

Antigua and Barbuda¹

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean – Escazú Agreement, is a multilateral accord that guarantees rights of participation, information, and access to justice on environmental matters. It also requires states to protect human rights and environmental defenders. This report has been prepared by the Cyrus R. Vance Center for International Justice, providing an overview of the consistency of the national legislation with the Escazú Agreement.

1. Legal Basis

The source for the analysis below are the following laws²:

- a) Constitution of Antigua and Barbuda of 1981³;
- b) Environmental Protection and Management Act of 2015⁴;
- c) Environmental Protection and Management Act of 2019⁵;
- d) Freedom of Information Act of 2004⁶;
- e) Physical Planning Act of 2003⁷;
- f) Legal Profession Act of 2008⁸;
- g) The Ombudsman Act of 1994⁹;
- h) Arbitration Act of 1975¹⁰;
- i) Barbuda Land Act of 2007¹¹;
- j) Barbuda Land (Amendment) Act of 2017¹².

2. Legal Analysis

¹ This report was prepared by the Cyrus R. Vance Center for International Justice (Vance Center) in the absence of a lawyer available in Antigua and Barbuda able to prepare the report. The Vance Center is not qualified to practice law in Antigua and Barbuda, so that should be taken into consideration when reviewing this report.

² Please manually copy the link to the text of the legislation to be accessed and paste it on your browser. The function that redirects from the present report to access the online link is faulty.

³ <http://laws.gov.ag/wp-content/uploads/2018/08/cap-23.pdf>

⁴ <http://laws.gov.ag/wp-content/uploads/2019/02/a2015-11.pdf>

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<http://laws.gov.ag/wp-content/uploads/2019/08/No.-10-of-2019-Environmental-Protection-and-Management-Bill-2019.pdf>

⁶ <http://laws.gov.ag/wp-content/uploads/2018/08/a2004-19.pdf>

⁷ <http://laws.gov.ag/wp-content/uploads/2018/08/a2003-6.pdf>

⁸ <http://laws.gov.ag/wp-content/uploads/2019/02/a2008-22.pdf>

⁹ <http://laws.gov.ag/wp-content/uploads/2018/08/a1994-5.pdf>

¹⁰ <http://laws.gov.ag/wp-content/uploads/2018/08/cap-33.pdf>

¹¹ <http://laws.gov.ag/wp-content/uploads/2019/02/a2007-23.pdf>

¹²

<http://laws.gov.ag/wp-content/uploads/2019/03/No.-41-of-2017-BARBUDA-LAND-AMENDMENT-ACT2c-2017-For-As sent-1.pdf>

The goal of this report is to evaluate how the general legal framework in Antigua and Barbuda corresponds to the Escazú agreement and provide a broad analysis of the current tools that are available to support the agreement.

i. Implementation of the Escazú Agreement in Antigua and Barbuda

The Escazú Agreement was signed on September 27, 2018 and ratified by Antigua and Barbuda on April 3, 2020. On December 9 and 10, 2020, the country hosted the second meeting of the signatory countries. Antigua was repeatedly recognized for its efforts to implement and advance the treaty, which is reflected in the Report of the Second Meeting of the Countries Signatory to the Escazú Agreement¹³.

According to the 2021 State of the Environment of Antigua and Barbuda and Redonda¹⁴ report, prepared by the Department of Environment's Monitoring, Evaluation and Data Management Unit (DMU), the country has taken the following implementation measures: approve the Environmental Protection and Management Act (EPMA) of 2019 that substituted the 2015 law, and prepare the Antigua and Barbuda Climate Change Country Programme 2020¹⁵.

The EPMA of 2019, as its 2015 predecessor, states that implementation of the act shall be based on the principles of (i) public participation in and transparency of the decision making process regarding environmental protection; (ii) public awareness regarding the state of the environment; and (iii) access to justice in environmental matters. Part XIV of the law determines what is considered an offense to the act and defines penalties for such violations. Schedule II, Part C of the act lists carbon dioxide, methane and other greenhouse gases as pollutants. This means that greenhouse gas emissions shall be controlled by the Department of Environment and, according to Part V of the act, should be subject to a pollution control permit.

The EPMA of 2019 also reaffirms the duty of the Department of Environment to create an environmental information system, to establish and maintain information in a centralized manner –referred to as the National Environmental Data and Information System (NEIS)¹⁶ –, and a Geographic Information Systems Unit that functions as a natural resources inventory –referred to as the National Resources Inventory (NRI)¹⁷. Other important provisions of the act will be analyzed in section (iv) below.

Additional actions of the government, although not closely connected to the implementation of the Escazú Agreement, indicate that the country is committed to fulfill its international obligations related to increasing access to environmental information and improving access to environmental justice. The 2021 Voluntary National Review of Antigua and Barbuda¹⁸ reinforces the country's intentions to accomplish its international commitments and advance the global environmental agenda. This document analyzes the country's implementation of the Sustainable Development Goals (SDGs), lists programs that support the SDGs, provides strategies and actions to achieve the goals, and classifies the SDGs targets as achieved, in fair progress, limited or no progress, moving away from the target, no data available or insufficient data.

¹³ Available at https://acuerdodeescazu.cepal.org/s2/sites/acuerdodeescazu2020/files/21-00078_esz.2_report.pdf

¹⁴ Available at <https://environment.gov.ag/assets/uploads/attachments/5c8dc-final-soe-report-2021-compressed.pdf>

¹⁵ Available at

<https://www.greenclimate.fund/sites/default/files/document/country-programme-antigua-and-barbuda.pdf>

¹⁶ <https://neis.environment.gov.ag/>

¹⁷ <https://nri.environment.gov.ag/>

¹⁸ Available at

https://sustainabledevelopment.un.org/content/documents/279502021_VNR_Report_Antigua_and_Barbuda.pdf

In 2021, Antigua and Barbuda published the Updated Nationally Determined Contribution for the period 2020-2030¹⁹. This update to the 2015 Intentionally Nationally Determined Contribution (INDC)²⁰ is an ambitious addition to the previous pledge. Antigua commits to reducing its greenhouse gas emissions, setting more ambitious targets, maintaining targets not met, and defining implementable targets and plans to achieve the desired results.

ii. The right to a healthy environment

Although the right to a healthy environment is not recognized by the constitution of Antigua and Barbuda, the protection of the health of human beings, animals and plants may be grounds for the restriction of the constitutional right to the enjoyment of property²¹

Lower hierarchy legislation provides for the protection of the environment, like the Physical Planning Act of 2003²² and the Environmental Protection and Management Act of 2019 (EPMA)²³, among others.

¹⁹ Available at

<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Antigua%20and%20Barbuda%20First/ATG%20-%20UNFCCC%20NDC%20-%202021-09-02%20-%20Final.pdf>

²⁰ Available at

<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Antigua%20and%20Barbuda%20First/Antigua%20and%20Barbuda%20First.pdf>

²¹ According to section 9 (1) and 9 (4)(a)(v):

“9 1. No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time.

9.(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right – (...)

(v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants.”

²² Section 3. The objects and purposes of this Act are to -

(a) facilitate a continuous improvement in the quality of life of every person in Antigua and Barbuda;

(b) provide for the orderly, efficient and equitable allocation and development of the resources of Antigua and Barbuda, taking account of all relevant social economic and environmental factors, so as to ensure that sustainable use is made of land in the interests of all the people of Antigua and Barbuda;

(c) maintain and improve the quality of the physical environment within which human settlements are situated in Antigua and Barbuda;

(d) provide for the orderly sub-division of land and the provision of services in relation thereto;

(e) secure the health, safety, welfare and convenience of persons 'in or about buildings and of others who may be affected by buildings or matters connected with buildings;

(f) protect and conserve the cultural heritage of Antigua and Barbuda as it finds expression in the natural and the built environment;

(g) to foster awareness that all persons and organisations owning, occupying and developing land have a duty to use that land with due regard for the wider interests, both present and future, of society.

²³ Section 3. Objects of the Act

(1) The objects of this Act are to —

(a) establish an integrated system for the sound and sustainable management of the environment for the benefit of present and future generations;

(b) provide preventive and remedial measures for the control and mitigation of all forms of environmental degradation or pollution including the management of hazardous substances and wastes for the purposes of protecting human health and maintaining the quality of the environment;

(c) facilitate the implementation of obligations assumed by Antigua and Barbuda under various multilateral environmental agreement;

iii. Environmental institutions

The first environmental body of Antigua was the Historical, Conservation and Environmental Commission (HCEC), created in 1989, and the predecessor of the Environment Division (ED), which was created in 1998.

The Environment Division was created to be the agency responsible for international representation on key environmental issues and for implementing and reporting on how the country met its treaty obligations to the Rio Conventions.

The now repealed Environment Protection and Management Act (EPMA) of 2015 provided that the former Environment Division would become the Department of Environment (DoE) as part of the Ministry of Health, Wellness and the Environment, with legislative authority and the mandate to apply and enforce the EPMA, manage environmental policy, undertake the conservation, protection and management of the fauna and flora of Antigua.

The Department of Environment (DOE) is the primary environmental institution of Antigua and Barbuda, overseeing all environmental matters in the country. The DOE has several programs for environmental protection and has developed partnerships with multiple organizations for funding, production of reports and development of projects.

iv. Access to environmental information

The Freedom of Information Act of 2004 is the primary source of rules for access to information held by public authorities. Section 6 (1) of the act introduces the right to access to information:

Within the broad objectives of section 12 of the Constitution, every person has the right, and is free, to receive and to disseminate information and ideas without interference. The paramount purpose of this Act is to give maximum effect to that right in respect of information

(d) make provision for the sustainable financing of the management of the environment and conservation of natural resources;

(e) promote and encourage among all persons a better understanding and appreciation of the environment; and

(f) enhance the legal, regulatory and institutional framework for environmental management.

(...)

(3) The implementation of this Act shall be based on the following principles:

(a) sustainable development;

(b) prevention and reduction of risk to human health;

(c) priority of pollution prevention over subsequent elimination of pollution damage;

(d) public participation in and transparency of the decision making process regarding environmental protection;

(e) public awareness regarding the state of the environment;

(f) polluter pays for damage caused to the environment;

(g) conservation, development and protection of ecosystems and the biological diversity inherent therein;

(h) restoration and improvement of environmental quality in polluted and disturbed areas;

(i) prevention of pollution and of other damage and adverse impact on clean areas of the environment;

(j) integration of environmental protection policy into the sectoral and regional economic and social development policies;

(k) access to justice in environmental matters.

(l) that decisions pertaining to the environment are made in an integrated manner in which the Department of Environment, in collaboration with appropriate authorities, non-governmental organizations and other persons, determine priorities and facilitates coordination among governmental entities to effectively harmonize activities and where necessary, take action to protect, enhance and conserve the environment;

held by public authorities (subject only to such exceptions as are reasonably justifiable in a democratic society or specifically prescribed by law) and to enhance good governance through knowledge, transparency and accountability.

In section 9, the act determines that every public authority shall designate an officer to be the information officer, responsible for assisting people seeking to obtain information. Sections 17, 18, and 19 discuss the procedure to obtain information from a public authority, including technical assistance to people unable to formulate a written request. The public authority may charge a fee, which must be reasonable and that cannot exceed the cost of searching for, preparing and communicating the requested information.

The EPMA of 2019 has also defined mechanisms for public access to information that complements the provisions of the Freedom of Information Act of 2004. The act determined that the Department of Environment shall create an Environmental Information Management and Advisory System (EIMAS) to centralize all environmental information of Antigua. The National Environmental Data & Information System (NEIS), mentioned in section (i) above, is the unfolding of the system conceptualized by EPMA of 2015 and EPMA of 2019. In theory, the NEIS should collect all environmental data, provide analysis of the data and make all information accessible online to the public. On the other hand, accessing the NEIS is only possible by login, and how to sign up for the system is not clear. Alternatively, the Department of Environment website hosts EIA submissions²⁴, although it is unclear if the tool is complete and up to date.

The EPMA of 2019 has also determined that a Natural Registry Inventory shall be created, hence the previously mentioned Natural Resources Inventory (NRI) was launched in the end of 2021. This user-friendly online platform was developed to manage and publish geospatial data, allowing users to share data and create interactive maps. Although anyone can register in the platform, the account needs to be approved by the administrators, which could restrict access to information.

A valuable resource to understand both the NEIS and NRI systems is the short documentary available online²⁵, which explains how the systems were created, the objectives, type of information held and how it should improve access to environmental information and environmental management.

The EPMA determines that a proposed policy, plan, or program or the review of existing policy, plan, or program which may have a significant negative impact on the environment will be subject to the environmental impact assessment process, provided in part VI of the act. Part VII of the act establishes rules for the environmental management and monitoring of commercial and industrial facilities that can significantly impact human health and the environment. Section 48(4) dictates the minimum information that the Environmental Management Plan should contain, which is aligned with the provisions of the Escazú Agreement. Self-monitoring and audit are also part of the environmental management and monitoring process.

Although the EPMA of 2019 defined rules for public participation in decision-making processes, section 120 determines that public comment and participation are only mandatory when a provision of the act specifically requires public comments and participation. It should be highlighted that the EPMA 2019 did not include either the environmental impact assessment process or the environmental management

²⁴ <https://www.environment.gov.ag/eia-submissions>

²⁵ Available at <https://www.youtube.com/watch?v=R21Hxrqui3U>

plan analysis as actions that require public comments or participation. Even if they did require, a public hearing would still be optional, at the discretion of the Director. Antigua and Barbuda is also not part of the Indigenous and Tribal Peoples Convention of 1989 (ILO 169).

v. Access to justice in environmental matters

Antigua and Barbuda provides for the constitutional guarantees of due process.

The Ministry of Justice and Legal Affairs has a Legal Aid and Advice Center – LAAC²⁶ that provides legal assistance to vulnerable people. However, according to the LAAC website, the matters for which assistance is available do not seem to include environmental issues. Another possibility to access legal assistance is through programs of the Bar Association. According to section 5(g) of the Legal Profession Act of 2008, one of the purposes of the Bar Association is to “provide independently or with the government a legal aid programme to qualifying members of the public.”

Alternatively, one of the functions of the Ombudsman “is to investigate any complaint relating to any decision or recommendation made or any act done or omitted by any officer of the Government or Statutory body in any case in which a member of the public claims to be aggrieved, or appears to the Ombudsman to have sustained injustice as a result of the exercise of the administrative function of that officer or body.”²⁷ Therefore, bringing environmental disputes to the Ombudsman may be a viable route to access environmental justice, since when environmental damages occur, government omission may be involved.

Arbitration is a mechanism for alternative dispute resolution, and it is ruled by the Arbitration Act of 1975.

vi. Protection of human rights and environmental defenders

We could not find positive evidence that Antigua and Barbuda has taken steps to protect human rights and environmental defenders.

The Barbuda Land Act of 2007²⁸ determined that land ownership is prohibited in the island, the citizens of Barbuda own the communal land, and the Council shall obtain consent from a majority of the people of Barbuda before the Council grants a lease of land for major developments in the island. This rule was changed by the Barbuda Land (Amendment) Act of 2017²⁹, which repealed the entire Part II of the act that defined rules for ownership of land in Barbuda, cancelling the communal ownership of land in the island, removing the requirement of mandatory consent of the people of Barbuda before granting a lease to a major development, among other changes. This modification has sparked conflict after the government granted a 99 year lease on a piece of land that is set to accommodate a luxury resort, golf court, yacht marina, and private homes³⁰. This project has been discussed internally, with multiple judicial disputes due to human rights violations, the negative impacts of the development on the

²⁶ https://legalaffairs.gov.ag/detail_page.php?page=legal_aid.php

²⁷ Section 5(1) of the Ombudsman Act of 1994.

²⁸ <http://laws.gov.ag/wp-content/uploads/2019/02/a2007-23.pdf>

²⁹

<http://laws.gov.ag/wp-content/uploads/2019/03/No.-41-of-2017-BARBUDA-LAND-AMENDMENT-ACT2c-2017-For-As sent-1.pdf>

³⁰ Available at <https://www.theguardian.com/world/2020/dec/14/barbuda-luxury-resort-project-dispute>

environment and the lives of vulnerable people of Barbuda, and possible irregularities in the environmental permit proceeding. The Office of the High Commissioner for Human Rights has become involved in the controversy and expressed concerns with the development and apparent human rights and environmental violations by means of a letter published in June 2021³¹.

The 2021 report of Global Witness did not mention Antigua and Barbuda.

³¹ Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=26334>