Summary of Colombia Report prepared by Baker McKenzie Colombia
(Last Updated September 2021)

1. Implementation of the agreement in Colombia

- Colombia signed the Escazú Agreement on December 11, 2019. Although the treaty has not been ratified yet, the Colombian government announced that it will submit a new bill for the Escazú Agreement.

2. The right to a healthy environment

- The right to a healthy environment is guaranteed by the Colombian constitution and has been the subject of case-law development. In one of the most relevant cases in this regard, the Constitutional Court granted the constitutional action arguing that, if the omission of companies in charge of providing a public utility service results in the violation of the right to health and to a clean environment, these rights prevail and must be protected.
- The Colombian legal system establishes legal mechanisms such as the popular action (*acción popular*) and protection action (*acción de tutela*) to enforce the right to a healthy environment. The Colombian state has the obligation to preserve and protect the environment through the imposition of limits to economic development and freedom of enterprise. These limits are enforced by issuing environmental licenses, permits, and authorizations for the use and exploitation of natural resources.

3. Access to environmental information

- Colombian legislation establishes that all environmental information is public unless it is protected.
- According to the regulation applicable to the environmental licensing procedure, the interested party must submit an environmental impact study to obtain the environmental license. In practice, the information that is made available to the public is the legal file and is deemed private or reserved because it contains information considered to be commercial or industrial secrets.
- Colombia has created systems that gather environmental information, but they still present barriers that restrict access to information.
- Colombia created different legal mechanisms to access information, such as (i) the right to present respectful petitions; (ii) intervening parties (terceros intervinientes); (iii) the right to access public environmental files; (iv) public hearings; (v) prior consultation; and (vi) citizen oversight committees (veedurías ciudadanas). All these mechanisms have their own implementation challenges, and the citizen oversight committees appear to be the most successful.
- According to the Environmental Democracy Index of the World Resources Institute (WRI), Colombian law broadly guarantees access to information. However, there is a lack of mechanisms that allow public opinion to be considered in environmental decisions. Notably, the authority confuses participation with a simple process of socialization, which merely provides for communicating to the communities a final decision. In other words, the citizen never feels part of a constructive and democratic process but simply the recipient of a decision.
- Case law on citizen participation in environmental matters has defined a detailed framework for administrative acts to be wide, participatory, deliberative, and efficient.

- Domestic legislation assures that, at the request of the leaders of the communities, the state will disclose the public information in various dialects and other spoken languages and will develop alternative formats comprehensible to those groups. In practice, there are no mechanisms to guarantee that the information is translated into the language of the affected people, which significantly limits the constitutional rights to information and participation.
- There is regulation and case law development on the fundamental right to prior consultation in Colombia. However, the absence of a statutory law establishing a mandatory procedure for Prior Consultation creates obstacles to implementing the right.

4. Access to justice in environmental matters;

- The Colombian legal system has created mechanisms to allow access to justice and includes (i) the class action (acción de grupo), to protect collective rights; (ii) the protection action (acción de tutela), to protect fundamental rights that have been affected by environmental incidents and to enforce the law; and (iii) the popular action (acción popular), when the fact, action or omission only concerns the environment.
- The lack of personnel with environmental technical knowledge at the environmental authorities jeopardizes the protection of the environment when granting environmental permits. In the judicial sphere, judges do not necessarily access the relevant scientific content of environmental matters when making decisions.
- Although it is free to file a case when the party is represented by a public defender, it is not easy to find public defenders and they do not necessarily have the expertise to take on the case. For that reason, people usually go to lawyers to assert their rights in environmental matters, which is very expensive, particularly for those in vulnerable situations. Another restraint to access to justice is the lengthy time authorities take to make decisions when third parties are affected.
- Environmental authorities can impose preventive measures in the event of a threat to health or the environment during the development of a certain activity. These may be imposed *ex officio* when a third party has informed the environmental authority of possible environmental damage.
- Colombia established mechanisms for access to justice, but the country does not have an exclusive judicial system devoted to environmental matters. Therefore, congestion in the judicial system is a barrier to access to justice in environmental matters. Also, decisions are not translated to other spoken languages, and the interested party must pay the costs of the translation.

5. Protection of environmental defenders

- According to the 2020 Global Witness report, 60% of the murders against environmental defenders occurred in Latin America, with Colombia being the country with the most murdered leaders. Hence, it is not possible to state that the existence of a broad domestic regulatory framework is sufficient to effectively protect access to environmental participation rights. The current framework must be accompanied by effective implementation mechanisms.

Appendix 1

With the Escazú Agreement coming into force in April 2021, **WECAN International** seeks advice on whether Antigua and Barbuda, Bolivia, Brazil, Colombia, Ecuador, and Peru's laws are consistent with the Escazú Agreement, and what steps these states have taken to implement the substantive and procedural requirements of the agreement. Antigua and Barbuda, Bolivia and Ecuador have fully ratified the agreement, and Brazil, Colombia, and Peru have signed, but not ratified, the agreement.

The legal research should assess the consistency and implementation of national laws against the Escazú Agreement's five areas of focus:

1. The right to a healthy environment;
2. Access to environmental information;
3. Access to justice in environmental matters;
4. Protection of environmental defenders; and
5. Implementation and compliance mechanisms.

The attached research template should be used to assess states' compliance with, and implementation of, the obligations set forth by the agreement. The analysis should not be limited to whether states have formally passed laws to facilitate the aims of the agreement, but also whether those laws are being implemented and observed in practice.

Additionally, the memorandum should identify:

- Aspects of the agreement that have already been implemented and which could be utilized by land defenders;
- Aspects of the agreement that have not been implemented, and advice on potential avenues for implementation in these areas, such as through strategic litigation or advocacy at the local level (depending on the formal legal status of the agreement in each jurisdiction), or regional action (such as through the Escazú Agreement Conference of Parties).

Template

Does Colombia have domestic legislation creating the following obligations defined in the Escazú Agreement? How is implementation and enforcement of these rules in the country?

Right to a healthy environment	
	Guarantee the right to a healthy environmental in the Constitution
	Applicable law:
	- The right to a healthy environment in Colombia has constitutional status and has been the subject of great case-law development. One of the most relevant cases in this regard, was the constitutional action filed by a group of affected people as a result of the improper management of waste close to the claimant´s neighborhood. The Constitutional Court granted the constitutional action arguing that, if the omission of companies in charge of providing a public utility service (collection of waste) triggers the violation of the right to health and clean environment, these rights prevail and must be protected.[1] Conservation

[1] Constitutional Court, ruling T-257, 1996.

	and protection of the environment are aimed at assuring health and life, as well as availability of environmental services to the future generations. According to article 79 of the Colombian Constitution "All people have the right to enjoy a healthy environment. The law will guarantee community participation in any decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, preserve areas of special ecological importance and promote education to achieve these means."[2] Likewise, Article 8 of the Colombian Constitution establishes that "It is the obligation of the State and the people to protect the cultural and natural wealth of the Nation."[3]
	- Additionally, there are three relevant records in the creation of the Escazú Agreement to understand the effectiveness in the protection of the rights of access to information, participation and environmental justice in Colombia. First, **Colombia is a party to the 1992 Rio Declaration on Environment and Development**, whose principle 10 is the basis of the Escazú Agreement by establishing informed community participation in environmental matters, as an essential element for countries to achieve sustainable development. Second, **the existence of the Aarthus Agreement** as an important reference in terms of protection of environmental participation rights. Finally, the role of national courts in promoting the rights of citizen participation in environmental matters.
	Implementation: For the protection of these rights, the Colombian legal system establishes legal mechanisms such as the popular action (*acción popular*) contained in article 88[4] of the Colombian Constitution, and developed by means of Law 472 of 1998. Even when the affectation includes fundamental rights, people can exercise the mechanism of protection action (*acción de tutela*), developed by means of Decree 2591 of 1991. In Colombia, the State has the obligation to preserve and protect the environment through the imposition of limits to economic development and freedom of enterprise. In Colombia, these limits are enforced through the issuance of environmental licenses, permits and authorizations for the use and exploitation of natural resources.
Right of access to environmental information	
01	Ensure the right to public access to environmental information and define procedure for such access.
	Applicable law: The Colombian government issued the Law of Transparency and the Right to National Public Information -Law 1712 of 2014-, which seeks to regulate the right of access to public information that people have, the procedures to exercise and guarantee the fundamental right as well as the exceptions to the public access of information. This law provides the obligation to proactively publish information, the quality of such information, its availability and means for its publication. It is pointed out that any person can access public information in two ways, on the one hand, by going to the virtual page of the regulated entities (for

[2] Article 79 Colombian Constitution. "*Todas las personas tienen derecho a gozar de un ambiente sano. La ley garantizará la participación de la comunidad en las decisiones que puedan afectarlo. Es deber del Estado proteger la diversidad e integridad del ambiente, conservas las áreas de especial importancia ecológica y fomentar la educación para el logro de estos fines*."

[3] Article 8 Colombian Constitution. "*Es obligación del Estado y de las personas proteger las riquezas culturales y naturales de la Nación*.

[4] Article 88 Colombian Constitution: "La ley regulará las acciones populares para la protección de los derechos e intereses colectivos, relacionados con el patrimonio, el espacio, la seguridad y la salubridad públicos, la moral administrativa, el ambiente, la libre competencia económica y otros de similar naturaleza que se definen en ella."

example, public entities) that must proactively publish a minimum mandatory information in the information systems of the State, and the other is making a request addressed to the obligated state entity. The law establishes that the obliged entities must ensure access to information to the different ethnic and cultural groups of the country and the means of communication will be adapted to help people with disabilities access such information.
In Colombia, environmental information is public, unless it is protected. There are different legal mechanisms to access information, such as:
1. Right to present respectful petitions, which is regulated in Law 1755 of 2015, under which any person can make respectful petitions to the competent environmental authority to obtain information on the environment.
2. Intervening parties (*terceros intervinientes*), figure established in Law 99 of 1993, by means of which, any person, without the need to demonstrate legal or technical interest, may become part of any environmental administrative procedure. This recognition as an "intervening third party" implies that all administrative decisions are notified during the application process, modification or cancellation of an environmental license, permit or authorization.
3. Access to files: In accordance with Article 74 of Law 99 of 1993 and Article 74 of the Political Constitution, anyone has the right to access public environmental files.
4. Public Hearings: In accordance with article 72 of Law 99 of 1993 and Decree 330 of 2007, the environmental authority may be requested to conduct an environmental public hearing in the process of issuing an environmental license, which seeks to generate a space for discussions and information exchange between different interested parties, where it is possible to express or present, prior to the criteria and requirements established in the regulation, different opinions about a specific project and its impacts on the environment and health.
5. Prior Consultation: In accordance with Decree 1076 of 2015, article 76 of Law 99 of 1993, Law 21 of 1991, among others, in the event that a project, work or activity may generate impacts on indigenous communities or afro, there will be room to develop the prior consultation process with such communities.
6. Citizen oversight committees (*veedurías ciudadanas*), regulated in Law 134 of 1994 as a democratic mechanism of participation and representation that allows citizens and community organizations to exercise vigilance over public management.
Implementation: - Law 1712 of 2014 -Law of Transparency and the Right to National Public Information- does not include specific mechanisms or procedures to execute the right to information so it is necessary that Law 1712 of 2014 is regulated in order to establish clearly and explicitly each of the procedures and tools related to the exercise such right, and thus be able to comply with the Escazú Agreement in this matter.
- Regarding the right to present respectful petitions, in practice, the application of this right is limited to formal matters (such as information requests), but not regarding substantive matters that involve an analysis of the assessment of environmental impacts caused by the development of a project.
- In practice, unfortunately, we have seen that the environmental authorities do not approve intervening parties (*terceros intervinientes*) during the execution of the project, work or activity, so that they are aware of the compliance with the obligations derived from the environmental license, as well as any requirement of authority.

	- Regarding access to files, although it is true that environmental regulation has a Comprehensive Online Environmental Procedures Platform (VITAL, acronym in Spanish) through which it centralizes the information, in practice not all the information that exists in the file can be reviewed in the VITAL platform, which implies having to go to the environmental authority to be able to request the physical file for consultation, since online information is not the same as physical information. This constitutes an access barrier to information which must be resolved in case the Escazú Agreement is ratified.
	-One difficulty regarding the right of access to information is the obligation to guarantee the understanding of environmental information, which is usually very technical and complex to understand by the citizens, who do not always have the technical knowledge. In short, if the citizen does not have the possibility to understand the information and analyze it to make it an input for his participation, that right of access to information will not be effective.
	- On environmental issues, we have seen the effectiveness of citizen oversight committees (*veedurías ciudadanas*) in environmental licensing processes in which information is requested on the licensed activity, recommendations are made to environmental authorities and complaints and reports are made and participating in environmental monitoring processes.
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.
	Applicable law: In Colombia, one of the most important participation mechanisms related to the environmental sector is the Prior Consultation, which has become a fundamental right that indigenous people and other ethnic groups have when measures are taken (legislative and administrative) or when projects, works or activities are to be carried out within their territories, and that may affect their cultural, social and economic integrity. The main legal basis for the Prior Consultation is Convention 169 of 1989 of the International Labor Organization, on the rights of indigenous peoples and the responsibilities of governments to protect these rights, which was adopted by Colombia through Law 21 of 1991.
	Implementation: According to the Environmental Democracy Index of the World Resources Institute (WRI) for Colombia in 2015, limitations were identified such as the **lack of** demand on all ministries or authorities to publish information on how to obtain environmental information, and the lack of proactivity of the authorities in promoting public participation or information to the public about existing opportunities for participation. The existing legal instruments require differentiated mechanisms in order to guarantee effective and efficient access to the right to information, public participation in decision-making and access to justice. There are specific rules under which access to environmental information can be facilitated, such as those mentioned in paragraph 1. However, we have seen that in certain circumstances these measures are not effective for people in vulnerable situations, for which we propose the following measures:
	1. That the owners of the projects that can generate impacts on a community, assume a more dynamic and active position, so that they do not act as a taxpayer that is limited to complying with the formalities of the law, but rather mobilize to the places where people in vulnerable situations are and carry out activities and informative workshops in places where

	people in vulnerable situations are. This will prevent people in a vulnerable situation from having to go to the headquarters of the environmental authority to search for information.
	2. That the information given to people in vulnerable situations is clear and easy to understand, so that people can understand the impacts derived from the project, ask questions and discuss the execution of the project in their territory .
	3. That the information is translated into the respective languages of the affected communities.
03	Ensure access to environmental information is provided at no cost, provided for costs of reproduction and delivery, which must be reasonable.
	There are no rules in the legal system that establish that environmental information must be provided free of charge, or at reasonable costs. In this way, and to comply with the Escazú Agreement, we recommend that the owner of the project delivers the physical information to people in a vulnerable situation. This information must be clear, concise and easy to understand.
04	Establish or designate one or more impartial entities or institutions with autonomy and independence to promote transparency in access to environmental information.
	Currently in Colombia there is no entity or institution with autonomy and independence to promote transparency in access to environmental information, which is why the Escazú Agreement would establish a great challenge in this area.
05	Guarantee that competent authorities generate, collect, publicize and disseminate environmental information relevant to their functions.
	According to the Law on Transparency and Access to Public Information, the authorities have a duty of care over the information that is requested by citizens. However, there is a flaw with respect to this duty, which is evident in the way in which the environmental authorities usually organize the files. What is usually released to the public is the legal file, since most environmental authorities consider that the information in the technical file is private or reserved because it contains information that may be part of the petitioner's commercial or industrial secret. It is important to specify that there is no standard that makes such distinction, so the environmental authority must guarantee access to all information on the respective project, work or activity. In fact, this was recognized by the Colombian State Council (Fourth Section of February 20, 2017, Judge Stella Jeanette Carvajal), in which it was pointed out that information of a technical nature, which includes the Environmental Impact Studies, may be subject to consultation by third parties as part of the guarantee of citizen participation.
06	Create one or more environmental information systems.
	Applicable law: Decree 1076 of 2015 established the duty to have a Comprehensive Online Environmental Procedures Platform (VITAL, for its initials in Spanish) by means of which all environmental information related to environmental licenses, permits and authorizations granted is centralized.
	Implementation: In practice, the information that exists in the file CANNOT be viewed in its entirety in the VITAL platform, which implies a trip to the environmental entity in order to be able to review the complete file, since the online information is not the same as the information physical file, which constitutes a barrier to information.

07	Create materials, waste and pollutant release and transfer register.
	Applicable law: Law 99 of 1993 establishes the Environmental Information System for Colombia, which is the Integrated Set of Actors, policies, processes, technologies involved in the management of environmental information in the country, to facilitate the generation of knowledge, decision making and education, related with air, water and soil quality.
	Implementation: However, when entering the website to find information related to air, water or soil quality, the access links do not work properly, which does not allow access to that information.
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.
	Environmental entities, whether of the national order such as the Ministry of Environment and Sustainable Development, or local environmental authorities, issue environmental information that may be relevant for the environment and health. However, this information - which is most of the time transferred by digital means - often does not reach places where there is a vulnerable population due to lack of connectivity.
09	Publish and disseminate national report on the state of the environment, at intervals no longer than 5 years.
	Applicable law: In accordance with Law 99 of 1993, in Colombia there is the Environmental Information System -SIAC, acronym in Spanish-, indicated in section 7 above, by virtue of which information regarding the state of water, air, biodiversity and soil resources and its use can be consulted.
	Implementation: A collaboration agreement is needed between the public, social and private sectors to be able to facilitate the updating of the SIAC in terms of environmental information, and to be able to provide clear and reliable information, as well as the production of comprehensive reports.
10	Encourage independent environmental performance reviews evaluating efficacy, effectiveness and progress of national environmental policies in fulfillment of national and international commitments.
	In Colombia, the Ministry of the Environment issues guidelines for certain activities that generate impacts, in such a way that the goals established therein are monitored. Guides have been issued on handling special waste, transportation and handling of hazardous substances, and some policies such as the handling of hazardous substances and waste. However, these guides are not updated in reasonable periods of time and do not have the participation of different actors.
11	Ensure consumers and users have official relevant and clear information on the environmental qualities of goods.
	Applicable law: Decree 1369 of 2014 aims to establish the requirements for advertisement related to environmental qualities, attributes or characteristics of products that generate environmental benefits.
	Implementation: Colombia does not have a unified tool that allows us to know official, pertinent and clear information on the environmental quality of goods and services. It is necessary to implement the decree.

12	Promote access to environmental information in possession of private entities and encourage public and private companies to prepare sustainability reports.
	Applicable law: Through the right to present respectful petitions contained in Law 1755 of 2015, everyone may exercise its right to present petitions to guarantee their fundamental rights before private or public organizations.
	Implementation: We see that this applicable law contains a limitation, because this right to present respectful petitions before private entities can only be exercised in order to guarantee fundamental rights. If the Escazú Agreement is ratified, any limitation to request information from private organizations should be eliminated, except in cases where information is protected.
13	Guarantee mechanisms for public participation in decision-making proceedings, revisions, re-examinations or updates with respect to projects, activities and other proceedings for granting environmental permits that have or may have significant impact on the environment or when they may affect health.
	Applicable law: Current environmental legislation, particularly Law 99 of 1993, contains a catalog of participation instruments to be used in environmental management and specifically within the licensing procedures of projects, works or activities likely to cause an impact on the environment, such as: **1. Right to present respectful petitions**, which is regulated in Law 1755 of 2015, under which any person can make respectful petitions to the competent environmental authority to obtain information on the environment.
	2. Intervening parties (*terceros intervinientes*), figure established in Law 99 of 1993, by means of which, any person, without the need to demonstrate legal or technical interest, may become part of any environmental administrative procedure. This recognition as an "intervening third party" implies that all administrative decisions are notified during the application process, modification or cancellation of an environmental license, permit or authorization.
	3. Access to files: In accordance with Article 74 of Law 99 of 1993 and Article 74 of the Political Constitution, anyone has the right to access public environmental files. Access to information can be given both in the process of an environmental authorization, and during the execution of a project, work or activity.
	4. Public Hearings: In accordance with article 72 of Law 99 of 1993 and Decree 330 of 2007, the environmental authority may be requested to conduct an environmental public hearing in the process of issuing an environmental license, which seeks to generate a space for discussions and information exchange between different parties interested in the environmental license process.
	5. Prior Consultation: In accordance with Decree 1076 of 2015, article 76 of Law 99 of 1993, Law 21 of 1991, among others, in the event that a project, work or activity may generate impacts on indigenous or afro-descendant communities, there will be room to develop the prior consultation process with such communities. In case a certain project cannot be performed without the consent of the affected indigenous and afro-descendant community, the competent authorities will perform a proportionality test aimed at determining the feasibility to develop the project without affecting the indigenous and afro-descendant communities.

6. Citizen oversight committees (*veedurías ciudadanas*), regulated in Law 134 of 1994 as a democratic mechanism of participation and representation that allows citizens and community organizations to exercise vigilance over public management.
Implementation: According to the Environmental Democracy Index of the World Resources Institute (WRI), the performance of such participation instruments in Colombia in 2015 was good. The evaluation highlights that in Colombia the law broadly guarantees access to information, mainly through the right to present respectful petition.
Notwithstanding the foregoing, there is a lack of mechanisms that allow public opinion to be involved in environmental decisions. Considering this, the Ministry of Environment and Sustainable Development should set as a challenge the implementation of different instances of environmental dialogue such as the Interinstitutional Table for Environmental Democracy, which was created through Resolution 1496 of August 3, 2018, and seeks to provide inputs to the design and monitoring of policies, plans and programs, strategies and projects for the guarantee and promotion at all levels and sectors of the National Environmental System of the rights of access to information, participation and justice in environmental matters in Colombia.
An issue of the different participation spaces developed today is that the authority confuses participation with a simple process of socialization, which implies communicating to the communities a final decision where they were not linked in its construction. In other words, the citizen never felt part of a constructive and democratic process but simply the recipient of a decision made.
One of the most relevant judgments on citizen participation in environmental matters is ruling T-361 of 2017, in which the Court indicated that Resolution 2090 of 2014 of the Ministry of Environment and Sustainable Development failed to comply with a participatory process by ignoring its different parts: the access to information to the extent that it did NOT disclose the administrative act's draft to the interested parties; public and deliberative participation, since the citizen intervention did not include all those affected by the decision; and not having a procedure for issuing the Resolution with prior, deliberative, efficient and effective spaces for participation. In this way, with such ruling, the administrative act by means of which the Santurbán páramo was delimited was left without effect, and on the other hand, the Court established rules to protect the right to participation for the issuance of the new administrative act as follows:
The administrative act which delimitates the Santurban moorland must be issued in the frame of a wide, participative, deliberative and efficient way. This implies mainly that: a) The delimitation procedure must initiate with a public, wide and open call (convocatoria), of the community settled and affected within the Santurban moorland. This call must be achieved by different communication means aimed at guaranteeing the knowledge of the community about the delimitation procedure; b) The call must also include relevant participants such as authorities, companies, legal or individuals, and organizations whose purpose is the defense of the common interest in the environmental management of the moorland; c) The call shall indicate the purpose of the proceeding, the phases and specific tools, duties and rights of participants and particular schedule to be performed by the environmental authority (Ministry of Environment) to issue the administrative act delimitating the moorland. d) The Ministry of Environment must create a link in the webpage, easy to use, with the purpose to maintain informed all the participants of the delimitation proceeding, according

	to the particular phase´s schedule. e) Environmental participation must encompass all individuals affected with the administrative decision, either by environmental impacts or life conditions. f) The environmental authority must establish an information phase in which the affected individuals may have access to the studies relating the moorland delimitation. Studies must be updated. g) A consult phase shall be opened, with the purpose that the participants expose their opinion, concerns and analysis of the delimitation alternatives, guaranteeing the conditions for the procedure to be public. For this purpose, minutes of the meetings shall be issued, and must be uploaded in the link established by the Ministry of Environment in its webpage. h) Once the Ministry of Environment prepares the draft, it will establish a reasonable deadline for the community to make comments and suggestions. i) The final administrative act must reflect the concerns, comments and suggestions provided by the affected communities and participants in order to evidence that the constitutional right to participation has been duly guaranteed. This is similar to the principle of FPIC in the sense that the participation and informed deliberation is prior the adoption of the administrative decision. However, please note that in this particular case, the participation proceeding encompass all affected individuals, including companies located within the moorland. FPIC concept usually applies when **ethnic communities** must express their prior and informed consent before the issuance of certain authorization; this means that if the ethnic communities do not express their prior consent the project cannot be developed, unless there is a unjustified reason, case in which the authorities must apply the proportionality test.
14	Make efforts to identify the public directly affected by the above mentioned decision making proceedings, and promote specific actions to facilitate their participation.
	Applicable law: To identify the public directly affected by a certain activity, Law 99 of 1993 establishes the possibility of holding public environmental hearings and prior consultations. Regarding public environmental hearings, these can be requested by the Attorney General of the Nation, the Public Defender's office, the Ministry of Environment and Sustainable Development, governors, mayors and at least one hundred people or three non-profit entities.
	Implementation: - Environmental Public Hearings have a limitation because if they are not requested by the abovementioned individuals, they cannot be carried out. Regarding prior consultations, the limitation is the lack of rigorous studies regarding the direct impact on ethnic communities. In practice, the studies are carried out on the project's area of influence and not on ancestral territory. The notion of ethnic territory goes far beyond a formally demarcated physical space, which includes areas that the indigenous community has habitually occupied, as well as the places where they have traditionally carried out their social, economic, spiritual or cultural activities.
15	Make public the following minimum necessary information related to the above mentioned decision-making proceedings: (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.
	Applicable law: As per Article 74[5] of Law 99 of 1993 and Article 74 of the Colombian Constitution, any person has the right to access public environmental files, in which such information is found. Also, according to the regulation applicable to environmental licensing procedure, the interested party must submit an environmental impact study (EIA) as requirement to obtain the environmental license. The regulation establishes a list to be followed when conducting the environmental impact study. This includes information about the impacts on the environment and health.
	Implementation: There is a difficulty with this guarantee, and it is the way in which the environmental authorities classify and organize the files. The information that is made available to the public is the legal file, because most environmental authorities consider that the information in the technical file is private or reserved because it contains information that may be part of the petitioner's commercial or industrial secret. It is important to specify that there is no rule that makes such a distinction, so the environmental authority must guarantee access to all the information on the respective project, work or activity. In fact, this was recognized by the Colombian State Council (Fourth Section of February 20, 2017, Judge Stella Jeanette Carvajal), in which it was pointed out that information of a technical nature, which includes the Environmental Impact Studies, may be subject to consultation by third parties as part of the guarantee of citizen participation.
16	Promote the right to public participation in environmental decision-making proceedings 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.
	There are different legal mechanisms for public participation, such as: **1. Right to present respectful petitions**, which is regulated in Law 1755 of 2015, under which any person can make respectful petitions to the competent environmental authority to obtain information on the environment.
	2. Intervening parties (*terceros intervinientes*), figure established in Law 99 of 1993, by means of which, any person, without the need to demonstrate legal or technical interest, may become part of any environmental administrative procedure. This recognition as an "intervening third party" implies that all administrative decisions are notified during the application process, modification or cancellation of an environmental license, permit or authorization.

[5] Article 74, Law 99, 1993: "Toda persona natural o jurídica tiene derecho a formular directamente petición de información en relación con los elementos susceptibles de producir contaminación y los peligros que el uso de dichos elementos pueda ocasionar a la salud humana de conformidad con el artículo 16 de la Ley 23 de 1973. Dicha petición debe ser respondida en 10 días hábiles. Además, toda persona podrá invocar su derecho a ser informada sobre el monto y utilización de los recursos financieros, que están destinados a la preservación del medio ambiente.

	3. Access to files: In accordance with Article 74[6] of Law 99 of 1993 and Article 74 of the Political Constitution, anyone has the right to access public environmental files. Access to information can be given both in the process of an environmental authorization, and during the execution of a project, work or activity.
	4. Public Hearings: In accordance with article 72[7] of Law 99 of 1993 and Decree 330 of 2007, the environmental authority may be requested to conduct an environmental public hearing in the process of issuing an environmental license, which seeks to generate a space for discussions and information exchange between different parties interested in the environmental license process.
	5. Prior Consultation: In accordance with Decree 1076 of 2015, article 76[8] of Law 99 of 1993, Law 21 of 1991, among others, in the event that a project, work or activity may generate impacts on indigenous communities or afro, there will be room to develop the prior consultation process with such communities.
	6. Citizen oversight committees (*veedurías ciudadanas*), regulated in Law 134 of 1994 as a democratic mechanism of participation and representation that allows citizens and community organizations to exercise vigilance over public management.
	Implementation: The Inter-American Commission on Human Rights shows in its report from the Special Rapporteur on Human, Economic, Social, Cultural and Environmental Rights (REDESCA, acronym in Spanish), that in Colombia there are tensions in the territory that affect the exercise of environmental rights. On the one hand, there are conflicts derived from the presence of farmers in protected areas, such as natural national parks, due to the contradiction between the development of agricultural activities and environmental conservation, and due to military and judicial operations in the area. And on the other hand, environmental defenders are subjected to criminalization situations. According to the Global Witness report, 60% of the murders against environmental defenders occurred in Latin America, with Colombia being the country with the most murdered leaders. Hence, it is not possible to state that the existence of a broad regulatory framework is sufficient to effectively protect access to environmental participation rights, this framework must be accompanied by effective implementation mechanisms.
17	Define procedure and mechanisms that support the right to public participation in above mentioned decision-making proceedings, from early stages until decision is made.
	There are different legal mechanisms for participation mentioned above. However, in practice, the involved parties are obliged to demonstrate a specific interest in order to

[6] Artículo 74 Ley 99 de 1993: "Toda persona natural o jurídica tiene derecho a formular directamente petición de información en relación con los elementos susceptibles de producir contaminación y los peligros que el uso de dichos elementos pueda ocasionar a la salud humana de conformidad con el artículo 16 de la Ley 23 de 1973."

[7] Artículo 72 Ley 99 de 1993: "El Procurador General de la Nación o el Delegado para Asuntos Ambientales, el Defensor del Pueblo, el Ministro del Medio Ambiente, las demás autoridades ambientales, los gobernadores, los alcaldes o por lo menos cien (100) personas o tres (3) entidades sin ánimo de lucro, cuando se desarrolle o pretenda desarrollarse una obra o actividad que pueda causar impacto al medio ambiente o a los recursos naturales renovables, y para la cual se exija permiso o licencia ambiental conforme a la ley o a los reglamentos, podrán solicitar la realización de una audiencia pública que se celebrará ante la autoridad competente para el otorgamiento del permiso o la licencia ambiental respectiva."

[8] Artículo 76 Ley 99 de 1993: " La explotación de los recursos naturales deberá hacerse sin desmedro de la integridad cultural, social y económica de las comunidades indígenas y de las negras tradicionales de acuerdo con la Ley 70 de 1993 y el artículo 330 de la Constitución Nacional y las decisiones sobre la materia se tomarán, previa consulta a los representantes de tales comunidades."

	participate, when the environment belongs to everyone and the involved parties are trying to defend the right to a healthy environment. Another issue under discussion is the impact that the opinion of the citizen should produce in the public decision. Participation will not cease to be a formalism if the authority ignores the opinions, suggestions, requests made by people in the democratic spaces established for environmental management. We are lacking mechanisms to involve public opinion in environmental decisions. Considering this, the Ministry of Environment and Sustainable Development should target the implementation of participatory instances of environmental dialogue such as the Interinstitutional Table for Environmental Democracy, which was created through Resolution 1496 of August 3, 2018, and seeks to provide inputs to the design and monitoring of policies, plans and programs, strategies and projects for the guarantee and promotion at all levels and sectors of the National Environmental System of the rights of access to information, participation and justice in environmental matters in Colombia.
	Another issue of participation today is that the authority confuses participation with a simple process of socialization, which implies communicating to the communities a final decision where they were not linked in its construction. In other words, the citizen never feels part of a constructive and democratic process but simply the recipient of a decision made.
18	Although the law establishes procedures for prior consultation, public hearings, intervening parties, right of petition, access to files, which are aimed at guaranteeing participation as mentioned above, sometimes this right to participation has shortcomings. Some examples are problems derived from the transport of people in vulnerable situations to the places where hearings are held, or information that is too technical which is not easy for those people to understand.
19	Provide the means to facilitate understanding and participation of directly affected public with primary language that is different from official language.

Applicable law: In accordance with article 8 of Law 1712 of 2014, in order to facilitate that specific populations access the information that particularly affects them, the obligated subjects, at the request of the authorities of the communities, will disclose the public information in various tongues and languages and will develop alternative formats understandable to those groups. Access to this information must be ensured for the different ethnic and cultural groups in the country and, especially, the means of communication will be adapted to facilitate access to people with disabilities. In accordance with Article 17 of Law 1712 of 2014, to ensure that electronic information systems are effectively a tool to promote access to public information, obligated subjects must ensure that they:

a) Are aligned with the different procedures and in compliance with the guidelines established in the entity's Document Management Program (*Programa de Gestión Documental*);

b) Manage the same information found in the administrative systems of the obliged subject;

c) In the case there is information of public interest, there must be a platform where information can be accessed in formats and languages understandable to citizens.

Implementation: In practice, there are no mechanisms to guarantee that the information is translated into the language of the people affected by the development of a certain project, which significantly limits the constitutional rights to information and participation.

20	Encourage establishment of appropriate spaces for consultation in which various groups and sectors are able to participate.
	Although the regulations establish procedures aimed at guaranteeing participation such as those we have mentioned, sometimes this right to participation has shortcomings such as problems derived from the transportation of people in vulnerable situations to the places where hearings are held, or information that is too technical and it is not easy for people to understand.
21	Guarantee domestic legislation and international obligations in relation to the rights of indigenous peoples and local communities are observed.
	In Colombia there is a case-law development on the fundamental right to prior consultation, and some Decrees and directives have been issued in order to constitute a guide for the prior consultation process. However, a statutory law on Prior Consultation has not been issued in Colombia that allows establishing a mandatory procedure for the State, Operators and Affected Communities regarding the prior consultation process, which triggers some obstacles when executing it. Likewise, it is very important to carry out a rigorous study by the operators regarding impacts on ancestral territories, which are often not taken into account when conducting environmental studies.
Access to justice in environmental matters	
01	Ensure domestic legislation guarantees substantive and procedural due process.
	Applicable law: The Colombian Constitution includes the class action in Law 472, 1998, (*acción de grupo*) created to protect collective rights, when legally safeguarded assets, such as the right to a healthy environment, have been or may potentially be affected. It also includes the protection action (*acción de tutela*) established in Decree 2591, 1991, when fundamental rights have been affected by environmental incidents, compliance to enforce the law. These actions can be effective channels that allow a citizen to obtain from a judge what the State has denied him. Thus, when the same fact simultaneously violates or threatens a fundamental and a collective right such as the environment, guardianship will be the tool that allows the defense of the environment. When the fact, action or omission only concerns the environment, popular action (*acción popular*), established in Law 472, 1998, will be the ideal instrument. And if there is harm done, then the group action will be appropriate. The compliance action will be arranged when it is intended to guarantee the application of a law or administrative act of environmental content and finally the unconstitutionality action will be used, when in the opinion of the person who files it, an environmental law or regulation exists and violates the Colombian Constitution.
	1. Right to a constitutional action (Tutela): This legal action was created by the Colombian Constitution of 1991 and is applicable to protect fundamental constitutional rights. Anyone in Colombia has a constitutional right to file a 'tutela' with any court in the country, if they feel their constitutional rights are violated. Any court has to accept them, and to decide on whether to grant or deny them within a short time. If a tutela is granted, the person gets an order they can take back to the other party to get them to act pursuant with what the constitution and the court says. Compared to other legal actions, a 'tutela' does not require a lawyer, has much simpler procedures and is processed expeditiously.
	2. Popular Action. Popular actions are included in the Constitution and are aimed at protecting collective rights and interests related to the environment and public health, among others. The popular action was stipulated in Law 472 of 1998. Article 4 contains a non-exhaustive list of collective rights and interests that can be protected with this legal

	action for the public interest. Among them are the enjoyment of a healthy environment, the existence of ecological balance and access to public services. The purpose of the popular action is to stop a threat to or violation of collective rights and guarantee restoration to the previous state when possible. In relation to legal standing in popular actions, Law 472, Article 12 provides that every citizen, whether a natural or legal person, can file actions before the competent court. These actions can be exercised by a single person, who should be the owner of the right under threat and who wishes to protect it by means of a popular action. It can also be any member of the community whose collective interests are threatened, when it comes to the affecting or threatening of collective rights.
	Class action (acción de grupo): If the aim is the defense of the rights and interests of a number of people, the legal method will be the class action. In this way, the decisive factor will be the damage caused. Group damage affects a number of victims who suffer individual personal damage that, when it touches a significant number of individuals, triggers the group or mass damage, whose compensation may be claimed in the same judicial process, through a class action. Law 472, Article 48 establishes that any injured party may initiate the action, but it also requires the plaintiff to identify a group of at least 20 affected people who meet the same conditions. In this regard, it is important to specify that it is enough for a single member of the group to give power of attorney to initiate the action on behalf of the group. This person must file the claims in the name of the group, not just for those victims who granted PoA.
	4. Compliance action. (Article 87 Political Constitution): Any person may appeal to the judicial authority defined in this law to enforce standards applicable through the substantive weight of law or administrative acts
02	In addition and support of due process, have (a) competent State entities with access to expertise in environmental matters;
	In the environmental authorities there is a lack of personnel with environmental technical knowledge, which jeopardizes the protection of the environment when granting environmental permits. In the case of legal actions, environmental matter have a strong scientific content which is not necessarily accessed by judges when making decisions.
	(b) effective, timely, public, transparent and impartial procedures that are not prohibitively expensive;
	The processes as they are regulated are complex and time-consuming and when they finish, usually the threat to the right has already occurred.
	Although the administrative orders come out on time, they find themselves with a public administration office that does not have sufficient management or budgetary capacity. In case the affected person is represented by a public defender is free to file a case. However, (i) In most cases it is not easy to find a public defender due to the lack of information; (ii) Usually public defenders are not prepared enough in terms of expertise to assume a case. For that reason, people usually go to lawyers to assert their rights in environmental matters, which is very expensive, particularly for those in vulnerable situations. The costs to file a case would depend on the claim. Tutela and popular action do not apply to this particular case, as the affected person may file directly the action, without intervention of a lawyer. On the other hand, class group and action for compliance require the intervention of a lawyer. Another issue is the long time authorities take to make decisions when third parties are affected.

	(c) broad active legal standing in defense of the environment;
	Affected parties must have interest to file any of the mentioned claims, case in which they can act directly, as in the case of Tutela and Popular Action, or they can act through a lawyer, external to the situation. **However, please note that any party may file a popular when a damage is to be caused to the environment as a common good. Any party may be: (i) any legal or natural person; (ii) ONG´s; (iii) General attorney, ombudsman (Article 12, Law 472, 1998).**
	(d) the possibility of ordering precautionary and interim measures, inter alia, to prevent, halt, mitigate or rehabilitate damage to the environment;
	In Colombia, environmental authorities are empowered to impose preventive measures in the event of a threat to health or the environment during the development of a certain activity. These can be imposed ex officio, when a third party has informed the environmental authority of possible environmental damage.
	(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;
	In Colombia, the burden of proof rests with the alleged offender, who, during the environmental investigation, must present all the evidence tending to show that he did not commit any environmental violation. If responsible, the environmental authority will proceed to impose the fines according to criteria established in the applicable regulation.
	(f) mechanisms to execute and enforce judicial and administrative decisions in a timely manner; and (g) mechanisms for redress.
	Although the law establishes deadlines that must be met by the authorities to make decisions, in practice these deadlines are not met. An environmental authority can take more than a year to make an administrative decision, which is absolutely disproportionate.
	The judge makes decisions that cannot be complied with and many times he does not know the environment in which his ruling will have an impact.
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.
	Although there are mechanisms to access justice, either through a protection action (*acción de tutela*) or a class action (*acción de grupo*), these mechanisms have limitations due to the congestion of the judicial system in Colombia. It is important that an exclusive judicial system is established to address environmental issues, allowing it to speed up environmental processes in order to protect the environment and the rights of people to access justice. Also, decisions are not translated to other spoken languages. The interested party must assume the costs of the translation.
04	Establish support mechanisms, including free technical and legal assistance with the objective to meet the needs of persons or groups in vulnerable situations.
	In Colombia, people in vulnerable situations have difficulties accessing the judicial system due to: (i) lack of knowledge; (ii) the place where they are located. Another obstacle is the difficulty to find a public defender who is prepared enough in terms of expertise to assume a case.

05	Ensure judicial and administrative decisions adopted in environmental matters are in writing.
	In Colombia, while judicial decisions are almost always available online, environmental administrative decisions are made in writing, but are often not available to the public. This means that an administrative act which grants an environmental license might be accessible online, but not the administrative act under which the environmental authority made certain requirements to the operator. When decisions are not available online, access to the files is possible only directly at the environmental agency.
06	Promote alternative dispute resolution mechanisms to allow such disputes are prevented or resolved.
	In Colombia the ways to solve any conflict on environmental issues is through administrative and judicial processes. However, these procedures do not allow a decision to be quickly reached by the competent authority, so it is necessary to implement an environmental court in charge of settling all disputes on environmental issues. Alternative dispute resolution is possible before the initiation of a judicial procedure. In this "conciliation phase", the parties can reach an agreement before initiating a judicial proceeding. Conciliation and mediation are also proper alternatives to avoid the initiation of a judicial proceeding.
Human rights defenders in environmental matters	
01	Guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters.
	From its preamble, the Escazú Agreement recognizes the importance of working with environmental defenders to strengthen democracy, access rights and sustainable development. The Inter-American Commission on Human Rights shows in its report from the Special Rapporteur on Human, Economic, Social, Cultural and Environmental Rights (REDESCA, acronym in Spanish), that in Colombia there are tensions in the territory that affect the exercise of environmental rights. On the one hand, there are conflicts derived from the presence of farmers in protected areas, such as natural national parks, due to the contradiction between the development of agricultural activities and environmental conservation, and due to military and judicial operations in the area. And on the other hand, environmental defenders are subjected to criminal situations. According to the Global Witness report, 60% of the murders against environmental defenders occurred in Latin America, with Colombia being the country with the most murdered leaders. Hence, it is not possible to state that the existence of a broad domestic regulatory framework is sufficient to effectively protect access to environmental participation rights, this framework must be accompanied by effective implementation mechanisms.
02	Recognize, protect and promote rights and ability to access such rights of human rights defenders.
	The Escazú Agreement refers to a substantial aspect: the obligation of the States to provide protection to the people who are dedicated to defending environmental social rights in their territories, which is a need in the Colombian case where people have been facing deaths and serious threats in the development of large extractive projects with high environmental and social impact. Currently, Colombia does not have clear mechanisms to protect social leaders.
03	Prevent, investigate and punish attacks, threats or intimidations directed to human rights defenders.

	The Escazú Agreement specifically requires that each state party guarantees the right of each person to live in a healthy environment and promote the protection of human rights for environmental defenders. However, in Colombia it has not been possible to guarantee a favorable environment so that groups that promote human rights in environmental matters can act without threats, restrictions and insecurity.
Compliance and implementation of the Escazú Agreement	
01	Commit to provide resources for national activities needed to fulfill the obligations defined by the agreement.
	Up to this date, we have no knowledge of the availability of resources for the implementation of the Escazú Agreement.
02	Cooperate with other parties to the agreement with the objective to strengthen national capabilities to implement the agreement.
	Up to this date, we have no knowledge.
03	Encourage partnerships with non-parties to the agreement (states from others regions, private organizations, civil society organizations, etc.).
	Up to this date, we have no knowledge.
04	Recognize that regional cooperation and information sharing shall be promoted in relation to all aspects of illicit activities against the environment.
	Up to this date, we have no knowledge.
Other questions regarding topics not defined as obligations of the parties:	
01	Has the country taken steps to engage with the virtual and universally available clearing house Observatory on Principle 10?
	Up to this date, we have no knowledge.
02	Has the country taken steps to make contributions to the Voluntary Fund created by Article 14 of the Escazú Agreement?
	Up to this date, no.
03	Has the country taken steps to engage in the Conference of the Parties to the Escazú Agreement?
	In 2019 the Colombian government signed the Escazú Agreement, understood as one of the most important international instruments. Although the treaty has not been ratified yet, the Colombian government announced that it will submit again the new bill for the Escazú Agreement.