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ESCAZÚ AGREEMENT: A FRAMEWORK FOR PROTECTING ENVIRONMENTAL HUMAN RIGHTS DEFENDERS AND ADVANCING SDG 16

EL ACUERDO DE ESCAZÚ: UN MARCO DE LAS NACIONES UNIDAS PARA LA PROTECCIÓN DE LOS
DEFENSORES DE LOS DERECHOS HUMANOS AMBIENTALES Y EL AVANCE DEL ODS 16

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ABSTRACT

The United Nations Sustainable Development Goals (SDGs) seek to provide a blueprint for global peace and prosperity through a human rights-based approach. SDG 16 aims to promote peaceful and inclusive societies by ensuring access to justice and fostering strong institutions. However, negative trends in climate change, natural resource exploitation, biodiversity loss, and ecosystem health threaten the ability of nations worldwide to achieve the SDGs. Environmental human rights defenders (EHRDs) play a vital role in forging pathways to sustainable development that are equitable for both humans and the environment. Despite this, EHRDs are increasingly subjected to a wide range of physical and structural violence that threatens their human rights and environmental protection. The Escazú Agreement is the first and only multilateral treaty that explicitly recognizes the rights of EHRDs to a healthy environment and sustainable development. This paper seeks to highlight the Escazú Agreement as a mechanism for strengthening access to rights in Latin American and Caribbean nations in accordance with SDG target 16.10, which pertains to public access to information and protection of fundamental freedoms. The spirit of

the Escazú Agreement reminds the world that, to protect human rights and nature, the global community must begin by protecting the people who defend the environment.

KEYWORDS: SDG 16, EHRDs, Escazú Agreement, human rights, sustainability.

RESUMEN

Los Objetivos de Desarrollo Sostenible (ODS) de las Naciones Unidas pretenden proporcionar un plan para la paz y la prosperidad mundial con un enfoque basado en los derechos humanos. Los ODS 16 promueven sociedades pacíficas e inclusivas mediante el acceso a la justicia y la solidez institucional. Sin embargo, las tendencias negativas del cambio climático, la explotación de recursos naturales, la pérdida de biodiversidad y el deterioro de la salud de los ecosistemas comprometen la capacidad de las naciones para alcanzar los ODS. Los defensores de los derechos humanos ambientales desempeñan un papel vital en la construcción de un desarrollo sostenible que beneficie tanto a las personas como al medio ambiente. A pesar de esto, los defensores de los derechos humanos ambientales están cada vez más expuestos a violencia física y estructural que amenaza sus derechos humanos y la protección del medio ambiente. El Acuerdo de Escazú es el primer y único tratado multilateral que reconoce explícitamente los derechos de los defensores de los derechos humanos ambientales a un medio ambiente sano y a un desarrollo sostenible. Se busca destacar este acuerdo como un mecanismo para fortalecer el acceso a estos derechos en las naciones de América Latina y el Caribe, alineándose con la meta 16.10 de los ODS sobre el acceso público a la información y la protección de las libertades fundamentales. El acuerdo recuerda a la comunidad internacional que la protección de los derechos humanos y la naturaleza comienza con la protección de quienes defienden el medio ambiente.

PALABRAS CLAVE: SDG 16, EHRD, Acuerdo de Escazú, derechos humanos, sostenibilidad

INTRODUCTION

Negative trends in climate change, natural resource exploitation, and ecosystem health have significant economic, social, and cultural implications for humans (Ituarte-Lima et al., 2023). More

specifically, climate change and environmental degradation pose a substantial threat to human rights around the world, including the rights to health, water, food, housing, culture, and life itself (Monawvil & Adame, 2022). Protecting individual human rights is an important and challenging agenda item for the United Nations. This is reflected in the Sustainable Development Goals (SDGs), which seek to provide a blueprint for global peace and prosperity (Hanhimaki, 2015). A significant challenge that the international system faces in the 21st century lies in devising regional sustainable development strategies that address vulnerable environmental realities from both ecological and socio-economic perspectives (Mohammed, 2021).

Environmental human rights defenders (EHRDs) play a vital role in forging pathways to sustainable development that are equitable for humans and the environment (Ituarte-Lima et al., 2023). Despite this, EHRDs are increasingly subjected to a wide range of physical and structural violence that seeks to undermine their efforts. Between 2012 and 2023, an estimated 2,106 EHRDs were murdered globally (Furones et al., 2024). Nearly three out of four EHRDs are murdered in Latin America and the Caribbean annually, making the region one of the most dangerous in the world for environmental defenders (Monawvil & Adame, 2022). This weakens the capacity of these nations to address environmental degradation and social justice outlined by the UN Sustainable Development Goals.

The Escazú Agreement —formally known as the Regional Agreement on Access to Information, Public Participation, and Justice in Environmental Matters in Latin America and the Caribbean—is the first and only multilateral treaty that explicitly recognizes the rights of EHRDs (Iтуarte-Lima et al., 2023). It also serves as a mechanism for strengthening access to the rights to a healthy environment and sustainable development in Latin American and Caribbean nations in accordance with SDG 16 (Mohammed, 2021). This paper aims to analyze the effectiveness of the Escazú Agreement in advancing SDG 16, specifically focusing on target 16.10, which pertains to public access to information and protection of fundamental freedoms. Through the SDGs, the United Nations has the responsibility to protect EHRDs, who are vital to creating a more peaceful, just, and inclusive society for people and the planet.

What is SDG 16 and Target 16.10?

One of the essential functions of the United Nations is to promote global norms relevant to sustainable development (Fukuda-Parr, 2018). The 2030 Agenda for Sustainable Development promises a transformative, legally non-binding action plan for sustainable development involving not just the governments of states but also civil society stakeholders (Fukuda-Parr, 2018). All 193 member states of the United Nations adopted the 2030 Agenda in 2015, which includes 17 SDGs and 169 targets (Mohammed, 2021). The 2030 Agenda recognizes the interconnected nature of sustainable development challenges, including across social, economic, and environmental sectors, providing a holistic approach previously absent from the Millennium Development Goals (Muñoz-Ávila & Guerrero, 2023).

SDG 16 aims to promote peaceful and inclusive societies for sustainable development, to provide access to justice for all, and to build effective, accountable, and inclusive institutions at all levels (ECLAC, 2015). It is seen as a foundational goal for the achievement of other goals in the 2030 Agenda, making its success paramount. Specifically, target 16.10 “refers to the importance of public access to information and the protection of fundamental freedoms in accordance with national legislation and international agreements” (Mohammed, 2021, p. 204). This is measured by two indicators: the number of “verified cases of killing, kidnapping, enforced disappearance, arbitrary detention, and torture” against human rights defenders and the number of countries that “adopt and implement constitutional, statutory, and/or policy guarantees” for their safety (UN, 2024, “Indicators” section). Under SDG 16, the rule of law becomes a catalyst for sustainable development by promoting access to justice and the enforcement of human rights protections (ECLAC, 2019). This requires states to address institutional and structural obstacles that prevent the realization of human rights, effective rule of law, access to information, and good governance (Ituarte-Lima et al., 2023).

Who are environmental human rights defenders?

Many terms have been used to describe individuals or groups who mobilize civil society against environmental pollution, extractive activities, biodiversity loss, and climate change (Ituarte-Lima et al., 2023). This paper will focus on “environmental human rights defenders,” a term recognized by the United Nations Environment Programme. According to United Nations A/71/281, EHRDs are “individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna” (UNEP, 2016, p. 4). In many cases, EHRDs are members of indigenous groups or from local communities whose access to natural resources and ways of life are threatened by industrialized enterprises (UN Special Rapporteur, 2016). While EHRDs come from many different intersectional backgrounds and deploy context-specific strategies to achieve their goals, a commonality is their commitment to protecting the environment on which a wide range of human rights depend (Ituarte-Lima et al., 2023). Their knowledge, participation, and leadership are vital for achieving the UN Sustainable Development Goals. However, EHRDs often face physical and structural violence by corporate, state, and non-state actors that limit the effectiveness of their actions (Jauregui, 2024).

EHRDs become vulnerable when they exercise their individual powers and influence to challenge the status quo (Ituarte-Lima et al., 2023). Violence against EHRDs includes threats and acts of harm, murder, arbitrary detention, forced disappearance, judicial harassment, and criminalization (Panovics, 2021). Since 2012, the British human rights organization Global Witness has published annual reports on violence against environmental defenders. In 2023, at least 196 EHRDs were murdered worldwide (Jauregui, 2024). For EHRDs, Latin America and the Caribbean is the most dangerous region, constituting 85% of documented murders (Jauregui, 2024). Due to difficulties in reporting and verifying harm against EHRDs, current statistics only represent a fraction of the larger problem (Panovics, 2021). Additionally, many instances of violence have little to no legal consequences for the perpetrators and may even be committed by governments

themselves (Jauregui, 2024). This makes accountability difficult without proper, binding channels for EHRDs to obtain justice, further exacerbating violations of environmental and human rights.

History of the Escazú Agreement

In 1992, Principle 10 of the UN Earth Summit, also known as the Rio Conference, outlined fundamental agendas for environmental governance: access to information, participation, and justice in environmental matters (Panovics, 2021). Over the years, Principle 10 has provided a globally recognized framework for developing national standards and laws related to environmental rights, as demonstrated by the Escazú Agreement. The Agreement was adopted in Escazú, Costa Rica, on March 4, 2018 (Panovics, 2021). It was the result of a regional negotiation process that took place from 2014 to 2018 that featured significant participation from civil society representatives and experts in environmental law and human rights from Latin America and the Caribbean (IISD, 2021). The Escazú Agreement became effective on April 22, 2021, coinciding with International Mother Earth Day (Panovics, 2021).

The Escazú Agreement outlines arrangements to ensure the full and effective implementation of Principle 10, which was reaffirmed at the 2012 Rio+20 Conference (Panovics, 2021). This includes civil society's right to access environmental information, participate in environmental decision-making processes, and seek justice in environmental matters (Monawil & Adame, 2022). The Agreement aims to create and strengthen parties' capacity and cooperation-building measures, as well as to protect the rights of present and future generations to live in a healthy environment and to develop sustainably (ECLAC, n.d.). In discussing the obligations of parties, Mohammed (2021) emphasizes that parties are required to guarantee "an enabling environment" for civil society organizations, ensuring that "guidance and assistance" are provided to the public, particularly to individuals or groups in vulnerable situations (p. 215). The Escazú Agreement is legally binding, which differs from other non-binding 'soft law' regional agreements, including the 2030 Agenda. Therefore, the signature and ratification of the Agreement signify a serious commitment to its principles on a domestic level (Mohammed, 2021). The Agreement is open to all 33 countries in the Latin America and Caribbean region. Unfortunately, the ratification process

has progressed slowly (Muñoz-Ávila & Guerrero, 2023). At the time of writing, 24 countries have signed it, and 17 countries have also ratified it (ECLAC, 2024).

The legally binding nature of the Escazú Agreement is key to establishing strong channels of justice for EHRDs as they seek to protect themselves and their environments from violence. However, the same characteristic that gives the Escazú Agreement strength may also contribute to the reluctance of countries to sign and ratify. Ratifying this agreement reflects a country's commitment to uphold international norms and values, government transparency, and the rule of law. As demonstrated by the previously stated Global Witness statistics, EHRDs from Latin American and Caribbean countries, many of whom identify as indigenous, face some of the most dangerous conditions to carry out their activism with little to no channels to pursue justice. When economic development is inextricably linked to the exploitation of natural resources, signing and ratifying the Escazú Agreement becomes a burden for countries wanting to avoid potential roadblocks to prosperity. This does not mean that the legally binding nature of the Escazú Agreement should be abandoned altogether. As climate change continues to progress, more pressure will be put on the international community to develop sustainably. The consequences of climate change, coupled with pressure from civil society, can encourage countries to sign and ratify the Escazú Agreement to strengthen their regional and international legitimacy. Therefore, the legally binding nature will be necessary to build climate resilience in line with the 2030 Agenda.

The Escazú Agreement and SDG Target 16.10

This Agreement represents the first environmental treaty ever concluded under the auspices of the UN Economic Commission for Latin America and the Caribbean. It is also the first treaty globally to contain specific provisions on EHRDs and to reinforce the region's commitment to the implementation of the 2030 Agenda (Panovics, 2021). The Agreement provides a pathway to realizing SDG 16 by strengthening the rule of law, enhancing participatory democracy, protecting human rights, and preventing social conflicts amid shifts in economic production patterns (Monawvil & Adame, 2022). The Escazú Agreement aims to combat inequality and discrimination, highlights individuals and groups in vulnerable situations, and places equity at the core of

sustainable development (Panovics, 2021). However, violence against EHRDs undermines the ability of states to achieve SDG target 16.10, as measured by this indicator (ECLAC, 2019).

The targeting of EHRDs in Latin America and the Caribbean is a harsh reality (Mohammed, 2021). EHRDs are frequently placed within a narrative that they are opposed to one economic activity in particular that is destroying their natural environment or denying them access to natural resources. This approach is reinforced by the fact that “since these activities are promoted by nation-states in the name of ‘development,’ in some countries, environmental defenders are portrayed as ‘anti-development,’ ‘anti-progress,’ ‘anti-modernity,’ or ‘enemies of the state’” (Ituarte-Lima et al., 2023, p. 351). On the contrary, EHRDs are often ordinary citizens attempting to exercise their rights established by domestic legal frameworks (UNEP, 2018). The Escazú Agreement advances target 16.10 by taking a rights-based approach that establishes obligations for states in the region concerning participation, access to information, and access to legal procedures for challenging environmental violations (Mohammed, 2021).

According to Article 8 of the Escazú Agreement, parties must offer free technical and legal support to vulnerable individuals to reduce or remove obstacles to justice (Mohammed, 2021). The first paragraph of Article 9 states that “each party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters” (Ituarte-Lima et al., 2023, p. 353). Public participation and access to justice serve to address inequalities and empower the most vulnerable, fostering the creation of peaceful and inclusive societies for sustainable development (Mohammed, 2021). Access to justice in realizing environmental rights as outlined in the Escazú Agreement supports the advancement of target 16.10. This is important because by effectively recognizing and enforcing these rights, the incidence of human rights violations against EHRDs can decrease significantly, saving lives and increasing environmental protections (Panovics, 2021).

DISCUSSION

As shared by Michelle Bachelet, UN High Commissioner for Human Rights, multilateral treaties “like the Escazú Agreement are one of the most effective tools” supported by the United Nations “for holding states accountable, defending human rights, and protecting the health of people and the planet” (IISD, 2021, paragraph 9). While the Escazú Agreement represents unprecedented progress in terms of supporting SDG 16, it is important to acknowledge several critiques: (1) the willingness and ability of states to act; (2) the reality of intersectionality in the identities of EHRDs; and (3) the agency of EHRDs to meaningfully contribute to the sustainable development discourse beyond their vulnerable status.

Firstly, political will is the main roadblock to institutional reform globally (Samarsinghe, 2018). The three pillars of the Escazú Agreement — right to access to information, public participation, and access to justice — rely on robust governance for their realization (Panovics, 2021). However, the narrowing of democratic space in the Latin America and Caribbean region poses a challenge to realizing SDG 16 (ECLAC, 2019). As Muñoz-Ávila & Guerrero (2023) explain, achieving the SDGs requires “greater government transparency and more participatory democracies” (p. 204). Additionally, the responsibilities of each party regarding EHRDs are shaped by their unique understanding of civil, cultural, economic, political, and social rights (Ituarte-Lima et al., 2023). While sustainable development priorities are proposed as universal, states differ significantly in their resources, capacities, and challenges (Fukuda-Parr, 2018). Ultimately, the effective execution of the Escazú Agreement depends on the willingness and ability of parties to implement the three pillars fully and progressively (Panovics, 2021).

Secondly, climate change acts as a catalyst for existing vulnerabilities, exacerbating its effects on countries and people who find themselves on the front lines of defending their environments against corporate, state, and non-state exploitation (Panovics, 2021). According to UN General Assembly Resolution 68/181, EHRDs who are women are especially vulnerable to physical and structural violence as they are prone to multiple, intersecting forms of gender-based discrimination (UNGA, 2014). While Article 7 of the Escazú Agreement “specifically refers to state

obligations to establish conditions that are adapted to gender characteristics of the public," interpretation and execution may differ between parties (Ituarte-Lima et al., 2023, p. 355). Additionally, over one-third of all fatal attacks on EHRDs target Indigenous Peoples, who protect approximately 80% of the remaining biodiversity on Earth (Jauregui, 2024). Recognizing the diverse backgrounds, cultures, and belief systems of EHRDs is essential; consequently, their rights should encompass economic, social, and cultural dimensions that consider the intersectionality of gender, age, ethnicity, and socio-economic status (Ituarte-Lima et al., 2023).

Lastly, while much of global attention is placed on protecting EHRDs from physical and structural violence as well as death, it is also vital "to understand their role as agents of change and as central actors" in advancing the UN Sustainable Development Goals (Ituarte-Lima et al., 2023, p. 348). Access to justice through domestic legal systems allows civil society to enforce their rights to be informed, to participate, and to hold public authorities and extractive industries accountable for environmental harm (Panovics, 2021). However, transformative change in these areas requires addressing the root causes of the different challenges that create vulnerability for certain communities (Fukuda-Parr, 2018). The Escazú Agreement underscores the critical relationship between people and governments, imposing specific obligations on parties to the public regarding environmental and human rights (Panovics, 2021). EHRDs actively confront existing power structures and challenge prevailing norms. A limited perspective on environmental defenders fails to recognize the diverse relationships they foster between humans and nature, rendering any future actions inadequate (Ituarte-Lima et al., 2023).

CONCLUSION

According to the Human Rights Council, every state is required to ensure a secure and supportive environment that allows individuals, groups, and organizations focused on human rights and environmental matters to function without fear, obstacles, or danger (UNGA, 2013). The United Nations is crucial as the sole global entity capable of influencing nations to modify their human rights policies and support individuals at risk of power abuses (Hanhimaki, 2015). The 2030 Agenda and its proposed SDGs are vital for determining global priorities across the United Nations

system (Fukuda-Parr, 2018). However, to effectively advance the SDGs, state obligations regarding EHRDs and the right to a healthy environment must take precedence in the Latin America and Caribbean region (Ituarte-Lima et al., 2023).

Achievement of SDG 16 depends on a multi-stakeholder approach. As outlined in this paper, the Escazú Agreement is key to advancing the 2030 Agenda as a whole, particularly target 16.10 (ECLAC, 2019). The Escazú Agreement's provisions on public participation procedures and access to information offer a detailed framework for parties to develop their laws, which can enhance the implementation of human rights specified in SDG 16 (Mohammed, 2021). The ratification of the Escazú Agreement underscores the significance of regional multilateralism in promoting sustainable development and highlights the crucial role of civil society and the broader public in the negotiation process (Panovics, 2021). The connection between human rights and the environment should create a positive cycle in which the exercise of human rights supports environmental protection, and conversely, a healthy environment fosters the complete realization of human rights (UN Special Rapporteur, 2016).

Monawvil & Adame (2022) state, "The spirit of the Escazú Agreement reminds the world that, to protect the environment, we need to start by protecting the people who defend it," which was originally shared in a joint statement by the Inter-American Commission on Human Rights, the Rapporteur on Economic, Social, Cultural, and Environmental Rights, and OHCHR (p. 6). When governments fail to protect the rights and lives of EHRDs, "the result is often conflict, forceful displacement, environmental degradation, and human rights violations" (CIEL, 2016, p. 4). With the year 2030 fast approaching, it is more important than ever not only for countries to make quantifiable progress toward the SDGs, but also for the United Nations to continue to evaluate their efficacy. This evaluation is crucial for the United Nations to foster a more peaceful, just, and inclusive society for both people and the planet.

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