

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

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- Mechanisms in the human rights and environmental fields
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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!

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