

This is an English translation of the original Spanish language version of the amicus. This is not a professional translation and may contain some inconsistencies. The purpose of the English translation is to convey the substantive content of the amicus to English speaking organizations so that they can make an informed decision about whether or not to endorse the amicus. Only the Spanish version will be submitted to the Court.

December 18, 2023

Mr. PABLO A. SAAVEDRA ALESSANDRI
Executive Secretary
Inter-American Court of Human Rights
San José, Costa Rica

Reference: Comments on the request for an advisory opinion submitted by the Republic of Colombia and the Republic of Chile on January 9, 2023. Advisory opinion on climate emergency and human rights.

Dear Mr. Secretary Saavedra,

The organizations whose signatures appear attached to this letter submit the following observations in response to the request for an advisory opinion submitted by the Republic of Colombia and the Republic of Chile on January 9, 2023, on "*the scope of State obligations, in their individual and collective dimension, to respond to the climate emergency within the framework of international human rights law, which takes special account of the differentiated effects that such an emergency has on the people of various regions and population groups, nature and human survival on our planet*".

These submissions are entitled "**Recognition of persons, groups and organizations that defend the environment as a vulnerable group in the Inter-American Human Rights System and State obligations for their protection in the context of the climate emergency**". They gather the contributions of civil society organizations (grassroots organizations, non-governmental organizations, trade unions) and individuals from various Latin American countries on the scope of State obligations pertaining to the adoption of measures, protection, respect and guarantees of the rights of persons, groups and organizations that promote and defend human rights in environmental matters, and recommendations for how the Inter-American Court of Human Rights should define States' obligations in this context. This brief was prepared by a Working Group of organizations within the Alliance for Land, Indigenous and Environmental Defenders (ALLIED) and was opened for

signature by external organizations and individuals, both members and non-members of ALLIED, whose signatures are attached to this submission.

We thank the Court for the opportunity to present these observations and trust that the advisory opinion will broaden the scope of protection for environmental defenders in the Americas, both within the Inter-American system and at the national level.

Recognition of persons, groups and organizations that defend the environment as a vulnerable group in the Inter-American Human Rights System and State obligations for their protection in the context of the climate emergency.

Observations submitted to the Inter-American Court of Human Rights in the process of the advisory opinion on the climate emergency and human rights.

Introduction

1. This brief of observations is submitted to the Inter-American Court of Human Rights (hereinafter the Inter-American Court) as part of the ongoing advisory opinion procedure on the human rights obligations of States in the context of the climate emergency, which began at the request of the Republic of Colombia and the Republic of Chile on January 9, 2023. The advisory function of the Inter-American Court on these issues represents an opportunity to promote the development of Inter-American standards, and international standards in general, with the participation of civil society.

2. This brief gathers the observations of civil society organizations (grassroots organizations, non-governmental organizations, trade unions) and individuals from various Latin American countries on the obligations of States regarding the adoption of measures, protection, respect and guarantee of the rights of persons, groups and organizations that promote and defend human rights in environmental matters (hereinafter persons, groups and organizations that defend the environment), the scope of which should be established by the Inter-American Court of Human Rights. This brief was prepared by a Working Group within the Alliance for Land, Indigenous and Environmental Defenders (ALLIED), and was opened for signature by external organizations and individuals, both members and non-members of ALLIED, whose signatures are attached to this submission.

3. This brief addresses the questions presented in the request for an advisory opinion related to States' obligations of prevention and protection with respect to persons, groups and organizations that defend the environment (section E of the request), and on the shared but differentiated responsibilities of States (section F of the request). In this regard, we request that the Court rules in its advisory opinion on these five fundamental aspects of the exercise of the right to advocate for and defend human rights in environmental matters:

- The incorporation of the Escazú Agreement as part of the *corpus iuris* for the application and interpretation of the obligations of States regarding human rights in the framework of the Inter-American System of Human Rights (hereinafter IAHRS), and in particular, regarding the protection of environmental defenders and guarantee of their right to advocate for a clean and healthy environment and rights of access to information, participation and access to justice in environmental matters.

- That criminalization against persons, groups and organizations that defend the environment is a violation of human rights, including the right to defend these rights in environmental matters. This declaration should be based on the articulation of the Escazú Agreement and the normative framework of the ISHR.

- The recognition of environmental defenders as a vulnerable group within the IAHRs, and therefore, the establishment of State obligations to adopt measures to guarantee the exercise of their rights, particularly the right to defend human rights in environmental matters.

- The recognition that States' have extraterritorial obligations when they have jurisdiction, influence and/or control over public and private companies that are registered or have their headquarters in the territory of that State (home States), and when it is reasonably foreseeable that the activities of these companies will directly or indirectly affect human rights and/or put at greater risk persons, groups and organizations that defend the environment in the States where these companies operate (host State).

- The adoption by the Inter-American Commission on Human Rights (hereinafter the Inter-American Comisión) of urgent and effective measures to advance the protection of environmental defenders, groups and organizations, especially: the expeditious processing and resolution of petitions where defenders are the victims of violations, the monitoring of the effectiveness of precautionary measures, and the adoption of higher standards that expand these protections in country reports and relevant special reports issued by the Commission. This requires that the Commission be strengthened by the States for the fulfillment of its work.

4. To this end, this brief addresses the five topics mentioned above and concludes with recommendations to the IACHR related to the questions posed within the advisory opinion.

1. **The Escazú Agreement as part of the *corpus iuris* for the application and interpretation of the normative framework of the IAHRs: the right to defend human rights in environmental matters and the “rights of access” in the context of the climate emergency.**

This section argues that the climate emergency is a reality that threatens the very existence of humanity. Subsequently, it presents how the climate emergency impacts the exercise of human rights, and the need for a rights-based approach to address these impacts. Next, it elaborates on the essential content of the right to defend human rights in environmental matters, highlighting that this is due to the seriousness of the climate emergency and the need to protect environmental defenders, who are at risk as never before. Next, the so-called “rights of access” are presented: information, participation

and access to justice in environmental matters, which must be protected and fully enjoyed by defenders to face the climate emergency. The assertion above is based on the articulation of the Escazú Agreement and the normative framework of the IAHRs, stating that the former is part of the *corpus iuris* for the application and interpretation of the latter.

A. The climate emergency is a threat to the existence of humankind that affects human rights.

5. Scientific evidence, the pronouncements of the United Nations Secretary General¹ and the reports of the Intergovernmental Panel on Climate Change (IPCC), among others, lead to the conclusion that the planet is in a climate emergency that threatens the very existence of humanity, and is a consequence of human actions that have seriously altered the balance of our ecosystems.

6. Climate change is the expression of environmental devastation experienced in the territories, which are defended by people and collectives. The environmental struggle is a struggle for the existence of life itself on the planet, and occurs in the context of different models of development with negative socio-environmental impacts on the territories.

7. Scientific consensus indicates that we are already in an urgent, acute planetary emergency.² In the same vein, the IPCC's *Special Report on Global Warming of 1.5°C* concludes that if global warming continues to increase at the current rate, it could reach 1.5°C between 2030 and 2052, which would generate a serious threat to human survival and ultimately have a devastating impact on human rights, especially on the rights of vulnerable groups³.

8. Climate change is one of the limits of our planet (so-called planetary boundaries) to withstand change generated by human activities⁴; therefore, reaching or exceeding the temperature of 1.5°C established in the Paris Agreement will generate possible irreversible and catastrophic impacts,⁵ including a decrease in the planetary capacity to be a habitable place. Scientists have identified that by 2023, six of the nine planetary

¹Guterres A. *Remarks at Austrian World Summit*. United Nations, Secretary-General, 15 May 2018 Speeches. Available at: <https://www.un.org/sg/en/content/sg/speeches/2018-05-15/remarks-austrian-world-summit>

²Lenton T. M., et al, *Climate tipping points-too risky to bet against*. Comment, Nature, 575(7784): 27 November 2019;592-595, 594. doi: <https://doi.org/10.1038/d41586-019-03595-0>; Armstrong D.I., et al., *Exceeding 1.5°C global warming could trigger multiple climate tipping points*. Science, September 9, 2022;377(6611). doi: 10.1126/science.abn7950.

³IPCC, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, (2018). [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf.

⁴Richardson k, et al., *Earth beyond six of nine planetary boundaries*. *Sci. Adv.*9, eadh2458, 13 September 2023.DOI:10.1126/sciadv.adh2.

⁵Armstrong D.I., et al., *Exceeding 1.5°C global warming could trigger multiple climate tipping points*. Science, *Ibidem*, pp. 1-10.

boundaries related to sustaining life will exceed their “safe zones”: climate change, deforestation (land use change), biodiversity loss, introduction of novel entities, biogeochemical flows and freshwater depletion. Keeping planetary boundaries in the safe zone is paramount to maintaining the stability of the biosphere because they are interrelated.⁶

9. The climate emergency affects a wide range of human rights. The impacts of climate change, both abrupt and protracted, produce changes in the natural cycles of ecosystems, including meteorological phenomena that become more frequent and severe over time,⁷ such as heat waves,⁸ droughts,⁹ fires,¹⁰ precipitation¹¹ and floods, among others.¹² Climate impacts likewise bring significant impacts and threats to the enjoyment of a wide range of rights, including, *inter alia*, the right to life, food, housing, health, water, property, collective property, self-determination, development, self-development, culture, and the right to a healthy environment. In addition, the measures that States and corporate actors design and implement in response to the climate crisis, including climate change adaptation and mitigation measures, may also negatively impact the full enjoyment of human rights.¹³ In this sense, the climate

⁶Richardson k, et al., *Earth beyond six of nine planetary boundaries. Ibidem.*

⁷Xu Y & Ramanathan V. Well below 2 °C: *Mitigation strategies for avoiding dangerous to catastrophic climate changes.* Proc Natl Acad Sci U S A. September 26, 2017;114(39):10315-10323. doi: <https://doi.org/10.1073/pnas.1618481114>, page. 10319-10323; Xu C, et al, (2020). *Future of the human climate niche.* Proc Natl Acad Sci U S A. May 4, 2020(21):11350-11355. doi: 10.1073/pnas.1910114117., page. 11350-11355; Watts N, et al, *report of the Lancet Countdown on health and climate change: responding to converging crises,* Lancet, 9 January 2021;397(10269):129-170. doi: 10.1016/S0140-6736(20)32290-X., pages. 129-170.

⁸Philip Z., et al., *Extreme heat in North America, Europe and China in July 2023 made much more likely by climate change,* July 25, 2023. doi: <https://doi.org/10.25561/105549>; Philip, S. Y., et al., *Rapid attribution analysis of the extraordinary heat wave on the Pacific coast of the US and Canada in June 2021,* Earth Syst. Dynam, Dec. 8, 2022;13, 1689-1713, <https://doi.org/10.5194/esd-13-1689-2022>, pp. 2; Newburger E. *Historic heat wave linked to hundreds of deaths in Pacific Northwest and Canada.* CNBC, July 1, 2021. <https://www.cnbc.com/2021/07/01/heat-wave-linked-to-hundreds-of-deaths-in-pacific-northwest-canada.html>; Vautard R., et al., *Human contribution to the record breaking June and July 2019 heatwaves in Western Europe,* Environ. Res. Lett. Aug. 28, 2020;15(9): 094077. DOI 10.1088/1748-9326/aba3d4, pp. 1-9.

⁹Dahl K. A, et al., *Quantifying the contribution of major carbon producers in increases in vapor pressure deficit and burned area in Western US and Southwestern Canadian Forests.* Environ. Res. Lett. May 16, 2023;18(6): 064011. DOI: 10.1088/1748-9326/acbce8. page. 1-11.

¹⁰Balch JK, et al., *Warming weakens the night-time barrier to global fire.* Nature, February 26, 2022;602(7897):442-448. doi: 10.1038/s41586-021-04325-1.

¹¹Pinto I, et al., *Climate change exacerbated rainfall causing devastating flooding in Eastern South Africa,* World Weather Attribution, May 13, 2022. Available at: <https://www.worldweatherattribution.org/wp-content/uploads/WWA-KZN-floods-scientific-report.pdf>. page. 1-21.

¹²Clarke B., et al., *Pakistan floods: What role did climate change play?*, September 2, 2022. The Conversation. Available at: <https://theconversation.com/pakistan-floods-what-role-did-climate-change-play-189833>; Otto F.E.L.; et al., *Climate change likely increased extreme monsoon rainfall, flooding, highly vulnerable communities in Pakistan,* Environ. Res. Climate 2, May 17, 2023;025001. DOI 10.1088/2752-5295/acbfd5., page 3; Trenberth K. *2022's supercharged summer of climate extremes: How global warming and La Niña fueled disasters on top of disasters,* The Conversation. (September 15, 2022). Available at: <https://theconversation.com/2022s-supercharged-summer-of-climate-extremes-how-global-warming-and-la-nina-fueled-disasters-on-top-of-disasters-190546>.

¹³Inter-American Commission and REDESCA, *"Climate Emergency. Alcance de las obligaciones interamericanas de derechos humanos"*, Resolution 3/21, December 31, 2021, Available at: http://www.oas.org/es/cidh/decisiones/pdf/2021/Resolucion_3-21_SPA.pdf

emergency is a human rights issue, and implicates the responsibility of the State to diligently address its obligations to fully respect, protect and guarantee rights in the context of the climate emergency.

10. Specifically, the climate emergency directly affects the right to a healthy environment, which has been recognized as an autonomous and justiciable human right in the ISHR. In this regard, Advisory Opinion 23/17 of the Inter-American Court of Human Rights provides that the protection of the right to a healthy environment is not intended to protect the interest of people over ecosystems, but also aims to protect nature and all its components based on their intrinsic value.

11. In addition, the climate emergency raises dilemmas of justice and equality at different levels, including, for example, between States and between present and future generations. The adverse effects of climate change disproportionately affect people living in poverty or in other conditions of vulnerability. It also raises various dilemmas about responsibility and burden-sharing in the fight against climate change.

12. Because the effects of climate change are disproportionately amplified in nations and populations that are already disadvantaged, climate change is also a threat multiplier. The most marginalized groups and those in vulnerable circumstances are most affected because of pre-existing inequalities and limited conditions and capacity to adapt to and mitigate the effects of climate emergency. Geographic location, poverty, gender, age, ethnicity, belonging to an Indigenous or minority population, social or national origin, state of birth, or other social or economic status, and ableness are just some examples of factors that can make the effects of climate change disproportionately more difficult for some populations.

13. The risk of harm is particularly high for those segments of the population that are currently marginalized, vulnerable, or as a result of discrimination and pre-existing inequalities, have limited access to decision-making spaces and resources, including women; children and adolescents; Indigenous peoples; people with disabilities; people living in informal settlements; migrants; peasants; and people living in rural areas. While impacts of the climate crises are felt disproportionately on marginalized groups, they have only marginally contributed to greenhouse gas emissions, which are the main cause of the climate crisis.¹⁴

14. A human rights-based approach to addressing the climate emergency is based on international precedents. In the normative sphere of the IAHRs, the 1999 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) recognizes the close relationship between the right to a healthy environment and civil and political rights and indicates that these rights are inextricably linked. The Inter-American Democratic Charter also establishes that democracies must facilitate the preservation of the environment, which therefore generates an obligation for States must adopt policies and strategies for the protection of the environment. For its part, the Inter-American Court has recognized the existence

¹⁴Inter-American Commission and REDESCA, "*Climate Emergency. Alcance de las obligaciones interamericanas de derechos humanos*", *Ibidem*.

of an undeniable relationship between protection of the environment and human rights, as well as the adverse effects of climate change on the full enjoyment of human rights.¹⁵

15. Notably, in its jurisprudence on environmental issues, the Inter-American Court recognizes the rights of ethnic peoples and requires their special protection. First, the Court recognizes that collective property rights and interests are deeply intertwined with the protection of, and access to, the natural resources on their territories that are fundamental to their survival and continuity of way of life.¹⁶ Second, the Court has analyzed the obvious relationship between a life with dignity and the protection of their ancestral territories and natural resources, as part of the recognition of their situation of vulnerability, and the special protections that they need given the connection between their land and territory and their individual and collective livelihood.¹⁷ Finally, the Court has emphasized that lack of access to territorial land and natural resources exposes indigenous communities to precarious or inhumane living conditions, which increases their vulnerability to diseases and epidemics and can lead to multiple violations of their human rights, way of life, customs and language.¹⁸

16. The Inter-American Commission has also highlighted that several human rights require a minimum level of environmental health as a necessary precondition for their full enjoyment, and that they are seriously impacted by environmental degradation and loss of natural resources.¹⁹ More recently, in Resolution 3/21²⁰ prepared in conjunction with the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA), the Commission highlights the climate emergency's

¹⁵Inter-American Court, *Case of Baraona Bray v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2022. Series C No. 481. Para. 114; Inter-American Court, *Environment and Human Rights (State obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and personal integrity - interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-23/17 of November 15, 2017. Series A No. 23. para. 47; Inter-American Court, *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196. para. 148.

¹⁶Inter-American Court, *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala. Interpretation of the Judgment on the Merits, Reparations and Costs*. Judgment of July 27, 2022. Series C No. 457, para. 197; Inter-American Court, *Case of Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina. Merits, Reparations and Costs*. Judgment of February 6, 2020. Series C No. 400, para. 98; Inter-American Court, *Case of the Xucuru Indigenous People and its members v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of February 5, 2018. Series C No. 346. para. 116.

¹⁷Inter-American Court, *Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs*. Judgment of November 25, 2015. Series C No. 309. para. 181; Inter-American Court, *Case of Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125. para. 163.

¹⁸Inter-American Court, *Case of the Afro-descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270. para. 354; Inter-American Court, Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 147; Inter-American Court, Case of the Yakye Axa Indigenous Community v. Paraguay. Ibidem, para. 354.*

¹⁹Inter-American Commission, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources - Norms and Jurisprudence of the Inter-American Human Rights System*, December 30, 2009, OEA/Ser.L/V/II. Doc. 56/09, para. 190. Available at: <https://www.oas.org/es/cidh/indigenas/docs/pdf/tierras-ancestrales.esp.pdf>.

²⁰Inter-American Commission and REDESCA, "Climate Emergency. Alcance de las obligaciones interamericanas de derechos humanos", *Ibidem*.

powerful impact on human rights and issues recommendations to States to address this emergency.

17. Other regional human rights systems have analyzed the interrelationship between environment and human rights. In Europe, the European Court of Human Rights (ECtHR) has ruled that severe environmental degradation can affect the well-being of the individual by violating the right to life,²¹ the right to respect for private and family life,²² and the right to private property.²³ For its part, the African Court on Human and Peoples' Rights recently recognized that the State violates the rights to health and life of persons under its jurisdiction when it does not prevent third parties from impacting these rights through environmental pollution. This is so even if the pollution does not result in death but endangers life.²⁴ The African Commission on Human and Peoples' Rights has reiterated that the right to a satisfactory environment is closely related to economic and social rights, insofar as environmental degradation impacts the quality of life and security of the individual.²⁵

18. In the universal system, in 2022 the United Nations (UN) General Assembly recognized the human right to a clean, healthy and sustainable environment.²⁶ The Resolution recognizes that environmental degradation has an impact on the effective enjoyment of all human rights, particularly for people who are already in vulnerable situations. A year earlier, the UN Human Rights Council recognized that environmental protection contributes to and promotes the enjoyment of human rights, including "[...] *to life, to the highest attainable standard of physical and mental health, to an adequate*

²¹ECtHR, Judgment (2nd Section), *Case M. Özöl and others v. Turkey*, No. 14350/05; 15245/05 and 16051/05, 17 November 2015, paras. 170, 171 and 200; ECtHR, Judgment (1st Section), *Case Budayeva and Others v. Russia*, Nos. 15339/02, 21166/02, 20058/02 and 15343/02, 20 March 2008, paras. 128-130; ECtHR, Judgment (Grand Chamber), *Case of Öneriyildiz v. Turkey*, No. 48939/99, 30 November 2004, paras. 71, 89, 90 y 118.

²²ECtHR, Judgment (2nd Section), *Case Di Sarno et al. v. Italy*, No. 30765/08, 10 January 2012, paras. 104-110 and 113; ECtHR, Judgment (3rd Section), *Case Tătar v. Romania*, No. 67021/01, 27 January 2009, paras. 85-88, 97, 107, 113 and 125; ECtHR, Judgment (3rd Section), *Case Giacomelli v. Italy*, No. 59909/00, 2 November 2006, paras. 76-82, 97 and 98; ECtHR, Judgment (Grand Chamber), *Case of Roche v. United Kingdom*, No. 32555/96, 19 October 2005; ECtHR, Judgment (1st Section), *Case of Fadeyeva v. Russia*, No. 55723/00, Judgment of 9 June 2005, paras. 68-70, 89, 92 and 134; ECtHR, Judgment (3rd Section), *Case of Taşkin et al. v. Turkey*, No. 46117/99, 10 November 2004, paras. 113, 116, 117, 119 and 126; ECtHR, Judgment (Grand Chamber), *Case of Hatton and Others v. United Kingdom*, No. 36022/97, 8 July 2003, paras. 96, 97, 104, 118 and 129; ECtHR, Judgment (Grand Chamber), *Case of Guerra and Others v. Italy*, No. 14967/89, 19 February 1998, paras. 57, 58 and 60; ECtHR, Judgment (Chamber), *Case of Lopez Ostra v. Spain*, No. 16798/9, 9 December 1994, paras. 51, 55 y 58.

²³ECtHR, Judgment (2nd Section), *Case Turgut et al. v. Turkey*, No. 11411/03, July 8, 2008, paras. 86 and 90-93; ECtHR, Judgment (Grand Chamber), *Case of Öneriyildiz v. Turkey*, No. 48939/99, 30 November 2004, paras. 124-129, 134-136 and 138; ECtHR, Judgment (1st Section), *Case of Papastavrou et al. v. Greece*, No. 46372/99, 10 April 2003, paras. 33 and 36-39.

²⁴African Court on Human and Peoples' Rights, *Case Ligue Ivoirienne Des Droits De L'homme (LIDHO) et al. v. Republic of Côte d'Ivoire*. Application No. 041/2016. Judgment of September 5, 2023, paragraphs 141, 143, 144, 171-174.

²⁵African Commission on Human and Peoples' Rights, *Case of the Center for Social and Economic Rights Action and the Center for Economic and Social Rights v. Nigeria*. Communication 155/96. Decision of 27 October 2001, para. 51.

²⁶United Nations, General Assembly, Resolution adopted by the General Assembly on 28 July 2022, The human right to a clean, healthy and sustainable environment. A/RES/76/300.

standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for present and future generations".²⁷

19. For its part, the UN Human Rights Committee recently established in its jurisprudence that the effects of climate change can expose people to a real risk to their right to life, including the right to a life with dignity, and to their private, family and cultural life, with a differentiated impact on Indigenous peoples.²⁸ The UN Committee on the Rights of the Child has recognized that climate change, on a global level, generates real and noticeable harm to people, with children suffering a differentiated impact.²⁹

20. The UN Special Rapporteur on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment has stated that the realization of the fundamental attributes on which human rights are based (such as dignity, equality and freedom) often depend on an environment that allows them to flourish, for which informed, transparent and appropriate policies are necessary.³⁰

21. International Environmental Law also recognizes the interrelationship between environment, sustainable development, and human rights. First, the Stockholm Declaration on the Human Environment (Stockholm Declaration)³¹ recognizes that a balance between economic development and environmental protection is indispensable to ensure a favorable living and working environment for human beings and to create conditions on Earth for improving quality of life. Second, the Rio Declaration on Environment and Development (Rio Declaration) recognizes that in order to achieve sustainable development, environmental protection must be an integral part of the development process.³² Third, the Johannesburg Declaration on Sustainable Development defines the following pillars as being equally fundamental: (i) economic development, (ii) social development, and (iii) environmental protection.³³ This approach is reiterated in the World Summit on Sustainable Development Implementation Plan as part of the UN 2030 Agenda for Sustainable Development.

22. In conclusion, it can be affirmed that the link between the climate emergency and human rights is well established, both in the Inter-American Human Rights System and

²⁷ United Nations, Human Rights Council, Resolution adopted by the Human Rights Council on October 8, 2021. 48/13. The human right to a clean, healthy and sustainable environment. A/HRC/RES/48/13.

²⁸ UN Human Rights Committee (CCPR). Daniel Billy et al. v. Australia. CCPR/C/135/D/3624/2019. Paragraphs 8.3, 8.12 8.14; Ioane Teitiota v. New Zealand. CCPR/C/127/D/2728/2016 Paragraph 8.6.

²⁹ Committee on the Rights of the Child (CRC). Chiara Sacchi et al. v. Argentina et al. CRC/C/88/D/104/2019. Paragraph 10.14

³⁰ United Nations, Human Rights Council, *"Preliminary report of the independent expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox,"* December 24, 2012, UN document A/HRC/22/43, para. 10.

³¹United Nations, *Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972,* UN document A/CONF.48/14/Rev.1.

³²United Nations, Sustainable Development. *United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992. Volume I. Resolutions adopted by the conference,* UN document NCONP.151/26/Rev.1 (Vol. 1). Principles 1 and 4.

³³United Nations, Sustainable Development. *Report of the World Summit on Sustainable Development. Johannesburg, South Africa, 26 August to 4 September 2002,* UN document A/CONF.199/20. paragraph. 5.

in other human rights systems. Based on the above, a rights-based approach to the climate emergency is needed, emphasizing the principles of integrality, interdependence, universality and non-discrimination, and placing special emphasis on guaranteeing the rights of all persons, including vulnerable groups. A rights-based approach could serve as a catalyst for the adoption of urgent measures to prevent catastrophic effects and achieve a sustainable future, insofar as it makes it possible to specify the State's duty to prevent and address the climate emergency as a threat to human rights in the face of which the State must act diligently.

B. The exercise of the right to the defense of human rights in environmental issues

23. Despite the severity of the climate emergency, environmental defenders, groups and organizations are under attack as never before, especially in the Americas. At least 177 "land and environmental defenders" were killed in 2022 worldwide, with 88% of the crimes taking place in Latin America. Colombia topped the list with 60 deadly attacks recorded, followed by Brazil with 34, Mexico with 31 and Honduras with 14. Outside of Latin America, only Asia and Africa had records of climate activists killed on their lands, with 16 and 5 recorded lethal attacks, respectively. These figures are a far cry from the situation within Latin America³⁴ and shows the increasing dangers faced by environmental defenders in the region. Nonetheless, it should be taken into consideration that the real figure may be higher, as there are many cases that are not reported because they occur in conflict zones or in places where there are restrictions and less efficient monitoring of attacks.

24. Despite this context of systematic violence, persons, groups, and organizations that defend the environment have continued their struggles to defend human rights, the environment, territories, land, ethnic peoples and their communities. This defense in itself is the exercise of a human right: the right to defend human rights in environmental matters.

25. The right to defend human rights in environmental matters is recognized in Article 9 of the Escazú Agreement, which establishes three obligations related to full enjoyment and protection of the right: the guarantee of a safe and enabling environment; the adoption of measures for the recognition, protection and promotion of the rights of defenders; and the prevention, investigation and punishment of threats and attacks against defenders.³⁵

26. These obligations are complementary and specify States' obligations to adopt measures related to the protection and guarantees articulated in the IAHRs. The Inter-American Court has previously pronounced the importance of the Escazú

³⁴Global Witness. Standing firm. The land and environmental defenders on the frontlines of the climate crisis, 15 September 2023. Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/>.

³⁵Economic Commission for Latin America and the Caribbean (ECLAC). *Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean. Adopted in the Escazú Agreement* (2022). Available at <https://repositorio.cepal.org/server/api/core/bitstreams/a6049491-a9ee-4c53-ae7c-a8a17ca9504e/content>.

Agreement for the access to environmental information,³⁶ and recently incorporated it into the inter-American *corpus iuris* in a contentious case.³⁷

27. The right to defend human rights in environmental matters is a specific form of the right to defend human rights, which has been recognized at the international level. In 1999, the UN General Assembly adopted the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms".³⁸ The right to defend rights inherently implies that States have obligations related to guaranteeing the conditions for its exercise by all persons; in this sense, it implies the duty of the State both to refrain from developing actions that threaten the right to defend rights, and to develop positive actions so that people can defend their rights, and policies that prevent third parties from impeding the right to defend human rights. Article 9 of the Escazú Agreement establishes the obligation to guarantee a safe and enabling environment as:

"Each Party shall ensure a safe and enabling environment in which individuals, groups and organizations promoting and defending human rights in environmental matters can operate free from threats, restrictions and insecurity".³⁹

28. It is important to remember that to be considered a human rights defender, including those who defend human rights in environmental matters, it is enough to develop actions to promote and protect those rights, either individually or collectively, regardless of gender or age, or the number of rights they defend or the place where they do it.⁴⁰ Likewise, the catalog of actions for the defense of human rights in environmental

³⁶Inter-American Court, *Environment and Human Rights (State obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and personal integrity - interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. *Ibidem*, para. 218.

³⁷Inter-American Court, *Case of Baraona Bray v. Chile. Preliminary Objections, Merits, Reparations and Costs*, *Ibidem*, para. 126.

³⁸United Nations, General Assembly, Fifty-third Session. *Resolution Adopted by the General Assembly. [on the report of the Third Committee (A/53/625/Add.2)]. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, March 8, 1999, UN document A/RES/53/144.

³⁹Economic Commission for Latin America and the Caribbean (ECLAC). *Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean. Adopted in the Escazú Agreement (2022)*. *Ibidem*.

⁴⁰Inter-American Commission, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser. L/V/II., Doc.66, December 31, 2011, para. 13; Inter-American Commission, *Towards a Comprehensive Policy for the Protection of Human Rights Defenders: Approved by the Inter-American Commission on Human Rights*, OEA/Ser. L/V/II. Doc. 207/17, December 30, 2017; United Nations, General Assembly, Fifty-third Session. *Resolution Adopted By The General Assembly. [based on the report of the Third Committee (A/53/625/Add.2)]*. *Ibid.* Article 1; Inter-American Commission, *Criminalization of the work of human rights defenders*, OEA/Ser. L/V/II. Doc. 49/15, 31 December 2015. Available at: <http://www.oas.org/es/cidh/informes/pdfs/criminalizacion2016.pdf>, para. 19; Inter-American Court, *Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 283. para. 129; Knox, J. H., *Public Policy Report, Environmental Human Rights Defenders, A Global Crisis*, (2017). Available at: <https://www.universal-rights.org/wp-content/uploads/2017/09/DDHA-Reporte-en-español-vf-2-pag-1.pdf>; United Nations Environment Programme (UNEP), *Promoting Enhanced Protection for Environmental Defenders. Policy*.

matters is broad, ranging from environmental education, to litigation, to advocacy, among others.⁴¹

29. It is emphasized that a person, group, collective or organization that defends the environment exercises a right to defend other rights; that the right to defend human rights in environmental matters, in a safe and adequate environment in turn allows the defense of other human rights, including the right to a clean and healthy environment, the right to dignity, health, water, etc. The right to defend other rights contributes to democracy, peace, equity and sustainability, and in short, the maintenance of the rule of law.⁴² It also contributes in a positive, important and legitimate way to the enjoyment of a safe, clean, healthy and sustainable environment.⁴³

30. The work carried out by persons, groups, collectives, and environmental defense organizations around the climate emergency is fundamental for the future of the planet, and at the same time, recognition of their work and the guarantee of their rights by States is fundamental. In this regard, the Inter-American Commission and REDESCA have pointed out that:

"Environmental and climate defenders are directly affected by those projects that are implemented as response or adaptation measures to climate change, such as hydroelectric dams, solar and wind farms, and large-scale monoculture and animal farming. Consequently, recognizing the important work they carry out at the national and regional level and their valuable contribution to the fight against climate change, States must adopt immediate measures to promote and protect the rights of these persons to life, integrity and personal liberty, to assembly and freedom of association, to privacy and protection of honor and dignity, to movement and residence, to due process and judicial guarantees, ensuring that

(2018). Available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/Environmental_Defenders_Policy_2018_SP.pdf?sequence=6&isAllowed=y; Office of the United Nations High Commissioner for Human Rights (OHCHR). *Human Rights. Human Rights Defenders: Protecting the Right to Defend Human Rights*. Fact Sheet No. 29, April 1, 2004. Available at: <https://www.ohchr.org/es/publications/fact-sheets/fact-sheet-no-29-human-rights-defenders-protecting-right-defend-human>.

⁴¹Inter-American Commission, *Criminalization of the Work of Human Rights Defenders*. *Ibidem*, para. 21; Global Witness, *At What Price?* Report, July 24, 2018. Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/a-qu%C3%A9-precio/>; Global Witness, *Defending the land: global killings of land and environmental defenders in 2016*, July 13, 2017. Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/defender-la-tierra/>

⁴²Front Line Defenders, *Global analysis of front line defenders 2018*, January 7, 2018. Available at: <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2018>; Inter-American Commission, *Towards a Comprehensive Policy for the Protection of Human Rights Defenders: Approved by the Inter-American Commission on Human Rights*, *Ibidem*; Inter-American Commission, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser. L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 46; Inter-American Commission, *Second Report on the Situation of Human Rights Defenders in the Americas*, *Ibidem*. para. 470; Inter-American Commission, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, OEA/Ser. L/V/II. Doc. 49/13, December 31, 2013, paras. 184, 185, 186, 187, 188, 192 and 193.

⁴³Inter-American Commission and REDESCA, *North Central America: Environmental Defenders*, approved by the Inter-American Commission on Human Rights on December 16, 2022, document OEA/Ser.L/V/II. Doc400/22.

defenders are not harassed, stigmatized, discriminated against or killed for the work they carry out."⁴⁴

31. Among the rights that must be guaranteed by the State to provide a safe and enabling environment for persons, groups and organizations that defend the environment are the so-called rights of access, which from a procedural point of view allow human rights in environmental matters to be effective and justiciable. The connection between the right to defend human rights in environmental matters and access rights is developed below.

32. It is also clearly established that there is a relationship between the protection of human rights and the right to defend rights. Recognizing and guaranteeing the right to defend rights is, in other words, inextricable from protecting other human rights. This same relationship is present with respect to environmental protection, as we shall see below.

C. Access rights are essential for the exercise of the right to defend human rights in environmental matters.

33. The right to defend human rights is inextricably linked to full respect for and the guarantee of procedural rights that the Escazú Agreement refers to as rights of access, including: access to information, participation and access to justice.⁴⁵ These rights can be considered "access" rights to the extent that they allow defenders to use them to have an impact on the enjoyment of other rights, such as a healthy environment. These rights make up the procedural element of environmental justice and are essential for the protection and guarantee of the right to a healthy environment.

34. On the other hand, the Inter-American Court has determined that the State must guarantee public participation in all decision-making processes on environmental issues, without discrimination, in an equitable, meaningful and transparent manner. In addition, it has indicated that States must guarantee spaces for the public to present their opinions or comments before, during, and after the issuance of environmental impact studies.

35. The Inter-American Court has pointed out that States have a diverse set of obligations to protect rights that are procedural in nature with the objective of guaranteeing the rights recognized by the different legal instruments of the ISHR. According to the Court, States have the obligation to guarantee: (i) the right to access to information related to possible impacts on the environment, including a right to information on the climate crisis; (ii) the right to public participation of the people in their jurisdiction in decisions and policies that may affect the environment and those related to decisions that may lead to the generation of greenhouse gases or aggravate the

⁴⁴Inter-American Commission and REDESCA, "Climate Emergency. Alcance de las obligaciones interamericanas de derechos humanos", *Ibidem*.

⁴⁵Economic Commission for Latin America and the Caribbean (ECLAC). *Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean. Adopted in the Escazú Agreement* (2022). *Ibidem*

climate crisis like the expansion of fossil fuels, the increase of methane emissions, the impact on carbon sinks such as forests, wetlands, the increase of black carbon emissions, etc.; and (iii) access to information related to the right to public participation in the making of decisions and policies that may affect the environment.; and (iii) access to justice to realize the enforceability of State obligations for the protection of the environment, including those related to the climate crisis.⁴⁶

36. Further, it is important to recall that the jurisprudence of the Inter-American Court, as well as the decisions of the Inter-American Commission, recognizes that there are substantive rights and procedural rights linked to the right to a healthy environment. Enjoyment of substantive rights is particularly impacted by environmental degradation, while protection of procedural rights are more closely linked to the development of better policies, regulations and decisions related to protection of the environment. This approach considers some rights have an instrumental character, since they serve as a mechanism to protect other rights. Such is the case of the right of access to information, insofar as it allows the satisfaction of other rights, including the right to health, life or personal integrity.⁴⁷

37. In line with the above, UN Rapporteur on Climate Change has recalled that citizen participation should be considered as one of the central aspect of a rights-based approach, since civic participation is a form of democratic control over the activities of the State by enabling citizens to question, investigate, and evaluate the State's fulfillment of its duties in the context of the climate emergency.⁴⁸

38. However, the exercise of the right to participation in environmental matters presupposes the existence of adequate conditions for it to be exercised. Among these conditions is the adequate recognition and protection of the work of persons, groups and organizations that defend the environment, since they are the ones who, by exercising their right to participation, are acting to protect rights in the context of the climate emergency. The link between environmental protection and human rights protection has been recognized on multiple occasions by the Organization of American States (OAS). For example, its General Assembly issued resolutions on "Human Rights and the Environment" in 2001, on "Human Rights and Climate Change in the Americas" in 2008, and on "Climate Change in the Framework of Sustainable Development in the Hemisphere", recognizing the impact climate change will have on human rights in 2014.⁴⁹

39. These statements allow us to affirm that, given the principles of interdependence and integrality of human rights, access rights have a positive impact on the safeguarding of other human rights in environmental matters since they allow the contents of the

⁴⁶Inter-American Court, *Environment and Human Rights (State obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and personal integrity - interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. *Ibidem*.

⁴⁷Inter-American Commission and REDESCA, *North Central America: Environmental Defenders*. *Ibid*.

⁴⁸United Nations, General Assembly. Seventy-seventh session. *Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, 26 July 2022, UN document A/77/226.

⁴⁹Inter-American Commission, and REDESCA, *North Central America: Environmental Defenders*. *Ibid*.

latter to be better protected. Likewise, access rights are fundamental to the exercise of the right to defend human rights in environmental matters and contribute to stronger democracies and substantive improvement of the rule of law. In the context of the climate emergency, these elements acquire great relevance because strengthening access rights to decision-making processes related to the climate crises results in the protection of a wide range of rights that are affected by it. In particular, access rights make it possible to: i) improve the quality of the decisions taken to address the climate emergency, ii) monitor the compliance of State agents and individuals with their commitments to mitigate and adapt to climate change, iii) ensure that the measures adopted to mitigate and adapt to climate change respect human rights, and iv) evaluate the results of mitigation and adaptation strategies.

II. Criminalization of persons, groups and organizations that defend the environment: violation of human rights, including the right to defend these rights in environmental matters.

40. The previous section presented the reasons why the Escazú Agreement is part of the *corpus iuris* for the application and interpretation of the normative framework of the ISHR and delved into the essential content of the right to defend human rights in environmental matters, emphasizing its relevance in the context of the climate emergency. Unfortunately, there are many factors that jeopardize the exercise of this and other human rights: conditions of vulnerability, risks, threats, deaths, criminalization and stigmatization, attacks on the personal integrity and honor of those who defend the planet in the context of the climate emergency. All these factors are equally serious and are defined as human rights violations.

41. However, for purposes of this brief, criminalization deserves special attention. First, because it is a systematic practice in the Americas that distorts rule of law through the illegitimate use of the punitive power of the State; second, because this practice warrants an express pronouncement by the Inter-American Court establishing that criminalization violates human rights, not only by hindering the exercise of human rights, but also as State conduct that undermines rights; and third, because the defense of human rights is not possible when the State and companies, with the blessing of the former, use coercive power to delegitimize, make invisible, stigmatize and punish the work of defending the environment, which is particularly serious in the context of the climate emergency.

42. To support the above, this section of the brief explains what is meant by criminalization in environmental matters and why it impacts the enjoyment of human rights, including the right to defend human rights in these matters.

A. The concept of criminalization in environmental matters

43. Criminalization in environmental matters constitutes a set of actions and omissions exercised against individuals, groups, collectives and environmental defense organizations. This term is used to describe the manipulation and misuse of the punitive

power of the State - both by State and private actors - with the aim of controlling, punishing or preventing the exercise of the right to defend rights. It is emphasized that the punitive power of the State should be aimed at protecting human rights and preserving the legal goods considered essential in a society, and therefore criminalization in environmental matters undermines the foundations of the rule of law.

44. In the Americas, criminalization is systematic and, although it responds to specific contexts in each country, common patterns have been observed, such as: (a) the filing of unfounded complaints or based on criminal types that do not comply with ISHR standards or the principle of legality; (b) the inappropriate use of criminal precautionary measures - including pretrial detention and other forms of temporary deprivation of liberty; (c) the initiation of unfounded criminal investigations and trials; (d) the subjection to lengthy⁵⁰ and costly judicial processes. Additionally, these forms may be accompanied by prior actions such as public statements by State officials stigmatizing or accusing social leaders of committing crimes or illegal actions, with the objective or effect of delegitimizing the leadership.

45. In the case of Indigenous populations, criminalization often involves denying access to an interpreter or translator that is necessary to make an adequate defense. Furthermore, in some cases Indigenous defendants are even prohibited from using their mother tongue, which is a form of discrimination based on language and cultural identity.⁵¹

46. Criminalization also implied the modification of the normative frameworks and criminal policies of the States being used to attack the right of environmental defenders to defend rights. Particularly noteworthy is the introduction of criminal definitions or the application of overly broad or ambiguous criminal definitions, such as "terrorism", "attacks on public authority", "apology for rebellion" or "obstruction of public roads", which have facilitated the use of criminalization.⁵²

47. The Inter-American Commission has defined criminalization as:

"[T]he manipulation of the punitive power of the State by State and non-State actors with the aim of controlling, punishing or impeding the exercise of the right to defend human rights. This may take place, for example, through the filing of unfounded complaints or based on criminal charges that do not comply with the principle of legality, or on criminal charges that do not comply with Inter-American standards in terms of the conducts they punish. It can also occur

⁵⁰Front Line Defenders, *Global analysis of front line defenders 2018*, *Ibidem*; Leyva, A., et al., *Report on the situation of environmental human rights defenders*. Mexican Center for Environmental Law (CEMDA), (2018). Available at: https://www.cemda.org.mx/wp-content/uploads/2019/03/Informe_defensores.pdf.

⁵¹Cfr, Inter-American Court, Case of López Álvarez v. Honduras, Judgment of February 1, 2006, Merits, Reparations and Costs.

⁵²United Nations, General Assembly, Fifty-third Session. *Resolution Adopted by the General Assembly. [on the report of the Third Committee (A/53/625/Add.2)]*. *Ibid.* Article 1; Inter-American Commission, *Criminalization of the work of human rights defenders*, *Ibidem*.

through the subjection to prolonged criminal proceedings and through the application of precautionary measures for non-prosecutorial purposes".⁵³

48. However, criminalization processes are not limited to the manipulation of the penal system and are often accompanied by stigmatization. In some cases, manipulation of the criminal process is accompanied by State actions aimed at delegitimizing and stigmatizing the work of environmental defenders, groups and organizations. This type of practice may include statements by high-level officials against defenders, use of arbitrary detention by State security forces as a mechanism to prevent defenders from carrying out their work, or to deprive them of freedom at crucial moments for the defense of their causes.⁵⁴ These are sophisticated practices that seek to "silence" the defense of human rights.⁵⁵

49. In addition to criminal prosecutions, environmental defenders may face other forms of inappropriate or abusive use of legal figures as a way of discouraging their actions. Examples of this are the use of civil, administrative (such as lawsuits for damages to honor, image and good reputation)⁵⁶ or police proceedings, which include the imposition of fines or embargoes, arbitrary detentions, police transfers, or raids, among others. These forms of manipulation of the State's sanctioning power have been defined as strategic litigation against public participation or strategic litigation against public participation (SLAPPs), which unfortunately are spreading in the Americas by private actors,⁵⁷ which end up violating human rights and undermining environmental democracy.

B. Criminalization in environmental matters violates human rights, including the right to defend human rights in environmental matters.

50. Criminalization of the defense of human rights in environmental matters is a breach of the State's duties under the IAHRs to respect, protect and guarantee human rights (Article 1 of the American Convention on Human Rights), as well as its duty to adopt domestic law provisions (Article 2 of the same convention), when the State: (a) abusively and arbitrarily uses and manipulates criminal law, or when it promotes and tolerates third parties to do so, it violates its duties to protect human rights; and (b) by introducing open or ambiguous criminal types, or by maintaining unaltered the criminalization of conducts, practices or procedures used to criminalize the defense of the environment, it fails to comply with its obligations to adopt adequate regulations

⁵³Inter-American Commission, *Criminalization of the Work of Human Rights Defenders*. *Ibid*.

⁵⁴Inter-American Commission, *Criminalization of the Work of Human Rights Defenders*. *Ibid*.

⁵⁵International Service for Human Rights, *The Role of Corporations and States in Violations against Land, Territory and Environmental Rights Defenders*. Joint Report of Civil Society Organizations. October 2015. Available at: https://www.ohchr.org/Documents/Issues/Environment/ImplementationReport/Civil_society_organization_joint_reoport_SP.pdf.

⁵⁶United Nations, Special Procedures. Communication of the Special Procedures to Maderera Canales Tahuamanu S.A.C., on June 19, 2023. Reference: AL OTH 26/2023

⁵⁷Business and Human Rights Information Center, *Companies and the criminalization of human rights defenders. Legal actions against public participation or SLAPPs in the context of business and human rights in Latin America*, February 2022. Available at: https://media.business-humanrights.org/media/documents/2022_SLAPPs_in_LatAm_ES_v7.pdf

and public policies for the enjoyment of human rights. The obligations of the ISHR include the obligation to create conditions for the guarantee and respect of human rights and, as indicated in the Escazú Agreement, to guarantee a safe and enabling environment for the defense of the environment.⁵⁸

51. Criminalization of the defense of human rights in environmental matters is a complex violation of human rights, both in the individual, family and collective sphere. On the one hand, in terms of personal and family life, there are effects on the physical and psychological integrity of criminalized persons, their families, and relatives, as well as consequences to their social life. Likewise, there is a significant impact on the resources of criminalized persons: on the one hand, there is economic costs, since they usually need to pay for legal representatives, in addition to the financial guarantees that tend to be imposed; in addition, there is personal costs related to the time and effort required by litigation that limits their ability to defend human rights and to attend to other aspects of their life. On a collective level, criminalization also impacts the organizations and social movements in which criminalized defenders work and, more generally, negatively impacts the work of defending human rights as a whole. An example of this is the labeling of organizations as "terrorists" or as "threats to national security" as a way of stigmatizing them because they are lead by criminalized defenders.

52. The IAHRs has reiterated that the impacts of criminalization against persons, groups and environmental defense organizations transcends social spheres, and highlights the following dimensions: (a) the very functioning of democracy, since criminalization affects the enjoyment of civil and political liberties, which are key to the democratic functioning of society and the control of civil society over the actions of the State; b) the lack of protection of environmental and natural resources, as it discourages civil society actions to demand their protection by the State, which can lead to more degraded environments due to the absence of citizen oversight and control; c) it encourages the misappropriation of environmental and natural assets; d) it aggravates the various environmental problems we are currently experiencing (climate emergency, water depletion, etc.); and, e) aggravates the various environmental problems we are currently experiencing (climate emergency, water depletion, etc.); and, e) generates collective impacts and rupture of the social fabric by fragmenting organizational and community processes.

53. The process of manipulating the coercive power of the State, with the objective of criminalizing the work of persons, groups and environmental defense organizations, generally involves multiple State actors such as: legislators who utilize ambiguous criteria in defining criminal actions; prosecutors who act inconsistently and unfairly in their investigations and through the use of unreliable witnesses and sources; judges who promote decisions not based in law; members of security forces who participate in making irregular and false intelligence reports and use excessive force against defenders; and members of the government who promote stigmatizing statements. Non-state actors are also involved, such as national and transnational private

⁵⁸Economic Commission for Latin America and the Caribbean (ECLAC). *Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean. Adopted in the Escazú Agreement* (2022). *Ibidem*.

companies, private security guards, personnel working in megaprojects, and landowners.⁵⁹

54. Criminalizing the defense of the environment creates situations of risk for the exercise of the rights of persons, groups and environmental defense organizations⁶⁰ and to the environment itself. Thus, criminalization exacerbates environmental conflicts, since by allowing, facilitating or even promoting criminalization, it eliminates or hinders democratic pathways for managing these conflicts, reduces social and democratic monitoring of the activities, works or projects that have or may have significant environmental impacts, and may also result in such projects and activities proceeding without the adequate inclusion of human rights standards and environmental principles, resulting in greater environmental damage and impact. These harms are aggravated by the fact that the State has allowed the incursion of extractive and mining industries (usually foreign) in countries of the region, which inevitably generates greater pressure on the territory and the environment. Violations by private agents are rarely sanctioned, as procedural issues (such as jurisdiction or attribution of responsibility) make it nearly impossible to access justice domestically.

55. Criminalization also leads to the failure to guarantee the right to participate, and in particular, the right to free, prior and informed consultation and consent of ethnic peoples. As a result, environmental conflicts arise between communities, the State, and private companies (corporations). An example of this is the granting of extractive concessions in areas inhabited by Indigenous peoples living in voluntary isolation.

56. In the context of socio-environmental conflicts generated by the State itself, criminalization also forecloses the ability of environmental defenders to question or monitor State works, projects and activities. As mentioned in these submissions, persons, groups, and organizations exercise the right to defend human rights in environmental matters, in addition to others rights, like access rights, in the context of the climate emergency. Therefore, they should be subject to special protections, because, among other things, they defend the survival of species on the planet, play a role in environmental democracy, and have a role in strengthening rule of law. In contrast, by using criminalization, the State violates the exercise of these rights and, in a

⁵⁹Fundación Comité de Solidaridad con los Presos Políticos (CSPP), et al., *Criminalización de la defensa de los derechos humanos en Colombia: la judicialización a defensores/as de la tierra/as, el territorio, el medio ambiente y la paz*, (2019). Available at: https://co.boell.org/sites/default/files/2019-12/2_LA%20JUDICIALIZACION%20WEB.pdf.

⁶⁰"The Commission has observed that women defenders face a situation of extreme risk due to the permanent violence, criminalization and delegitimization they suffer because of their opposition to the installation of hydroelectric, mining and agrarian projects that affect their territories and natural resources. The Inter-American Commission has warned about the differentiated and disproportionate risks faced by women defenders due to their gender, which in turn are exacerbated according to their ethnic origin and territorial location. In particular, indigenous and Afro-descendant women face double discrimination -or intersectional discrimination- because they belong to their racial and ethnic group and because of their gender. Therefore, women environmental defenders in Northern Central America may face a triple risk: for their gender, for being indigenous or Afro-descendant, and for defending the environment". Inter-American Commission and REDESCA, *North Central America: Women Environmental Defenders, Ibidem*.

related manner, the rights that persons, groups and environmental defense organizations promote and defend.

57. Increasingly, States are attempting to exert control over non-governmental organizations (NGOs) and civil society organizations (CSOs) through administrative laws, including the so-called "NGO laws". These laws allow the State to further restrict the right to defend human rights in environmental matters by limiting or interfering with this right or the activities of defenders, in violation of international human rights standards.

58. In conclusion, criminalization of persons, groups and environmental defense organizations is not only a violation of the right to defend rights, but also a violation of the rights that these persons, groups and organizations seek to defend, which are none other than the rights to the environment, territory, health and life, among others. This outcome is especially serious in the context of the climate emergency because it discourages and reduces i) the control and vigilance of the State in the management of the climate emergency; ii) social control over potentially polluting and greenhouse gas generating activities, which can aggravate the climate emergency; and iii) reduces social awareness of the need for environmental protection and care, among others.

III. Recognition of environmental defenders as a vulnerable group in the Inter-American Human Rights System.

59. In this part of the observations, it is argued that the Inter-American Court should declare that persons, groups and organizations are a vulnerable group and subject to special protection within the IAHRs. To this end, we present the concept of vulnerability that has been used in the IAHRs with respect to other vulnerable groups, and the implications of this concept for the States' human rights obligations in this area. The section then further elaborates upon the context that informs vulnerability in the exercise of the right to defend human rights in environmental matters, which was already discussed in the first part on climate emergency and in the second part on criminalization. Finally, it articulates some of the obligations that the Court should recognize that States have to persons, groups, and environmental defender organizations as a vulnerable group, with a special emphasis on the duties of prevention and protection.

A. The concept of vulnerability in the Inter-American Human Rights System and the implications for State human rights obligations.

60. The concept of vulnerability has been used by the Inter-American Court to justify taking special measures with respect to certain populations and groups that face specific circumstances that impede or hinder the enjoyment of their rights. This concept covers at least the following populations: a) populations that have suffered historical discrimination, such as Indigenous peoples, persons of diverse gender or sexual orientation, women, etc.; and b) persons who carry out activities that, given the social, economic or political context, are exposed to particular and specific risks - for example, journalists, human rights defenders, etc.

61. Recognizing the vulnerability of certain populations and groups acknowledges that in practice, rights and obligations are not distributed equally among the population. This is because *de facto* access to rights depends on social and economic factors, including gender, ethnic origin, social status, age, among others.

62. In this sense, the concept of vulnerability relates to several elements that explain the existence of barriers or obstacles to the full enjoyment of rights, and therefore, to the correlative obligation of the State to remove these obstacles through specific actions, including in some instances, affirmative or positive actions to achieve the realization of rights. These factors may be due to the existence of underlying causes (historical discrimination), exposure to particular, concrete and specific risks (threats) or the characteristics or circumstances of the person or group in question, which result in unequal access to rights or the ability to effectively defend them – such as for example, persons who are deprived of liberty. In some cases, these elements combine and intersect resulting in multiple barriers to full enjoyment of rights.

63. The identification of circumstances of vulnerability justifies a differentiated and special treatment to overcome asymmetries in the access to rights,⁶¹ and should trigger an affirmative finding that the person or group in question should be afforded the special protections of a vulnerable group. In the context of the IAHR, the Court has identified different groups that meet these criteria, including: women; children; Indigenous persons; Afro-descendant persons; persons with disabilities; migrants; displaced persons; persons deprived of liberty; journalists; human rights defenders; and members of the LGBTQIA community.

64. Based on the definitions above, the following section explains why persons, groups and organizations that defend the environment are in a situation of vulnerability, because they are exposed to particular, concrete and specific risks, which are often generated by the State itself.

B. Contexts of the exercise of the right to defend environmental rights: special vulnerability.

⁶¹The UN Rapporteur on climate change has stated that "it is clear that corporate elites with interests in the fossil fuel and carbon sectors have disproportionate access to decision-makers, a phenomenon described as 'corporate capture'. These fossil fuel sector elites and the politicians they patronize have a human rights responsibility and must be held accountable for the human rights abuses to which they are subscribing." Special Rapporteur on the promotion and protection of human rights in the context of climate change. "Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation." 26/7/2022. Cited in General Secretariat of Training and Jurisprudence. Public Ministry of Defense, *Right to a healthy environment. Universal System of Human Rights*, Jurisprudence Bulletin. February 2023. Available at: https://www.pensamientopenal.com.ar/system/files/Documento_Editado1018-2.pdf

65. Environmental defenders are understood by various international bodies⁶² as "human rights defenders", who are in a situation of vulnerability due to the specific risks and threats they face when carrying out their activities in contexts of: a) violence; b) strong asymmetry in access to technical services and assistance; c) opposition to large-scale development projects such as hydroelectric dams, extractive projects, large infrastructure projects, etc.; d) high stigmatization and criminalization; and e) remote and rural areas. These vulnerabilities that are specific to environmental defenders may be exacerbated or have disproportionate impacts when the persons, groups or organizations that defend the environment belong to groups that are traditionally discriminated against, such as Indigenous peoples, Afro-descendants, women, etc.

66. When it comes to the right to defend human rights in environmental matters, the context of vulnerability that places defenders, their families, and collectives at risk has been widely documented in the Universal System of Human Rights and in the IAHRS, in national jurisdictions in the Americas, as well as in other countries. These circumstances occur in contexts of systematic violence against those who defend the environment and as a result of the work they carry out.

67. Below we mention just a few examples of the conditions that limit or impede the work of persons, groups, and organizations that defend the environment, and maintain their conditions of vulnerability:

- The presence of armed actors exercising territorial control, threats, assassinations, persecution and environmental displacement.
- The direct participation of State officials or State representatives in violence against environmental defenders, including through stigmatization and criminalization.
- Impunity in the investigation and punishment of crimes committed against persons, groups and organizations that defend the environment.
- Harassment and violence directed against defenders by public and private agents involved in environmental conflicts.
- The adoption and implementation of laws, regulations or institutional practices that restrict the activities of persons, groups and organizations that defend the environment.
- Strong disputes over access to biodiversity, including those conflicts that are created by the State and its development projects.
- The failure to guarantee access rights, such as for example, access to information in advance of the possible social and environmental impacts of megaprojects, participation in informed decision-making with respect to the environment, and the opportunity to seek recourse before national and international justice mechanisms.

⁶²Economic Commission for Latin America and the Caribbean (ECLAC). *First Annual Forum on Human Rights Defenders on Environmental Issues in Latin America and the Caribbean. Sustainable Development and Human Settlements*, November 22, 2022. available at: <https://www.cepal.org/es/eventos/primer-foro-anual-defensoras-defensores-derechos-humanos-asuntos-ambientales-america-latina>.

- The destruction of the territory of ethnic peoples whose survival depends on their ancestral relationship with these lands is a factor in the worsening of the circumstances of vulnerability of these peoples.

68. The elements of risk and vulnerability listed above are in addition to those previously described in this brief: the climate emergency itself, and the use of criminalization are also vulnerability factors.

69. First, persons, groups and organizations defending environmental rights defend these rights in the context of climate degradation and emergency, which is often characterized by social conflict. Accordingly, in many cases, those who defend human rights in environmental matters put their lives, integrity, good name and family at risk. In the same way, groups and organizations that defend human rights in an unfavorable and risky contexts suffer persecution by the State and by other actors.

70. Related to this, it is important to note that, particularly in the Americas, many environmental defenders belong to Indigenous peoples and that environmental destruction has a differentiated and more immediate impact on their lives. As indicated above, these populations who are historically marginalized, are already in a situation of vulnerability. Likewise, those involved in large-scale environmental destruction tend to be entities with significant economic and political power, so there is a high degree of power imbalance.

71. Second, persons, groups and organizations are victims of the criminalization of the defense of human rights in environmental issues, by the State or by companies and other development actors with the condonement of the State. Criminalization is linked to contexts of systematic violence that include threats, assassinations and persecution. Criminalization and stigmatization, as both cause and effect, serve as a justification of violence against environmental defenders, groups and organizations. Delegitimizing defense of the environment and stigmatizing those who defend it through SLAPPs or branding them as anti-development, paves the way for violence and criminalization.

72. In conclusion, the circumstances of vulnerability faced by persons, groups and organizations that defend the environment are particular, differentiated and specific, which justifies a pronouncement by the Inter-American Court in its Advisory Opinion to declare this group to be a vulnerable group. Consequently, the Court should shape the measures and policies to be adopted by the States to facilitate the work of defending human rights in environmental matters in accordance with this recognition .

73. In addition, given the context of climate emergency, recognizing the vulnerabilities of persons, groups, and organizations that defend the environment becomes imperative. This recognition will enable States to develop a better approach to adequately protecting this group, so that they are better able to do their work of protecting the environment.

C. Obligations of the State regarding the protection of environmental defenders: special emphasis on the duties of prevention and protection.

74. As previously stated, States should respect the obligations articulated by the IAHRs and those established in the Escazú Agreement, which is part of the *corpus iuris* for the application and interpretation of the obligations of States. These sources of law inform States' obligation to respect, protect and guarantee the human rights of those who defend the environment, adopt domestic law provisions, and provide a safe and enabling environment for persons, groups and organizations that defend the environment to exercise the right to defend human rights in environmental matters.

75. These obligations can take the form of different measures that must be appropriate and timely depending on the context of each country. Various UN agencies and CSOs have identified these obligations. For example, the NGO FIMA published a report analyzing States' compliance with aspects of the Escazú Agreement that relate to access to information, public participation and access to justice in environmental matters. The report includes recommendations to States on the measures they should take to align national policies with the Escazú standards.⁶³

76. The following are considered State obligations for guaranteeing a safe and enabling environment for the defense of human rights in environmental matters, as well as for the protection, respect, and guarantee of the rights of persons, groups, and organizations that defend environmental rights. These obligations are grouped into four categories: recognition and protection measures; access to information and participation in policies and activities; investigation and sanction of violations; and information on rights violations:

Recognition and protection measures:

- States should publicly recognize the valuable role of persons, groups and organizations that defend human rights in environment matters and how exercising this right contributes to strengthening democracy and the rule of law. This recognition should be reflected in public pronouncements, as well as legislative and public policy measures. It is essential that States proactively demonstrate their support for the important and legitimate role of persons, groups and organizations that defend the environment, at all levels (community, local, national, and international).⁶⁴
- States should adopt and enforce laws that protect persons, groups, and organizations that defend the environment, in accordance with international human rights law.

⁶³Environmental Prosecutor's Office (FIMA). *Analysis of compliance with the standards of the Escazú Agreement in Chile*. Second edition. April 2023. Available at: <https://www.fima.cl/wp-content/uploads/2023/04/analisis-cumplimiento-2023.pdf>, page. 42.

⁶⁴Center for Justice and International Law (CEJIL). *Protocol of Hope: An Effective Response to Threats against Human Rights Defenders* (2021). *Ibidem*, page 39.

- States should establish specific protection programs or mechanisms with sufficient resources and detailed action plans, including strategies for the early detection of hazards and associated risks, taking into account the particular contexts and ensuring coordination between different agencies at the community, local and national levels.⁶⁵

Guaranteeing Access Rights:

- States should adopt norms and formulate and implement environmental policies that guarantee timely and meaningful participation of persons, groups and organizations that defend the environment. Meaningful participation includes the obligation to give prior notice and share culturally appropriate information. Likewise, the principle of transparency should guide the design, implementation, and evaluation of public policies to ensure relevance and accountability.⁶⁶
- States should ensure an inclusive, equitable and gender-sensitive approach to public participation in all actions related to the climate emergency, with special emphasis on the most affected populations, namely youth, women and girls, Indigenous peoples, local communities, people living in poverty, people with disabilities, migrants, older persons, forcibly displaced persons, and other communities that may be at risk or particularly vulnerable .

Investigation and punishment of violations:

- States should guarantee prompt and independent investigation of violations of the rights of persons, groups and organizations that defend the environment. To advance in this measure, it will be necessary to strengthen and/or revise criminal codes to take into consideration threats and judicial harassment that affect these rights, such as criminalization and other forms of judicial harassment.⁶⁷
- States should implement mechanisms for the protection of victims and secure, confidential and effective mechanisms for reporting complaints, and establish specific or aggravating penalties in the penal system when the rights of persons, groups and organizations that defend the environment are violated.
- States should conduct outreach and training activities (e.g., campaigns) on the rights and special protections relevant to environmental defenders , as well as on the mechanisms for reporting threats or attacks, and ensure there is adequate protection for persons and organizations that report threats.⁶⁸

⁶⁵Center for Justice and International Law (CEJIL). *Protocol of Hope: An Effective Response to Threats against Human Rights Defenders* (2021). *Ibidem*, page. 41

⁶⁶Center for Justice and International Law (CEJIL). *Protocol of Hope: An Effective Response to Threats against Human Rights Defenders* (2021). *Ibidem*, page 23

⁶⁷'Threat' refers to intentional conduct that indicates future harm or intimidates a HRDD, her family or her community. This definition includes individual and collective, direct and indirect, explicit and symbolic threats, whether they take place online or offline.

⁶⁸Environmental Prosecutor's Office (FIMA). *Analysis of compliance with the standards of the Escazú Agreement in Chile. Ibidem*, page. 48.

Information on rights violations:

- States should collect and systematize consolidated information on attacks on persons, groups and organizations that defend the environment, as well as other circumstances of vulnerability depending on the context of each country, and maintain disaggregated data on this information.⁶⁹
- States should consolidate information as data and should make this information available to the public. This data should also inform public policies that relate to the protection of defenders and the maintenance of an enabling environment for them to safely conduct their work.

IV. The Inter-American Court must recognize that "home States" have extraterritorial obligations to persons, groups, and organizations that defend the environment in "host States".

77. Individuals, groups and organizations that defend the environment can suffer criminalization, threats, and physical harm and even death in the context of transnational extractive projects.⁷⁰ These projects are physically located in the State where the defenders live, the "host State", but are financed and carried out by a company based in another State, the "home State".

78. The Inter-American Commission, Inter-American Court, and other human rights bodies have recognized that respect for and protection of human rights in the context of transnational extractive projects is a shared responsibility.⁷¹ This means that home and host States in the Americas have a duty to cooperate with each other to ensure that State actors, and non-State actors whose conduct they are in a position to influence, do not impede the enjoyment of human rights.⁷² The Inter-American Commission has also

⁶⁹Environmental Prosecutor's Office (FIMA). *Analysis of compliance with the Escazú Agreement standards in Chile*. *Ibidem*, page. 42.

⁷⁰Imai S., et al., *La Marca Canadiense: Violence and Canadian Mining Companies in Latin America (The Canada Brand: Violence and Canadian Mining Companies in Latin America)*, November 20, 2016. Osgoode Legal Studies Research Paper No. 14/2017, doi: <http://dx.doi.org/10.2139/ssrn.2912378>; Justice & Corporate Accountability Project (JCAP) and MiningWatch Canada, *Canada's Systematic Failure to Fulfill its International Obligations to Human and Environmental Rights Defenders Abroad. Submission to the UPR Working Group of the United Nations Human Rights Council in anticipation of the 2023 Universal Periodic Review of Canada*, April 4, 2023. Available at: https://miningwatch.ca/sites/default/files/jcap_submission_to_unpr_2023.pdf, pp. 12-13.

⁷¹Inter-American Commission and REDESCA, *Business and Human Rights: Inter-American Standards*, November 1, 2019, available at: CIDHR/REDESCA/INF.1/19. Para. 168; United Nations, International Covenant on Civil and Political Rights. Human Rights Committee, *General comment No. 36. Article 6: Right to life*, September 3, 2019, document CCPR/C/GC/36; United Nations, Economic and Social Council. Committee on Economic, Social and Cultural Rights, *General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, August 10, 2017, UN document E/C.12/GC/24, para. 27; United Nations, Convention on the Rights of the Child. Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, 17 April 2013, UN document CRC/C/GC/16, para. 43.

⁷²Inter-American Commission and REDESCA. *Business and Human Rights: Inter-American Standards*, *Ibidem*, para. 169; Inter-American Court, *Environment and Human Rights (State obligations in relation to the environment in*

recognized that States have a duty to cooperate to ensure that acts constituting human rights violations involving transnational corporations do not go unpunished.⁷³ This position, based on international human rights law,⁷⁴ is part of a broader effort to address the "governance gap" in the global regulation of the potential human rights impacts of multinational corporate activity.⁷⁵

79. In this context, the Inter-American Commission has expressed particular concern about economic diplomacy, whereby a home State takes concerted action to provide political support for the business activities of its corporate nationals in another country. The Commission has recognized that home States may incur international responsibility for violations related to the practice of economic diplomacy, given the direct intervention of State agents on behalf of corporate enterprises, and the consequent ability of these agents to contribute to the generation of risks for defenders outside their territory.⁷⁶

80. The concept of shared extraterritorial obligations related to the protection of defenders derives from the fact that the concept of jurisdiction in international human rights law is not exclusively territorial.⁷⁷ Under the American Convention on Human Rights, States are internationally responsible for acts and omissions attributable to them within their territory, as well as wherever they exercise jurisdiction.⁷⁸ The Inter-American Commission has also noted that States' obligations under the American Declaration may be extraterritorial.⁷⁹

the framework of the protection and guarantee of the rights to life and personal integrity - interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights). Ibidem, para. 7.

⁷³Inter-American Commission and REDESCA. *Business and Human Rights: Inter-American Standards, Ibidem*, para. 168; United Nations, International Covenant on Civil and Political Rights. Human Rights Committee, *General comment No. 36. Article 6: Right to life, Ibidem*, para. 171.

⁷⁴United Nations, International Law Commission, "Report on the work of its fifty-eighth session" (*Annex V Extraterritorial Jurisdiction*) in *Yearbook of the International Law Commission* (2006), vol 2, part 2, at p 229 paras 1, online, UN document A/CN.4/SER.A/2006/Add.1 Annex Part 2, page 229, para. 1; United Nations, Economic and Social Council. Committee on Economic, Social and Cultural Rights, *General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, Ibidem*, para. 27; McCorquodale R. & Simons P., *Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law*. July 4, 2007;70:4 MLR. Doi: <https://doi.org/10.1111/j.1468-2230.2007.00654.x>, pp. 617-613.

⁷⁵McCorquodale R. & Simons P., *Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law. Ibidem*, pp. 598-599; Waagstein P., *Justifying Extraterritorial Regulations of Home Country on Business And Human Rights*. Indonesian Journal of International Law. April 4, 2019; Vol. 16:No. 3, Article 4. DOI: 10.17304/ijil.vol16.3.771. pp. 362-363

⁷⁶Inter-American Commission and REDESCA. *Business and Human Rights: Inter-American Standards, Ibidem*, para. 306-308.

⁷⁷Inter-American Commission, *Report No. 121/18, Case 10.573. Merits (Publication). Jose Isabel Salas Galindo and others. United States, October 5, 2018. Available at: <https://www.oas.org/en/iachr/decisions/2018/USPU10573-EN.pdf>, para. 311; ECtHR, Judgment (Grand Chamber), *Case Banković v. Belgica and others*, No. 52207/99, 10 April 2003, 12 December 2001, at paras. 59-61.*

⁷⁸Inter-American Commission, *Report No. 112/10 Inter-state Petition IP-02 Admissibility Franklin Guillermo Aisalla Molina (Ecuador-Colombia), Report No. 112/10, Inter-American Commission on Human Rights (IACHR)*, October 21, 2011. Available at: <https://www.refworld.org/cases,IACHR,4e2d27912.html>, para. 90.

⁷⁹Inter-American Commission, Organization of American States (OAS), *Charter of the Organisation of American States*. Entered into force December 13, 1951, art. 3(1); Inter-American Commission, Organization of American

81. Extraterritorial responsibilities are triggered when a State exercises authority, responsibility or effective control over someone outside its territory.⁸⁰ Although this criterion is still evolving in international law,⁸¹ the Inter-American Commission and the Inter-American Court have interpreted it broadly,⁸² recognizing "effective control or authority" in a variety of situations, whenever States are in a position to exercise significant influence over protected rights directly, or indirectly through third party actors, in particular when serious extraterritorial harm is foreseeable.⁸³ Serious harm is determined on a case-by-case basis, but generally involves violations of the right to life and physical integrity.⁸⁴ The Inter-American Commission has observed that attacks on the right to life of defenders are particularly harmful, as they hinder the work of other defenders and damage democracy and the rule of law.⁸⁵

82. In the context of transnational business activity, the Inter-American Commission has recognized that there is a direct relationship between the degree of State influence over the enjoyment of human rights by defenders outside of its territory, and the level of scrutiny used to assess whether the it has met its obligations to respect and guarantee rights extraterritorially.⁸⁶ Influence over rights can be measured through influence over a national company, as well as through the relationship between the State's behavior and

States (OAS), *American Convention on Human Rights*, November 22nd, 1969, art. 1; Inter-American Commission, *Coard et Al. v. United States*, Report N. 109/99 - Case 10.951, Inter-American Commission on Human Rights (IACHR), September 29, 1999, Available at: <https://www.refworld.org/cases,IACHR,502a39642.html>; Wilde R., *"The extraterritorial application of international human rights law on civil and political rights"*, *Routledge Handbook of International Human Rights Law*, (2013). Taylor & Francis Publishers, doi: <https://doi.org/10.4324/9780203481417>, page. 639.

⁸⁰Inter-American Court, *Environment and Human Rights (State obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and personal integrity - interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. *Ibidem*, para. 73.

⁸¹United Nations, International Law Commission, *"Report on the work of its fifty-eighth session" (Annex V Extraterritorial Jurisdiction)* in *Yearbook of the International Law Commission 2006*, *Ibidem*, page 229, paragraphs 1-3.

⁸²Inter-American Commission and REDESCA. *Business and Human Rights: Inter-American Standards*, *Ibidem*, para. 148.

⁸³Inter-American Commission, *Coard et al. v. United States*, *Ibidem*; Wilde R., *"The extraterritorial application of international human rights law on civil and political rights"*, *Ibidem*, paras. 35, 37, 60-61; Inter-American Commission, *Report No. 121/18, Case 10.573*. *Ibidem*, paras. 307, 318, 324, 334; Inter-American Commission, *Report No. 200/20, Case 13.356. Admissibility and Merits (Publication)*. Nelson Ivan Serrano Saenz. *United States of America*, August 3, 2020. paras. 9-10, 27-29; IACHR, *Report No 86/99. Case 11.589. Armando Alejandro Jr, Carlos Costa, Mario De La Peña, And Pablo Morales. Cuba*, September 29, 1999. Available at: <https://www.cidh.oas.org/annualrep/99eng/Merits/Cuba11.589.htm>, para. 25; Inter-American Commission, *Report No. 112/10, Ibidem*, paras. 93-94, 140.

⁸⁴Inter-American Court, *Environment and Human Rights (State obligations in relation to the environment in the framework of the protection and guarantee of the rights to life and personal integrity - interpretation and scope of Articles 4(1) and 5(1), in relation to Articles 1(1) and 2 of the American Convention on Human Rights)*. *Ibidem*, para. 140.

⁸⁵Inter-American Commission, *Second Report on the Situation of Human Rights Defenders in the Americas*, *Ibid.* para. 13, 25.

⁸⁶Inter-American Commission and REDESCA. *Business and Human Rights: Inter-American Standards*, *Ibidem*, paragraphs 165, 167.

the factors that threaten or enable human rights violations related to business activities.⁸⁷

83. UN monitoring bodies have made similar considerations on extraterritorial liability and jurisdiction, including the UN Human Rights Committee,⁸⁸ the Committee on Economic, Social and Cultural Rights (CESCR),⁸⁹ and the Committee on the Rights of the Child.⁹⁰ In addition, both the UN Working Group on Business and Human Rights and the UN Special Rapporteur on the Rights of Indigenous Peoples have called on States to take appropriate measures to ensure that all companies domiciled in their territory and/or jurisdiction respect the rights of defenders, including through the enactment of mandatory due diligence obligations for companies.⁹¹

84. All of these statements echo the following common criteria for establishing extraterritorial obligations between a home State and an individual, group and environmental defender organization: 1) a degree of influence by the home State over actors and situations that may affect the defender's enjoyment of protected rights; and 2) the reasonable foreseeability of serious harm to the defender.

85. Thus, in the context of economic diplomacy, "effective control or authority" can clearly be established when a home State exercises significant influence over a business enterprise that has the potential to affect human rights, and knows, or should know, that there is a real risk due to that enterprise to an individual, group or environmental defender organization. When this occurs, State actors engaged in economic diplomacy should be aware that they have an actionable obligation to do what is reasonably within their area of responsibility and sphere of influence to respect and guarantee the right to life of defenders.

⁸⁷Inter-American Commission and REDESCA. *Business and Human Rights: Inter-American Standards, Ibidem*, paragraphs 162, 167, 312.

⁸⁸United Nations, International Covenant on Civil and Political Rights. Human Rights Committee, *General comment No. 36. Article 6: Right to life, Ibidem*, paras. 63, 22.

⁸⁹United Nations, Economic and Social Council. Committee on Economic, Social and Cultural Rights, *General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, Ibidem*, paras. 28, 32. CESR adds "...the International Court of Justice has recognized the extraterritorial scope of the core human rights treaties, focusing on their object and purpose, their legislative history and the lack of territorial limitation provisions in the text. Customary international law also prohibits a State from allowing its territory to be used to cause damage to the territory of another State, a requirement that has become particularly relevant in international environmental law. The Human Rights Council has confirmed that such a prohibition extends to human rights law, when it endorsed the guiding principles on extreme poverty and human rights in its resolution 21/11.7", para. 27.

⁹⁰United Nations, Economic and Social Council. Committee on Economic, Social and Cultural Rights, *General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, Ibidem*, paras. 43.

⁹¹United Nations, General Assembly. Human Rights Council. *The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders. Working Group on the issue of human rights and transnational corporations and other business enterprises. Ibidem*, paragraphs 42-43; United Nations, General Assembly. Human Rights Council. *Report of the Special Rapporteur on the rights of Indigenous peoples*. August 10, 2018, UN document A/HRC/39/17, paragraph 91(c).

86. Although the Inter-American Commission has recognized that the coexistence of human rights obligations of the sending and receiving States may form the basis for shared responsibility between these States, it is important to note that the individual acts of each State will be "considered separately in light of their specific applicable obligations".⁹²

87. If a violation occurs, the Inter-American Commission and other human rights bodies have recognized that the duty of States to investigate, punish and redress all forms of threats and attacks against defenders may also form part of a State's extraterritorial obligations.⁹³ In addition, the UN Special Rapporteur on the situation of human rights defenders has stated that "where attacks against defenders have occurred in receiving States, sending States should use all possible avenues to advocate for an independent, impartial and transparent investigation and should provide financial and technical support for such an investigation".⁹⁴

88. In relation to preventive actions, the UN Human Rights Committee (UNHRC) has outlined specific obligations for home States when defenders are under the power or effective control of a foreign State and their right to life may be affected by an enterprise domiciled in the home State in a "direct and reasonably foreseeable manner".⁹⁵ These obligations include:

- Requiring due diligence on human rights by domiciled entities.
- Prevent reasonably foreseeable threats to life from domiciled entities.
- Adoption of special protection measures in response to "specific or pre-existing threats or patterns of violence" towards defenders.⁹⁶

89. An example of the application of the above criteria to a specific case is that of Canada. Citing "reports of persecution of human rights defenders who have raised concerns about the operation of Canadian companies abroad", the UN Working Group on Business and Human Rights recommended that State to take action to: support more

⁹²Inter-American Commission and REDESCA. *Business and Human Rights: Inter-American Standards, Ibidem*, para. 168.

⁹³Inter-American Commission and REDESCA. *Business and Human Rights: Inter-American Standards, Ibidem*, paras. 133, United Nations, General Assembly. Seventy-second session, *Human rights and transnational corporations and other business enterprises. Ibidem*, para. 64; United Nations, General Assembly. Human Rights Council. *The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders. Working Group on the issue of human rights and transnational corporations and other business enterprises, Ibidem*, paras. 41, 88.

⁹⁴United Nations, General Assembly. Seventy-second session. *Situation of human rights defenders*. July 19, 2017, UN document A/72/170 (2017), para. 51.

⁹⁵United Nations, International Covenant on Civil and Political Rights. Human Rights Committee, *General comment No. 36. Article 6: Right to life, Ibidem*, paragraphs 21-23, 63; United Nations, General Assembly. 21-23, 63; United Nations, General Assembly. Seventy-second session, *Situation of human rights defenders. Report of the Special Rapporteur on the situation of human rights defenders, Ibidem*, para. 3.

⁹⁶United Nations, International Covenant on Civil and Political Rights. Human Rights Committee, *General comment No. 36. Article 6: Right to life, Ibidem*, paras. 7, 23.

effective protection of the legitimate activities of defenders⁹⁷ and "develop training for its public officials and business agents, as well as guidance for companies that more directly addresses the role of the private sector in ensuring respect for the rights of human rights defenders in the extractive sector".⁹⁸

90. The Working Group has also repeatedly recommended that States: "raise the issue of risks to human rights defenders in the context of trade missions (...), maintain contact with human rights defenders, including by receiving them at embassies and visiting their places of work when it is safe to do so; and defend human rights defenders when they are threatened or attacked), including by formally raising their concerns as part of diplomatic dialogues, raising public awareness about the work of human rights defenders, and observing and monitoring trials involving human rights defenders".⁹⁹

91. The UN Special Rapporteur on the situation of human rights defenders recommends that "where attacks against defenders have occurred in host States, home States should use all possible avenues to advocate for an independent, impartial and transparent investigation and provide financial and technical support for such an investigation".¹⁰⁰ The UN Working Group on Business and Human Rights has echoed this recommendation by calling on home States to allow effective investigation to prevent, investigate, punish and redress all forms of threats and attacks against defenders.¹⁰¹

92. Finally, home States should establish national mechanisms to ensure that their officials comply with their obligations under international human rights law in relation to environmental defenders, groups and organizations. This includes effective oversight and monitoring of officials' adherence to applicable policies and laws, as well as processes to investigate and, if necessary, hold officials accountable for any harm to defenders that they have caused or contributed to. In the case of Mariano Abaca described in the Blackfire report, Abarca's surviving family members unsuccessfully sought to have the alleged failure of Canadian officials to comply with applicable laws and policies investigated in Canada. In their recent petition against Canada, filed with the Inter-American Commission in June 2023, they alleged that Canada lacks effective

⁹⁷United Nations, General Assembly. Human Rights Council, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada*. April 23, 2018, UN Doc A/HRC/38/48/Add.1, para. 45.

⁹⁸United Nations, General Assembly. Human Rights Council, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada*. *Ibidem*, para. 44.

⁹⁹United Nations, General Assembly. Human Rights Council. *The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders*. Working Group on the issue of human rights and transnational corporations and other business enterprises. *Ibidem*, para. 48-51.

¹⁰⁰United Nations, General Assembly. Seventy-second session, *Situation of human rights defenders*. Report of the Special Rapporteur on the situation of human rights defenders, *Ibidem*; United Nations, General Assembly. Human Rights Council, *Final warning: death threats and killings of human rights defenders* Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, December 24, 2020, UN document A/HRC/46/35, paras. 29, 108 (foreign states have a duty to protect against companies over which they have jurisdiction; foreign embassies should publicly denounce threats to HRDs).

¹⁰¹United Nations, General Assembly. Human Rights Council. *The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders*. Working Group on the issue of human rights and transnational corporations and other business enterprises, *Ibidem*, para. 41, 88.

mechanisms to investigate and hold public officials accountable for failure to comply with applicable human rights policies, and for actions and omissions that have harmed defenders abroad.¹⁰²

93. An illustration of how sending States can contribute to and increase risks for environmental defenders in receiving States is found in a submission to the UN Human Rights Council's Working Group on the Universal Periodic Review (UPR) in anticipation of Canada's 2023 UPR.¹⁰³ The submission was endorsed by 26 organizations and 39 professors, lawyers and jurists. This document draws from several previously published reports to reveal that:

- First, home State officials had direct knowledge of credible allegations of human rights violations and/or risk to defenders related to the company's operations, yet failed to conduct any due diligence or investigate the matter. Rather, in these circumstances, the home States continue to support the Canadian company and failed to meaningfully support the defender in question.
- Second, home State officials often continue to support and defend resource exploitation companies amidst strong community opposition, significant levels of violence and criminalization, and credible evidence of environmental contamination, thereby exacerbating environmental conflict and increasing the risk of harm to affected communities and environmental defenders.
- Third, officials provide support to the company, but not to the defender; States systematically ignore applicable national policies and respective international obligations, despite notification and knowledge of alleged violations and risks.
- Finally, they remain silent in the face of rights violations involving companies domiciled in the country of origin.

94. The example of Canada is also applicable to other States of origin in the Americas that have expanded their transnational businesses without developing effective human rights safeguards and without considering the risks to persons, groups and organizations that defend the environment that the activities of their companies generate. The States of origin not only accentuate extractivist models with the actions of transnational corporations in the host States, with the consequent environmental degradation, pollution, and aggravation of the climate emergency, but also allow or tolerate the violation of the human rights of individuals, groups, and organizations that defend those rights in environmental matters.

¹⁰²Justice & Corporate Accountability Project (JCAP), et al., *Petition Against Canada for Violations of the Right to Life and Other Rights of Mariano Abarca*, submitted by Justice & Corporate Accountability Project, Canada, June 2, 2023, Available at: https://miningwatch.ca/sites/default/files/public_iachr_petition_canada_abarca_june_2_2023.pdf.

¹⁰³Justice & Corporate Accountability Project (JCAP) and MiningWatch Canada, *Canada's Systematic Failure to Fulfill its International Obligations to Human and Environmental Rights Defenders Abroad*. Submission to the UPR Working Group of the United Nations Human Rights Council in anticipation of the 2023 Universal Periodic Review of Canada, *Ibidem*.

V. Due diligence, adoption of standards and compliance with reasonable deadlines by the Inter-American Commission for the protection of persons, groups and organizations that defend the environment.

95. The Inter-American Court has clarified the scope of its advisory function, understanding that it includes the Inter-American Commission, as it is a member body of the OAS.¹⁰⁴ In this sense, the Court stated:

"Given the broad scope of the Court's advisory function which, as already stated, involves not only the States Parties to the American Convention, everything stated in this advisory opinion also has legal relevance for all OAS Member States, **as well as for the OAS Member bodies whose sphere of competence relates to the subject of the consultation**".¹⁰⁵

96. Based on the foregoing, this brief requests an express pronouncement and commitment from the Inter-American Court to require the Inter-American Commission to expedite and be more transparent in the resolution of the cases of persons, groups and environmental defense organizations that are being processed by the Commission, and to adopt effective measures to expand the scope of protection for persons, groups and environmental defense organizations.

97. As explained throughout this brief, the advisory opinion on the climate emergency and human rights offers an opportunity for the Inter-American Court to consolidate the *corpus iuris* to protect the rights of persons, groups and organizations that defend the environment. In its advisory opinion, the Court is required to guide the Inter-American Commission in this regard, especially with regard to due diligence when receiving a petition or request for precautionary measures involving a person, group or organization that defends the environment.

98. Although the work of the Inter-American Commission is recognized and appreciated in that it has pronounced itself on the serious situation of persons, groups and organizations that defend the environment in the Americas, more work is needed with respect to granting timely and effective protection. For example, in some cases, decisions on admissibility are delayed for more than 5 years, during which time threats and violations of the human rights of environmental defenders, groups and organizations continue with absolute impunity.

99. Considering the gravity of the situation environmental defenders find themselves in, the principle of due diligence requires that the Inter-American Commission responds

¹⁰⁴Organization of American States (OAS), *Our Structure*. Accessed October 8, 2023. Available at: https://www.oas.org/es/acerca/nuestra_estructura.asp.

¹⁰⁵Inter-American Court, *Gender Identity, and Equality and Non-Discrimination of Same-Sex Couples. State obligations in relation to the change of name, gender identity, and the rights derived from a bond between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1 of the American Convention on Human Rights)*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, para. 28.

promptly, or at least in a reasonable period of time, to petitions and requests for precautionary measures involving environmental defenders, groups and organizations.

100. On the occasion of the hearing requested by environmental defenders before the Inter-American Commission on the manipulation of criminal law to retaliate against environmental defenders, Professor Dinah Shelton forcefully expressed that in the context of the climate emergency affecting human rights in the Americas, the Inter-American Commission must play a fundamental role in protecting environmental defenders, groups and organizations. Specifically, she referred to the issuance of precautionary measures, the inclusion of specific chapters in country reports, and the expeditious resolution of cases in which environmental defenders are victims.¹⁰⁶

101. During the aforementioned hearing, Inter-American Commission Commissioner Joel Hernandez said:

"The hearing should serve for us, in the Commission, to reflect on what we have done in the defense of environmental defenders, what still needs to be done, and how can we do it better? And how can we do it better? We have tools developed over time; we certainly have to do more. We need to redouble our efforts and we need to be more creative and imaginative. I was mentioning that one of the things we need to do is to keep moving forward is the development of standards."¹⁰⁷

102. The Inter-American Court has an extraordinary opportunity in this advisory opinion to clearly guide the Inter-American Commission and require it to move forward with concrete measures, and to prioritize and expedite the petitions and requests for precautionary measures that are being processed by the IAHRs for persons, groups and organizations that defend the environment. At the same time, the Inter-American Court should call on the States to strengthen the Inter-American Commission through funding and support for its work.

103. It should be noted that when a person, group or organization that defend the environment turns to the Commission, it is because their situation is desperate, serious and urgent and they are in risk of suffering irreparable harm, and they are no longer able to exercise their right to defend human rights in environmental matters, and therefore, other rights that they defend are likewise endangered, including the right to life, a healthy environment, health, and collective property.

104. Additionally, the IAHRs needs to consolidate its jurisprudence regarding the right to defend human rights in environmental matters and the protection of persons, groups and organizations that exercise it, which is not possible if the cases before the Inter-American Commission are not resolved within reasonable timeframes. It is worth mentioning that IAHRs cases not only impact a specific case, but also become judicial precedents applicable to other countries, and considering that violence and

¹⁰⁶Inter-American Commission, *Use of criminal justice against human rights defenders*, Hearing, 173rd Period of Sessions, Washington DC. Video of September 27, 2019. Available at <https://www.youtube.com/watch?v=EeF2EFwsnyE&t=14s>

¹⁰⁷Inter-American Commission, *Use of criminal justice against human rights defenders*, *Ibidem*, minute 29.

criminalization against environmental defenders are systematic in the Americas, the jurisprudence of the IAHR is, and will continue to be, a fundamental tool for the resolution of cases at the national level.

V. RECOMMENDATIONS

105. The recommendations to the Inter-American Court resulting from this *amicus* are of four types: 1) those aimed at obtaining declarations from the court to broaden the scope of protection of persons, groups and organizations that defend the environment and guaranteeing the exercise of their rights; 2) those that seek the Court to specify, expand or establish human rights obligations for the States in which the persons, groups and organizations that defend the environment operate; 3) those that seek the Court to specify, expand or establish the extraterritorial obligations of States with respect to companies in their jurisdictions; and 4) those related to the Court's pronouncements on due diligence and the reasonable time periods of the Inter-American Commission with respect to cases involving environmental defenders, groups and organizations.

Regarding the declarations of the Inter-American Court of Human Rights.

106. It is recommended that the Inter-American Court, in the exercise of its advisory function, declare that:

- Environmental defenders, groups and organizations are a vulnerable group in the Inter-American Human Rights System, due to the risks, threats, criminalization and stigmatization they face because of their work in defense of the healthy environment, land, territory and ethnic peoples. Therefore, they should be afforded special protection and States must adopt measures to protect their lives and integrity, and guarantee the exercise of their rights, in particular the right to defend human rights in environmental matters and access rights.
- The Escazú Agreement is part of the *corpus iuris* for the interpretation and application of the normative framework of the ISHR with respect to the scope of the obligations of the States in the area of human rights, and in particular on the protection of persons, groups and organizations that defend the environment and the guarantee of the right to the defense of human rights in environmental matters and the rights of access to information, participation and access to justice in environmental matters.
- Criminalization of persons, groups and organizations that defend the environment is a violation of the right to defend human rights in environmental matters. This arbitrary exercise of punitive power by the State is systematic in the Americas and is due to the lack of safe places and adequate spaces for the exercise of human rights. In this way, States create risks and fail to meet their obligations to respect, protect and guarantee human rights.

- States have extraterritorial obligations when they have jurisdiction, influence and/or control over public and private companies that are registered or have their headquarters in the territory of that State (home States), and when it is reasonably foreseeable that the activities of these companies directly or indirectly affect human rights and/or put at greater risk persons, groups and organizations that defend the environment in the States in which these companies operate (host State).

On the obligations of States in which persons, groups and organizations that defend the environment exercise their right to defend human rights in environmental matters.

107. It is recommended that the Inter-American Court, in the exercise of its advisory function, specify, expand or establish the following obligations of States in which environmental defenders, groups and organizations exercise their rights:

- States must guarantee the exercise of the right to defend human rights in environmental matters and the rights of access to information, participation, and access to justice in environmental matters. This implies ensuring that decision-making in environmental matters is transparent, participatory, and accountable, which avoids socio-environmental conflicts that generate risks for persons, groups and environmental defense organizations.
- States should address the climate emergency and adopt urgent measures to deal with it based on a human rights approach, considering the differentiated impacts of this emergency on ethnic peoples and groups in vulnerable conditions.
- States should include risk assessment against environmental defenders in the environmental impact assessment processes for the approval of projects, works or activities that may impact the environment, both before, during, and after their completion.
- States must guarantee a safe and enabling environment for the exercise of the right to defend human rights in environmental matters, including the right to a healthy environment, land, territory, and the defense of ethnic peoples.
- States must act with due diligence in cases in which preventive detention is used against persons, groups and organizations that defend the environment. Specifically, they must: a) create and put into operation mechanisms for the expedited review of these measures; b) ensure the existence of effective appeals against decisions to impose preventive measures; and c) monitor the use of preventive measures against persons, groups and environmental defender organizations; d) apply criteria for comprehensive reparation in cases where there is criminalization of environmental defenders that is consistent with the jurisprudence of the Inter-American Human Rights System.

- Judges must analyze the conditions of vulnerability of persons, groups and environmental defense organizations when making decisions in the context of criminal proceedings, especially when it comes to imposing preventive detention measures that may create or increase their risk.
- Judges must act with special care when imposing preventive measures or using broad and ambiguous criminal definitions to accuse or charge environmental defenders, groups and organizations, and they must especially strengthen the standard of applying criminal law only as an *ultima ratio*.
- In compliance with the obligation to adopt measures established in Article 2 of the American Convention, States must review and reform the normative frameworks that are being used to justify the criminalization of environmental defenders based on the standards of the IAHRs, the Escazú Agreement, and other norms of international law that support the protection of persons, groups and organizations that defend the environment and guarantee the exercise of their rights.
- States should monitor the use of criminal law against environmental defenders, groups and organizations, in order to identify, characterize and avoid criminalization. The information resulting from monitoring should be publicly available.
- States should formulate and implement protection programs for environmental defenders, including complaint channels, legal advice, monitoring systems and an adequate budget.
- Home States should develop actions to prevent human rights violations against environmental defenders when it is directly and reasonably foreseeable that those violations might be perpetrated by a company domiciled in the home State. These actions include: the obligation to require these companies to conduct human rights due diligence to prevent reasonably foreseeable threats to life; and to adopt special protection measures in response to specific or pre-existing threats or patterns of violence towards defenders.

On the extraterritorial responsibility of the home States of companies with respect to their obligations towards persons, groups and environmental defense organizations exercising the right to the defense of human rights in environmental matters.

108. It is recommended that the Inter-American Court Court, in the exercise of its advisory function, specify, expand or establish the following obligations of the States of origin of the companies that carry out works, projects or activities that may put persons, collectives and environmental defense organizations at risk:

- Home States should establish national mechanisms to ensure that their officials comply with their obligations under international human rights law in relation to

persons, groups and organizations that defend the environment. This includes effective oversight and monitoring of officials' adherence to applicable policies and laws, as well as processes to investigate and, where necessary, hold officials accountable.

- Sending States should use all possible avenues to advocate for an independent, impartial and transparent investigation and provide financial and technical support for such an investigation when attacks against environmental defenders have occurred in receiving States.
- States of origin should raise the issue of risks to human rights defenders in the context of the conduct of trade missions, and should maintain contact with environmental rights defenders in host countries, including by receiving them in embassies and visiting their places of work.
- Home States should defend environmental defenders, including by formally raising concerns as part of diplomatic dialogues, raising public awareness about the work of human rights defenders, and observing and monitoring trials involving environmental rights defenders and home country companies.

On due diligence, adoption of standards and compliance with reasonable timeframes by the Inter-American Commission for the protection of persons, groups and organizations that defend the environment.

109. It is recommended to the Inter-American Court Court that, in the exercise of its advisory function and taking into account that this advisory opinion is legally relevant for the Inter-American Commission as a member body of the OAS, it require the following:

- The Inter-American Commission must prioritize, timely processing and decide within reasonable timeframes the petitions in process in which the victim of human rights violations is a person, group or organization that defends the environment.
- The adoption of standards of individual and collective reparation in cases where criminalization is used against persons, groups and environmental defense organizations, taking into account that this is a violation of the right to defend human rights in environmental matters and other related rights.
- The prioritization and expeditious processing of requests for precautionary measures where the person, group or organization that is in a serious and urgent situation of suffering irreparable harm is an individual, collective or environmental defender.
- The precautionary measures granted by the Inter-American Commission that pertain to environmental defenders must be adequate, effective and timely,

considering the context of violence and/or criminalization in which they are to be implemented.

- The Inter-American Commission must strengthen the process of monitoring compliance with precautionary measures, both in terms of their substantive content and the deadlines for implementation.
- In its State-specific reports, the Inter-American Commission should include a specific chapter on the situation of environmental defenders, groups and organizations.
- The Inter-American Commission should prepare a guide for the protection of environmental defenders, groups and organizations, detailing the obligations of States to adopt measures related to ensuring full respect, and protection for the exercise of the right to defend human rights in environmental matters.

Signatory organizations and individuals

Alliance for Land, Indigenous and Environmental Defenders - ALLIED - (Global)

Aida Sofia Rivera Sotelo (Colombia)

Albeiro Carmona Torres (Colombia)

Alejandra Leyva Hernández (México)

Alejandro E. Camacho, Chancellor's Professor of Law, University of California, Irvine (United States)

Alerte Congolaise pour l'environnement et les droits de l'homme - ACEDH - (Afrique)

Alianza de Organizaciones de Mujeres Tejedoras de Vida del Putumayo (Colombia)

Alianza de Derecho Ambiental y Agua (Colombia)

Ambiente y Sociedad (Colombia)

Andreko Carvajal, Gaia Unión (Colombia)

Andrés Mauricio Hurtado Benitez (Colombia)

Ángela Lucila Pautrat Oyarzún (Perú)

Angie Cuasquén Portilla (Colombia)

Ariatna Reyes (Colombia)

Article 19 (Global)

Asociación Apoyo a la Mujer, Red Matamba y Guasa (Colombia)

Asociación Ciudadana por los Derechos Humanos (Argentina)

Asociación de Gestores Ambientales del Pacífico - ASOGESAMPA - (Colombia)

Asociación de mujeres campesinas agua vida y esperanza - ASOMUCAVIE - (Colombia)

Asociación de Pueblos Indígena Originario Campesinos QHANA PUKARA KURMI (Bolivia)

Associação dos Professores de Direito Ambiental do Brasil - APRODAB - (Brasil)

Asociación Interamericana para la Defensa del Ambiente - AIDA - (Regional-Américas)

Asociación Nacional de Derechos Humanos Ima Pijao (Colombia)

Asociación tsbatsanamama "Madre Tierra" (Colombia)

Association of Saamaka Communities - VSG - (Surinam)

Bangabandhu Sheikh Mujibur Rahman Maritime University (Bangladesh)

Brigitte Baptiste, Bióloga, PhD in Law (hon) (Colombia)
Cabo Pulmo Coast Waterkeeper (México)
Camila Espitia Fonseca (Colombia)
Carbone Guinée (Guinea)
Carlos A. M. Soria Dall'Orso (Perú)
Carlos Cardona (Colombia)
Carlos Manuel Alejos Levano (Perú)
Carolina de Figueiredo Garrido (Brasil)
Carolina Hernández, Doctorante en Geografía Universidades Nacional de Colombia y Sorbonne Nouvelle (Colombia y Francia)
Carolina Monje (Colombia)
Catalina Rodríguez Flórez (Colombia)
Centinelas del Agua, A.C. (México)
Centre for Environment, Human Rights & Development Forum - CEHRDF - (Asia-Pacific)
Centro Interdisciplinario de Investigación y Desarrollo Alternativo, U Yich Lu'um (Mesoamérica)
Centro Mexicano de Derecho Ambiental - CEMDA - (México)
Cesar Herdenez (Colombia)
Chiga Tuse del Pueblo Indígena Kofán (Colombia)
Cielo Alvarado Bautista (México)
Clarisa Vega Molina (Honduras)
Climate Justice Programme (Australia)
Colectiva Escuelas del cuerpo (Colombia)
Colectivo Nuestra Casa Nuestro Ambiente (Colombia)
Comité ambiental (Colombia)
Comité Ambiental de Piedras Tolima (Colombia)
Comite de D.D.H.H. y Ecologicos de Quilpue (Chile)
Confederación Mesa Nacional de Pesca Artesanal de Colombia - COMENALPAC - (Colombia)
CoopeSoliDar R.L (Costa Rica)
Coordinadora Integral Social Mercadereña (Cólombia)
Corporación Ambiental y Turística Alas del Humadea - CORPOHUMADEA - (Colombia)
Corporación Programa La Caleta (Chile)
Daniel Noroña (Ecuador y Estados Unidos)
Daniela Chapetón Rios (Colombia)
Dajani Paola Hurtado (Colombia)
David Hunter, International Environmental Law Professor, American University Washington College of Law (United States)
Defensores Tudaray (Bolivia)
Derecho Ambiente y Recursos Naturales - DAR - (Perú)
Devanshi Saxena, Researcher (India)
Diana Carolina Portilla Morales (Colombia)
Diana Milena Patiño Niño (Colombia)
Diana Ojeda (Colombia)
DIAKONIA (Colombia)

Dr. Dina Lupin, Director Global Network for Human Rights and the Environment (Global)

Dr. Sujata Arya (India)

Edgar Humberto Cruz Aya (Colombia)

Efrain Ballesteros Garces, Representante Legal del Consejo Comunitario COCOMASECO (Colombia)

Emma Villamizar Reyes (Colombia)

Enrique F. Pasillas (México)

Enver Federico Castellanos Gomez (Colombia)

Environmental Defender Law Center (Global)

Eric Schwartz (Colombia)

Extintion Rebellion Medellin (Colombia)

Federación de comunidades y pueblos artesanos y originarios de Colombia (Colombia)

Fernando Pinzón Ramírez (Colombia)

Foro Internacional de Ecopolítica - FIE - (Global)

Françoise Wautiez (International)

Franklin Chil Madrid Vilela (Perú)

Fundación Alma (Colombia)

Fundacion Barranquilla+20 (Colombia)

Fundación Bosque Manuel Quintín Lame (Colombia)

Fundación Concern Universal (Colombia)

Fundación Ecuménica para el Desarrollo y la Paz - FEDEPAZ - (Perú)

Fundación Erigaie (Colombia)

Fundacion Fagucar y/o Cartagena Waterkeeper (Colombia)

Fundación HIDROSFERA (Colombia)

Fundacion Hidrica Ambiental de Colombia - FUNHACOL - (Colombia)

Fundación MarViva (Colombia, Panamá, Costa Rica)

Fundación Raices Tierra y Paz (Colombia)

Fundación Reeducando y Creando - Recicreando - (Colombia)

Gina Noriega Narváez (Colombia)

Giorgia Pane (Italy)

Giovanny Cruz (México)

Giulia Contes (Belgium)

Graciela Milena Orcola (Argentina)

Gregorio Mesa Cuadros (Colombia)

Grupo de Investigación en Derechos Colectivos y Ambientales - GIDCA - Universidad Nacional de Colombia (Colombia)

Grupo Juvenil Hormiguitas Artesanas Guardianas del agua valle del Guamuez (Colombia)

Hailin Ibet Reyes Gutiérrez (Colombia)

Harry Pinto Leon (Colombia)

Héctor Castellanos Villalpando (México)

Héctor Herrera (Colombia)

Helida barcenás Rojas (Colombia)

Iniciativa Arrecifes Saludables para Gente Saludable (Sistema Arrecifal Mesoamericano)

Instituto de Abogados para la Protección del Medio Ambiente (República Dominicana)

International Service for Human Rights - ISHR - (Internacional)

Irene Lozano Mascarúa (México)
Isabela Figueroa, Facultad de Humanidades, Universidad del Magdalena (Colombia)
Isabel García Coll (Colombia)
Jeff Thaler, Esq., Adjunct Professor, University of Maine School of Law (United States)
Jessy Catalina (Colombia)
Jose Jiménez Patiño (Colombia)
José Alejandro Machado (Colombia)
Jorge Montañez, Sociólogo y pedagogo, integrante del Comité Ambiental en Defensa de la Vida Ibagué-Tolima (Colombia)
Juan Carlos Gutiérrez Mejía (Colombia)
Juan David Castaño (Colombia)
Juan Fernando Puerta Tamayo (Colombia)
Juan Manuel Cañón Amaya (Colombia)
Juan Riaño (México)
Julián Alberto Medina Salgado (Colombia)
Julieta Ortiz Fernández (Colombia)
Julieth Serrano Mantilla (Colombia)
Jungla Viva (Colombia)
Junta de Gobierno del Territorio Campesino Agroalimentario del Macizo Norte de Nariño y sur del Cauca - TCAM - (Colombia)
Kevin Andrés Morales Toro (Colombia)
Laura Miranda (México)
Leandro Collante (Colombia)
Leila Patricia Piragauta Rodriguez, Ecologo (Colombia)
Lina Malagon Diaz (United Kingdom)
Los Cabos Coastkeeper, A. C. (México)
Luciana Bauer (Brazil)
Luis Fernando Parra Paris (Colombia)
Luis Fernando Sánchez Supelano, Profesor Universidad Nacional (Colombia)
Luis Javier Vicente Castilla De La Hoz (Colombia)
María José Lubertino Beltran, Profesora de Derechos Humanos Facultad de Derecho Universidad de Buenos Aires (Argentina)
Maria Celeste Quiroga ErosteGUI (Colombia)
María Teresa Holguín Aguirre (Colombia)
Mario Alejandro Delgado Narváez (Colombia)
Maritza La Torre Vasquez (Bolivia)
Martha Lucia Perengüez (Colombia)
Maule Itata Coastkeeper Waterkeeper (Chile and Latin America)
Mayra López Pineda (México)
Medardo Chindoy (Colombia)
Member Judges for Democracy Brazil (Brazil)
Mesa de Organizaciones Sociales Defensoras de Derechos Humanos de Risaralda (Colombia)
Miguel Fredes, defensor ambiental (Chile)
Milena Bernal (Colombia)
Montserrat San Martín (México)
Movimiento Nacional de Víctimas de Crímenes de Estado - Movice - (Colombia)

Mujeres Restaurando el Ecosistema 2023/2025 (México)
Natalia Ivana Perlines (Argentina)
Nathan Bennett, Chair, People and the Ocean Specialist Group, IUCN CEESP & Global Oceans Lead Scientist, WWF (Canada)
Nicolas Boeglin, Profesor de Derecho Internacional Público, Facultad de Derecho, Universidad de Costa Rica - UCR - (Costa Rica)
Noemí Chávez Castañeda (México)
Observatorio DESCA (España)
Observatorio para la Gobernanza Marino Costera (Colombia)
Olga Caicedo Pinto (Colombia)
Omar Chacón (Colombia)
Omaira Zamora (Colombia)
ONG FIMA (Chile)
Oscar Velez Ruiz Gaitan (México)
Oswaldo Homero Díaz Molina (Colombia)
Paula Satizábal PhD, Helmholtz Institute for Functional Marine Biodiversity - HIFMB - (Alemania)
Paz y libertad (México)
Pierfrancesco Mattiolo, University of Antwerp (Belgium and United States)
Philippe Le Billon (Canada)
Protection International Mesoamérica (Mesoamérica)
Public Interest Law Center - PILC- Tchad (Afrique Central)
Raquel Ivveth Ruiz (Colombia)
Rayo Angulo, Economista y financiera ambiental (México)
Red de Defensoras del Ambiente y el Buen vivir (Argentina)
Red Ecofeminista Latinoamericana y del Caribe (América Latina y el Caribe)
Red Humedal el Salitre (Colombia)
Red Nacional por la Defensa de la Soberanía Alimentaria en Guatemala - REDSAG - (Guatemala)
Regina A. Barba Pirez (México)
Revive México AC (México)
Ricardo Luis Mejía Marchena (Colombia)
Roberto Hernandez Juarez (México)
Rocio López de la Lama (Perú)
Romina Picolotti, defensora ambiental (Américas)
Rosa Elena López de Rivera C. (México)
Rosalba Díaz Navarro (Colombia)
Salvaginas colectiva Ecofeminista (Colombia)
Sandra Molina (United States)
Sandra Vilaridy Q. (Colombia)
Sarah Dávila A, Profesora de Derechos Humanos (Estados Unidos)
Sebastián Rubiano-Galvis, Profesor, Universidad de San Francisco (Estados Unidos, Colombia)
Sigifredo Delgado Narvaez (Colombia)
Silvia Bagni (Italia)
Sisters of Saint Francis Rochester MN (North and South America)
S.O.S Humedal Tibabuyes (Colombia)

Sukaar Welfare Organization (Pakistan)

Susana Patricia Chicunque Agreda (Colombia)

Templo tribu Lamekius (Colombia)

Terra de Direitos (Brasil)

Tsikini (México)

Usha Natarajan, Law & Political Economy Faculty Fellow, Yale Law School (United States)

Uso Inteligente ASV A.C. (México y Latinoamérica)

Waterkeeper Alliance (Global)

Yolanda Sánchez (Colombia)

Sign here: <https://bit.ly/FirmaObservacionesalaOC> before December 17.