

The Right to a Healthy Environment in Latin America and the Caribbean

Compliance through the Inter-American System and the Escazú Agreement

MARIA ANTONIA TIGRE

12.1 Introduction

Latin America and the Caribbean (LAC) is a region filled with paradoxes: it is uniquely biologically rich and relies heavily on primary products and natural resources, with economies driven by external commodity demands.¹ As LAC continues to pursue ‘development’,² important ecosystems and ecological processes are affected. It is also the deadliest region for environmental defenders, with countries consistently placing first in global rankings.³

At the same time, LAC is a leading region in the recognition of the right to a healthy environment, with the majority of countries having

The author would like to thank Lavinia Bhaskaruni for research assistance and Natalia Urzola, Alexandra Harrington, and Gastón Medici Colombo for helpful comments on earlier drafts of this chapter. This chapter was also significantly improved by a rich discussion at the PluriCourts Research Conference on Compliance Mechanisms, held at the University of Oslo in October 2021, the IUCN WCEL 2022 Oslo International Environmental Law Conference, held at the University of Oslo in October 2022, and discussions with the members of the task force of the GNHRE Implementing Principles of the Escazú Agreement. The author would also like to thank the editors of this publication, Christina Voigt and Caroline Foster, for helpful comments throughout the drafting of this chapter.

¹ ‘Geo-6 Regional Summary for Latin America and the Caribbean’, United Nations Environment Programme, available at www.unep.org/global-environment-outlook/findings-and-data/assessment-findings/geo-6-regional-summary-latin, accessed 1 October 2021.

² Meant here as the non-sustainable socio-economic development that is often pursued in the region.

³ ‘Defending Tomorrow’ (*Global Witness*, July 2020), available at www.globalwitness.org/en/campaigns/environmental-activists/defending-tomorrow/, accessed 1 October 2021.

adopted a constitutional right.⁴ Furthermore, the region is characterised by strong civil society movements, including environmental NGOs advocating for stronger environmental legislation and providing broad legal representation, stimulating the improvement of laws and regulations.⁵ With LAC States' widespread constitutionalisation of environmental rights, judges are open to new and emerging legal theories, providing an expansive interpretation of existing norms, driving innovation, and challenging legal formalism. These emerging theories, grounded in the right to a healthy environment, are being used to push national governments towards increased activity in areas lacking implementation, such as climate ambition and deforestation.⁶

Following developments in national courts, the Inter-American Court of Human Rights (IACtHR) has recognised an autonomous right to a healthy environment, thus clearly stating that cases relying on the right to a healthy environment can be heard within the Inter-American System of Human Rights (IASHR). In 2017, the IACtHR issued a landmark Advisory Opinion recognising the right to a healthy environment as 'fundamental to the existence of humanity' under the American Convention.⁷ The opinion is groundbreaking: it confirmed extraterritorial jurisdiction for transboundary environmental harms, the autonomous right to a healthy environment and State responsibility for environmental damage within and beyond the State's borders.⁸ In 2020, the IACtHR

⁴ 'Substantive Rights – Latin America & Caribbean' (EnviroRightsMap), available at https://enviroightsmap.org/?s=&post_type=listing&et-listing-type=39&et-listing-location=6&et-listing-rating=none, accessed 1 October 2021; countries within LAC region that have enshrined the right to a healthy environment within their treaties: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guyana, Mexico, Nicaragua, Paraguay, Peru and Venezuela.

⁵ DR. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2012) chapter 6, 143.

⁶ J Peel and J Lin 'Transnational Climate Litigation: The Contribution of the Global South' (2019) 113 *American Journal of International Law* 679, 713; AP Riaño, 'Litígio Climático e Direitos Humanos' in J Setzer, K Cunha and A Botter Fabbri (eds), *Litigância Climática: Novas Fronteiras para o Direito Ambiental no Brasil* (Revista dos Tribunais 2019).

⁷ Inter-American Court of Human Rights, *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity)*, Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, Series A, No 23, available at www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, accessed 21 March 2020.

⁸ MA Tigre and N Urzola Gutierrez, 'The 2017 Inter-American Court's Advisory Opinion: Changing the Paradigm for International Environmental Law' (2021) 12(1) *Journal of Human Rights and the Environment* 24.

declared in *Lhaka Honhat Association v Argentina* that Argentina violated Indigenous groups' communal property and rights to a healthy environment, cultural identity, food, and water.⁹ For the first time in a contentious case, the Court analysed these as autonomous rights, based on Article 26 of the American Convention on Human Rights,¹⁰ and ordered specific restitution measures, including actions to provide access to adequate food and water, the recovery of forest resources and Indigenous culture. The decision marks a significant milestone for protecting Indigenous peoples' rights and expanding the autonomous rights to a healthy environment, water and food. Cases relying on these rights can now be heard and decided on the merits under the IASHR.¹¹

Although limited to the legal context of the Americas, the decision further supported a broader campaign for the international recognition of the right to a clean, healthy and sustainable environment. In 2021 and 2022, the United Nations Human Rights Council (UNHRC) and the United Nations General Assembly (UNGA) adopted resolutions recognising the right to a clean, healthy and sustainable environment as a human right.¹² While this recognition resulted from a decades-long process and a wide-reaching international campaign, it also benefitted from the holistic approach adopted by the IACtHR.¹³

The developments at the IASHR fully embrace the justiciability of the right to a healthy environment at the regional level, opening doors for new cases and the use of regional non-compliance mechanisms for international environmental law (IEL). In the absence of an international environmental tribunal, human rights courts are crucial for adjudicating environmental rights at the regional level. Moreover, it provides a clear

⁹ I'A Court H.R., *Indigenous Communities of the Lhaka Honhat (Our Land) Association v Argentina, Merits, Reparations, and Costs*, Judgment of 6 February 2020, Series C, No 400.

¹⁰ American Convention on Human Rights (San Jose, Costa Rica, 22 November 1969) 9 ILM 673 (1970), entered into force 18 July 1978.

¹¹ MA Tigre, 'Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina' (2021) 115(4) *American Journal of International Law* 706.

¹² Human Rights Council Res 48/L.23/Rev.1, UN Doc A/HRC/48/L.23/Rev.1, 5 October 2021; United Nations, General Assembly, 'The Human Right to a Clean, Healthy and Sustainable Environment', A/76/L.75 (2022).

¹³ See i.e., MA Tigre, *Gaps in International Environmental Law: Toward a Global Pact for the Environment* (ELI Press 2020); MA Tigre, 'International Recognition of the Right to a Healthy Environment: What Is the Added Value for Latin America and the Caribbean?' (2023) 117 *American Journal of International Law Unbound* 184.

path to promoting the rule of law by ensuring environmental accountability to governments in LAC.¹⁴

After a long negotiation grounded in an effective participatory process, the Escazú Agreement (Escazú) was adopted in 2018 and entered into force in April 2021. It is a landmark treaty for advancing environmental rights – and access rights, in particular – in LAC.¹⁵ The Escazú Agreement has brought a myriad of environmental rights and duties for LAC. Escazú, unlike the Aarhus Convention, contains explicitly a provision adopting a substantive environmental right. Article 4.1 notes that ‘Each Party shall guarantee the right of every person to live in a healthy environment and any other universally recognised human right related to the present Agreement.’ The explicit recognition, paired with a positive duty of States to enforce it, is crucial to the development of environmental protection in the region.

In giving expression to the idea of environmental democracy, Escazú sits alongside the Aarhus Convention¹⁶ – Europe’s 1998 Convention on environmental access rights – in implementing Principle 10 of the 1992 Rio Declaration on Environment and Development.¹⁷ Through three pillars of environmental democracy, Principle 10 recognised environmental procedural rights: (i) the right to public participation, (ii) access to environmental information, and (iii) access to justice.¹⁸ However, Escazú provides a ‘regional spin’ to Principle 10 by recognising the regional underpinnings of the universal values it expands.¹⁹ Furthermore, Escazú holds that environmental decision-making is rarely straightforward; essential in its implementation is recognising how Principle 10 applies to the region’s social, cultural, economic and

¹⁴ Tigre and Urzola Gutierrez (n 9) 49.

¹⁵ Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and Caribbean (Escazú, 4 March 2018) C.N.195.2018, entered into force 22 April 2021, available at <https://repositorio.cepal.org/handle/11362/43583> (Escazú Agreement).

¹⁶ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998) 2161 UNTS 447, entered into force 30 October 2001 (Aarhus Convention).

¹⁷ Rio Declaration on Environment and Development, UN Doc A/CONF.151/5/Rev.1 (Rio de Janeiro, 13 June 1992) 31 ILM 874 (Rio Declaration).

¹⁸ J Darpö, ‘Principle 10 and Access to Justice’ (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2985277, accessed 1 October 2021.

¹⁹ MA Tigre, ‘Principle 10: What Can We Learn from Its Regional Implementation through the Escazú Agreement?’ (Pathway to the 2022 Declaration), available at www.pathway2022declaration.org/article/principle-10-what-can-we-learn-from-its-regional-implementation-through-the-escazu-agreement/, accessed 1 October 2021.

environmental context.²⁰ Escazú, therefore, expands on the three traditional pillars of access rights by adding: (iv) the right to a healthy environment, (v) the protection of environmental and land defenders, and (vi) capacity building and co-operation.²¹ These additional pillars are essential in implementing environmental democracy in LAC.

Countries in LAC now face the arduous task of implementing Escazú. Environmental decision-making faces a series of distinctive challenges due to the (i) volume and diversity of environmental interests, (ii) the plurality of environmental values involved, (iii) the uncertain nature of environmental knowledge, and (iv) the complex nature of environmental risk. States in the region must facilitate the implementation of the Escazú Agreement, keeping in mind multiple regional contradictions. This is a region filled with biodiversity and progressive environmental laws which still lacks effective implementation. As Escazú entered into force, a key question emerged: How can we ensure compliance with the new rules of Escazú? Furthermore, what are the mechanisms available in the case of non-compliance?

Importantly, in this context, the Agreement established a Committee to Support Implementation and Compliance (Committee) by Parties as a subsidiary body under the Conference of the Parties (COP).²² The Committee shall be consultative, transparent, non-adversarial, non-judicial and non-punitive.²³ Considering the background briefly explained here, it is essential to develop a robust system for oversight and compliance at the regional level through the Committee to facilitate the Agreement's success. The first COP, which was held in April 2022, adopted both the rules of procedure of the Conference of the Parties (Article 15)²⁴ and the rules relating to the structure and functioning of the Committee (Article 18(2)).²⁵ These rules provide the first step towards the implementation of the Agreement. However, many other steps for effective implementation are still ahead.

²⁰ Ibid.

²¹ MA Tigre, 'Six Pillars of the Escazú Agreement' (The Global Network for Human Rights and the Environment 2021), available at <https://gnhre.org/community/the-six-pillars-of-the-escazu-agreement-part-1/>, accessed 1 October 2021.

²² Article 18 Escazú Agreement (n 16), para 1.

²³ Ibid., para 2.

²⁴ Report of the First Meeting of the Conference of the Parties to the Escazú Agreement, LC/COP-EZ.1/3, Annex I, Decision I/1 (2 September 2022).

²⁵ Article 18 Escazú Agreement (n 16), paras 1 and 2; Decision I/3 (n 26).

Implementation requires a series of actions at the domestic level. For example, each Party shall establish or designate one or more impartial entities or institutions with autonomy and independence to promote transparency in access to environmental information, oversee compliance with rules and monitor, report on and guarantee the right of access to information. Furthermore, each Party may consider including or strengthening, as appropriate, sanctioning powers to certain governmental entities to properly enforce the recognised rights in the Escazú Agreement within the scope of their responsibilities.²⁶

Given the broad reach of the regional recognition of the human right to a healthy environment now available in LAC, what are the best mechanisms to prevent environmental harm through the enforcement of this right? This chapter compares the existing mechanisms available under the IASHR and the implementation and compliance mechanism under Escazú. Additionally, what can we learn from the non-compliance mechanism in the Aarhus Convention? To keep with the spirit of Escazú, meaningful participation must be maintained throughout the Agreement's implementation, so it remains a valuable living instrument. Specifically, the public should make use of and trigger the Committee on alleged non-compliance to ensure participation in its implementation.²⁷ This chapter discusses this ongoing process to increase enforcement of the right to a healthy environment in LAC. Section 12.2 discusses the right to a healthy environment in Escazú and the relevance of its express recognition. Section 12.3 debates the threat of non-compliance that may hinder the full implementation of the Agreement and the need to strengthen non-compliance mechanisms. Section 12.4 briefly goes over the newly adopted Rules of Procedure of the Committee. Section 12.5 draws lessons from the Aarhus Convention, Paris Agreement, Nagoya, and Convention on Biological Diversity (CBD) for Escazú's Committee. Section 12.6 analyses potential overlap with the mechanisms under the inter-American human rights system. Section 12.7 concludes.

²⁶ Article 5 Escazú Agreement (n 16), para 18.

²⁷ *Ibid.* NGOs cannot bring a claim to the European Court of Human Rights, for example, decreasing the efficacy of the Aarhus Convention and its integration with the European human rights system. See L Lizarazo-Rodriguez and J Teixeira de Freitas, 'Aarhus and Escazú: The Two Sides of the Atlantic in the Field of Public Participation in Environmental Matters' (The Global Network for Human Rights and the Environment 2021), available at <https://gnhre.org/community/aarhus-and-escazu-the-two-sides-of-the-atlantic-in-the-field-of-public-participation-in-environmental-matters/>, accessed 1 October 2021.

12.2 The Right to a Healthy Environment under Escazú

The substantive right to a healthy environment for present and future generations is explicitly acknowledged in Escazú as an objective of the treaty²⁸ and one of its general provisions.²⁹ Grounded in the right to a healthy environment, Escazú establishes procedural environmental rights to provide tools to implement it. Environmental access rights are rooted in the rights of present and future generations to live in a healthy environment and to sustainable development.³⁰ Article 1 fully adopts the right to a healthy environment for present and future generations, with a positive duty of each Party to guarantee such right as recognised in the Agreement. As will be detailed below, the existence of a non-compliance mechanism and the intersection with the IASHR provide teeth to the recognition of the right. By joining the Agreement, the States which have not recognised the right already at the national level join a long list of countries worldwide who have done so. This process, as noted before, is further strengthened by the international recognition of the right to a healthy environment by the UNHRC and the UNGA.

Furthermore, the inclusion of future generations in Article 1 is significant and guarantees a commitment to their survival and well-being, dependent on environmental protection. The Agreement also explicitly addresses climate change and its related impacts and requires Parties to have environmental information systems to build national capacities, including climate change sources.³¹ This is important because, considering the effects of climate change on future generations, environmental and human rights law must ensure that protection measures are in place

²⁸ Escazú Agreement (n 16) Article 1: 'The objective of the present 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 the environmental decision-making process and access to justice in environmental matters, and 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.'

²⁹ Escazú Agreement (n 16) Article 4(1): 'Each Party shall guarantee the right of every person to live in a healthy environment and any other universally-recognized human right related to the present Agreement.'

³⁰ Escazú Agreement (n 16).

³¹ Escazú Agreement (n 16) Article 6(3): 'Each Party shall have in place one or more up-to-date environmental information systems, which may include, inter alia: (g) climate change sources aimed at building national capacities.'

to provide the right to a healthy environment for the future.³² For example, it can be argued that the environmental rights of future generations must be considered in environmental policies adopted by the legislative and executive branches at the national level. Additionally, with the recognition of the human right to a healthy environment, future generations can have standing to invoke the right in national (if the provision is adequately implemented at the national level) and regional courts (through the recognition in the Advisory Opinion by the IACtHR and the Escazú Agreement). Finally, this explicit acknowledgement opens the door for other rights-based cases (broadly in climate litigation but also specifically in climate litigation and biodiversity litigation) to be brought on behalf of future generations, furthering the argument of intergenerational equity. Since the role of future generations in climate litigation remains contested,³³ the inclusion of this norm in the Escazú Agreement represents a welcome advance in access to justice. However, several questions remain about how compliance mechanisms will feature future generations. For example, how can the COP ensure that the rules of procedure address their needs? Furthermore, how do the protective mechanisms in the IASHR apply to them? These questions will likely be answered as cases of non-compliance arise.

A further significant feature of the Escazú Agreement is that throughout its text, one can easily recognise its commitment to ensuring that the rights acknowledged, whether traditional human rights, the right to a healthy environment or environmental access rights, are understood as interrelated and interdependent. This is in line with the jurisprudence of the IACtHR.³⁴ Giupponi notes that within LAC, scholars consider environmental information a fundamental part of the right to an adequate environment enshrined in national constitutions, downplaying the traditional distinction between 'procedural' and 'substantive' rights.³⁵ The

³² J Greaves Siew, 'Facing the Future: The Case for a Right to a Healthy Environment for Future Generations under International Law' (2020) 8(1) *Groningen Journal of International Law* 30.

³³ See i.e., A Daly, 'Intergenerational Rights are Children's Rights: Upholding the Right to a Healthy Environment through the UN Convention on the Rights of the Child' (20 June 2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4141475.

³⁴ I'A Court H.R., Advisory Opinion OC-23/17 of 15 November 2017 (n 8) para 47.

³⁵ B Olmos Giupponi, 'Fostering Environmental Democracy in Latin America and the Caribbean: An Analysis of the Regional Agreement on Environmental Access Rights' (2019) 28(2) *Review of European, Comparative & International Environmental Law* 136, 137.

different theoretical underpinnings of environmental law in LAC – environmental constitutionalism, the close intersection between the international and the domestic in protecting environmental rights and the greening of Latin American constitutions in the 1980s and 1990s³⁶ – reflect the integrationist approach to the different rights in Escazú.³⁷

In essence, Escazú has a dual character. It is a binding multilateral environmental agreement (MEA) while also uniquely significant as a human rights instrument. Moreover, its approach to environmental access rights is distinctive as its implementation is sure to be reinforced through regional human rights law.³⁸

12.3 Non-Compliance in Escazú: A Work in Progress

Given the global challenge generated by the insufficient implementation of environmental norms, which is particularly relevant in LAC, States must engage with measures to bring the Escazú Agreement to life at the national level. Ultimately, the effectiveness of an international agreement like Escazú relies on the contracting Parties to implement its norms domestically. Implementing Escazú means enacting relevant laws and regulations (formal implementation) and adopting effective policies, measures and actions for Parties to meet their obligations under the Agreement. The latter includes deploying the formal machinery established by the treaty.³⁹ An additional step lies in effectively implementing the treaty on the ground.⁴⁰ Can States in LAC conform to Escazú's different layers of compliance and implementation?

Moreover, what mechanisms are there in case of non-compliance? Several MEAs have implemented a system of compliance that accommodates the particular characteristics of international environmental law (IEL). Goote notes that IEL compliance requires (i) flexibility in applying rules open to diverse interpretations, (ii) operating in a dynamic regime that is unceasingly evolving, (iii) an ongoing process, (iv) sensitivity to conflicting political and economic interests, and yet (v) a certain level of

³⁶ JR May and E Daly, *Global Environmental Constitutionalism* (Cambridge University Press 2015).

³⁷ Giupponi (n 36) 138.

³⁸ *Ibid.*, 140.

³⁹ LD Guruswamy, *International Environmental Law in a Nutshell* (4th ed., West Academic Publishing 2012) 56.

⁴⁰ B Olmos Giupponi, *International Environmental Law Compliance in Context: Mechanisms and Case Studies* (1st ed., Routledge 2021) 35.

predictability and procedural transparency to be considered legitimate and fair.⁴¹ Non-compliance procedures in IEL attempt to find a compromise between flexibility and stability and between diplomacy and law.⁴²

The Escazú Agreement envisions several mechanisms for implementation and compliance. For example, in the context of access to environmental information, Article 5(18) establishes parameters for independent oversight mechanisms within each member State 'to promote transparency in access to environmental information, to oversee compliance with rules, and monitor, report on, and guarantee the right of access to information'. While subsequent provisions create mechanisms for voluntary information sharing and assistance with implementation in developing States, overall, the Agreement leaves oversight mechanisms to the discretion of each national system.⁴³ Implementation of Article 5(18) is likely not going to be straightforward. Nevertheless, transparency of oversight mechanisms is essential. It has been recommended that State Parties ensure adequate transparency in compliance and oversight mechanisms under the Agreement. This can be done, for example, with a thorough explanation of how the compliance system functions, the values it enshrines and the potential remedies it offers. Furthermore, '[s]uch transparency measures should be designed with an understanding of the languages used throughout the region and in each State – including Indigenous languages – to optimise inclusion and awareness'.⁴⁴ Without further guidance from the COP, there is a danger that countries will quickly fall into non-compliance with Article 5(18). Nevertheless, future COPs may delineate parameters of compliance and best practices to facilitate implementation of these issues, rather than solely relying on

⁴¹ MM Goote, 'Non-Compliance Procedures in International Environmental Law: The Middle Way between Diplomacy and Law' (1999) 1 *International Law Forum du droit international* 82.

⁴² *Ibid.*

⁴³ A Harrington, 'Implementing the Escazú Agreement: The Need for Rapid Definition of the Committee to Support Implementation and Compliance' (The Global Network for Human Rights and the Environment 2021), available at <https://gnhre.org/community/implementing-the-escazu-agreement-the-need-for-rapid-definition-of-the-committee-to-support-implementation-and-compliance/>, accessed 1 October 2021.

⁴⁴ Global Network for Human Rights and the Environment, 'The GNHRE Implementing Principles for the Escazú Agreement' (April 2022), available at <https://gnhre.org/gnhre-principles-on-the-escazu-agreement/>.

national regimes to set up parameters of public participation in environmental decision-making and lawmaking.⁴⁵

One core difficulty in implementing the Agreement is the access to justice problem. In LAC, a large section of the population still lacks full and equal access to justice. Despite advances in the scope and autonomy of courts with constitutional jurisdiction, rights protection remains highly uneven across geographic and social divides.⁴⁶ Citizens' perception of the justice system remains pervasively hostile, and cases sometimes take years – even decades – to reach a final decision. Comprehensive environmental protection essentially involves the representation of NGOs, civil society organisations and individuals. Escazú is already a step ahead of regional arrangements in Europe by promising civic engagement in all aspects related to compliance with the Agreement. In contrast, civic engagement in implementing the Aarhus Convention is restricted by excluding NGOs as claimants at the European Court of Human Rights (ECtHR).⁴⁷

Transparency across the region will be crucial in helping ensure a robust implementation of the Escazú Agreement. Article 12, providing for creating a clearing house mechanism for member State laws, rules and policies on access rights, is a crucial step, as seen in the clearing house systems effectively deployed by other treaty regimes. However, this lacks an authoritative or evaluative function. Perhaps the most critical examples of how clearing houses can function as oversight tools come from the Convention on Biological Diversity (CBD),⁴⁸ where the Nagoya Protocol on Access and Benefit-sharing⁴⁹ establishes a dedicated clearing house of relevant national legislation (the Access and Benefit-sharing Clearing house). In addition, the Cartagena Protocol on Biosafety⁵⁰ establishes a similar entity for laws and rules relating to biosafety issues.

⁴⁵ Escazú Agreement (n 16) Article 8.

⁴⁶ L Hilbink, J Gallagher, J Restrepo Sanin, and V Salas, 'Engaging Justice Amidst Inequality in Latin America' (*Open Global Rights* 2019), available at www.openglobalrights.org/engaging-justice-amidst-inequality-in-latin-america/, accessed 1 October 2021.

⁴⁷ Lizarazo-Rodriguez and Teixeira (n 28).

⁴⁸ Convention on Biological Diversity, available at www.cbd.int/, accessed 1 October 2021.

⁴⁹ The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, UNEP/CBD/COP/DEC/X/1 of 29, entered into force 29 October 2010.

⁵⁰ Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal, 29 January 2000) Depositary Notification C.N.251.2000.TREATIES-1 of 27 April 2000, entered into force 11 September 2003.

Subsequent COPs may draw on these models to further develop the Escazú clearing house mechanism.

12.4 The Committee to Support Implementation and Compliance: Rules Relating to Its Structure and Functions

Critically, the Escazú Agreement establishes a Committee to Support Implementation and Compliance (Committee) as a subsidiary body under the COP. The parameters of the Committee's work are quite broad in that it is tasked with reviewing compliance with provisions of the Escazú Agreement. The Committee is to be 'consultative and transparent [in] nature, non-adversarial, non-judicial and non-punitive' and 'review compliance of the provisions of the present Agreement and formulate recommendations'. In addition, the Committee's structure and function are to follow the rules of procedure established by the COP, ensuring the significant participation of the public and paying particular attention to the national capacities and circumstances of the Parties.⁵¹

As referred to above, in April 2022, Escazú's first COP adopted the Rules relating to the structure and functions of the Committee to Support Implementation and Compliance (Rules).⁵² However, the Rules represent a work in progress. Therefore, the COP requested the chair, with the support of the secretariat, to begin consultations with the States Parties, with significant participation of the public, to examine the compatibility of the proposed text of the Rules with the agreed language of the Agreement, to fine-tune the Rules relating to the structure and functions of the Committee and, as appropriate, consider them at the next COP, in order to enable the strengthened implementation of the Agreement.⁵³

The Committee is composed of seven members elected by consensus and serving four years (renewable), with equitable geographical distribution (and no more than one member of the same nationality), gender parity, legal knowledge and experience.⁵⁴ The public may participate and contribute to factual or legal aspects of cases of non-compliance.⁵⁵ Deliberations on cases of non-compliance are to be held in closed sessions. In these cases, the Committee shall provide the session's

⁵¹ Escazú Agreement (n 16) Article 18(2), see Decision I/3 (n 26).

⁵² Decision I/3, Annex 1 (n 26).

⁵³ Decision I/3, para 3 (n 26).

⁵⁴ Decision I/3, Annex 1, I, paras 1, 3, 4 (n 26).

⁵⁵ Decision I/3, Annex 1, VI, para 1 (n 26).

conclusions 'as soon as possible'.⁵⁶ Decisions are to be made by consensus and a two-thirds majority in its absence.⁵⁷

With respect to its functions, the Committee shall: (i) provide a report to the COP, including observations in cases of non-compliance, (ii) support the COP on implementation and compliance, including providing a systemic report on implementation and compliance and reports requested by the COP on any aspect of implementation and compliance with the Agreement, (iii) provide advice and support to Parties on implementation and compliance, including by formulating general comments on the interpretation of the Agreement, responding to queries on the interpretation of the Agreement, engaging in periodic consultations and dialogues with Parties and opening dialogues with Parties and members of the public, and (iv) examine cases of alleged non-compliance.⁵⁸

In addition, Parties or members of the public may file communications requesting support for compliance or alleging non-compliance with provisions of the Agreement.⁵⁹ The envisaged inclusion of the Agreement's non-compliance procedures of members of the public significantly expands the scope and reach of environmental democracy. Questions of admissibility or merits may be decided without a hearing, but the Party concerned or the author of the communication may request one.⁶⁰

Members of the public will have multiple opportunities to engage in non-compliance procedures (in addition to the other functions of the Committee), including through written observations on factual or legal aspects of a non-compliance case (including the implementation of the outcome of consultations with the Committee by the Party concerned), and participation in any public hearings on non-compliance cases.⁶¹ The Party concerned and the author of the communication have the right to request a hearing on the admissibility of a communication and on the merits of the case, and Committee will decide whether to grant the request.⁶² However, to further civil society participation, it has been recommended that members of the public and civil society organisations

⁵⁶ Decision I/3, Annex 1, III, para 4 (n 26).

⁵⁷ Decision I/3, Annex 1, III, para 6 (n 26).

⁵⁸ Decision I/3, Annex 1, IV, para 1 (n 26).

⁵⁹ Decision I/3, Annex 1, V, para 1 (n 26).

⁶⁰ Decision I/3, Annex 1, V, para 4, 8 (n 26).

⁶¹ Decision I/3, Annex 1, V, para 7(a)(ii), VI, para 1 (n 26).

⁶² Decision I/3, Annex 1, V, para 4 and 8 (n 26).

be permitted to offer comments in the admissibility and merits, participate in the proceedings and have full access to the Committee's decisions.⁶³ Throughout all stages of the complaint review, evaluation and decision-making processes, the Committee should ensure adequate avenues for members of the public and civil society organisations to observe and participate.⁶⁴ The adoption of the rules of procedure fully endorsed these recommendations, as the chapter outlines further.

The Committee will deliberate on allegations of non-compliance and adopts preliminary observations on a case, including specific recommendations for the Party concerned.⁶⁵ Parties can then submit written comments on the preliminary observations, after which the Committee adopts final observations and measures, and makes recommendations.⁶⁶

The Committee will provide reports to the COP on its activities, including its observations in cases of non-compliance.⁶⁷ After the Committee adopts certain measures and makes recommendations, it will present its conclusions to the Party concerned and the author of the communication.⁶⁸ When appropriate, the Committee will also monitor the implementation of recommendations.⁶⁹ If the Committee concludes that the Party concerned has failed to implement the Committee's conclusions and recommendations, it will report the case to the COP.⁷⁰

In assessing and facilitating the implementation of and compliance with the Agreement, the Committee shall consider the national capacities and circumstances of the Parties. Additionally, the Committee shall consider the cause, type, severity and frequency of non-compliance.⁷¹ Measures that can be adopted include: (i) observations on cases, (ii) recommendations to strengthen laws, measures and practices, (iii) requests for action plans on implementation, (iv) requests for a report on progress with recommendations, (v) advice and support, and (vi) recommendations to adopt measures to safeguard environmental defenders.⁷² In addition, the COP may take such measures as it deems necessary

⁶³ GNHRE Principles (n 45) princ 25.

⁶⁴ GNHRE Principles (n 45) princ 27.

⁶⁵ Decision I/3, Annex 1, V, para 9 (n 26).

⁶⁶ Decision I/3, Annex 1, V, para 10 (n 26).

⁶⁷ Decision I/3, Annex 1, IV, para 1 (n 26).

⁶⁸ Decision I/3, Annex 1, V, para 10 (n 26).

⁶⁹ *Ibid.*

⁷⁰ Decision I/3, Annex 1, V, para 11 (n 26).

⁷¹ Decision I/3, Annex 1, VIII, para 1 (n 26).

⁷² Decision I/3, Annex 1, VIII, para 1 (n 26).

to facilitate implementation and compliance through (i) formulating declarations of non-compliance by a Party, (ii) facilitating support for compliance, (iii) issuing cautions, and (iv) suspending the rights and privileges of a Party, including voting rights.⁷³

The Rules provide an initial framework for non-compliance, which will likely change and evolve. In any case, the Committee may not receive communications on compliance before the closure of COP2, which will likely happen in 2024 (ordinary meetings are held at least once every two years).⁷⁴ Furthermore, when the Agreement enters into force for other Parties joining, there is a one-year moratorium before a communication on a Party's compliance can be received by the Committee.⁷⁵ With the current framework and the 'learning process' frame of the institutional set-up of the Committee, there are several lessons to be learned from other non-compliance structures of existing MEAs.

12.5 The Committee to Support Implementation and Compliance: Drawing from the Aarhus Convention, Paris Agreement, Nagoya and CBD

Much of the terminology related to the Committee in the Escazú Agreement echoes existing oversight and compliance mechanisms ranging from those used for the Aarhus Convention and Minamata Convention, to the Paris Agreement on Climate Change.⁷⁶ As such, Escazú shares significant features with other agreements. Compliance procedures, including compliance committees, have become a common feature of MEAs. These represent a response to general and individual compliance issues based on problem-solving through negotiation to identify a flexible and pragmatic multilateral solution to questions of treaty interpretation and alleged breaches.⁷⁷ Compliance mechanisms are more fundamentally geared towards promoting *future* compliance rather than punishing *past* non-compliance, aiming to boost the regime's

⁷³ Decision I/3, Annex 1, VIII, para 2 (n 26).

⁷⁴ Decision I/3, Annex 1, XII, para 1 (n 26).

⁷⁵ Decision I/3, Annex 1, XII, para 2 (n 26).

⁷⁶ 'The Paris Agreement' (United Nations Climate Change), available at <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>, accessed 1 October 2021.

⁷⁷ A Cardesa-Salzmann, 'Constitutionalising Secondary Rules in Global Environmental Regimes: Non-Compliance Procedures and the Enforcement of Multilateral Environmental Agreements' (2012) 24(1) *Journal of Environmental Law* 103–32.

effectiveness and facilitating multilateral solutions.⁷⁸ Nevertheless, compliance mechanisms provide an opportunity for the international community to put pressure on non-compliant Parties.⁷⁹

The Aarhus Convention's compliance mechanisms have assisted Parties and their citizens in implementing rights and crafting laws and rules that comply with the treaty's terms. Aarhus' experience shows that an independent, professional compliance committee can act as an effective means for regime development.⁸⁰ Distinctive features of the compliance mechanism in Aarhus include the public trigger (i.e., the public can trigger a complaint) and the requirement of prior exhaustion of remedies (a soft admissibility requirement).⁸¹ However, the decisions of its compliance committee are subject to consensus approval by the Convention's governing body, implicitly giving veto power to the Party whose compliance issues are at stake.⁸² Escazú has significantly improved upon this provision. While decisions of the Committee are to be made by consensus, in the absence of consensus, a two-thirds majority suffices.⁸³

The Paris Agreement's Implementation and Compliance Committee⁸⁴ has only recently begun to operate. Its recently established modalities and procedures exemplify how to bridge different views of multiple State Parties to craft a meaningful oversight entity even in the absence of significant treaty-based guidance.⁸⁵ As in the case of the Escazú

⁷⁸ E Morgera, E Tsioumani and M Buck, *Unraveling the Nagoya Protocol: A Commentary on the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity* (Brill 2014) 347.

⁷⁹ V Koester and T Young, 'Compliance with International Conventions: The Role of Public Involvement' (2007) 37 *Environmental Policy and Law* 399.

⁸⁰ S Stec and J Jendroška, 'The Escazú Agreement and the Regional Approach to Rio Principle 10: Process, Innovation, and Shortcomings' (2019) 31 *Journal of Environmental Law* 533, 545.

⁸¹ E Fasoli and A McGlone, 'The Non-Compliance Mechanism under the Aarhus Convention as "Soft" Enforcement of International Environmental Law: Not So Soft After All!' (2018) 65(1) *Netherlands International Law Review* 27–53; Aarhus Convention (n 17), Article 15; UNECE, *Guide to the Aarhus Convention Compliance Committee* (2017); UNECE, Report of the First Meeting of the Parties, Decision I/7, Annex, paras 15–18 (2004).

⁸² V Koester, 'Aarhus Convention/MOP-4: The Compliance Mechanism – Outcomes and a Stocktaking' (2011) 41 *Environmental Policy and Law* 196, 197–198.

⁸³ Annex 1 of Decision I/3, para. III, 6 (n 26).

⁸⁴ Paris Agreement (n 17) Article 15.

⁸⁵ Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, FCCC/PA/CMA/2018/3/Add.2, Decisions 20/CMA.1 (2019); Report of the Conference of the Parties serving as the meeting of the

Committee, the *Paris* Committee's function is to address implementation and compliance issues in a facilitative rather than punitive manner.⁸⁶

The Aarhus Committee's well-established system of doing this could serve the Escazú Committee well as a model, given the sensitivity of the issues subject to its jurisdiction and the need to ensure that State Parties work with the Committee to ensure compliance rather than establishing a relationship based on antagonism. At the same time, the transparency of the Aarhus Committee's decision-making process, including making all decisions publicly available, can serve as an example of how the public can be assured that the oversight process for Escazú is focussed on ensuring that the treaty regime's terms are put into effect for the benefit of all.

The Nagoya protocol's mechanisms could also provide valuable insights, given its unique engagement with Indigenous and local communities, which is essential in the context of LAC. An innovative idea could be to establish an ombudsperson to support vulnerable persons and Indigenous and local communities in identifying breaches of rights and providing independent technical and legal support in ensuring the adequate redress of such breaches. The Global Network for Human Rights and the Environment (GNHRE) Principles have suggested inclusive and non-discriminatory participation in the development and implementation of environmental law of Indigenous communities and vulnerable communities, either directly or through representatives such as civil society organisations, legal organisations and legal representatives.⁸⁷ This emphasis on inclusivity and non-discrimination is particularly valuable given the threats faced by human rights advocates and defenders, land rights activists and Indigenous community leaders throughout LAC, coupled with the many ways in which access to justice and public participation have been hobbled throughout the region due to the Covid-19 pandemic.

Parties to the Paris Agreement, FCCC/PA/CMA/2021/10/Add.3, Decision 24/CMA.3 (2021).

⁸⁶ C Voigt and G Xiang, 'Accountability in the Paris Agreement: The Interplay between Transparency and Compliance' (2020) 1 *Nordic Environmental Law Journal* 31–57; G Zihua, C Voigt and J Werksman, 'Facilitating Implementation and Promoting Compliance with the Paris Agreement: Conceptual Challenges and Pragmatic Choices' (2019) 9 *Climate Law* 65–100.

⁸⁷ GNHRE Principles (n 45) princ 31.

12.6 Non-Compliance Mechanisms under the IASHR: Overlap

Another critical discussion in developing the Escazú Agreement's non-compliance machinery relates to potential overlap with the IASHR.⁸⁸ Implementing environmental access rights in LAC has primarily advanced through public interest litigation before regional human rights courts.⁸⁹ The IASHR is pledged to protect, promote and monitor human rights in the thirty-five Latin American States that comprise the Organization of American States (OAS).⁹⁰ The IASHR fulfils this responsibility through two principal bodies: the Inter-American Commission on Human Rights (IACHR)⁹¹ and the Inter-American Court of Human Rights (IACtHR).⁹² Each of these entities can hear individual complaints of alleged human rights violations and may issue emergency protective measures where the subject of a complaint risks immediate irreparable harm. In addition, an OAS organ or member State may seek the Court's advisory opinions on interpreting the IASHR instruments. The Commission undertakes human rights promotion, monitoring, established rapporteurships and publications for the region. The rules of procedure for the Escazú Compliance Committee generally reference the option of the Committee entering 'into dialogue and consultations with other multilateral agreements, institutions, and processes, at the global or regional level, to seek synergies for the full implementation of access rights and other matters covered by the Agreement'.⁹³ This may include synergies with the IASHR, although such synergies are in their very early stages and will likely develop in the future.

⁸⁸ Chapter 4, this volume. As indicated earlier, there are similarities here with the European system. See also below, accompanying notes 129-131?

⁸⁹ C Shall, 'Public Interest Litigation Concerning Environmental Matters before Human Rights' (2008) 20 *Journal of Environmental Law* 417.

⁹⁰ Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States of America, Uruguay, and Venezuela.

⁹¹ 'Inter-American Commission on Human Rights' (IACHR) (Organization of American States), available at www.oas.org/en/iachr/mandate/basic_documents.asp, accessed 1 October 2021.

⁹² 'Inter-American Court of Human Rights' (Inter-American Court of Human Rights), available at www.corteidh.or.cr/index.cfm?lang=en, accessed 1 October 2021.

⁹³ Decision I/3, Annex 1, IX (n 26).

A significant body of jurisprudence on environmental access rights is available in the IASHR.⁹⁴ Litigation of environmental rights has seen considerable development in recent years. Significantly, the OAS was not endowed with an environmental protection role, yet the pervasiveness of environmental degradation placed the topic on its agenda.⁹⁵ One significant aspect of the agenda is the implementation of MEAs and environmental treaties, which is the focus of the OAS work programme on the Environmental Rule of Law in the Americas.⁹⁶ In addition, the IASHR has offered the possibility of discussing IEL compliance related to human rights, including concerning Indigenous peoples' rights and the protection of environmental defenders, which are at the core of Escazú. Finally, the Commission and the Court have developed a substantive case law related to the rights to consultation and – more recently – protection of the environment.⁹⁷

Importantly for this chapter's discussion of the overlap between Escazú and the IASHR, the Inter-American Court of Human Rights has a specific rules-based non-compliance function. After the Court makes specific orders about a State in a particular case, it then tracks that State's implementation of its orders: this is the most direct example of the Court's non-compliance function.⁹⁸ Beyond this follow-up for specific cases, the IASHR also maintains an accountability function where it evaluates and monitors the human rights records of OAS member States through an independent commission that monitors whether States are complying with their international human rights obligations.⁹⁹ More broadly, the Inter-American Commission promotes the observance and defence of human rights in the Americas through country visits, thematic activities and initiatives, preparing reports on the human rights situation in a specific country or on a particular thematic issue, adopting

⁹⁴ II/A Court HR, *Case of Mayagna (Sumo) Awas Tingni Community v Nicaragua*, Judgment of 31 August 2001, Series C, No 79; I/A Court HR, *Case of Saramaka People v Suriname*, Judgment of November 28, 2007, Series C, No 185; I/A Court HR, *Case of Kaliña and Lokono Peoples v Suriname*, Judgment of 25 November 2015, Series C, No 309.

⁹⁵ Giupponi (n 41) 101.

⁹⁶ 'Environment' (Organization of Americas), available at www.oas.org/en/topics/environment.asp, accessed 1 October 2021.

⁹⁷ MA Tigre and SC Slinger, 'A Voice in the Development of Amazonia: The Constitutional Rights to Participation of Indigenous Peoples' in W Leal Filho, VT King and I Borges de Lima (eds), *Indigenous Amazonia, Regional Development and Territorial Dynamics: Contentious Issues* (Springer International Publishing 2020).

⁹⁸ Inter-American Court of Human Rights, Rules of Procedure (n 93) Article 69.

⁹⁹ Inter-American Court of Human Rights, Rules of Procedure (n 93) Article 58, 8.

precautionary measures or requesting provisional measures before the Court, and processing and analysing individual petitions to determine States' international responsibility for human rights violations.¹⁰⁰

The Court's development of its practice and the granting of remedies is also significant. The Court has widely expanded its reparation orders beyond monetary compensation to victims: it has issued reparations in the form of demands for State reforms, criminal prosecution of individuals who have violated regional human rights and even symbolic reparations, such as calling for the erecting of memorials. However, some scholars argue that these non-compliance mechanisms are weak since the Court does not have a specific mandate for enforcement or political compliance mechanisms that would better hold States accountable in implementing the Court's orders.¹⁰¹ As a result, compliance with the rulings and recommendations from the Commission and the Court remains low, and partial compliance is an expected outcome. The long procedural development of cases, paired with the low enforceability of decisions, also hinders hearing cases before the IASHR. All these factors limit the impact of the IASHR and undermine its legitimacy and authority. However, complaints continue to rise, reinforcing the importance of the system.

The participation of NGOs has been limited under the San Salvador Protocol, although NGOs can submit complaints to the IACHR.¹⁰² However, individuals and regional human rights organisations' access has strengthened over time as the IASHR system has become increasingly judicialised, with a procedural focus on legal argumentation and regional human rights jurisprudence.¹⁰³ One significant limitation is that petitioners have to reasonably exhaust the remedies available within the domestic legal system, thereby limiting IASHR judicial intervention to cases where domestic laws and courts have not adequately protected rights and principles. Additionally, the IASHR has to consider where due process rights in the American Convention have been breached and at what point domestic courts have acted arbitrarily.¹⁰⁴

While the possibility of direct access for the public to the Escazú Compliance Committee was envisioned in earlier drafts of the Agreement, it was deleted from the final version due to some Parties'

¹⁰⁰ Article 106 of the OAS, Charter of the Organization of American States, 30 April 1948.

¹⁰¹ P Engstrom, 'Reconceptualizing the Impact of the Inter-American Human Rights System' (2017) 8 *Revista Direito & Práxis*, Rio de Janeiro 1250.

¹⁰² Giupponi (n 41) 209.

¹⁰³ Engstrom (n 102).

¹⁰⁴ *Ibid.*

reluctance.¹⁰⁵ Nevertheless, it reappeared in the Rules of Procedure of the Committee, which established that a member of the public may file a communication requesting support for compliance or alleging non-compliance with provisions of the Agreement.¹⁰⁶ An analysis of experience under the Aarhus Convention shows the relevance of the public's ability to submit communications of non-compliance to the Committee. At the time of writing, over 190 communications have been presented before the Aarhus Committee by the public, while only two by States regarding other States' compliance, and one by a State regarding its own compliance.¹⁰⁷ This background reinforces the relevance of ensuring broad participation and the significance of the Escazú COP's decision on access to the Committee. In addition, it may be noted that a group of civil society organisations submitted recommendations for rules governing the structure and functions of the Escazú Committee.¹⁰⁸ Furthermore, paragraph 12(c) of said recommendations explicitly suggested the possibility of communications from the members of the public being brought regarding a Party's compliance with the Escazú Agreement. This input may have helped to bring about the COP's decision to allow public communications to the Committee.

Alongside regional bodies, other sub-regional judicial or quasi-judicial bodies created in the framework of regional integration processes, such as the Central American Court of Justice, the Andean Court of Justice or Mercosur arbitral tribunals, may offer an additional forum for the implementation of environmental access rights.¹⁰⁹ However, these bodies have rarely addressed environmental matters. The Caribbean Court of Justice (CCJ) could become an essential avenue for implementing environmental rights, as most Caribbean States have not accepted the jurisdiction of the IACtHR.¹¹⁰

¹⁰⁵ G Médici Colombo, 'El Acuerdo Escazú: La implementación del Principio 10 de Río en América Latina y el Caribe' (2018) 9(1) *Revista Catalana De Dret Ambiental* 1–66.

¹⁰⁶ Escazú Agreement (n 16), Rules of Procedure, V(1).

¹⁰⁷ See UNECE, 'Communications from the Public', available at <https://unece.org/env/pp/cc/communications-from-the-public>.

¹⁰⁸ Access Initiative, 'Recommendations of the Public on Proposals on Elements to be Considered in the Rules Governing the Structure and Functions of the Committee to Support Implementation and Compliance', available at <https://accessinitiative.org/resource/proposal-from-the-public-on-the-implementation-and-compliance-committee-of-the-escazu-agreement/>.

¹⁰⁹ Giupponi (n 41) 139.

¹¹⁰ Caribbean Court of Justice, *Maya Leaders Alliance v The Attorney General of Belize*, Judgment of 30 October 2015, available at www.law.nyu.edu/sites/default/files/upload_documents/Final_GFILC_pdf.pdf, accessed 1 October 2021.

With the Escazú Agreement in force, there is an opportunity for the legal framework of the IASHR and Escazú to work together and strengthen the democratisation of environmental governance in LAC. Escazú reinforces principles and obligations established in the inter-American legislation and jurisprudence on the right to a healthy environment, highlighting the need to guarantee access rights to ensure their validity. However, how will these complementing regimes interact in practice? Noroña notes the risk of conflicting petitions or multiple claims in different forums, reinforcing the need to understand the Committee's consultative and transparent, non-adversarial, non-judicial and non-punitive nature, which only allows it to formulate recommendations and would, in theory, not conflict with the mechanisms in the IASHR.¹¹¹

The Committee is not a court and does not issue binding decisions, even if its opinions, as per the example of Aarhus, provide an authoritative interpretation of its provisions. Nonetheless, as a human rights treaty, Escazú can be invoked within the human rights protection system of the OAS.¹¹² This means that the mechanisms within the IASHR are available to those who seek to enforce the Escazú Agreement. The relationship between the Escazú Agreement and the IASHR is similar to that between the Aarhus Convention and the European Convention on Human Rights (ECHR), including as it pertains to the jurisprudence of the European Court of Human Rights (ECtHR). Countries could thus be called on to answer for access rights within the IASHR.¹¹³ This possibility significantly expands the available enforcement mechanisms under Escazú through reliance on an already established regional human rights system with decades of development. However, it should be noted that the expectation of vigorous enforcement of the Aarhus Convention by the European Court of Justice has not yet come to fruition.¹¹⁴

¹¹¹ D Noroña, 'All Hands-On Deck: Is the Inter-American Human Rights System Compatible with the Escazú Agreement?' (The Global Network for Human Rights and the Environment 2021), available at <https://gnhre.org/community/all-hands-on-deck-is-the-inter-american-human-rights-system-compatible-with-the-escazu-agreement/>, accessed 1 October 2021.

¹¹² 'Organization of American States', available at www.oas.org/en/ accessed 1 October 2021.

¹¹³ 'Inter-American Commission on Human Rights' (Organization of American States), available at www.oas.org/en/iachr/mandate/basic_documents.asp, accessed 1 October 2021 (IACHR).

¹¹⁴ J Jendroška, 'Aarhus Convention Compliance Committee: Origins, Status and Activities' (2011) 8(4) *Journal for European Environmental and Planning Law* 301–14.

12.7 Conclusion

The Escazú Agreement was adopted based on broad and effective public participation and came into force with great fanfare. Escazú recognises explicitly the right to a healthy environment and has been lauded as a progressive Agreement, and there is much expectation that it will bring change to the region. One of the biggest challenges in implementing the Escazú Agreement will be overcoming LAC's tendency to adopt broad-minded legislation but implement it at a slow pace. This chapter advances some of the questions about how to facilitate the implementation of the rights, rules and principles included in the Agreement. Specifically, it addresses the implementation of the recognised right to a healthy environment. Building a system for oversight and compliance at the regional level is essential in ensuring compliance. This system should be flexible yet provide a reliable and stable response to claims. This chapter has highlighted the initial progress made at the first Escazú COP, including adopting the Rules for the Committee to Support Implementation and Compliance. In addition, the chapter has drawn on experience under other MEAs, analysed the potential overlap with regional human rights systems and provided suggestions for moving forward. To a certain extent, the compliance procedures and mechanisms established under Escazú share features that have become commonplace across MEAs.¹¹⁵ However, some distinctive features of the Agreement – including its regional underpinnings – will likely lead Parties to consider innovative approaches to multilateral compliance procedures and mechanisms. The next few years will be essential in delineating the parameters of the Agreement so that it brings effective positive environmental human rights developments to the region.

¹¹⁵ See i.e., U Beyerlin, P-T Stoll and R Wolfrum (eds), *Ensuring Compliance With Multilateral Environmental Agreements: A Dialogue between Practitioners and Academia* (Martinus Nijhoff Publishers 2006); T Treves, A Tanzi, C Pitea and C Ragni (eds), *Non-Compliance Procedures and Mechanisms and the Effectiveness of International Environmental Agreements* (Asser Press 2009); RB Mitchell, 'Compliance Theory: Compliance, Effectiveness and Behaviour Change in International Environmental Law' in J Brunnée, D Bodansky and E Hey, *The Oxford Handbook of International Environmental Law* (Oxford University Press 2007) 893; and A Nollkaemper, 'Compliance Control in International Environmental Law: Traversing the Limits of the National Legal Order' (2003) 13 *Yearbook of International Environmental Law* 165.