- **Duties of private entities in respect of access to environmental information (art. 2 b)**

"Competent authority" means, for the purposes of articles 5 and 6 of the present Agreement, any public body that exercises the powers, authority and functions for access to information, including independent and autonomous bodies, organizations or entities owned or controlled by the government, whether by virtue of powers granted by the constitution or other laws, and, when appropriate, **private organizations that receive public funds or benefits (directly or indirectly) or that perform public functions and services, but only with respect to the public funds or benefits received or to the public functions and services performed;**

As expressly indicated in the Agreement, the inclusion of private entities is limited to those that receive public funds or benefits or that perform public functions or services. Moreover, the information that shall be accessible is only that environmental information related to those public funds, benefits, functions or services and does not encompass non-environmental information or any other information of the private entity.

- **Refusal of access to information (art. 5.5)**

The right to obtain environmental information is not absolute. A competent authority may refuse to provide all or a part of requested environmental information **based on the domestic legal regime of exceptions**. If the information is refused, this should be done based on exceptions in the party's national legal framework in keeping with article 5.8 which requires reasons for refusal to be legally established in advance.

Although countries have flexibility in determining the reasons for refusal under national law, the Agreement requires that these reasons not be arbitrary but "legally established in advance" and "clearly defined and regulated", meaning they should be set out in the national legal framework on access to information.

- **Human rights defenders in environmental matters (art. 9)**

Protecting the environment requires, first and foremost, protecting those who defend it. Article 9 of the Escazú Agreement is innovative in its inclusion of specific provisions to protect and promote the work of human rights defenders in environmental matters in Latin America and the Caribbean. Human rights defenders in environmental matters are among the groups most at risk of suffering human rights violations.

The special consideration given to human rights defenders in environmental matters by the Escazú Agreement does not entail the establishment of new rights or special jurisdictions for this group, nor does it recognize any additional rights other than those that every person already has under international human rights law. Rather, the Escazú Agreement reiterates and reaffirms commitments already assumed by States under international, regional and national frameworks and adapts them to the environmental sphere, facilitating their application to the work and practical situation of environmental defenders in view of the particular risks and threats they face in the region.

Every person, on an equal and non-discriminatory basis, has the right to defend human rights. Human rights defenders in environmental matters have the same rights and obligations as every other person and shall act peacefully. However, in view of the certain or likely risks to which they

are exposed in the environmental field, it is necessary to consider specific measures for individuals and groups within this group. The establishment of affirmative measures for specific groups is part of international human rights law. Human rights instruments seek to protect particularly those who are more vulnerable to human rights violations and therefore establish specific obligations and guarantees to protect people and groups in situations of greater vulnerability.

The Escazú Agreement thus intends to highlight the role and work of human rights defenders in environmental matters and to require States to safeguard their rights and avoid violations. It also seeks to reinforce capacity-building and regional cooperation on the issue, in line with national and international commitments.

- **Clearing house (art. 12)**

Under article 12, the Escazú Agreement establishes a clearing house on access rights to be operated by the secretariat. Clearing houses are common to multilateral environmental agreements and are intended to foster the exchange of information among parties and stakeholders, as well as to promote knowledge and awareness on specific topics.

The provision specifies that this mechanism shall be "virtual" and "universally accessible", indicating that it should be open to the general public and available online. In terms of the content, the article is non-exhaustive and indicates that it can include "legislative, administrative and policy measures, codes of conduct and good practices".

In relation to this obligation, ECLAC has created the Observatory on Principle 10 in Latin America and the Caribbean, which includes treaties, legislation, policies and jurisprudence on access rights in Latin American and Caribbean countries and on related topics such as climate change, biodiversity and environmental defenders.

The Observatory is composed of information of public nature or access, as well as information voluntarily provided by countries. It operates fundamentally as a repository of laws and policies, allowing representatives of governments, civil society, the private sector, the academic sector and any interested person to access documents in one place. It also provides resources and visual and outreach materials that assist in processing the data and information contained therein, as appropriate.

- **Secretariat functions (art. 17)**

The functions of the Secretariat shall be as follows: (a) to convene and organize the meetings of the Conference of the Parties and its subsidiary bodies and provide the necessary services; (b) to provide assistance to the Parties upon their request for capacity-building, including the sharing of experiences and information and the organization of activities in accordance with articles 10, 11 and 12 of the present Agreement; (c) to determine, under the general guidance of the Conference of the Parties, the administrative and contractual arrangements needed to carry out its functions effectively; and (d) to perform any other secretariat functions specified in the present Agreement and any other functions as determined by the Conference of the Parties.

- **Settlement of disputes (art. 19)**

The means provided in this article are common in international law95 and follow standard procedures similar to those included in most multilateral environmental agreements, such as the Minamata Convention on Mercury or the United Nations Framework Convention on Climate Change.97 The Escazú Agreement offers a wide variety of voluntary options and a high degree of flexibility to parties as to the means they may choose to solve any possible disputes peacefully.

When a dispute arises, parties are first called on to seek a solution through negotiation or by any other means of dispute settlement that may be acceptable to them. As a result, the article expressly provides for an informal, non-confrontational and non-compulsory method as a preferred means of dispute settlement, while also allowing agreement on a different means acceptable to the parties concerned. These other means are not listed in the Agreement, leaving it to the absolute discretion of the parties.

In addition, article 19.2 of the Agreement gives the alternative to parties of voluntarily accepting two other means of dispute settlement: submission of the dispute to the International Court of Justice or arbitration. These alternative means may only be applied if the dispute is not settled through negotiation or another agreed means as provided for in article 19.1. Recourse to any of these means is not compulsory and under no circumstance may a party be forced to opt for one of them unless it has expressly consented to it. As a result, a dispute shall only be submitted to the International Court of Justice or to arbitration if each party has expressly agreed to use either one or both means.

- **Reservations (art. 23)**

The total prohibition of reservations has been the standard practice in international environmental law for the past 30 years. None of the main multilateral environmental agreements adopted since 1985 allow any reservation, such as the three Rio conventions, the chemicals conventions or the Paris Agreement, to name a few. This prohibition is intended to protect the integrity of the treaty and support its implementation and effectiveness.

Following this trend, article 23 does not permit any reservation to be made to the Escazú Agreement. As a result, when joining the treaty, States accept the text in its entirety. In addition to being consistent with the aforementioned practice in international environmental law, this express prohibition is rooted in the fact that during the negotiations all provisions were negotiated by consensus, in an open, transparent and participatory manner, the result of which was a carefully crafted and finely balanced text that considered all interests and concerns expressed and was deemed acceptable to all negotiating countries as a one-package deal. The text also reflects a series of interlocking compromises and accommodates the different realities and contexts of each country under common agreeable goals and standards.