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THE ESCAZÚ AGREEMENT/2018 AS AN INSTRUMENT OF ENVIRONMENTAL DEMOCRACY AND HUMAN RIGHTS IN BRAZIL

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ABSTRACT

From the perspective of a Democratic State's theoretical framework, this study analyses the importance of ratifying the Escazú Agreement – 2018, specially, to guarantee Brazilian environmental democracy. Theoretical considerations were traced through bibliographical and documentary research, using the deductive method. The study seeks to answer the following question: to what extent can the dialogue between sources of domestic and international law contribute to the strengthening of environmental democracy and the defense of human rights related to the environment? The defended hypothesis is that given the constant human rights violations suffered by populations affected by environmental damage and by environmental defenders, the incorporation of mechanisms from the international sector, together with the instruments already provided for in our legislation, should contribute to strengthening the democratic participation of citizens in defense of a healthy environment. It can therefore be concluded that, with the ratification of this Agreement by Brazil, an important contribution could be added to the national legal system, which in turn could discipline access to the triad of environmental rights: access to environmental information, public participation and access to justice in environmental matters. The Agreement contains skillful instruments for the strengthening and defense of environmental democracy and human rights.

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O ACORDO DE ESCAZÚ/2018 COMO INSTRUMENTO DE DEMOCRACIA AMBIENTAL E DIREITOS HUMANOS NO BRASIL

RESUMO

Este estudo busca analisar, na ótica do referencial teórico de um Estado Democrático, a importância da ratificação do Acordo de Escazú/2018, sobretudo para garantir a democracia ambiental brasileira. Assim, traçaram-se considerações teóricas por meio de pesquisa bibliográfica e documental e do método dedutivo. Buscou-se responder à seguinte problemática: em que medida o diálogo das fontes de Direito Interno e Internacional pode contribuir para o fortalecimento da democracia ambiental e para a defesa dos direitos humanos relacionados ao meio ambiente? A hipótese defendida é de que, diante das constantes violações de direitos humanos sofridas pelas populações atingidas por danos ambientais e pelos defensores do meio ambiente, é preciso incorporar no ordenamento jurídico brasileiro mecanismos da seara internacional, os quais, somados aos instrumentos já dispostos na legislação brasileira, contribuam para o fortalecimento da participação democrática dos cidadãos em defesa do meio ambiente saudável. Com isso, pode-se concluir pela importante contribuição que poderá ser agregada ao ordenamento jurídico nacional com a ratificação desse acordo pelo Brasil, pois, ao disciplinar a tríade dos direitos de acesso ambiental – acesso à informação ambiental, participação pública e acesso à justiça em assuntos ambientais –, traz em seu texto instrumentos hábeis para o fortalecimento e a defesa da democracia ambiental e dos direitos humanos.

***Palavras-chave**: Acordo de Escazú; democracia ambiental; direitos de acesso ambiental; direitos humanos; meio ambiente.*

INTRODUCTION

The effective exercise of environmental access rights in its threefold dimension – namely: the right of access to environmental information, to public participation, and to justice in environmental matters, previously mentioned in some legal instruments in domestic and international law – are currently established as recurring issues, especially after the adoption of the Escazú Agreement (Costa Rica) in 2018. Although this agreement has not yet been ratified by Brazil, the scope of environmental access rights had gained prominence, albeit sporadically, in a few documents such as the Rio Declaration on Environment and Development (Rio-92) and the Aarhus Convention (1998), in force for the European Union and its member states.

Today, there is a perfect interplay in the debate on the importance of safeguarding and promoting the exercise of these rights of access, not only by individual citizens, but also by all the players involved in the debate and the protection of the environment. At present, the exercise of environmental democracy must be regarded as a global commitment of humanity to maintain and preserve the environment, including all living and non-living species and all the elements that make up "Mother Nature". Such a concern is not exclusive to the current generation, but also affects future generations.

Everyone must be aware that a healthy environment is a fundamental human right, and its autonomy does not disqualify its interrelationship and interdependence with other human rights, especially quality of life, as has been agreed since the Stockholm Convention (1972) and in other international documents in accordance with this guideline. In turn, in National Law, the *caput* of Article 225 of the 1988 Constitutional Charter ratifies this inseparability between human rights and rights-duties related to the enjoyment and defense of a healthy environment.

On the basis, it was important to analyze in this article that the development of Environmental Law, within the scope of International Law, has reached new dimensions through the close harmony between the fight for Human Rights and the defense of the right to a healthy environment. Therefore, we support the hypothesis that, in the face of the constant human rights violations perpetrated against populations affected by environmental damage and also against environmental defenders, the incorporation of international law mechanisms into domestic law will

strengthen the democratic participation of all citizens in the defense of a healthy environment.

Thus, this research proceeded to discuss: to what extent can the dialogue between domestic and international law sources contribute to strengthening environmental democracy and the defense of human rights related to the environment? Legislative instruments such as the Aarhus Convention (1998), in force for the European Union, and the adoption of the Escazú Agreement, in 2018, for Latin America and the Caribbean, are considered milestones that emphasize the importance of strengthening guarantees regarding the exercise of the right of access in its three pillars, both domestically and internationally, for all the signatory States. They also bring to the fore the need to discuss the wide participation of citizens, member States and the international community on matters pertaining to the defence of the environment, representing thus the most comprehensive support for democracy and the environment.

Through bibliographic and documentary research using the deductive method, we attempted to reflect on the importance of implementing, at international and national levels, the environmental access rights and their alignment with the defense of human rights, especially for the defense of those considered vulnerable and environmental human rights defenders, with an approach from the perspective of the Brazilian State. In this task, we concluded that the ratification of the 2018 Escazú Agreement by Brazil is necessary considering its perfect alignment with the national legislation in order to move toward a Democratic State of Law under the auspices of a strong and coherent environmental democracy, as prescribed by the 1988 Constitutional Charter of and the international documents on human and environmental rights.

1 THE CONTRIBUTION OF INTERNATIONAL HUMAN RIGHTS DOCUMENTS TO THE SYSTEMATIZATION OF ENVIRONMENTAL ACCESS RIGHTS

When mentioning environmental access rights, it is important to highlight that they have a diverse nomenclature and can also be called, as determined by Sarlet and Fensterseifer (2019, p. 464), "procedural rights, environmental access rights or environmental rights of participation[3]".

3 In this article, we chose to use the term environmental access rights, as stipulated in the definition of the Escazú Agreement, in art. 2, *a*: "Access rights means the right of access to environmental information, the right of public participation in the evironmental decision-making processes and the

Consonant with this, it cannot be said that environmental access rights deal with a specific category of rights since they are implemented through various legal mechanisms and instruments inserted in various legislations, both environmental and of human rights.

As the United Nations Universal Declaration of 1948 was a milestone in the construction of what is understood today as human rights, especially with regard to the universality and indivisibility of these rights, and the Stockholm Convention (1972) left as a legacy not only the fact that it produced the first international document to endorse the environment as a human right, but also a framework for States to adapt their national laws and align their mechanisms of defense and protection of the environment and human rights.

This helped significantly to the change the profile of Environmental Law itself, which would require a less fragmented systematization in legislation. This new legislative profile brought to the constitutions of the States not only the need to systematize rules regarding the protection of the healthy environment, but also to ratify it as a fundamental human right.

In International Law, the new guidelines began to be observed as environmental problems grew from being concerned primarily with pollution and the damage to the ozone layer. Today, new demands arise, including those resulting from the damage caused by the so-called environmental disasters, which can cause cross-border environmental damage that, depending on the extent or the complexity, may demand new positions and actions to be taken and agreed upon not only by each State individually, but for the whole world community. As a result, social groups such as traditional populations, refugees, environmentally displaced persons, NGOs, associations and social movements, which had hitherto remained on the sidelines of certain discussions, began to participate directly in the management of environmental conflicts and in the submission of proposals that reinforce effective popular participation and fight the causes of climate change caused by a predatory and exclusionary development model.

With regard to environmental access rights, the 1998 Aarhus Convention was the first international document to regulate these threefold rights, namely access to environmental information, public participation, and access to justice in environmental matters, as stipulated in Principle 10 of the Rio-92 Convention[4]. The 1998 Aarhus Convention, in spite of

right of access to justice in environmental matters" (ECLAC, 2018, p. 15).

4 The Principle 10 of ECO-92, provides the following: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall

being a norm for regulating conduct in the European Union, which has very different the realities from Latin America, was in many respects very important for the systematization of the 2018 Escazú Agreement, especially because it assigns a global, humanistic and supportive character to the defense of the environment, in addition to considering the rights of access to environmental elements which are essential for the achievement of these goals, as seen at article 1:

> OBJECTIVES
> To contribute to the protection of the right of every person of present and future generations to live in an environment suitable to their health and well-being, each party shall ensure the rights of access to information, public participation in the decision-making process and access to justice in environmental matters according to the provisions of this Convention (UNO, 1998).

On the same level, the 2018 Escazú Agreement brings, from its conception to its adoption on March 4, 2018 the widest debate on the mechanisms and concrete proposals for the realization of environmental democracy, which, although not yet fully outlined, can be considered goals to be built by the whole international community. At present, it is impossible to think about guaranteeing human rights, especially those related to the quality of life on the planet, without wide participation for the protection of the environment in its entirety.

In its 26 articles, the 2018 Escazú Agreement stands out as the first legally binding international document for Brazil and the first in the world to specifically address human rights defenders in environmental matters (art. 9). In addition, it is especially concerned with persons or groups in vulnerable situations (art. 2, *and*). Therefore, it can be considered an authentic human rights treaty, as Alicia Bárcena described it when prefacing the Escazú Agreement: "This Regional Agreement is a ground-breaking legal instrument for environmental protection, but it is also a human rights treaty. Its main beneficiaries are the people of our region, particularly the most vulnerable groups and communities" (BÁRCENA, 2018, p. 8).

have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided" (UNO, 1992).

2 AN APPROACH FROM THE PERSPECTIVE OF AN ECOLOGICAL DEMOCRATIC STATE AND ITS IMPLICATIONS FOR ENVIRONMENTAL DEMOCRACY IN BRAZIL

It is undeniable that the Brazilian Democratic State of Law, taking as a reference the Constitution of 1988, has strong characteristics of an Environmental Law State, with democratic-participatory precepts properly outlined in the *caput* of art. 225[5], by assigning the duty of defense and preservation of a healthy environment to the public authority and the entire population. Benjamin (2008, p. 67), when analyzing the characteristics of environmental constitutions such as the Brazilian one, highlights:

> Environmental Law – whether constitutionalized or not – is a discipline deeply dependent on the freedom of public participation and the permanent and unimpeded flow of information of all kinds. In dictatorial or authoritarian regimes, the environmental norm does not take thrive, but remains at best in the process of lethargic hibernation, waiting for more favorable times for to be implemented, as was the case of law of the 1981 National Environmental Policy, until the reinstatement of democracy (politics and access to justice) in the country in 1988.

In this context of environmental law, it is important to highlight a new ecological perspective in comment, also called the Environmental Law State, or, in a more recent version, the Ecological State of Law, which, above all, is not opposed to the Democratic State of Law, but, on the contrary, adds the values of protection of nature in all its components, not regarding environmental goods or resources only as inexhaustible resources available to the human species (anthropocentric view), shedding light on the possibility of assigning personality and rights to nature (ecocentric view). In this context, Aragão explains (2017, p. 22):

> The Ecological State of Law is guided by a set of norms, principles and legal strategies needed to ensure the preservation of a set of operating conditions of the Earth's system that make Planet Earth a safe space for humanity and other living beings. The promotion of human security and prosperity in the safe operational space is essential for keeping socio-ecological resilience and for achieving the worldwide Sustainable Development Goals.

5 The *caput* of Art. 225 of the 1988 Federal Constitution states the following: "Everyone has the right to an ecologically balanced environment, to be used by the people as a common good essential to the quality of life. The public authority and the people have the duty to defend it and preserve it for present and future generations" (Brazil, 1988).

This ecologized perspective would be represented by the Constitution of Ecuador (2008), by guaranteeing rights proper to nature, or "Pacha Mama", as rights of existence, regeneration and restoration of its life cycles, among others (art. 71)[6], in addition to its democratic character regarding the defense of the environment, as can be seen: "[…] every person, community, people or nationality may demand from the public authority the enforcement of the rights of nature […]" (ECUADOR, 2008, free translation).

Another reference in this field is the Constitution of Bolivia (2009), which, despite not recognizing rights of Nature, highlights in its preamble the greatness of Mother Earth and its elements, always in perfect interaction with human beings, and enshrines legal pluralism and ethnic-cultural plurality in its text, as can be seen in article 3: "the Bolivian nation is formed by all Bolivians men and women, indigenous and peasant nations and native peoples and the intercultural and African-Bolivian communities they constitute the Bolivian people"[7] (BOLIVIA, 2009, free translation).

Of course, the national legislation has not yet reached an advanced stage in assigning intrinsic rights to nature without completely dissociating them from a vision of nature at the service of human well-being and health, but the exegesis of the Constitutional Charter is not closed to a broader interpretation. This can be seen in art. 225 itself and its paragraphs, which, by protecting ecological processes, species and ecosystems[8], creates hermeneutic openness and the possibility of mitigating this anthropocentric view attributed to most environmental legislations (Brazil, 1988).

In this context, it is important to highlight the contribution made to this ecologized perspective by the jurisprudential production of national courts[9] and international courts such as the Inter-American Commission on

6 "La naturaliza o Pacha Mama, donde se reproduce y realiza la vida, tiene derecho a que se respete integralmente su existencia y el mantenimiento e regeneración de sus ciclos vitales, estructuras, funciones y procesos evolutivos. […] Toda persona comunidad, pueblo o nacionalidad podrá exigir a la autoridad pública em cumplimiento de los derechos de la natureza […]" (ECUADOR, 2008).

7 "La nación boliviana está conformada por la totalidad de las bolivianas y los bolivianos, las naciones y pueblos indígena originário campesinos, y las comunidades interculturales y afrobolivianas que em conjunto constituyen el pueblo boliviano" (BOLIVIA, 2009).

8 It can also be highlighted in art. 225 […]:

§1º to ensure the effectiveness of this right, it is incumbent on the Public Authority:

I- to preserve and restore essential ecological processes and to provide ecological management of species and ecosystems; [V]; V – to control the production, sale and use of techniques, methods and substances that pose a risk to life, quality of life and the environment; [VII]; VII – to protect the fauna and flora by prohibiting by law practices that jeopardize their ecological function, cause the extinction of species or subject animals to cruelty (Brazil, 1988).

9 As an example, in Latin America, ruling T-622/16 of the Colombian Constitutional Court stands out by recognizing the Atrato River, its basin and its tributaries, as a subject of rights, in which the

Human Rights (IACHR) and the European Court of Human Rights (ECHR), by systematizing rulings that guarantee rights to other non-human species. Also internationally, it is imperative to mention the masterful interpretation made by Advisory Opinion n. 23/2017, written by the IACHR, in particular the fact that the violation of environmental rights can be substantiated by virtue of art. 26 of the American Convention on Human Rights (ACHR – IACHR, 1969). In addition, in paragraph 62 it regards the right to a healthy environment as an autonomous human right, susceptible of protection for its components[10].

In the national jurisprudence, we have noticed some rulings to be in favor of the guarantee of rights, especially the rights off animals[11], as in REsp. 1.797.175/SP, which guaranteed the custody of a bird to its claimant, who had lived with it in his home for 23 years. Among the arguments for the vote given by Reporting Judge Og Fernandes, we stress the extension of human dignity to an ecological dimension and the guarantee of the rights of animals, as recognized by the minister in his vote:

> IV – From the ecological perspective of the principle of the dignity of the human person and the recognition of non-human animals as subjects of rights. […]. He considers that retrieving the wild animal after a long period of domestication would actually constitute a violation of the rights of the animal itself. About this point, we should highlight that the ecological approach of Brazil's legislation is justified because of the importance of quality, balance, and environmental safety for the enjoyment, protection and promotion of fundamental rights […] (Brazil, 2019a).

In this context, it is important argue that the perspective of an environmental State has much to contribute to the Democratic State with a protectionist bias on the protection of the environment, still greatly damaged, since it is difficult to consider building an environmental democracy without a legal and democratic structure to legitimize and put it into effect, as there are certainly many obstacles to be surmounted, such as a poor policy for environmental education, distrust in the government institutions

State and ethnic communities would be responsible for guaranteeing and defending such rights (COLOMBIA, 2016).

10 In the original: "Esta Corte considera importante ressaltar que el derecto al medio ambiente sano como derecho autónomo, a diferencia de otros derechos, protege los componentes del medio ambiente, tales como bosques, ríos, mares y otros, como interesses jurídicos em sí mismos, aún em ausência de certeza o evidencia sobre el risgo a las personas individuales. […]" (CIDH, 2017).

11 Other rulings also set precedents for this ecocentric perspective, such as ruling ADI. 1856/RJ, which declared inconstitutional Rio de Janeiro State Law n. 2.895/98, which regulated exhibitions and competitions of birds of "fighting breeds", which was then the crime of encouraging of acts of cruelty against "fighting roosters" (Brazil, 2011B). In the same sense, Extraordinary Appeal n. 153.531/SC, "by considering bullfighting (farra do boi) to be inconsistent with the constitutional norm, even if the State is obliged to guarantee the full exercise of cultural rights to all" (Brazil, 1997).

in charge of managing the environment, in addition to a general lack of knowledge about the instruments of political participation, for example, public hearings, participation in people's boards and others. In this sense, Krell comments (2017, p. 45):

> As the Environmental State also "suggests new forms of political participation, suggestively condensed into the phrase 'sustained democracy', it is still difficult to imagine the implementation of such measures in Brazil, where most of the population does not have the habit of claiming and exercising their rights to participate in the preparation of master plans or zoning laws, of attending public hearings on the environmental impact studies of projects where their interests are at stake, or of casting their votes for more sustainable political proposals.

Thus, faced with an adverse scenario, the very idea of an environmental democracy is undermined because society needs to understand and exercise new dimensions of citizenship that are not just about electing representatives or being eligible. Given this context, the very political, economic and social landscape in the Brazilian State is in deficit, as it still fails to guarantee basic fundamental rights to the majority of the population, which contributes strongly to the destabilization and discredit of the majority of the population toward public institutions.

These factors contribute excessively to emptying out the spaces for debate, besides directly affecting the self-determination and sense of belonging of certain groups, which already find themselves politically and socially excluded, in addition to making these citizens susceptible to being potential victims of injustices and environmental damage. Regarding the new dimensions of citizenship, Guerra (2017, p. 381) highlights that: "In short, citizenship is not a given, it is instead constructed by the citizens themselves in its civil, political, social, legal, economic and cultural dimensions, among others". Therefore, the violation of any of these dimensions of citizenship will produce a deficit for citizens, affecting the guarantee of basic rights, including rights related to the healthy environment.

3 THE 2018 ESCAZÚ AGREEMENT: STRENGTHENING TIES BETWEEN THE DEFENSE OF HUMAN RIGHTS AND ENVIRONMENTAL DEMOCRACY

On April 22, 2021, the 2018 Escazú Agreement finally entered into force, as stipulated by the requirements of its art. 22[12]. Considering that

12 "The present Agreement shall enter into force on the ninetieth day after the date of deposit of the eleventh instrument of ratification, acceptance, approval or accession" (CEPAL, 2018).

as of January 2021, 24 countries have signed and 12 have deposited their instruments of ratification[13], Brazil has not yet deposited its instrument of ratification, which would be of paramount importance to consolidate the international legal strengthening of the internal system regarding an environmental defense policy that respects the wide participation of society as a whole, supported by the transparency and timeliness of environmental information provided to the whole community.

We stress that the merit of the Escazú Agreement goes beyond setting up mechanisms aimed at the realization of the tripod of environmental democracy today, namely: (1) access to Information (art.5); (2) public participation in decision-making processes (art. 7); and (3) access to justice in environmental matters (Art. 8). The agreement also stands out for the concern in how it was systematized to shed light on structural concepts, principles, the setting of goals by the States for achieving the proposed objectives, and particularly its humanistic character by highlighting the concern with people or groups in vulnerable situations, going as far as defining them for the purposes of this agreement.:

> **Article 2**
> […]
> Definitions
> […]
> e) "Persons or groups in vulnerable situations" means those persons or groups that face particular difficulties in fully exercising the access rights recognized in the present Agreement, because of circumstances or conditions identified within each Party's national context and in accordance with its international obligations (CEPAL, 2018, p. 16).

We should note that, in this agreement, for each right of access there is an accompanying special clause aimed at providing special treatment for these vulnerable persons or groups. Today, we can see the importance of ensuring this special legal and social guardianship on account of the various hardships faced by human beings on the planet, including environmental hardships, as is the case of displaced persons or environmental refugees, who either flee or are driven out of their countries by natural or environment disasters, the latter being caused mainly by the introduction of capitalist enterprises on the environment, resulting in the destruction of people's livelihoods, with many examples to be found in Brazil, among

13 The countries that ratified the Escazú Agreement by January 2021 were: Antigua and Barbuda, Bolivia, Ecuador, Nicaragua, Guyana, Panama, San Vicente y Las Granadinas, Saint Kitts and Nevis, Saint Lucia, Uruguay, Argentina and Mexico (CEPAL, 2021).

them the social and environmental disasters in Mariana (2015) and Brumadinho (2019).

Unfortunately, the reality in Brazil is no different from that of several regions of the planet, as there is here a large population contingent in sites that are daily subjugated and exposed to risks, struggles and environmental damage, whether in the city or in the countryside, including traditional populations[14] and indigenous peoples. In Brazil, these populations are also victimized in many ways (murders, expulsions, invasions of their territories, slow demarcation processes of their lands etc.). These situations put the country in the unfortunate position as being a large catalyst in the numbers of socio-environmental conflicts of various kinds. Little (2001, p. 108-113, our highlight) classifies socio-environmental conflicts as:

> (1) **conflicts involving control over natural resources**, […]. Generally, conflicts involving natural resources take place on lands containing such resources and, therefore, among the human groups that claim these lands as their territory of dwelling and living. (2) **Conflicts involving the environmental and social impacts generated by human and natural action**, […] these situations cause problems both through threats to the health of those affected and through the injustice of the action. We can identify three basic subtypes of negative impact: environmental contamination, depletion of natural resources and degradation of ecosystems; (3) **conflicts involving the use of environmental knowledge.** […] each social group has specific environmental knowledge that it uses to adapt to their environment and to develop their own technology. In this category, we can identify: conflicts between social groups involving the perception of risk, conflicts involving the formal control of environmental knowledge and conflicts involving sacred sites.

Thus, new resistance fronts have been and must be opened, especially to demand the fulfillment of rights already guaranteed in domestic legislation and international documents. As a result, the very concept of vulnerability needs to be expanded since today it does not only concern economic matters, as defined by the *Brasilia Rules on access to justice in its definition of people in vulnerable conditions*: "those who, due to their age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, encounter special difficulties in fully exercising before the justice system the rights recognized by the legal system" (IBERO-AMERICAN JUDICIAL CONFERENCE, 2008, p. 5).

14 In Brazil, Decree No. 6.040/2007, in art.3, I, defines: "I – Traditional peoples and communities, culturally distinct groups that recognize themselves as such, have their own forms of social organization, which occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral and economic reproduction, using knowledge, innovations and practices generated and transmitted through tradition" (Brazil, 2007).

Also regarding the main merits of the 2018 Escazú Agreement, it is undisputedly the first international treaty dealing specifically with human rights defenders in environmental matters (art. 9), either individually or in groups, calling on State to protect and guarantee the human rights of these people and to provide them with the full exercise of the right of access. Article 9, 3 is worthy of being quoted: "Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement".

This insertion of specific protection for human rights defenders can be considered of great relevance for the humanist and protectionist character of this agreement, so necessary in the context brought by the environmental crisis that is being established globally. Furthermore, it generates massive violations of rights, which are directly and indirectly related to the exercise of the human right to a healthy environment. The environmental crisis is believed to be aggravated by several factors, particularly by the inequalities in the use and enjoyment of environmental goods, and also by the inequality in the distribution of the risks and negative effects caused by environmental degradation, resulting in the so-called "environmental injustices". In this regard, in the case of Brazil, the characteristics of the struggles for environmental justice, according to Acselrad, Mello and Bezerra (2009, p. 146-147), should combine:

> 1 The defense of the rights to culturally specific environments – traditional communities located on the frontier of expanding market-driven capitalist activities.
> 2 The defense of the rights of equitable environmental protection against socio-territorial segregation and environmental inequality promoted by the market.
> 3 The defense of the rights of equitable access to environmental resources against the concentration of fertile land, water and safe soil in the hands of the strong economic interests of the market.
> 4 The defense of the rights of future populations. How do the representatives of the movements articulate present struggles and "future rights" in a logical way? By proposing the interruption of mechanisms for transferring the environmental costs of development to the poorest.

To advocate for the ratification of the Escazú Agreement is, above all, to admit that the Brazilian reality is not different from that of other countries in Latin America and the Caribbean, since there is still in place a chaotic State structure which effectively fails to guarantee human rights in all

respects, including the rights concering the protection of the environment, and which has been affecting both the victims of environmental degradation and those who are committed to defending these rights.

In this sense, the international NGO Global Witness documented in its annual report that, in 2019, 212 land and world environment defenders were murdered, with 2/3 of these murders taking place in Latin America. Brazil was in third place, with 24 murders, behind only Colombia (64) and the Philippines, with 64 and 43 murders respectively (GLOBAL WITNESS, 2019).

Also about 2019, according to the report by Comissão Pastoral da Terra (CPT), there were approximately 1,833 ongoing conflicts in Brazil that year, including land disputes, water disputes and labor conflicts. In addition, 32 murders, 30 attempted murders and 201 death threats were counted, all resulting from these conflicts. Another regrettable fact is the increase in violence against indigenous peoples: nine murders were perpetrated, seven against indigenous leaders (CPT, 2020).

In this backdrop of violence against human rights defenders, this article focuses on cases related to the environmental matters which often involve disputes over natural resources and the occupation of lands or territories. Data for 2020 (CPT, 2021) showed a significant increase in these occurrences: 1,608 cases of violence against occupation and possession were recorded, affecting around 171,968 families. Unfortunately, in the type of conflict called "invasion of territories", of the total 178 occurrences recorded until November 27, 2020, indigenous people are most frequent victims (54.5%), followed by quilombola families (11.8%) and squatters (11.2%).

One of the main contributions to the increase in cases of violations of human rights and the environment in Brazil comes from government policies that have been adopted mostly in the last two years, trying at all costs to undermine many of the achievements and breakthroughs in Brazil's environmental policy, directly affecting traditional peoples and communities and other segments of the population, which has had a negative impact on the different sectors of society, including internationally, as is the case of growing deforestation in many regions, burnings, forest fires – arsons or not – among others.

With this, it is defensible that the 2018 Escazú Agreement is so expected to come into force because it emerges as a starting point for a new phase that is expected to have an impact on the defense of persons and

peoples victimized by environmental conflicts in Brazil, especially those most vulnerable.

4 WHILE ESCAZÚ 2018 DOES NOT COME, WHERE SHOULD WE MOVE, AIMING THE ENVIRONMENTAL ACCESS RIGHTS?

With so many obstacles toward a democratic management of the environment in Brazil, as a caveat it is important to highlight that there is a legislation receptive to environmental access rights concerning the guarantee of environmental information, such as Law No. 6,938/81, which created the National System of Environmental Information (SISNIMA), and Law No. 12,527/2011 (Information Access Law – LAI). In this sense, we should note that in addition to legislation, physical and human structures are crucial to allow State bodies to process and make such information widely available with principles of exemption, veracity and timeliness of such information.

Information sharing about the perspective of environmental problems will not only be a decisive factor for publicizing environmental conflicts and damages, but also a strong instrument for preventing and punishing their perpetrators. We can cite, for example, the National Institute of Space Research (INPE)[15], which works with a state-of-the-art satellite capable of providing real-time information about burning outbreaks in the Brazil's states and regions, as well as operating the Real-Time Deforestation Detection System (DETER). Given the considerable increase in deforestation, burning and forest fires, this is a work of excellence, that needs to be strengthened with other work carried out by other public and private institutions, which have different sorts of data concerning environmental matters.

It is of fundamental importance to strengthen the mechanisms of participation, such as holding public hearings[16] and the creation of environmental committees and councils at all three levels of the Federation.

15 The INPE, in the period from January 1 to February 11, 2021, detected the following numbers of fire outbreaks and burnings: 1,362 (Amazon); 627 (Caatinga); 882 (Cerrado); 436 (Atlantic Forest); 49 (Pampa); 48 (Pantanal). Also according to data from DETER, deforestation in the Amazon grew 85% in 2019 and, by October 2020, more than a quarter of the Pantanal (INPE, 2021) had burned.

16 Article 1 of Resolution No. 09/87 of CONAMA regulates the following: "The Public Hearing referred to in resolution/Conama No. 001/86, 'aims to expose to interested parties the content of the product under analysis and its RIMA, dispelling doubts and welcoming suggestions and criticism from those present" (Brazil, 1987).

In this respect, we can infer that Brazil still lacks a culture of citizen participation, which is due to several factors, such as the lack of knowledge about the legislation and the lack of information and knowledge about the content of the matters to be addressed at these events. In addition, there is the discredit of a large part of the population involved, which is deprived of the ability to give an opinion or do not have the decision-making power or technical knowledge to discuss on an equal footing with professionals working for companies on an environmental impact study (EIA) or an environmental impact report (RIMA).

As far as environmental councils at national level are concerned, in the case of the National Environment Council (CONAMA)[17], there was a significant decrease in what previously appeared to be a parity composition among its members, as the current president of the Republic cut down its members from 96 to 23 with Decree No 9.806/19. As a result, there will be 10 fixed representatives linked to the government, while the other 13 will rotate. There is a stark decrease in the participation of members of civil society, in addition to the decrease in the term of office, which will be only one year and will be chosen by lot.

Despite the fact that Brazil has several instruments that legitimize not only collective actions brought by state bodies, such as Public Civil Action (Law n.7,347/1985) and, individually, in the case of Popular Action (art. 5º, LXXIII, of the CF, and art. 1º, § 3º, of Law n. 4,717/65), access to justice in environmental matters is still precarious. In this bias, it is important to emphasize that there is a greater engagement by bodies such as the Public Prosecutor's Office (both states and federal) and public defenders, advising a large number of victims in the exercise of judicial guardianship. However, civil society has participated more actively in recent years, represented by NGOs, associations, trade unions, social movements, among others, which have been mounting a resistance to conflicts, seeking and demanding solutions in civil, penal or administrative courts, to investigations of environmental matters.

These resistance fronts are important because as capitalist interests advance their trenches toward unlimited exploitation of natural resources, the question is: what will remain of such expropriation and depredation of natural resources? The answer will therefore be the overwhelming destruction of nature. Thus, more than ever, environmental access rights must be

17 CONAMA, established by Article 7 of Law No. 6,938/1981, had its composition changed in 2019 by Presidential Decree No. 9,806/2019 (Brazil, 2019b).

appropriated by the whole of society as instruments to fight all kinds of human rights violations.

CONCLUSION

It is of fundamental importance to believe that it is possible to think of better days, even with so many evils being experienced all over the world, especially the destruction of the environment. It is known that environmental damage and tragedies have not ceased to exist on account of the insatiable world capital, armed with the discourse of sustainable development, an expression so abused in recent years, but not without importance for those who really fight and sacrifice their lives for the defense of the environment and human rights.

To advocate for the entry into force of another international instrument, such as the 2018 Escazú Agreement, is really to see the opening of fronts of struggles for palpable possibilities of insertion of citizens in democratic spaces, spaces that compete within society and "Mother Earth". It is therefore important that society knows, demands and does not retreat when confronted with the denial of rights that are guaranteed in the laws of their countries and in International Law.

In light of this, we confirm the hypothesis defended in this article, to wit, that the binding of the instruments of the International Law, in addition to those that are guaranteed by the Brazilian legislation, are necessary to strengthen environmental democracy and the fight against human rights violations committed against the citizens and also against human rights defenders, as shown by the high rates of violence and violations of rights related to the environment.

Thus, even if there are governments that impose backward rules on their environmental management policies, every citizen, regardless of the social group to which they belong or the place in the world where they are, must have access to information and to an environmental education policy that allows them to know the legal-political instruments of defense of the environment and other rights that are intrinsically linked to the environmental issue.

Finally, it is urgent to call on the Brazilian public to ratify and implement the 2018 Escazú Agreement as a binding and mandatory legislative instrument for various reasons, whether they be the situation of the environment, which is agonizing (but is still vital for the maintenance of other

human rights), or for all human and environmental rights defenders who had their lives taken with unacceptable impunity.

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