Escazu’s Committee to Support Implementation and Compliance: Towards Rules of Procedure

First Meeting of the Signatory Countries of the Escazú Agreement

San José, Costa Rica, October 11, 2019

Dr. Marcos A Orellana
Contents

- Historical background on implementation and compliance
- Mechanisms in the human rights and environmental fields
- The Escazú Agreement’s mandate
- Toward rules of procedure
Historical background on implementation and compliance

- From an international law of co-existence to an international law of co-operation
- Emergence of multilateral treaties to address common challenges of humanity
Mechanisms in the human rights and environmental fields

- **Human Rights Treaty Bodies**
  - Country reports and “Concluding Observations”
  - Individual communications and “Views”

- **Multilateral Environmental Agreements**
  - Ozone: Montreal Protocol
  - Climate Change: Paris Agreement

- **Environmental Rights**
  - Aarhus Convention
Ozone: Montreal Protocol
*Dec IV/5, November 1992*

- **Composition**
  - 10 Parties

- **Modes of Initiation**
  - Party-to-Party
  - Self-initiation

- **Functions**
  - Handle submissions on compliance
  - Gather information in the territory of the Party (upon invitation)
  - Exchange of information with Multilateral Fund
Ozone: Montreal Protocol

Dec IV/5, November 1992

- Outcomes of the Implementation Committee
  - Recommendations to the MOP

- Outcomes of the MOP -- Indicative List
  - Providing assistance, including:
    - Assistance for the collection and reporting of data
    - Financial assistance
    - Technology transfer
  - Issuing cautions
  - Suspending Protocol rights and privileges
Environmental Rights: Aarhus Convention

Dec I/7: October 2002

- **Nature**: Non-confrontational, non-judicial and consultative
- **Composition**: 9 experts
- **Modes of Initiation**
  - Communications by members of the public
  - Referrals by the Secretariat
  - Self-initiation submissions
  - Party-to-Party submissions
Environmental Rights: Aarhus Convention

*Dec I/7: October 2002*

- **Functions of the Committee**
  - Consider communications, referrals, requests and submissions
  - Prepare a report on compliance and implementation of the Convention, at the request of the MOP

- **Committee output**
  - Recommendations to MOP
  - Measures pending consideration by the MOP

- **MOP output**
  - Make recommendations
  - Request the Party concerned to submit a strategy
Climate: Paris Agreement

Decision 20/CMA1, December 2018

- **Nature:** Facilitative and non-punitive
- **Composition:** 12 experts
- **Modes of Initiation**
  - Mode 1: Self-initiation
  - Mode 2: Mandatory Committee Initiation
    - In respect of 4 procedural obligations, eg Art 4: communicating and maintaining a Nationally Determined Contribution
  - Mode 3: Discretionary Committee Initiation + Party Consent
    - To address certain recommendations in Technical Expert Review reports and thereby complement the Enhanced Transparency Framework
Climate: Paris Agreement

Decision 20/CMA1, December 2018

- Committee shall take appropriate measures, such as:
  - Engage in dialogue with the Party
  - Assist Party to engage other bodies
  - Recommend the development of an action plan
  - Issue findings of fact (on Mode 2 initiation)

- Issues of a systemic nature

- Information
  - Seek expert advice
  - Seek and receive information from bodies serving the PA

- Report annually to the CMA
Key features of implementation and compliance mechanisms

- *Tailored*, to fit the subject-matter of their Agreement

- *Flexible*, to enable measured responses to the situation in question

- *Non-confrontational*, to channel international co-operation
The Escazú Agreement’s mandate in Article 18

- Committee to Facilitate Implementation and Compliance, as a Subsidiary Organ of the COP

- Nature
  - Consultative and Transparent
  - Non-adversarial, non-judicial and non-punitive

- Functions
  - To promote the implementation of the Escazú Agreement
  - To support the Parties in that regard

- Key Features of the Committee’s mandate
  - To ensure the significant participation of the public
  - To pay particular attention to the national capacities and circumstances of the Parties
Toward “Rules of Procedure” for Escazú’s Implementation and Compliance Committee

- Escazu Article 18
  - 1st COP to determine the Rules of Procedure: “the rules relating to its structure and functions”

- Possible elements of the Rules of Procedure
  - Composition & Election of Committee members
  - Modes of initiation:
    - Communications from public
    - Committee self-initiation
    - Secretariat referrals
    - Self-Party and Party-to-Party submissions
Toward “Rules of Procedure” for Escazú’s Implementation and Compliance Committee

Possible elements of the Rules of Procedure (cont.)

- Functions
  - Engage in consultation with Parties to facilitate implementation
  - Address issues concerning environmental defenders
  - Examine submissions on implementation and compliance
  - Review and advise on implementation of recommendations
  - Advise the COP on systemic issues

- Outputs
  - Recommendations to the Party concerned
  - Action plans for implementation and compliance
  - Measures for the protection of environmental defenders
  - Recommendations and reporting to the COP
Toward “Rules of Procedure” for Escazú’s Implementation and Compliance Committee

- *Possible* elements of the Rules of Procedure (cont.)
  - Transparency & Participation of the public
  - Process, open hearings, confidentiality, timelines and working methods
  - Conflict of interests
  - Institutional arrangements

- The Committee may prepare more detailed modalities for its effective operation, in conformity with the Rules of Procedure, addressing its operational issues
Conclusions

- Rules of Procedure may be tailored to the subject-matter of the Escazú Agreement

- Robust Rules of Procedure can help the Committee contribute to the effectiveness of the Escazú Agreement

- The Committee should consider national circumstances and capacities when tailoring measures to support implementation and compliance
Thank you!

Dr. Marcos A Orellana
morellana@law.gwu.edu

October 11, 2019
San José, Costa Rica
1st Meeting of the Signatory Countries of the Escazú Agreement