law (Article 3 (i) – state sovereignty, Article 3 (j) – sovereign equality);
- principles of human rights law (Article 3 (a) – equality and non-discrimination);
- principles of environmental law and sustainable development (Article 3 (e) – principle of prevention, Article 3 (f) – precautionary principle, Article 3 (g) – intergenerational equity), and
- principles specific for the access rights regime (Article 3 (h) – principle of maximum disclosure).

It is worthy to highlight the principles of non-regression and progressive realization (Article 3 (c) and principle of *pro persona* (Article 3 (k)). They are unique for the explicit expression in multilateral environmental and human rights treaties. They are also crucial for the Escazú Agreement given the specificity of the region (increasing development and nature resources extraction, while the necessity to protect local communities and indigenous people). These principles can also benefit the current debates on the development of international environmental law in view of drafting the Global Pact for the Environment (see: Group of Experts for the Pact (2017)).

According to M. Prieur (2012), non-regression is a new principle in international and domestic environmental law that protects the environment from backward changes in the legislation and practices. This principle does not mean “freezing environmental law”, but requests that new laws

should contribute to environmental protection instead of worsening pollution or biodiversity loss (Prieur, 2012).

The principle of *pro persona* is critical to address the need for a stronger protection of environmental defenders and vulnerable communities. M. Concha (2013) points out that the *pro persona* principle is a gender-neutral name of the principle *pro homine* (*pro man*). One can translate it as “for the person” or “the person first”. The principle means that, in case of uncertainty, the interpretation of the legislation and applicable standards concerning human rights exercise should be in favor of such rights. Otherwise, the interpreters should follow stricter standards or interpretation concerning restrictions of the rights. The principle is especially important for the protection of persons against illegitimate acts and omissions by a state (Concha, 2013).

The Escazú Agreement also contains detailed provisions for concrete access rights. Thus, eighteen paragraphs of Article 5 are devoted to the right to access the information concerning the environment. Article 6 with thirteen detailed paragraphs complements Article 5, which provides norms on generation and dissemination of environmental information.

Access to environmental information embeds:

- accessibility to environmental information including maximum disclosure (Article 5, para. 1) and assistance in receiving the information (Article 5, para. 3 and 4);
- rules on refusal of the access to environmental information which include justified exemptions and legally established in advance reasons for refusal (Article 5, para. 8);
- conditions applicable to the delivery of environmental information (appropriate format of the information and period before delivery, reasonable costs – Article 5, para. 11-17); and
- necessity to establish an independent oversight mechanism in each member state (Article 5, para. 18).

Article 6 of the Escazú Agreement concerning the generation and dissemination of environmental information embeds the following norms:

- establishment of environmental information system(s) (para. 3);
- immediate disclosure and dissemination of the information in case of imminent threat to the public health or the environment (para. 5);
- publish national reports at least every five years (para. 7); and

- encourage the private sector of the parties especially big companies to prepare sustainability reports (para. 13).

In the same detailed manner, the Escazú Agreement establishes provisions on the right of public participation in environmental decision-making processes and the right of access to justice in environmental matters.

As previously mentioned, the Escazú Agreement addresses regional specific issues, such as, a necessity of stronger support for indigenous communities and environmental defenders. It also reflects the evolution of environmental law for two decades since the adoption of the Aarhus Convention.

The Agreement combines the right of access to environmental information, the right of public participation in environmental decision-making process and the right of access to justice in environmental matters under one concept of “access rights” (Art. 2 a). The Agreement also contains principles for its implementation including, principle of maximum disclosure and principle of pro persona (Art. 3). It highlights the general provisions that parties shall seek for adoption the interpretation that is most favorable for access rights (Art. 4 (8)). The Escazú Agreement establishes the specific status of persons or groups in vulnerable situations (Art. 2 (e), 4 (5)), it recognizes and protects human right defenders in environmental matters (Art. 4 (6), Art. 9).

In this context, the adoption of the Escazú Agreement with a strong protection of environmental defenders is crucial for the region. Costa Rica’s former President Luis Guillermo Solís believes that the treaty is “a turning point” in the fight against poverty, inequality and hate (Neslen, 2018). The United Nations special rapporteur on human rights and the environment, John H. Knox refers to environmental defenders and claims “If we can’t protect them, then how can we protect the environment we all depend on” (Watts, 2018).

L. Mead (2018) points out that the Escazú Agreement is “the first legally binding regional agreement to protect [the access rights]”. Considering the role of the agreement in the development of international environmental law as a whole, J. H. Knox (2018) claims that it “is one of the most important human rights agreements AND one of the most important environmental agreements of the last twenty years”.

The Escazú Agreement reflects the terminology and approaches of other new and significant environmental agreements. Thus, similar to the Paris Agreement, the Escazú Agreement gives particular consideration of cooperation of its parties with the least developing countries, landlocked developing countries, and small island developing states (Art. 11 (2)). Compared to the Aarhus Convention, the Escazú Agreement strengthens its provisions on withdrawing from the treaty. Thus, the Aarhus Convention (Art. 21) establishes that withdrawal shall take effect on the ninetieth day after receiving the notification by the Depositary. The Escazú Agreement (Art. 24 (2)), like the Paris Agreement (Art. 28 (2)), extends this period up to one year.

Thus, the Escazú Agreement is an updated legal instrument for better implementation of Principle 10 of the Rio Declaration in the Latin America and Caribbean region. It also reflects relevant provisions of the Aarhus Convention, other multilateral environmental agreements and local practices. To further explore these agreements, see Annex I, which presents a comparison of the structures of the Escazú Agreement and the Aarhus Convention.

Differences and similarities of the Earth Charter, the Aarhus Convention and the Escazú Agreement regarding Principle 10 of the Rio Declaration

The previous section has shown similarities and differences between the two regional treaties (see Annex 1). This section will provide an overall comparison of these treaties and compares them with the approach of the Earth Charter on procedural environmental rights.

The Escazú Agreement and the Aarhus Convention are similar in their legal nature, scope, approaches, structure, and compliance systems. The United Nations Regional Commissions – Economic Commission for Latin America and the Caribbean (ECLAC) and Economic Commission for Europe (UNECE) supported the consultation and drafting processes of the documents and carry out secretariat functions for the treaties. Both documents connect human rights and environmental issues, which recognize that guarantees of access rights are contributing to the right of every person to live in a healthy environment. According to the treaties, the compliance review should be on non-adversarial, non-punitive, and non-judicial basis.

Notwithstanding, the treaties have significant differences: the Aarhus Convention, originally regional, opened possibilities for global participation, while the Escazú Agreement limits its access

by the listed Latin American and Caribbean countries presented in Annex I. Article 17 and Article 19 (2) provide that the Aarhus Convention is open for signature by the UNECE member states, and states, which have consultative status with the UNECE, as well as by regional economic integration organizations of the UNECE states. In addition, Article 19 (3) allows other countries, which are the UN members to become parties to the Aarhus Convention in case the Meeting of the Parties approves their participation. Article 21 of the Escazú Agreement allows signing of the Agreement only by the listed countries.

The Aarhus Convention contains a list of activities for compulsory application on public participation, presented in Annex I, while the Escazú Agreement does not contain such a list. The specific provisions of the Aarhus Convention reflect in its Kyiv Protocol on Pollutant Release, and Transfer Register (PRTR), and Amendment on public participation concerning genetically modified organisms (GMO). The Escazú Agreement does not contain any specific provisions on GMO. Nevertheless, it reflects the trend towards PRTR providing in its Art. 6 (4) that every party shall take steps to establish PRTR.

While both treaties refer to the International Court of Justice and an arbitration as means of dispute settlement, the Aarhus Convention establishes rules of arbitration in its Annex II and the Escazú Agreement leaves these issues to the Conference of the Parties. It is also worth mentioning that the Aarhus Convention leaves room for reservations and many parties did it, while the Escazú Agreement excludes possibility for reservations.

Despite differences, the Aarhus Convention and the Escazú Agreement share a number of similarities within the framework of the Earth Charter. For example, both documents are treaties with the same objective – recognition of procedural environmental rights: access to environmental information, its collection and dissemination; public participation in decision-making; and access to justice in environmental matters.

The Earth Charter is not a treaty nor a legal document in a strict sense. It is a comprehensive, eco-centric, ethical framework embedding principles towards sustainability. The Earth Charter incorporates procedural environmental rights in its text and highlights the significance of these rights for the practice of sustainability. The Earth Charter also provides a more general overview

that the environmental procedural rights are important but not enough, other actions, mechanisms, and changes are also needed for the implementation of the Earth Charter's principles.

G. Parola (2013), discussing the role of the Aarhus Convention, claims that the Convention is a step towards the creation of a new form of citizenship though there is more to be done. Thus, the improvement of political and legal structures concerning public participation is needed, as well as the shift in awareness of the central significance of the Earth (Parola, 2013). These suggestions are also relevant for the Escazú Agreement and other legally binding environmental instruments.

It is clear that the regional treaties on access rights do not only contribute to the implementation of Principle 10 of the Rio Declaration, but also complement a broader approach towards the governance expressed in the Earth Charter. The Charter is an ambitious and comprehensive document towards sustainability. It embeds environmental procedural human rights but goes beyond these issues.

The entering of the Escazú Agreement in force would further contribute to the implementation of the trinity of access rights (information, participation, and justice) - Principle 10 of the Rio Declaration and Principles 13a, 13b, and 13d of the Earth Charter in the region. Its implementation would make wider impacts. For example, its special concern for the rights of indigenous people and environmental defenders would contribute to implementation of Principle 13f of the Earth Charter. This principle calls for strengthening local communities, enabling them to care for their environment, and assigning environmental responsibility to the levels of government where they can be carried out most effectively.

General conclusions

Principle 10 of the Rio Declaration innovatively introduced the importance of access to information, public participation, and justice for sustainability. The Earth Charter embeds these provisions under the broader ethical framework of its Principle 13 on strengthening democratic institutions, transparency, accountability, inclusive participation, and access to justice.

The Aarhus Convention is the first legally binding regional instrument for the protection of environmental procedural rights. In the year of its twentieth anniversary, another regional treaty is

adopted- the Escazú Agreement. While reflecting the main ideas and achievements of the Aarhus Convention, the Escazú Agreement strongly addresses the protection of environmental defenders and access rights for vulnerable groups. It is crucial for Latin America and the Caribbean region to enhance dissemination and further implement Principle 10 of the Rio Declaration and Principle 13 of the Earth Charter in their entirety.

The regional treaties on access rights not only contribute to the implementation of Principle 10 of the Rio Declaration, but also complement a broader approach of governance expressed in the Earth Charter.

A solid international legal framework is in place for access to environmental information, participation in decision-making, and access to justice in environmental matters. It is supported by the three strong pillars: the Rio Declaration as a soft law document, the Earth Charter as a sui generis law instrument (Febres, 2017), and regional legally binding instruments. This framework is an outline for better protection of the environment, and for a more democratic and fair society with a strong sense of security and citizenship among the peoples. The most important achievement from this framework is that it has prepared the ground for a strong and resilient implementation for a sustainable world.

ANNEX I: Comparison of the structures of the Escazú Agreement and the Aarhus Convention

Agreement on access to information, participation and justice in environmental matters, Latin America and the Caribbean (<i>Escazú Agreement</i>)	Convention on access to information, public participation in decision-making and access to justice in environmental matters (<i>Aarhus Convention</i>)
Preamble	Preamble
Article 1. Objective	Article 1. Objective
Article 2. Definitions	Article 2. Definitions
Article 3. Principles	
Article 4. General provisions	Article 3. General provisions
Article 5. Access to environmental information	Article 4. Access to environmental information
Article 6. Generation and dissemination of environmental information	Article 5. Collection and dissemination of environmental information
Article 7. Public participation in the environmental decision-making process	Article 6. Public participation in decisions on specific activities
	Article 7. Public participation concerning plans, programmes and policies relating to the environment
	Article 8. Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments
Article 8. Access to justice in environmental matters	Article 9. Access to justice
Article 9. Human rights defenders in environmental matters	
Article 10. Capacity-building	
Article 11. Cooperation	
Article 12. Clearing house	
Article 13. National implementation	
Article 14. Voluntary Fund	
Article 15. Conference of the Parties	
Article 16. Right to vote	Article 11. Right to vote
Article 17. Secretariat	Article 12. Secretariat
	Article 13. Annexes
Article 18. Committee to Support Implementation and Compliance	Article 15. Review of the compliance
Article 19. Settlement of disputes	Article 16. Settlement of disputes
Article 20. Amendments	Article 14. Amendments to the Convention
Article 21. Signature, ratification, acceptance, approval and accession	Article 17. Signature
	Article 19. Ratification, acceptance, approval and accession
Article 22. Entry into force	Article 20. Entry into force
Article 23. Reservations	
Article 24. Withdrawal	Article 21. Withdrawal
Article 25. Depositary	Article 18. Depositary
Article 26. Authentic texts	Article 22. Authentic texts
Annex I. [List of the Countries]	
	Annex I. List of activities referred to in the Article 6, Paragraph 1 (a)
	Annex II. Arbitration
	Protocol on Pollutant Release and Transfer Register
	Amendment to the Convention on access to information, public participation in decision-making and access to justice in environmental matters (GMO amendment)

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