

Summary of Brazil Report
(Last Updated August 2021)

1. Implementation of the agreement in Brazil

- The Escazú Agreement was signed by Brazil on September 27, 2018 and has not been ratified. The agreement is still with the environment and agricultural ministries for analysis and internal processing before being sent to the legislative branch by the Brazilian president, Mr. Jair Bolsonaro.
- Brazil was present at the second meeting of signatory countries held in December 2020 to discuss the sustainable development of the region and defend fundamental rights.

2. The right to a healthy environment

- The right to a healthy environment is guaranteed by the Brazilian Federal Constitution. The scope of polluters' liability and the standards for environmental protection against pollution are provided for in Brazil's laws and regulations.

3. Access to environmental information

- Public access to environmental information is guaranteed by federal laws that regulate mechanisms, deadlines, and procedures for the availability of information. Public entities must proactively disclose a minimum amount of information on the internet and grant free access to documents, files, and administrative proceedings addressing environmental matters. The entity may charge the public with the cost to make the information available.
- Brazil has different environmental information systems. The most well-known is the environmental and rural registry – CAR - that compels the owners of rural areas to register information about preserved areas in their properties. This registry is managed by the states. Another important registry is the National Policy of Solid Waste that establishes the obligation to prepare an inventory of waste in specific sectors, and to file the information with the respective state environmental agency.
- Certain manufacturers, retail sellers, and service providers must prepare a solid waste management plan which becomes part of the environmental licensing proceeding of the relevant activity.
- Brazil regulates the obligation to disclose and disseminate information in case of an imminent threat to public health or the environment. For instance, federal law creates the obligation to disclose and disseminate information in case of imminent threat related to dams, while federal regulation determined disclosure obligations when any risk of contamination is detected.
- Federal and state governments have created rules on mandatory auditing in some industry sectors. States like Rio de Janeiro and São Paulo require periodic environmental auditing of pollution control systems and of activities that may cause potential harm to the environment.
- Although federal law requires publicly traded companies to publicize information regarding performance, sustainability reports are not included in the rule. However, the National Central Bank and the Security and Exchange Commission are reevaluating the subject. It is expected that new rules will introduce environmental, social, and corporate governance – ESG disclosure requirements.
- The environmental permitting proceeding guarantees public participation by means of mandatory public hearings on the discussion of large projects with environmental impact. When traditional communities,

indigenous and tribal peoples are involved, the ILO Convention No. 169 must be applied. These consultations must be undertaken with the objective of achieving an agreement regarding environmental issues.

- Regulation establishes that the environmental impact assessment must be available to the public before public hearings. Additionally, all information that is part of the environmental permitting process is considered public information and must be made available if anyone requests it.
- The constitution guarantees specific rights to indigenous people, and federal law has created the governmental indigenous protection agency, the National Indigenous Foundation (FUNAI). FUNAI is responsible for promoting studies on identification, delimitation, demarcation, land title regularization, and registration of lands traditionally occupied by indigenous people, for monitoring and inspecting indigenous lands, and for coordinating and implementing protection policies for isolated indigenous communities.

4. Access to justice in environmental matters;

- The Brazilian legislation, represented by the civil and criminal procedural codes, provides the substantive and procedural due process of law.
- Federal and State District Attorneys, the Public Defendant's Office, Environmental Protection Agencies, and Brazilian registered nongovernmental organizations have standing to sue for environmental damages in public civil lawsuits. Administrative and criminal sanctions are defined by specific legislation and shall be applied independently from civil reparations. The law imposes severe criminal sanctions on individuals and legal entities that contribute to environmental damage, including officers, controllers, management boards, managers, and employees of said legal entities.
- The constitution guarantees full legal assistance by the public defendant's office, free of charge, to those who can prove they do not have sufficient resources. The Public Defendant's Office also has the legal prerogative of filing public civil actions for the collective defense of vulnerable citizens.
- Brazil promotes alternative dispute mechanisms, including the environmental conciliation hearing, which allows the defendant to negotiate with the public authorities about imposition of the fine or request that the fine be converted into environmental preservation services, unless the environmental damages have caused human loss of life.

5. Protection of environmental defenders

- Brazil has adopted measures for the protection of the rights of human rights defenders in environmental matters, having ratified multiple international instruments on the topic and developed guidelines for companies to promulgate their own human rights policies.
- The Federal and State District Attorney Offices have specialized offices focused on the promotion of citizenship and human dignity in defense of constitutional rights. In States that are historically more susceptible to human rights violations, the DA's Office works closely with companies in order to avoid any human rights violations. Brazil also has state councils for the protection of human rights defenders.
- The State of Pará, with the highest number of deaths of environmental defenders, has a program that offers protection to human rights defenders, including indigenous people, who are threatened with death. There are approximately 58 individuals currently protected under state law.

Memorandum

PRIVILEGED AND CONFIDENTIAL

Date: 27 July 2021

To: Cyrus R. Vance Center for International Justice.

Re: Escazú Agreement.

The main purpose of this document is to provide information about the implementation of environmental national laws involving the Escazú Agreement ("Agreement").

This document has been prepared following the template provided by the Cyrus R. Vance Center for International Justice, which includes the main provisions of the Agreement.

The Agreement was signed by Brazil in 2018, but it was not ratified by the Brazilian National Congress yet. This means that the Agreement was not incorporated in the country's legislation. Nonetheless, Brazil has a broad environmental legislation, which includes some of the principles and goals foreseen by the Escazú Agreement.

1) Legal basis

The main normative sources used for the preparation of the report are the following¹:

- a. Brazilian Federal Constitution of 1988.
- b. American Convention on Human Rights.
- c. Federal Law No. 5,371/1967 - Establishes the governmental indigenous protection agency.
- d. Federal Law No. 7,347/85 - Establishes public civil action for liability for damage caused to the environment.
- e. Federal Law No. 4,717/1965 - Establishes popular action for liability for damage caused to the environment.
- f. Federal Law No. 12,527/2011 - Transparency and Access to Public Information.
- g. Federal Law No. 10,650/2003 - Access to Environmental information.
- h. Federal Law No. 9,605/1998 - Establishes criminal and administrative liability for damage to the Environment.
- i. Federal Law No. 12,651/2012 - Establishes the National Forestry Code

¹ All federal legislation mentioned and can be accessed at the website: <https://www.gov.br/planalto/pt-br>

- j. Federal Law No. 12,334/2010 - Establishes the National Policy of Dam Safety
- k. Federal Law No. 12,305/2010 - Establishes the National Policy of Solid Waste
- l. Federal Law No. 11,284/2006 - Establishes proceedings for the management of public forests by private companies
- m. Federal Law No 12,527/2011 - Access to Public Information
- n. Federal Decree No. 10,088/2019 - Ratifies ILO Convention No. 169.
- o. ILO Convention No. 169 - Convention regarding indigenous and tribal people.
- p. Federal Decree No. 6,514/2008 - Regulates Federal Law No. 9,605/98.
- q. Federal Decree No. 9,760/2019 - Establishes Federal Environmental Administrative Proceedings.
- r. Federal Decree No. 9,571/2018 - Establishes guidelines to companies to develop their own human rights policies
- s. Pará State Law No. 8,444/2016 - Establishes protection to Human Rights Defenders².
- t. CONAMA's Resolution No. 01/1986 - Establishes guidelines to environment impact assessment.
- u. CONAMA's Resolution No. 09/1987 - Establishes guidelines to public hearings during environment assessment.
- v. CONAMA's Resolution No. 494/2020 - Authorize public hearings through videoconferencing.
- w. CONAMA's Resolution No. 420/2009 - Establishes guidelines for the management of contaminated areas.
- x. CONAMA's Resolution No. 306/02 (altered by Resolution No. 381/06) - Establishes minimum requirements for environmental audits.
- y. Environmental Ministerial Ordinance No. 280/2020 - Establishes the obligation of a Transportation Manifest of Industrial Waste (*MTR - Manifesto de Transporte de Resíduos*)

2) Analysis

Right to a healthy environment
Guarantee the right to a healthy environmental in the Constitution

² Available in: <https://www.pge.pa.gov.br/sites/default/files/repositorio/2016/lo8444.pdf>

	<p>The right to a healthy environment is guaranteed by the Article 225 of the Brazilian Federal Constitution: <i>Article 225. All have the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.</i></p>
	<p>Environmental protection is reflected in the Federal Constitution and in federal, state and municipal legislation, international treaties, and provisions of MERCOSUR.¹⁹ The scope of polluters' liability and the standards for environmental protection against pollution are, in some cases, at a level comparable with those of developed nations. Some states, including Sao Paulo, have established supplemental rules and standards that provide even greater protection.</p>
<p>Right of access to environmental information</p>	
01	<p>Ensure the right to public access to environmental information and define procedure for such access.</p>
	<p>Public access to existing data and information held by the entities that are part of the National Environmental System is regulated by Federal Law No. 10,650/2003. It determines that Public Administration must grant documents, files and administrative processes addressing environmental matters (through the payment of the amount spent by the government to make the information available) especially those relating to: I - environmental quality; II - policies, plans and programs that could potentially cause environmental impact; III - monitoring and auditing results on pollution control systems and potentially polluting activities; IV - accidents, risk situations or environmental emergencies; V - emissions of liquid and gaseous effluents and production of solid residues; VI - toxic and dangerous substances; VII - biological diversity; and VIII - genetically modified organisms. Federal Law No. 12,527/2011 also classifies access to public information as a fundamental principle. It also defines mechanisms, deadlines and procedures for the availability of information and determines that public entities must proactively disclose a minimum amount of information through the internet. We set out below a list containing some examples of public databases from the Brazilian government:</p>
	<p>1. Brazilian Institute of Environment and Renewable Natural Resources (IBAMA): Database of environmental licenses, aerial images, information on embargoed areas for non-compliance with current environmental legislation, authorizations for forest exploitation; the data is separated by municipality/state and the type of product to be explored with its area and volume.</p>
	<p>2. Brazilian Institute of Geography and Statistics (IBGE): Database of soil irregularities, biomes, landslide susceptibility, marine coastal system, soil type with the extension in km² and vegetation.</p>

Brazil also enacted Federal Law No 12,527/2011 that regulates the comprehensive right of access to public information, providing state duties to efficiently manage government documents or those under government custody, and to make knowledge and consultation thereof available to all. Availability, authenticity, and integrity are the main legal attributes of public information according to such Law.

02 Define specific rules facilitating access to environmental information to persons and groups in vulnerable situations, including making efforts to identify and support persons or groups in vulnerable situations, providing assistance in preparing requests for access and ensuring information is available in the various languages used in the country.

The ILO Convention No. 169 establishes guidelines to facilitate access to environmental information to indigenous and tribal people. The Public Administration, especially District Attorney's Office and Public Defendant's Office usually apply the same regulation to other traditional communities and groups in vulnerable situation.

03 Ensure access to environmental information is provided at no cost, provided for costs of reproduction and delivery, which must be reasonable.

Federal Law No. 10,650/2003 determines that Public Administration' entities must grant documents, files and administrative processes addressing environmental matters through the payment of the amount spent by the government to make the information available. However, Federal Law No. 12,527/2011 establishes that access to the information is free of charge, exception made in case of obtaining copies of documents, when a fee shall be demanded.

04 Establish or designate one or more impartial entities or institutions with autonomy and independence to promote transparency in access to environmental information.

Although there is no express provision on that matter in the Brazilian legislation, the District Attorney's Office must act in matters regarding environmental protection and therefore, they can be engaged in public hearings and other consults to the people concerned with environmental issues. Some NGOs in Brazil are also concerned with transparency in access to environmental information.

05 Guarantee that competent authorities generate, collect, publicize and disseminate environmental information relevant to their functions.

As mentioned, Federal Law No. 10,650/2003 and 12,527/2011 determine that Public Administration' entities must grant documents, files and administrative processes addressing environmental matters (through the payment of the amount spent by the government to make the information available) with specification on several subjects and topics.

06 Create one or more environmental information systems.

1. As mentioned, Federal Law nº 10,650/2003 determines that public authorities may require the periodic provision of any type of information by private entities, through a specific

system to be implemented by all SISNAMA (Environment National System) entities on the potential and effective environmental impacts of their activities.

2. Different systems of environmental information may exist in the States and Municipalities. For instance, Federal Law No. 12,651/2012 (National Forestry Code) creates an environmental and rural registry (*Cadastro Ambiental Rural - CAR*) that compels every owner of a rural area to register information about preserved areas in their properties. This registry is made available by each State of the Federation. The National Policy of Solid Waste (Federal Law No. 12,305/2010) also provides the obligation to prepare an inventory of waste in specific sectors, and to file the information with the respective state environmental agency.

07

Create materials, waste and pollutant release and transfer register.

As mentioned, Federal Law No. 10,650/2003 determines that Public Administration' entities must grant documents, files and administrative processes addressing environmental matters (through the payment of the amount spent by the government to make the information available) with specification on several subjects and topics, including materials, waste and pollutant release.

According to Brazilian legislation, the generator is responsible for the proper final disposal of hazardous and non-hazardous waste. Federal and some state regulations require that the transportation, treatment and disposal of wastes (whether solid, hazardous, non-hazardous or medical) must be subject to the prior approval of a state environmental protection agency. In some cases, companies may temporarily store waste in their facilities under state approval and supervision. The Federal Law No. 12,305/2010 establishes the National Policy on Solid Waste among other provisions, requires the implementation of EPR - Extended Producer Responsibility obligations (including take back requirements) by manufacturers, importers, retailers and distributors of agrochemicals and fertilizers, batteries, tires, lubricant oil, fluorescent lamps, electronics, packages in general, among others. There are also specific requirements for hazardous waste classification, inventory and disposal reporting requirements, and waste import and export, transport, storage and disposal. The general rule is that hazardous wastes are those that pose potential risks to the environment and public health. As a general rule, the environmental protection agencies adopt the waste classification of ABNT Technical Standard NBR 10.004, which considers as hazardous the waste that is toxic, corrosive, flammable, and radioactive.

Recently, the Federal government established the obligation of a Transportation Manifest of Industrial Waste (*MTR - Manifesto de Transporte de Resíduos*), a document which must accompany the transportation of industrial waste in the national territory, which is now mandatory for all those waste generators subject to the preparation of a Management Plan on Solid Waste. The generator of the waste will be exclusively responsible for issuing the MTR form for each shipment of waste for final destination. Non-compliance with the MTR

obligations may subject the responsible parties to penalties established by environmental laws (Environmental Ministerial Ordinance No. 280/2020).

The Federal Law also obliges certain manufacturers, retail sellers and service providers to prepare a solid waste management plan to become part of the environmental licensing proceeding of the relevant activity. Please refer to next Item for further details on this Policy.

Businesses operating in Brazil that discharge liquid effluents are subject to federal and state government environmental control. National Environmental Council (“CONAMA”) Resolution No. 357/05, altered by CONAMA Resolution No. 430/11, sets the standards for effluents, their maximum levels of pollutants, and the discharge regime. Governmental water quality standards differ according to water suitability of the water body receiving the discharged effluent. Brazil’s water quality standards cover a broad range of pollutants and substances, including oil, fecal coliforms, dissolved oxygen, and various toxins. The use of specific segments of streams and water bodies are ruled by competent governmental agencies.

08

Guarantee immediate disclosure and dissemination of information in case of imminent threat to public health or the environment, develop and implement early warning system.

The Declaration of Rio de Janeiro (ECO-92) states, in principle 10, that "at the national level, each individual must have adequate access to information relating to the environment available to public authorities, including information on hazardous materials and activities in their communities".

The environmental issues are treated separately by Brazilian legislation. The obligation of disclosure must be evaluated in each issue. For instance, Federal Law No. 12,334/2010 compels the entrepreneur to disclose and disseminate information in case of imminent threat regarding damns. Additionally, CONAMA's Resolution No. 420/2009 provides the disclosure obligation when any kind of contamination with risk is detected. In addition, depending on state and municipal rules, companies may be required to disclose to the local environmental authorities relevant information in case of accidents, leakages or serious environmental risks. In the State of São Paulo, disclosure is mandatory if contamination is suspected (State Law No. 13,577/2009).

09

Publish and disseminate national report on the state of the environment, at intervals no longer than 5 years.

Monitoring activities and corresponding reports by the private sector are usually included in the environmental permits issued by the environmental authorities, depending on the applicable federal, state or local law.

10

Encourage independent environmental performance reviews evaluating efficacy, effectiveness and progress of national environmental policies in fulfillment of national and international commitments.

Parallel to voluntary initiatives on environmental auditing, the Federal Government and several States provide for rules on mandatory auditing in some industry sectors. Federal CONAMA's Resolution No. 306/02 (altered by Resolution No. 381/06) establishes minimum requirements for environmental audits. Also, Federal Law No. 11,284/06, which established proceedings for the management of public forests by private companies, elected forest audits as an important instrument to guarantee the sustainable use of concession areas. According to the law, all concessions must be subject to independent forest audits which will be carried out at least every three (3) years and supported by the assignee.

At state level, Rio de Janeiro initiated this legislative approach in 1991, followed by Minas Gerais, Espírito Santo, São Paulo and Paraná. The Rio de Janeiro and the São Paulo laws require periodic environmental auditing of pollution control systems and of activities which may cause potential harm to the environment. Other States have also adopted similar legislation. Major cities have also included environmental auditing mandates as part of the local environmental requirements (e.g., Santos - SP and Vitória - ES).

11

Ensure consumers and users have official relevant and clear information on the environmental qualities of goods.

The Consumer Defense Code (Federal Law No. 8,078/1990 - "CDC") determines the National Policy for Consumer Relations in its Article 4. One of the mentioned objectives of the policy is the promotion of actions aimed at the financial and environmental education of consumers. Article 6 determines that "*consumers must receive adequate and clear information about different products and services, with correct specification of quantity, characteristics, composition, quality, price and taxes, as well as the risks presented*".

12

Promote access to environmental information in possession of private entities and encourage public and private companies to prepare sustainability reports.

CONAMA's Resolution No. 01/197 establishes that the environmental impact assessment must be available to people's consulting before public hearings, promoting, therefore, access to environmental information. As to sustainability reports, the Federal Law No. 6,404/1976 compels stock companies to publicize information regarding its performance, without mentioning sustainability as a requirement. However, National Central Bank and Security and Exchange Commission are reevaluating the subject. It is expected that the new rules will regulate the ESG disclosure requirements.

13

Guarantee mechanisms for public participation in decision-making processes, revisions, re-examinations or updates with respect to projects, activities and other processes for granting environmental permits that have or may have significant impact on the environment or when they may affect health.

The Brazilian government, represented by IBAMA, is concerned with the society's participation in public hearings on the discussion of large projects with an environmental

impact. During those hearings, participants can ask questions about the project and the licensing process. If technically relevant, their suggestions are incorporated into the environmental licensing process. (CONAMA's Resolution No. 09/1987).

When traditional communities, indigenous and tribal peoples are involved, the ILO Convention No. 169 must be followed. The hearings must be done before the environmental impact assessment. People should be involved in the decision-making, participating in all the process, including the choice of the location. These consultations must be undertaken with the objective of achieving an agreement regarding environmental issues.

14

Make efforts to identify the public directly affected by the above mentioned decision making processes, and promote specific actions to facilitate their participation.

During the public hearings participants can ask questions about the project and the licensing process. If technically relevant, their suggestions are incorporated into the environmental licensing process. The process is even more participative if those environmental issues concern to indigenous, tribal or traditional peoples. (CONAMA's Resolution No. 09/1987).

15

Make public the following minimum necessary information related to the above mentioned decision-making processes: (a) description of the area of influence and physical and technical characteristics of the proposed project or activity; (b) description of the main environmental impacts of the project or activity and, as appropriate, the cumulative environmental impact; (c) description of the measures foreseen with respect to those impacts; (d) a summary of (a), (b) and (c) herein in comprehensible, non-technical language; (e) public reports and opinions of the involved entities addressed to the public authority related to the project or activity under consideration; (f) description of the available technologies to be used and alternative locations for executing the project or activity subject to assessment, when the information is available; and (g) actions taken to monitor the implementation and results of environmental impact assessment measures.

CONAMA's Resolution No. 01/197 establishes that the environmental impact assessment must be available to people's consulting before public hearings, promoting, therefore, access to environmental information. Nevertheless, all the information listed above is analyzed as part of the environmental licensing process, which is considered public information and must be made available if anyone requests it.

16

Promote the right to public participation in environmental decision-making processes with respect to environmental matters of public interest such as land-use planning, policies, strategies, plans, programmes, rules and regulations, which have or may have significant impact on the environment.

IBAMA is concerned with the society's participation in public hearings on the discussion of large projects with an environmental impact. During those hearings, participants can ask questions about the project and the licensing process. If technically relevant, their suggestions are incorporated into the environmental licensing process. The process is even

more participative if those environmental issues concern to indigenous, tribal or traditional peoples. In that case, instead of a hearing, it is promoted a consultancy to the people. (CONAMA's Resolution No. 09/1987 and ILO Convention No. 169).

17

Define procedure and mechanisms that support the right to public participation in above mentioned decision-making processes, from early stages until decision is made.

CONAMA's Resolution No. 09/1987 provides for the obligation of public hearings in the environmental licensing process. ILO Convention No. 169 provides for the obligation of consultations to indigenous, tribal or traditional peoples.

18

With regards to above mentioned decision-making processes, guarantee public is informed, as a minimum, of (a) the nature of the environmental decision, (b) the authority responsible for making the decision and other authorities or bodies involved, (c) procedure for public participation, (d) other public authorities where additional information can be requested and procedure for such request.

IBAMA is concerned with the society's participation in public hearings on the discussion of large projects with an environmental impact. During those hearings, participants can ask questions about the project and the licensing process. If technically relevant, their suggestions are incorporated into the environmental licensing process. The process is even more participative if those environmental issues concern to indigenous, tribal or traditional peoples. In that case, instead of a hearing, it is promoted a consultancy to the people. Those elements are defined by CONAMA Resolution No. 01/1986; 09/1987 and ILO Convention No. 169.

19

Provide the means to facilitate understanding and participation of directly affected public with primary language that is different from official language

ILO Convention No. 169 establishes the obligation to consult indigenous, tribal or traditional peoples, including to facilitate understanding and participation in case those people do not speak Portuguese.

20

Encourage establishment of appropriate spaces for consultation in which various groups and sectors are able to participate.

IBAMA is concerned with the society's participation in public hearings on the discussion of large projects with an environmental impact. During those hearings, participants can ask questions about the project and the licensing process. If technically relevant, their suggestions are incorporated into the environmental licensing process. The process is even more participative if those environmental issues concern to indigenous, tribal or traditional peoples. In that case, instead of a hearing, it is promoted a consultancy to the people.

21

Guarantee domestic legislation and international obligations in relation to the rights of indigenous peoples and local communities are observed.

The Brazilian Federal Constitution covers the rights of the indigenous people in a specific chapter. The governmental indigenous protection agency is the National Indigenous Foundation (FUNAI), created by Federal Law No. 5,371/1967. FUNAI is responsible for promoting studies on identification, delimitation, demarcation, land title regularization and registration of lands traditionally occupied by indigenous people, in addition to monitoring and inspecting indigenous lands and also coordinating and implementing protection policies for isolated indigenous communities.

In addition, ILO Convention No. 169 was ratified by Federal Decree No. 10,088/2019.

Access to justice in environmental matters

01 Ensure domestic legislation guarantees substantive and procedural due process.

The Brazilian legislation, represented by the civil and criminal procedural codes, provides the substantive and procedural due process of law principle. Article 5 of the Federal Constitution also establishes that: *LIV – no one shall be deprived of freedom or property without due process of law; LV – parties in judicial or administrative proceedings and defendants in general are ensured an adversary system and a full defense, with the means and resources inherent therein;*

02 In addition and support of due process, have (a) competent State entities with access to expertise in environmental matters; (b) effective, timely, public, transparent and impartial procedures that are not prohibitively expensive; (c) broad active legal standing in defense of the environment; (d) the possibility of ordering precautionary and interim measures, inter alia, to prevent, halt, mitigate or rehabilitate damage to the environment; (e) measures to facilitate the production of evidence of environmental damage such as the reversal of the burden of proof and the dynamic burden of proof; (f) mechanisms to execute and enforce judicial and administrative decisions in a timely manner; and (g) mechanisms for redress

Federal and State District Attorneys, the Public Defendant’s Office, Environmental Protection Agencies, as well as Brazilian nongovernmental organizations (NGOs) registered with public record offices have standing orders to sue for environmental damages in public civil lawsuits (similar to US class actions). Public civil lawsuits are regulated by Federal Law Nos. 7,347/85 and No. 8,078/90. Individuals are not entitled to sue under Federal Law No. 7,347/85, but they may sue a Popular Action, regulated by the Federal Law No. 4,717/1965. They may also sue to recover personal damages under Brazilian nuisance and tort laws. In the event of environmental damage, administrative and criminal sanctions, as well as civil liability (for the damages caused to third parties) may apply. Environmental civil liability in Brazil is considered strict and joint (i.e., each individual party is wholly liable for all parties’ liabilities) and strictly connected with the environmental damage repair. The obligations that could be imposed may vary in each case and depend on the nature of the damage. In this sense, three categories of damage repair may be applied: (i) repair of the damage itself; (ii) environmental compensation; and (iii) indemnity. In general,

administrative penalties at the federal level are established by Federal Decree No. 6,514/08, which regulates Federal Law No. 9,605/98 (“Environmental Crimes Law”). Federal Law No. 9,605/98 establishes criminal and administrative liability for damage to the environment. The law imposes severe criminal sanctions on individuals and legal entities that contribute to environmental damage, including officers, controllers, management boards, managers and employees of said legal entities

03

Establish (a) measures to minimize or eliminate barriers to the exercise of the right of access to justice; (b) means to publicize the right of access to justice and the procedures to ensure its effectiveness; (c) mechanisms to systematize and disseminate judicial and administrative decisions; and (d) the use of interpretation or translation of languages other than the official languages.

Item XXXV of art. 5 of the Federal Constitution of Brazil ensures that jurisdiction or access to justice cannot be waived, defining that the law shall not exclude from the appreciation of the Judiciary any lesion or threat to the right. The Civil Procedure Code in art. 346 caput, included an identical rule, the code also provides free access to justice for the underprivileged, and ensures free legal assistance by the public defender's office.

04

Establish support mechanisms, including free technical and legal assistance with the objective to meet the needs of persons or groups in vulnerable situations.

The Federal Constitution establishes that the country is responsible for providing full legal assistance, free of charge, to those who can prove they do not have sufficient resources. The state agency responsible for this service is the public defendant's office, present in every state of Brazil, ensuring access to justice. The Public Defender's Office has the legal prerogative of filing public civil actions for the collective defense of vulnerable citizens. This instrument can be used in several areas of Law - such as Housing, Urban Planning, Health and Environment. The law also provides for the Public Defender's Office to promote terms of adjustment of conduct / consent agreements.

05

Ensure judicial and administrative decisions adopted in environmental matters are in writing.

Brazilian legislation is quite evolved, ruled by the Brazilian procedural code (Federal Law No. 13.105) that provides in its art. 205 that the decisions must be written and signed by the judge.

06

Promote alternative dispute resolution mechanisms to allow such disputes are prevented or resolved.

Recently, Federal Decree No. 9,760/2019 instituted the environmental conciliation hearing, which allows the defendant to negotiate with the public authorities about a possible discount on the amount of the imposed fine or the conversion of the fine into environmental preservation services, unless the environmental damages result in human deaths.

Human rights defenders in environmental matters	
01	<p>Guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters.</p> <p>Brazil has adopted measures for the protection of the rights of human rights defenders in environmental matters, listed below the international instruments for the protection already ratified by Brazil: Universal Declaration of Human Rights (1948); Declaration on the Right to Development (1986); Vienna Declaration and Program of Action (1993); Declaration of Beijing (1995); American Declaration of the Rights and Duties of Man (1948); Precepts of the Charter of the United Nations (1945); Convention against Genocide (1949); Convention relating to the Status of Refugees (1951); Protocol relating to the Status of Refugees (1966); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social, and Cultural Rights (1966); Convention on the Elimination of All Forms of Racial Discrimination (1968); Convention on the Elimination of All Forms of Discrimination Against Women (1984); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); American Convention on Human Rights (1969); Inter-American Convention to Prevent and Punish Torture (1985); Indigenous and Tribal Peoples Convention (1989); Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (1994)</p>
02	<p>Recognize, protect and promote rights and ability to access such rights of human rights defenders.</p> <p>The Federal and State District Attorney Office has specific Prosecutor's Offices known as Federal/State Prosecutor for Citizens' Rights (PFDC), whose specific focus is the promotion of citizenship and human dignity in defense of constitutional rights.</p> <p>Federal Decree No. 9,571/2018 establishes guidelines for companies to develop their own human rights policies. The DA's Office, especially in States that are historically more susceptible to human rights violation, is looking into companies in order to avoid any human rights violations, such as slave and child labor.</p>
03	<p>Prevent, investigate and punish attacks, threats or intimidations directed to human rights defenders.</p>
Respos e	<p>At the federal level, the Ministry of Women, Family and Human Rights is the agency responsible for defending human and minority rights in Brazil. There are also state councils for the protection of human rights defenders. In the State of Pará—where the highest number of deaths of environmental defenders occurs—there is a specific Protection Program, created by State Law No. 8444/2016, which offers protection to Human Rights Defenders (individuals who exercise, alone or as part of a group, organization or social movement activities toward the promotion, protection and defense of human rights), including</p>

indigenous people, threatened with death. There are approximately 58 individuals currently protected under this State Law.

Compliance and implementation of the Escazú Agreement

01 Commit to provide resources for national activities needed to fulfill the obligations defined by the agreement.

Brazil has not ratified the Agreement yet. The agreement was signed during Michel Temer's presidential term in 2018, but has not been sent to Congress for ratification. The agreement is still in the process of internal processing prior to being sent to the legislative branch by Brazilian president, Mr. Jair Bolsonaro. The text was sent to the environment and agricultural ministries for analysis. It is not yet known if these ministries approved the agreement or which comments were sent to the Civil House, the body responsible for presenting it to Congress. Considering that the Agreement has not been ratified, Brazil has no obligation to adopt its provisions.

02 Cooperate with other parties to the agreement with the objective to strengthen national capabilities to implement the agreement.

Considering that Brazil has not ratified the Agreement, it is only subject to the international obligations deriving from the Treaties to which it is a party and the Universal Declaration. Other examples are the American Convention on Human Rights, the Rio Declaration on Environment and Development, the Paris Agreement, among other Treaties and Declarations that promote a standardization of commitments of the States in environmental matters.

03 Encourage partnerships with non-parties to the agreement (states from others regions, private organizations, civil society organizations, etc.).

Brazil encourages agreements and initiatives that aim to protect the environment. Nowadays, the most famous is the Amazon Fund, a REDD+ mechanism created to raise donations for non-reimbursable investments in efforts to prevent, monitor and combat deforestation, as well as to promote the preservation and sustainable use in the Brazilian Amazon. Furthermore, there are hundreds of NGOs and environmental associations with projects aimed at preservation and sustainable development.

04 Recognize that regional cooperation and information sharing shall be promoted in relation to all aspects of illicit activities against the environment

The Agreement has not been ratified, so there is no uniform and firm pronouncement from Brazil expressly stating an intention of international collaboration with respect to illegal activities against the environment.

Other questions regarding topics not defined as obligations of the parties:

01	<p>Has the country taken steps to engage with the virtual and universally available clearing house Observatory on Principle 10?</p>
	<p>Yes, Brazil has established a legal framework that guarantees the access rights established in Principle 10 of the Rio Declaration on Environment and Development. According to information gathered in the Observatory of Principle 10 in Latin America and the Caribbean by the Economic Commission for Latin America and the Caribbean (ECLAC), the Brazilian government provides an environmental database and ensures popular participation through public hearings to discuss important environmental projects at the federal level.</p>
02	<p>Has the country taken steps to make contributions to the Voluntary Fund created by Article 14 of the Escazú Agreement?</p>
	<p>Brazil has not ratified the Agreement and therefore has not taken any actions to contribute to the Voluntary Contributions Fund created by the Agreement.</p>
03	<p>Has the country taken steps to engage in the Conference of the Parties to the Escazú Agreement?</p>
	<p>Yes, Brazil was present at the second meeting of signatory countries held in December 2020 to discuss the sustainable development of the region and defend fundamental rights.</p>