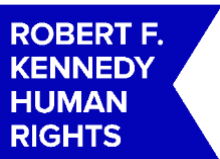


AMICUS CURIAE

Submission before the Inter-American Court of Human Rights
with regards to the Request for Advisory Opinion
on the Climate Emergency and Human Rights

Submitted by:
Robert F. Kennedy Human Rights
Centre for Human Rights, University of Pretoria
Amazon Watch
Latin American and Caribbean Network for Democracy (REDLAD)
ARTICLE 19: Global Campaign for Free Expression
Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)
International Service for Human Rights (ISHR)



STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

1. Pursuant to Article 44 of the Court's Rules of Procedure, the organizations Robert F. Kennedy Human Rights (RFKHR), Centre for Human Rights, University of Pretoria, Amazon Watch, Red Latinoamericana y del Caribe para la Democracia (REDLAD), ARTICLE 19: Global Campaign for Free Expression, the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and the International Service for Human Rights (ISHR) ¹ submit this amicus curiae brief, with the aim of contributing respectfully, independently and impartially with some legal considerations to the Advisory Opinion that the Honorable Inter-American Court of Human Rights (hereinafter, the "Inter-American Court" or the "Honorable Court") will issue on "the Climate Emergency and Human Rights."
2. This amicus brief is submitted by the aforementioned organizations on a voluntary basis, in order to contribute to the protection of environmental human rights defenders, as well as women, Indigenous Peoples, Afro-descendant Peoples, and rural farming communities in the context of the climate emergency. This brief provides the Court with jurisprudence from various regional and international legal authorities to contribute to the analysis and progressive protection of environmental defenders. The amicus brief addresses some of the relevant standards that we hope are useful for the Court to answer questions E(1), (2) and E(3) regarding States' "obligations of prevention and the protection of environmental defenders, as well as women, Indigenous peoples, and Afro-descendant communities in the context of the climate emergency."² We believe that this Advisory Opinion represents an important opportunity to deepen and expand Inter-American standards on the rights of these groups, especially due to the urgent nature of the climate crisis and the myriad of attacks against environmental defenders. It is particularly crucial for the Inter-American Court to address the protection of environmental defenders because of the dangerous situation in Latin America. Additionally, it is important for the Inter-American Court to adopt a progressive approach to these issues in order to influence other regions that are having similar conversations about States' obligations in light of the climate emergency.³
3. In light of the human rights violations environmental defenders—particularly those who are also women, Indigenous peoples, Afro-descendant peoples, and/or rural farmers—are facing, as well as international legal standards regarding States' obligations to address climate change and protect human rights defenders, the Honorable Court should further clarify the scope of States' duties to protect environmental defenders and how this relates to the obligations related to climate

¹ Description and signatures of the organization joining the amicus curiae brief can be found on the last sections of the document.

² This brief aims to answer questions E(1), E(2) and E(3) from the advisory opinion request. Republic of Colombia and Republic of Chile, [Request for Advisory Opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights](#), at 11-12, January 9, 2023.

³ Commission of Small Island States on Climate Change and International Law, [Request for Advisory Opinion from the International Tribunal for the Law of the Sea](#), December 12, 2022; Joan E. Donoghue & Philippe Gautier, [Obligations Of States In Respect Of Climate Change \(Request For Advisory Opinion\)](#), April 20, 2023.

change, particularly because of the critical role these defenders play in addressing the climate emergency. The Inter-American Court should also highlight the importance of taking a differentiated approach to protecting environmental defenders in order to address the additional struggles faced by marginalized communities who may or may not identify as environmental defenders.

I. STATES' OBLIGATIONS TO ADDRESS CLIMATE CHANGE

4. The Inter-American system has clearly asserted that States have the obligation to mitigate and prevent climate change. The Inter-American Commission on Human Rights (IACHR) has stated that States must “devote the maximum available resources to the adoption of measures to mitigate [the climate crisis]...[and] for the effective protection of human rights, States must take appropriate measures to mitigate greenhouse gases, implement adaptation measures and remedy the resulting damages.”⁴ Additionally, the Inter-American Court of Human Rights has declared that States must “take all steps to mitigate [any significant environmental damage that could have occurred] and, if possible, eliminate the consequences of the damage.”⁵ The Inter-American Court has also pointed out that States must ensure the right to a healthy environment under the general obligation to ensure human rights of Article 1(1) of the Convention and therefore, are “bound to use all the means at their disposal to avoid activities under its jurisdiction causing significant harm to the environment.”⁶
5. Other authorities reinforce and further this obligation. The UN Human Rights Council (HR Council) has stated that “climate change agreements broadly require States to prevent or mitigate the harm from climate change.”⁷ For example, under the United Nations Framework Convention on Climate Change (UNFCCC), States are required to “take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects...[f]ormulate, implement, publish and regularly update national and regional programs containing measures to mitigate climate change...[and] adopt national policies and take corresponding measures on the mitigation of climate change.”⁸ Additionally, the Paris Agreement requires States to “pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.”⁹

⁴ Inter-American Commission on Human Rights & Special Rapporteur for Economic, Social, Cultural, and Environmental Rights, *Climate Emergency: Scope of Inter-American Human Rights Obligations*, at 10 & 15, December 31, 2021.

⁵ Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic Of Colombia*, at 69, November 15, 2017.

⁶ Inter-American Court of Human Rights, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association V. Argentina*, at para. 208, February 6, 2020; Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic Of Colombia*, at footnote 247 and para. 142, November 15, 2017.

⁷ United Nations Human Rights Council, *The Slow Onset Effects of Climate Change and Human Rights Protection for Cross-border Migrants*, at 5, March 27, 2018.

⁸ United Nations, *United Nations Framework Convention on Climate Change*, 1771 U.N.T.S., at Art. 3(3), Art. 4(1)(b), Art. (2)(b), May 9, 1992.

⁹ United Nations, *The Paris Agreement*, at Art. 4(2), 2015.

6. Other UN bodies have also stressed States' duty to mitigate climate change in order to respect human rights. According to the Office of UN High Commissioner for Human Rights (OHCHR), "[c]limate change impacts, directly and indirectly, an array of internationally guaranteed human rights. States (duty-bearers) have an affirmative obligation to take effective measures to prevent and redress these climate impacts, and therefore, to mitigate climate change, and to ensure that all human beings (rights-holders) have the necessary capacity to adapt to the climate crisis...Failure to take affirmative measures to prevent human rights harms caused by climate change, including foreseeable long-term harms, breaches [States' obligation to respect, protect, fulfil and promote all human rights for all persons without discrimination]."¹⁰
7. The UN Human Rights Committee (HR Committee) and UN Committee on the Rights of the Child (CRC) have also emphasized how States not addressing climate change violates various human rights. In *Daniel Billy and others v. Australia*, the HR Council found that Australia's failure to adequately protect Indigenous Torres Islanders against climate change impacts violated the Indigenous community's rights to be free from arbitrary interferences with their private life, family and home and enjoy their culture under articles 17 and 27 of the International Covenant of Civil and Political Rights (ICCPR).¹¹ In *Chiara Sacchi, et al. v Argentina, Brazil, France, Germany and Turkey*, the CRC found that States can be held responsible for the human rights impacts of its carbon emissions on children both within and outside its territory.¹²
8. While the Inter-American system clearly holds States accountable to mitigate climate change, the Court must take the opportunity presented by the advisory opinion to strengthen this obligation. In order to foster the protection of human rights and the prevention of climate change impacts, the Inter-American Court should detail the measures States must take to mitigate climate change, reinforce the fact that States not fulfilling their climate obligations also violates their human rights obligations, and provide clear guidelines regarding business and human rights as it relates to States' duties and corporations' responsibilities.

II. ENVIRONMENTAL DEFENDERS FACE ENORMOUS RISK AND ADDRESS CLIMATE CHANGE

9. Former UN Special Rapporteur on the situation of Human Rights Defenders, Michel Forst, described environmental human rights defenders in his report of 2018 as "individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna."¹³ In his 2016 report, Forst stated that environmental human rights defenders "are one of the most heterogeneous groups of defenders. The category includes a diverse range of people,

¹⁰ United Nations Office of the High Commissioner for Human Rights, [Human Rights and Climate Change](#), at 2, 2016.

¹¹ Human Rights Committee, [Daniel Billy and others v Australia \(Torres Strait Islanders Petition\)](#), at 16, 2019.

¹² Committee on the Rights of the Child, [Chiara Sacchi, et al. v Argentina, Brazil, France, Germany and Turkey](#), 2019.

¹³ United Nations General Assembly, [Report of the Special Rapporteur on the Situation of Human Rights Defenders](#), U.N. Doc. A/71/281, at 4, August 3, 2016.

profiles and trajectories, from small-scale farmers with no land deeds to environmental lawyers and journalists, from well-organized non-governmental organizations to isolated indigenous communities.”¹⁴

10. The term ‘environmental defender’ is often a label from the outside rather than a self-description; many do not call themselves defenders and take on this role “by accident or necessity.”¹⁵ This may amplify their vulnerabilities, as these individuals taking a stand against harm to the environment are unaware that their rights as defenders are being violated.¹⁶ The ‘environmental defender’ label can also serve as a form of protection, especially if a high level actor refers to someone as an environmental defender, thereby legitimizing their work and helping to insulate them from criminalization. The title also helps individuals and groups to connect locally and globally with others doing similar work. This can both increase a defender’s influence and strengthen protections for defenders.
11. Environmental human rights defenders face numerous threats, as they are the most targeted human rights defenders.¹⁷ Many of these protectors are unjustly killed—in 2022, at least 177 individuals lost their lives defending the planet, bringing the total number of killings to 1,910 since 2012.¹⁸ At least 155 (87.6%) of last year’s killings happened in the Americas.¹⁹ Murders of environmental defenders are on the rise; no less than 1,390 killings took place between December 2015 and December 2022.²⁰ It is crucial to note that these figures merely represent killings that authorities and civil society have been made aware of. Underreporting of these crimes is a major issue, so there are likely many more lives that have sadly been lost than these numbers illustrate.²¹
12. The killing of environmental defenders is just one dimension of the various forms of violence perpetrated against them.²² Defenders are subject to a plethora of (largely unreported) non-lethal attacks, including physical violence, criminalization, smear campaigns, subtle co-optation practices, forced evictions and displacement of

¹⁴ United Nations General Assembly, [Report of the Special Rapporteur on the Situation of Human Rights Defenders](#), U.N. Doc. A/71/281, at 15, August 3, 2016. The Inter-American Commission on Human Rights, in its [Second Report on the Situation of Human Rights Defenders \(2011\)](#) also recognized environmental defenders as a category of human rights defenders at particular risk. See P. 131.

¹⁵ United Nations General Assembly, [Report of the Special Rapporteur on the Situation of Human Rights Defenders](#), U.N. Doc. A/71/281, at 15, August 3, 2016.

¹⁶ Viktoria Reisch, [Civic space restrictions beyond open repression: Mining and environmental defenders in Northern Chile](#), at 3, March 2023.

¹⁷ Report of the Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor, [Final warning: death threats and killings of human rights defenders](#), U.N. Doc. A/HRC/46/35, at 4-5, December 24, 2020.

¹⁸ Global Witness, [Standing Firm: The Land and Environmental Defenders on the frontlines of the climate crisis](#), at 9, September 13, 2023.

¹⁹ Global Witness, [Standing Firm: The Land and Environmental Defenders on the frontlines of the climate crisis](#), at 9, September 13, 2023.

²⁰ Global Witness, [Standing Firm: The Land and Environmental Defenders on the frontlines of the climate crisis](#), at 9, September 13, 2023.

²¹ Global Witness, [Standing Firm: The Land and Environmental Defenders on the frontlines of the climate crisis](#), at 28, September 13, 2023.

²² Nathalie Butt et al., [The supply chain of violence](#), at 15, May 8, 2019.

environmental defenders, intimidation, and judicial harassment including strategic lawsuit against public participation (SLAPP) suits to dissuade activism.²³ In 2018, John Knox, former UN Special Rapporteur on human rights and the environment, estimated that “for every 1 killed, there are 20 to 100 others harassed, unlawfully and lawfully arrested, and sued for defamation, amongst other intimidations.”²⁴ Further, environmental defenders’ family members, communities, associates, and legal representatives also face threats because of their connections to them.²⁵

13. Despite the various challenges they face, studies show that environmental defenders make critical contributions to climate change mitigation and adaptation through their work. Extractive industries are significant generators of the greenhouse gasses causing climate change.²⁶ When protectors defend the planet against these actors, they protect the atmosphere from greenhouse gasses, in turn, defending the planet from climate change.²⁷ For example, many environmental human rights defenders work to protect forests. Deforestation causes climate change because the world’s forests act as a carbon sink.²⁸ Therefore, defenders who protect trees and forests are inherently taking part in a mitigation activity.²⁹

14. In 2019, the HR Council unanimously adopted a resolution that formally recognized the role of Defenders in environmental protection.³⁰ Additionally, a global study showed that in 11% of environmental conflicts, defenders who used a single tactic “contributed to halt environmentally destructive and socially conflictive projects, defending the environment and livelihoods,” and defenders who used multiple strategies had a higher success rate of “up to 27%.”³¹ While the tactics used by defenders vary, all defenders “speak out against the harm done to people or the planet through the exploitation of land and natural resources by businesses and governments for profit. This could be through awareness-raising and protest, peaceful direct action, filing legal complaints, or other ways of speaking out.”³² For

²³ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 83–109, 2018; Viktoria Reisch, [Civic space restrictions beyond open repression: Mining and environmental defenders in Northern Chile](#), at 3, March 2023; Global Witness, [Standing Firm: The Land and Environmental Defenders on the frontlines of the climate crisis](#), at 44, September 13, 2023.

²⁴ United Nations Environment Programme, [Who are environmental defenders](#), 2020.

²⁵ United Nations Human Rights Council, [Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development](#), U.N. Doc. A/HRC/40/L.22/Rev.1, at 4, March 20, 2019.

²⁶ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 93, 2018.

²⁷ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 93, 2018.

²⁸ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 94, 2018.

²⁹ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 94, 2018.

³⁰ United Nations Human Rights Council, [Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development](#), U.N. Doc. A/HRC/40/L.22/Rev.1, at 4, March 20, 2019.

³¹ Arnim Scheidel et al., [Environmental conflicts and defenders: A global overview](#), Global Environmental Change, Volume 63, 2020, at 1.

³² Global Witness, [How Land and Environmental Defenders Protect the Planet, and How We Can Protect Them](#), June 4, 2021.

example, defender Berta Cáceres drew attention to the ways a planned hydropower project in Honduras would damage a local river and violate the rights and threaten the livelihoods of Indigenous people who lived nearby through protest, community organizing, and filing complaints with government authorities.³³ The Waorani Indigenous community in Ecuador took a different approach; they filed and won a case against the Ecuadorian government to prevent them from selling off their land for oil drilling.³⁴

15. Environmental human rights defenders cannot continue to address climate change while facing threats and attacks. Because environmental defenders play an important role in climate change mitigation and adaptation, and States have an obligation to mitigate climate change, States have a duty to protect these defenders in order to fulfill their climate change obligations as well.
16. Environmental defenders also play a crucial role in protecting and defending human rights. As recognized by the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean –also known as the Escazú Agreement– “human rights defenders in environmental matters [strengthen] democracy, access rights and sustainable development.”³⁵ Because States have a duty to protect and facilitate human rights under international human rights law and environmental defenders contribute to this, protecting environmental defenders is “fundamental to achieving universal respect for human rights” and, therefore, a State obligation.³⁶ Furthermore, the HR Council recognized “the positive, important and legitimate role played by human rights defenders in the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.”³⁷

III. STATES’ OBLIGATIONS TO PROTECT ENVIRONMENTAL DEFENDERS

17. The mitigation and adaptation work that environmental defenders conduct is essential to fighting the climate crisis and defending human rights. In the following subsections, we explain how this requires States to protect these defenders in order to fulfill their other obligations regarding climate mitigation and protecting human rights. Specifically, we will briefly summarize the international and regional standards related to human rights defenders and explain their application to environmental defenders. The Honorable Court should articulate these standards’ pertinence to environmental standards in its advisory opinion so that States have a more tailored guide on how to respond to their particular needs and circumstances.

³³ Global Witness, [How Land and Environmental Defenders Protect the Planet, and How We Can Protect Them](#), June 4, 2021.

³⁴ Global Witness, [How Land and Environmental Defenders Protect the Planet, and How We Can Protect Them](#), June 4, 2021.

³⁵ United Nations, [Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean](#), at 2, 2018.

³⁶ U.N. High Commissioner for Human Rights, [Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights](#), at 18, April 1, 2004.

³⁷ United Nations, Human Rights Council: [Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development](#), U.N. Doc. A/HRC/38/L.5 at 2, 2018.

A. States' Obligations Regarding Human Rights Defenders

i. Obligation to Ensure an Enabling Environment for Human Rights Defenders to Carry Out their Activities Freely

18. The IACHR has indicated that States have the obligation to create safe environments that are conducive to the defense of human rights.³⁸ The IACHR has repeatedly emphasized how important it is that human rights defenders be able to perform their work without fear of reprisals, highlighting that the defense of human rights can be exercised freely only when the persons engaged in it are not victims of threats or harassment.³⁹ Additionally, the Inter-American Court has established that States are obligated to “provide effective and adequate guarantees to human rights defenders so that they may freely carry out their activities, and to avoid actions that limit or impede such work. Human rights advocacy constitutes a positive and complementary contribution to the State’s own efforts as guarantor of the rights of all persons under its jurisdiction.”⁴⁰

19. The IACHR has observed that a large factor contributing to the current unsafe environment for human rights defenders is the criminalization of their work.⁴¹ States criminalize human rights defenders in a number of ways, including by: accusing defenders of crimes in the absence of court decisions; misusing laws that criminalize social protest; punishing defenders for the receipt of foreign funding to carry out their work; misusing counter-terrorism laws against defenders; subjecting defenders to unreasonably lengthy criminal proceedings; illegally and arbitrarily detaining defenders; and using precautionary measures to criminalize the work of human rights defenders.⁴² In light of this injustice, the IACHR calls on States to: recognize the work of human rights defenders; prevent the adoption and implementation of laws whose formulation is contrary to international law standards on freedom of expression and freedom of assembly; ensure justice operators perform in accordance with international human rights standards; avoid criminal proceedings of an unreasonable length; ensure that any detention is carried out with strict adherence to the right of personal liberty; eradicate the misuse of precautionary measures; and

³⁸ Inter-American Court Of Human Rights, [Luna Lopez v. Honduras \(Merits, Reparations, and Costs\)](#), at para. 117-118, 235, October 10, 2013.

³⁹ Inter-American Commission on Human Rights, [Second Report on the Situation of Human Rights Defenders in the Americas](#), at para. 46, 2011.

⁴⁰ Inter-American Commission on Human Rights, [Request for Provisional Measures Submitted by the Inter-American Commission on Human Rights Regarding the Republic Of Colombia. Matter of the Colombian Commission of Jurists](#), at para. 24, November 25, 2010.

⁴¹ Inter-American Commission on Human Rights, [Criminalization of Human Rights Defenders](#), OEA/Ser.L/V/II., Doc. 49/15, December 31, 2015.

⁴² Inter-American Commission on Human Rights, [Criminalization of Human Rights Defenders](#), OEA/Ser.L/V/II., Doc. 49/15, at 45-107, December 31, 2015.

archive groundless legal proceedings that were initiated to repress and punish the right to defend human rights.⁴³

20. The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) asserts that States must create conditions necessary for the protection of human rights.⁴⁴ In addition, the UN General Assembly has adopted a declaration that expands on what a safe environment for human rights defenders means, calling on States to ensure that human rights defenders can perform their crucial role without being subject to “excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts.”⁴⁵
21. The African System has also addressed the issue of a safe environment for human rights defenders. The African Commission on Human and Peoples’ Rights’ resolution on the Protection of Human Rights Defenders in Africa, and the African Union’s *Grand Bay (Mauritius) Declaration* both call upon States to implement the UN Declaration on Human Rights Defenders.⁴⁶ Additionally, the African Commission on Human and Peoples’ Rights has urged States to create a safe environment for these defenders to work without stigma or reprisals, stating that the defense of human rights is “among the most important exercises of human rights and as such should be given substantial protection that [does] not allow the State to suspend [this right] for frivolous reasons and in a manner that is thus disproportionate to the interference with the exercise of [this] fundamental human [right].”⁴⁷ The Commission has compelled States to include information on measures taken to protect these defenders in States’ periodic reports, adopt laws to protect human rights defenders and end impunity, and include women human rights defenders.⁴⁸ The Commission has also specifically called on States to protect defenders who speak about and advocate for measures to protect human rights of affected communities in the extractive industries as obligations derived from

⁴³ Inter-American Commission on Human Rights, [Criminalization of Human Rights Defenders](#), OEA/Ser.L/V/II., Doc. 49/15, at 143-152, December 31, 2015.

⁴⁴ United Nations, [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#), G.A. Res. 53/144, March 8, 1999.

⁴⁵ United Nations, [Promotion of 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: Protecting Women Human Rights Defenders](#), G.A. Res. 68/181, at para. 8, December 18, 2013.

⁴⁶ African Commission on Human and Peoples’ Rights, [Resolution on the Protection Of Human Rights Defenders In Africa](#), Res. 69(XXXV)04, para. 3, June 4, 2004; African Commission on Human and Peoples’ Rights, African Union Common Repository, [Grand Bay \(Mauritius\) Declaration](#), at para. 19, April 16, 1999.

⁴⁷ [Law Office of Ghazi Suleiman v. Sudan](#), at para. 62, 2003.

⁴⁸ African Commission on Human and Peoples’ Rights, [Resolution on the Protection Of Human Rights Defenders In Africa](#), Res. 69(XXXV)04, at para. 3, June 4, 2004; African Commission on Human and Peoples’ Rights, [Resolution on the Situation of Human Rights Defenders in Africa](#), Res. 104(XXXI)07, May 30, 2007; African Commission on Human and Peoples’ Rights, [Resolution on Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa](#), Res. 273(LV)2014, May 12, 2014; African Commission on Human and Peoples’ Rights Resolution 336: [Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders](#), Res. 336(EXT.OS/XIX)2016, February 25, 2016; African Commission on Human and Peoples’ Rights, [Resolution on the Situation of Human Rights Defenders in Africa](#), Res. 376(LX)2017, May 22, 2017; African Commission on Human and Peoples’ Rights, [Resolution on the Need to Adopt Legal Measures for the Protection of Women Human Rights Defenders in Africa](#), Res. 409 (LXIII)2018, November 13, 2018.

the African Charter. These obligations also include educational and awareness-raising activities and to enable advocacy for protection of the rights of affected communities.⁴⁹

22. Cognisant of the potential for reprisals against human rights defenders, the African Commission provides in its Rules of Procedure the obligation on African states to “ensure that no reprisal of any kind is taken against any person or entity that provides the Commission with information, testimony or evidence in order to assist it in fulfilling its mandate.”⁵⁰ The Rules of Procedure also requires African states to ensure that there are no reprisals against victims of complainants who submit communications to the Commission alleging human rights violations. This protection extends to the family members, representatives, witnesses, experts or other persons who provide the Commission with information concerning alleged human rights violations.⁵¹ Furthermore, the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa noted instances of extrajudicial killings and arbitrary arrests in his 2022 report, and called on States to “adopt laws on the protection of human rights...[and] refrain from adopting freedom-suppressing laws that tend to restrict civic space and the legitimate activities of defenders to promote and defend human rights.”⁵²

23. The Organization for Security and Co-operation in Europe (OSCE) has also stated that States should “respect, encourage and facilitate human rights activity. They should put in place practical measures aimed at creating safe and conducive environments that enable and empower human rights defenders to pursue their activities freely and without undue limitations, including work conducted individually and collectively with others, domestically and across borders.”⁵³ The realization of the right to defend human rights depends on fully enjoying a range of rights and freedoms, including freedom of expression. Additionally, while holding several States in violation of the European Convention on Human Rights for the arrest, detention and ill treatment of human rights defenders, the European Court of Human Rights ruled that States have also a positive obligation to protect human rights defenders and to allow them to conduct their work.⁵⁴

24. The International Legal Framework Applicable to Threats Against Human Rights Defenders: A Review of the Relevant Jurisprudence in International Law (a civil

⁴⁹ African Commission on Human and Peoples’ Rights, [State Reporting Guidelines and Principles on Articles 21 And 24 of The African Charter Relating to Extractive Industries](#), Human Rights and The Environment, October 30, 2021

⁵⁰ African Commission on Human and Peoples’ Rights, [Rules of Procedure of the African Commission on Human and Peoples’ Rights](#), at Rule 74(1), 2020.

⁵¹ African Commission on Human and Peoples’ Rights, [Rules of Procedure of the African Commission on Human and Peoples’ Rights](#), at Rule 107, 2020.

⁵² African Commission on Human and Peoples’ Rights, [Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa](#), at para. 42, May 6, 2023.

⁵³ OSCE Office for Democratic Institutions and Human Rights (ODIHR), [Guidelines on the Protection of Human Rights Defenders](#), at para. 41, 2014.

⁵⁴ European Court of Human Rights, [Case of Rasul Jafarov v Azerbaijan](#), 69981/14, March 17, 2016; [Case of Aliyev v. Azerbaijan](#), 68762/14 and 71200/14, September 20, 2018; [Case of Kavala v. Turkey](#), 28749/18, December 10, 2019.

society led initiative known as “The Esperanza Protocol”)⁵⁵ also clarifies how States can ensure a safe and enabling environment that allows human rights defenders to perform their work, calling on States to: publicly support the work of defenders; create a legal, institutional, and administrative framework that protects, supports, and empowers defenders; have strong, independent, and effective national human rights institutions to address concerns of human rights defenders; develop effective protection policies and mechanisms for defenders; and implement policies and practices against impunity.⁵⁶

ii. Obligation to Prevent Human Rights Violations Against Human Rights Defenders as a Measure to Mitigate the Risks

25. The Inter-American system has distinctly recognized States’ duty to prevent human rights violations, including threats, against human rights defenders in the exercise of their work. The IACHR has specified that States must prevent violations against human rights defenders by ensuring conditions that enable human rights defenders to carry out their activities freely, not impeding or improperly criminalizing their work, and investigating, clarifying, prosecuting, and punishing crimes committed against them.⁵⁷ The IACHR has clearly stated that “although the obligation to prevent is one of ‘means or conduct’, it involves the State adopting “comprehensive measures” to ‘comply with due diligence’ by addressing the legal circumstances in which possible infringement is to be prevented.”⁵⁸ It has also provided some guidance on the measures State should adopt to prevent violations of defender’s rights, including the obligation to create a culture of human rights and recognition of the work done by human rights defenders, obligation to educate and train government officials and the obligation to tackle structural issues.⁵⁹

26. The Inter-American Court has stated that “in certain situations, [States] have the obligation to adopt all necessary and reasonable measures to guarantee the right to life, personal liberty and personal integrity of individuals who find themselves in situations of special vulnerability, particularly as a consequence of their work, whenever the State is aware of a situation of real and immediate danger, and has reasonable possibilities of preventing or avoiding that danger.”⁶⁰ As a consequence,

⁵⁵ The Esperanza Protocol, which is widely endorsed by experts around the world, is an initiative created by civil society that systematizes international and regional legal standards related to human rights defenders. [The International Legal Framework Applicable to Threats Against Human Rights Defenders: A Review of the Relevant Jurisprudence in International Law](#) (hereinafter “Esperanza Protocol”), 2019.

⁵⁶ Center for Justice and International Law, [Esperanza Protocol](#), at 19, 21, 24-25, 2021.

⁵⁷ Inter-American Commission on Human Rights, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser. L/V/II. Doc. 66, para. 479, December 31, 2011; Inter-American Commission on Human Rights, [Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/II.Doc. 207, at para. 133, December 29, 2017.

⁵⁸ Inter-American Commission on Human Rights, [Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/II.Doc. 207, at para. 134, December 29, 2017.

⁵⁹ For further information refer to chapter 4.B. Inter-American Commission on Human Rights, [Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/II.Doc. 207, December 29, 2017.

⁶⁰ Inter-American Court of Human Rights, [Case of Human Rights Defender et al. v Guatemala \(Preliminary objections, merits, reparations and costs\)](#), at para. 141, August 28, 2014 (citing Inter-American Court Of Human Rights, [Luna Lopez v. Honduras \(Merits, Reparations, and Costs\)](#), at para. 123, October 10, 2013).

States are obligated to prevent attacks on human rights defenders' lives and integrity.⁶¹

27. The UN has also highlighted the importance of preventing these threats, calling upon States to “exercise due diligence in preventing violations and abuses against human rights defenders, including through practical steps to prevent threats.”⁶² Similarly, the Council of the European Union describes the need to sharpen preventative means to protect human rights defenders, specifically highlighting those working on land rights and other human rights defenders in vulnerable situations.⁶³ The African Commission also urges all States to prevent “all acts of intimidation or reprisal against individuals or groups who seize the African Commission on Human and Peoples’ Rights.”⁶⁴

28. Within the United Nations Commission for Europe (UNECE), the Aarhus Convention lays down the prohibition of harassment, penalization and prosecution of people of those exercising the rights set forth in the Convention.⁶⁵ While defenders are not specifically mentioned, the Aarhus Convention Compliance Committee has taken a wide approach towards environmental defenders by defining them as any member of the public that exercises their rights in relation to environmental matters and has stressed the importance of a case-by-case assessment. This approach has led the Committee to consider that even a single telephone call constituted harassment and the State concerned had violated its obligation under the Aarhus Convention.⁶⁶ Furthermore, States have also an obligation to “take all necessary measures to redress the harm” caused to environmental defenders by penalisation, persecution and harassment.⁶⁷

iii. Obligation to Protect Human Rights Defenders as a Measure to Mitigate the Risks

29. The Inter-American Court has clearly expressed that “States have the duty to...protect [human rights defenders] when they are subject to threats in order to ward off any attempt on their life or safety”⁶⁸ and has recognized the importance of the work done

⁶¹ Inter-American Court of Human Rights, *Case of Human Rights Defender et al. v Guatemala (Preliminary objections, merits, reparations and costs)*, at para. 142, August 28, 2014.

⁶² United Nations, *Promotion of 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: Protecting Women Human Rights Defenders*, G.A. Res. 68/181, at para. 9, December 18, 2013.

⁶³ General Secretariat of the Council of the European Union, *Council Conclusions on EU Priorities in UN Human Rights Fora in 2021*, at para. 5, February 22, 2021.

⁶⁴ African Commission of Human and Peoples’ Rights, *Resolution on Human Rights Defenders in Africa*, 196(L)2011, at para. 15, November 5, 2011.

⁶⁵ United Nations Economic Commission for Europe (UNECE), *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447 (Aarhus Convention), Article 3 (8)

⁶⁶ Aarhus Convention Compliance Committee, *ACCC/C/2013/98 Lithuania* at para. 154, 158, August 4, 2020

⁶⁷ Aarhus Convention Compliance Committee, *ACCC/C/2014/102 Belarus* at para 73, June 18, 2017

⁶⁸ Inter-American Court of Human Rights, *Case of Kawas Fernández v. Honduras (Merits, Reparations and Costs)*, at para. 145, April 3, 2009.

by human rights defenders and that States are obligated to protect them.⁶⁹ The Inter-American Court has also emphasized the need for States to implement protection mechanisms; in the Case of Acosta et al. v. Nicaragua, the Court required the State to implement a protection mechanism for the situations of risk, threats, and aggression against human rights defenders.⁷⁰ Furthermore, there are several annual Organization of American States (OAS) General Assembly resolutions recognizing the important work of human rights defenders and urging States to adopt necessary measures to protect defenders.⁷¹

30. Other regional bodies have also adopted instruments calling attention to the need to protect human rights defenders. In Europe, the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe have acknowledged that environmental defenders need enhanced protection due to the specific risks they face, and that the primary responsibility to promote and protect human rights defenders lies with the State.⁷² The Aarhus Convention Compliance Committee has interpreted the obligation to protect very broadly and held that it does not end with the closing of the formal public participation procedures.⁷³ Individuals participating in these procedures are protected against any form of subsequent harassment related to their participation. Moreover, they are not only protected for formal participation in decision-making procedures concerning projects, but also protests against such projects outside of formal procedures fall under the scope of protection of the Convention.⁷⁴ What is more, various forms of protest and other direct actions that are not related to a specific project but an environmental policy in general are also protected.
31. The African Commission on Human and Peoples' Rights' resolution on the Protection of Human Rights Defenders in Africa encourages States to "take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports."⁷⁵ The African Union's *Kigali Declaration* recognizes the important role of human rights defenders in the promotion of human rights in Africa and calls upon States and regional institutions to protect them.⁷⁶
32. The UN System has also addressed the necessity of protecting human and environmental rights defenders; the HR Council recognized "the need to develop

⁶⁹ Inter-American Court of Human Rights, *Case of Heliodoro Portugal v. Panama (Preliminary objections, Merits, Reparations and Costs)*, August 12, 2008; Inter-American Court of Human Rights, *Case of Myrna Mack Chang v. Guatemala (Merits, Reparations and Costs)*, November 25, 2003.

⁷⁰ Inter-American Court of Human Rights, *Case of Acosta et al v. Nicaragua*, March 25, 2017.

⁷¹ See, e.g., [AG/RES. 1671](#) (XXIX-O/99), of June 7, 1999, and [AG/RES. 1818](#) (XXXI-O/01), June 5, 2001.

⁷² Organization for Security and Co-operation in Europe, *Guidelines on the Protection of Human Rights Defenders*, 2014; Council of Europe, *Declaration of the Committee of Ministers on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote their Activities*, 2008.

⁷³ Aarhus Convention Compliance Committee, ACCC/C/2013/98 Lithuania, at para 152, August 4, 2020

⁷⁴ Aarhus Convention Compliance Committee, ACCC/C/2014/102 Belarus, June 10, 2017

⁷⁵ African Commission on Human and Peoples' Rights, *Resolution on the Protection Of Human Rights Defenders In Africa*, Res.69(XXXV)04, at para. 3, June 4, 2004.

⁷⁶ African Union Ministerial Conference on Human Rights in Africa, *Kigali Declaration*, at para 28, May 8, 2003.

protection mechanisms for environmental human rights defenders, taking into account the intersectional dimensions of violations against women human rights defenders, indigenous peoples, rural and marginalized communities, and persons belonging to minorities, and to take concrete steps to prevent and stop the use of legislation to hinder or limit unduly the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law.”⁷⁷

33. The Model Law for the Recognition and Protection of Human Rights Defenders—which was created by jurists and human rights experts to provide guidance to States to effectively address threats to human rights defenders—also discusses States’ obligations to protect human rights defenders.⁷⁸ The Model Law outlines States’ obligations: to respect, promote, protect and fulfill the rights of human rights defenders; to facilitate the work of human rights defenders; to provide free access to materials relating to human rights and fundamental freedoms; not to disclose defenders’ confidential sources; to ensure protection against intimidation or reprisal; to ensure protection against arbitrary or unlawful interference; to conduct investigations on threats against human rights defenders; to ensure effective remedy and full reparation; to make intimidation and reprisal an offense; to promote and facilitate human rights education; and to implement protection measures for human rights defenders.⁷⁹

iv. Obligation to Investigate, Prosecute, and Punish Crimes Committed Against Human Rights Defenders as a Measure to Mitigate the Risks

34. The Inter-American Commission and Court have both stated that the most effective way to protect human rights defenders is by effectively investigating the violations against them and punishing those responsible.⁸⁰ They have also stressed that States have an essential obligation to prevent impunity with regard to the attacks against human rights defenders.⁸¹ Additionally, the Honorable Court has stated that the obligation to exercise due diligence implies that the investigations carried out by the State must exhaust all logical lines of investigation by taking into account “the complexity of the facts, the context in which they occurred and the systematic

⁷⁷ United Nations Human Rights Council, [Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development](#), U.N. Doc. A/HRC/40/L.22/Rev.1, at 3, March 20, 2019.

⁷⁸ International Service for Human Rights, [Model Law for the Recognition and Protection of Human Rights Defenders](#), at i, 2016.

⁷⁹ International Service for Human Rights, [Model Law for the Recognition and Protection of Human Rights Defenders](#), sec. 22-32, June 21, 2016.

⁸⁰ Inter-American Commission on Human Rights, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser. L/V/II. Doc. 66, at para. 233, December 31, 2011.

⁸¹ Inter-American Court of Human Rights, [Case of Kwas Fernández v. Honduras \(Merits, Reparations and Costs\)](#), at para. 145, April 3, 2009; Inter-American Commission on Human Rights [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser. L/V/II. Doc. 66, at para. 28, December 31, 2011.

patterns that explain why the events occurred.”⁸² This due diligence obligation is especially relevant in cases involving violations against human rights defenders, as “an investigation that does not consider factors related to context—such as the person’s professional or personal activities and the rights he or she is defending—will be less likely to produce results.”⁸³

35. The African Court has found a State liable for human rights violations for “not act[ing] with due diligence in seeking out, prosecuting and placing on trial those responsible for the murder” of human rights defenders.⁸⁴ Additionally, the OSCE’s *Guidelines on the Protection of Human Rights Defenders* outlines the need for States to implement effective remedies—and exercise due diligence in doing so—in order to end impunity for crimes against human rights defenders and their families.⁸⁵
36. The Esperanza Protocol also explains that the specific due diligence obligation of a State is triggered once that State is made aware of risk to human rights defenders.⁸⁶ Once this obligation is triggered, the State must investigate, prosecute, and punish perpetrators and provide remedy and redress for the victims.⁸⁷ Additionally, the UN General Assembly Declaration calls upon States to combat impunity “by ensuring that those responsible for violations and abuses, including gender-based violence and threats against women human rights defenders, committed by State and non-State actors, including online, are promptly brought to justice through impartial investigations.”⁸⁸

B. States’ Obligations Regarding Human Rights Defenders Apply to Environmental Defenders

37. The standards detailed above were developed for the protection of human rights defenders, therefore, they also apply to environmental defenders. A human rights defender is one who promotes or seeks the realization of human rights and fundamental freedoms.⁸⁹ As environmental defenders’ work contributes to the protection of human rights, they fall under the category of human rights defenders. Thus, the existing standards on States’ obligations regarding human rights defenders

⁸² Inter-American Court of Human Rights, *Case of the Rochela Massacre v. Colombia (Merits, Reparations and Costs)*, at para. 158, May 11, 2007; Inter-American Court of Human Rights, *Case of Cepeda Vargas v. Colombia (Preliminary Objections, Merits, Reparations and Costs)*, at para. 106-110 and 167, May 26, 2010.

⁸³ Inter-American Commission on Human Rights, *Human Rights Defenders and Social Leaders in Colombia*, OEA/Ser.L/V/II. Doc. 262, at para. 232, December 6, 2019.

⁸⁴ *Beneficiaries of Norbert Zongo, Abdoulaye Nikiéma alias Ablassé, Ernest Zongo, and Blaise Ilboudopara & Burkinabe Human and Peoples’ Rights Movement v. Burkina Faso*, 013/2011, at para. 156, 2014.

⁸⁵ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on the Protection of Human Rights Defenders*, at para. 13-18, 2014.

⁸⁶ Center for Justice and International Law, *Esperanza Protocol*, at 32, 2021.

⁸⁷ Center for Justice and International Law, *Esperanza Protocol*, at 36, 2021.

⁸⁸ United Nations, *Promotion of 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: Protecting Women Human Rights Defenders*, G.A. Res. 68/181, at para. 9, December 18, 2013.

⁸⁹ Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser. L/V/II. Doc. 66, at para. 233, December 31, 2011.

also apply to environmental defenders. Therefore, States must ensure that environmental defenders are given these protections that they are entitled to and recognize them as human rights defenders.

38. However, environmental defenders face a heightened risk, as they are one of the most targeted human rights defenders.⁹⁰ As the Inter-American Court has established, States must take notice of a situation of special risk and determine or assess whether the target of threats requires protection measures.⁹¹ While this risk analysis must respond to the particular circumstances of each defender, “certain groups have specific protection needs because of their specific circumstances of special vulnerability or historical discrimination in which they are living because of various factors.”⁹² Because of the special vulnerability environmental defenders face, environmental defenders qualify as being a group with specific protection needs, and States are obligated to act with due diligence and “maximize their efforts” to protect them from violations.⁹³ Additionally, many environmental defenders advocate on behalf of communities that have traditionally faced discrimination and political marginalization within their societies, which creates extra barriers when they seek support from governments to reduce violence against them. Many of these defenders often live and work in remote areas where government reach is weaker, there is less access to support networks, and where organized crime has captured local government functions. As a part of these “maximized efforts,” and due to the unique set of challenges that environmental defenders face, States should be obligated to provide extra, reinforced protection to these defenders in addition to the rights they enjoy as human rights defenders. Therefore, the Honorable Court needs to articulate States’ obligations with respect to environmental defenders specifically.

39. In Europe, for example, the recognition of the emerging threats against environmental defenders has led to the establishment of a Rapid Response Mechanism to address potential violations by State parties to the Aarhus Convention in 2021. This constitutes the first international mechanism for immediate relief in cases where environmental defenders are harassed, prosecuted or penalized. To provide a rapid response, a Special Rapporteurship has been established, which is able to take protection measures and receive complaints by individuals on their behalf or on behalf of others (including NGOs), States and the Secretariat of the Convention.⁹⁴ Unlike other international mechanisms, the admissibility rule of exhaustion of domestic remedies does not apply. Protection measures are addressed

⁹⁰ Report of the UN Special Rapporteur on the Situation of Human Rights Defenders, Mary Lawlor, [Final warning: death threats and killings of human rights defenders](#), U.N. Doc. A/HRC/46/35, at 4-5, December 24, 2020.

⁹¹ Inter-American Court of Human Rights, [Case of Vélez Restrepo and family v. Colombia \(Preliminary Objection, Merits, Reparations, and Costs\)](#), at para. 201, September 3, 2012.

⁹² Inter-American Commission on Human Rights, [Toward a Comprehensive Policy to Protect Human Rights Defenders](#), at para. 300, OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017.

⁹³ See Inter-American Court of Human Rights, [Luna Lopez v. Honduras \(Merits, Reparations, and Costs\)](#), at para. 137, October 10, 2013.

⁹⁴ Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Seventh session, Geneva, 18–20 October 2021, Decision VII/9 on a rapid response mechanism to deal with cases related to article 3 (8) of the Convention, Annex.

to the State party concerned, and may include a request to refrain from certain activities or take actions to end harmful acts against the environmental defender. Measures can be “immediate” if they are issued as soon as the Rapporteur has received the complaint, or “ongoing” if they are issued after the Rapporteur has concluded their investigations and found there has been a violation of the Convention.

40. The standards that have been created specifically for environmental defenders should also inform the Inter-American Court in providing guidance to States about their obligations towards environmental defenders. For example, the Escazú Agreement lays out protections for environmental defenders specifically. This Agreement calls on states to “guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity”⁹⁵ and declares that States shall “take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer.”⁹⁶
41. The recently approved General Comment 26 of the UN CRC on children’s rights and the environment with a special focus on climate change, recognized the importance of and threats faced by children environmental defenders, stating: “Children who exercise their right to freedom of expression or engage in protests on environmental matters, including children environmental human rights defenders, often face threats, intimidation, harassment and other serious reprisals. States are required to protect their rights, including by providing a safe and empowering context for initiatives organized by children to defend human rights in schools and other settings.”⁹⁷ The Honorable Court should look to these authorities for examples on how to express States’ obligations to environmental defenders in particular.
42. Further, in his report on “Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice,” the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association presents various recommendations for States to protect those advancing climate justice, including: creating an enabling environment for civil society to address the climate crisis and ensuring a just transition, including access to funding from national, foreign and international sources; recognizing and facilitating climate-related protests, including civil disobedience; fostering inclusive participation in development and implementation of climate and just-transition policies; carrying out the prevention of, protection from and accountability for attacks; and ending legal harassment and

⁹⁵ United Nations, [Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean](#), at Art. 9(1), 2018.

⁹⁶ United Nations, [Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean](#), at Art. 9(3), 2018.

⁹⁷ Committee on the Rights of the Child, [General comment No. 26 \(2023\) on children’s rights and the environment with a special focus on climate change](#), at para. 30, August 22, 2023.

unlawful surveillance.⁹⁸ The Inter-American Court should model its own obligations after these recommendations.

43. Overall, the Inter-American Court should take this opportunity to clarify that—because States are obligated to ensure conditions that enable human rights defenders to carry out their activities freely, to prevent threats against human rights defenders, to protect human rights defenders, and to investigate, prosecute, and punish crimes committed against human rights defenders—they must do the same for environmental defenders. Additionally, because of the special risk environmental defenders face, the Court should provide specific guidelines for creating a safe environment for these defenders to do their work that is in line with existing standards on human rights defenders as well as environmental defenders’ specific context.

IV. WOMEN, INDIGENOUS PEOPLES, AFRO-DESCENDANT PEOPLES, AND RURAL FARMING COMMUNITIES DEFEND THE ENVIRONMENT AND ARE DISPARATELY IMPACTED BY THE CLIMATE EMERGENCY

44. As discussed above, environmental defenders play a fundamental role in fighting the climate emergency. Their mitigation efforts, land protection, and other actions are vital for the livelihood of the earth and the enforcement of rights related to the environment. However, some groups of environmental defenders play a key and distinctive role in the context of the climate emergency, including women, Indigenous peoples, rural farming communities, and Afro-descendant peoples. Despite their important contributions to climate action, these groups commonly face additional challenges in relation to their right to defend environmental rights. Because of historical systems of oppression—namely racism, sexism, and colonialism—these groups face challenges of violence, discrimination, and exclusion, which are exacerbated in the context of the climate crisis. As some of these identities may overlap with each other, adequate protection for environmental defenders requires an intersectional response by States that addresses all factors of discrimination and inequality.

45. Climate impacts disproportionately affect women in Latin America and the Caribbean. In the region, women experience higher levels of food insecurity and poverty compared to men.⁹⁹ Additionally, women cannot migrate as easily due to a lack of social networks that are more available to men, and are thus more likely to remain in areas experiencing the effects of climate change.¹⁰⁰ The combination of existing gender-based inequalities with the climate crisis also exacerbates gender-

⁹⁸ Clément Nyaletsossi Voulé, UN Secretary General and Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, [Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice](#), A/76/222, July 23, 2021, at 14-24.

⁹⁹ Erika Pires Ramos & Keila McFarland Dias, [Gender, Migration, Climate Change and Disasters in Latin America and the Caribbean](#), 2021; Lorena Aguilar Revelo, [Women’s Autonomy and Gender Equality at the Centre of Climate Action in Latin America and the Caribbean](#), 2022.

¹⁰⁰ Erika Pires Ramos & Keila McFarland Dias, [Gender, Migration, Climate Change and Disasters in Latin America and the Caribbean](#), 2021; Lorena Aguilar Revelo, [Women’s Autonomy and Gender Equality at the Centre of Climate Action in Latin America and the Caribbean](#), 2022.

based violence such as domestic violence, forced marriage, human trafficking, forced sex work, and hate crimes.¹⁰¹

46. Women environmental defenders face gender-specific threats in retaliation to their work, including sexual violence, harassment of their families, and discrimination in their communities.¹⁰² They are also victims of public defamation, attacks against their credibility, judicial harassment, death threats, and physical violence.¹⁰³ Furthermore, the criminalization of women defenders has a differentiated impact, since they also assume the role of caregivers of their families.¹⁰⁴ Experts in the Special Procedures of the HR Council connect the murder of environmental activist Berta Cáceres to the fact that she is a woman, stating that her murder “sadly illustrates an appalling backlash against women human rights defenders and, especially against environmental activists” and that “women human rights defenders are generally further exposed to retaliation, harassment and violence as they usually challenge the patriarchal culture and deep-rooted gender stereotypes about the role of women in society.”¹⁰⁵ While all environmental defenders are at risk, attacks on women are distinguishable due to their ability to carry “misogynistic brutality.”¹⁰⁶
47. Though women are disproportionately impacted by climate change, they are also heavily contributing towards environmental justice.¹⁰⁷ As the HR Council states, “women are not only victims but also agents of change, and...the integration of a gender-responsive approach into climate policies...would increase the effectiveness of climate change mitigation and adaptation.”¹⁰⁸ Additionally, the HR Council recognizes the important role women play as “managers of natural resources and

¹⁰¹ A.E. Boyer et al., [Advancing Gender In The Environment: Exploring The Triple Nexus Of Gender Inequality, State Fragility, And Climate Vulnerability](#), 2020; Erika Pires Ramos & Keila McFarland Dias, [Gender, Migration, Climate Change and Disasters in Latin America and the Caribbean](#), 2021; Lorena Aguilar Revelo, [Women’s Autonomy and Gender Equality at the Centre of Climate Action in Latin America and the Caribbean](#), 2022.

¹⁰² African Commission on Human and Peoples’ Rights, [Resolution on the Need to Adopt Legal Measures for the Protection of Women Human Rights Defenders in Africa](#), Res. 409(LXIII)2018, November 13, 2018; Global Witness, [The Defenders: 54 Environmental Defenders Have Been Killed so Far in 2018 While Protecting their Communities’ Land or Natural Resources](#), 2017.

¹⁰³ United Nations Human Rights, Office of the High Commissioner, [End of Mission Statement by Michael Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders on his Visit to Honduras, 29 April to May 12](#), 2018.

¹⁰⁴ Inter-American Commission on Human Rights, [Northern Central America Environmental defenders](#), OEA/Ser.L/V/II. Doc. 400/22, at para. 135, December 16, 2022.

¹⁰⁵ The experts mentioned include: Eleonora Zielińska, Chairperson of the Working Group on the issue of discrimination against women in law and in practice; Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples; Michel Forst, Special Rapporteur on the situation of human rights defenders; Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association; David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Dubravka Šimonović, Special Rapporteur on violence against women, its causes and consequences; John Knox, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and Başkut Tuncak, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. United Nations Human Rights, Office of the High Commissioner (OHCHR). United Nations Human Rights, Office of the High Commissioner, [Berta Cáceres Murder: UN Experts Renew Call to Honduras to End Impunity](#), 2018.

¹⁰⁶ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 97, 2018.

¹⁰⁷ Michael Burger & Maria Antonia Tigre, [Global Climate Litigation Report: 2023 Status Review](#), at 3, 2023.

¹⁰⁸ United Nations, Human Rights Council: [Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development](#), U.N. Doc. A/HRC/38/L.5 at 3, 2018.

agents of change in the safeguarding of the environment.”¹⁰⁹ Despite the harm they face because of climate change and their action to ameliorate the climate crisis, women have been historically marginalized in climate debates.¹¹⁰ For example, international treaties including the Framework Convention and the Kyoto Protocol failed to recognize women as crucial actors in mitigation and adaptation, causing rural and Indigenous women to be largely excluded from climate discussions.¹¹¹ While the UNFCCC finally delivered a decision promoting gender-balance and improving women’s participation in negotiating teams in 2013, this historical exclusion still has a negative impact on female environmental defenders today.¹¹²

48. While the human rights implications of environmental damage are felt by people around the world, the consequences are felt most acutely by communities that are already in vulnerable situations, like Indigenous Peoples.¹¹³ Further, the specific nature of Indigenous Peoples and communities can aggravate their vulnerability, as they often live in isolated areas without communication access or network support.¹¹⁴ According to the UN Special Rapporteur on the Rights of Indigenous Peoples, Indigenous Peoples are among those who have least contributed to the climate change emergency, yet suffer the most from its effects.¹¹⁵ Indigenous Peoples are disproportionately affected due to their reliance on natural resources and deep cultural and spiritual connection to the land.¹¹⁶ Additionally, many Indigenous Peoples live in areas at greater risk of becoming uninhabitable, such as remote areas, islands, coastal territories, and fragile forest ecosystems.¹¹⁷ In these areas, climate change impacts like sea level rise and changing rainfall have an amplified effect.¹¹⁸

49. Further, Indigenous Peoples are also more vulnerable to the effects of adaptation and mitigation measures to tackle the climate crisis if those fail to factor in human rights implications. Human rights violations can occur if transitions to green energy

¹⁰⁹ United Nations Human Rights Council, [Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development](#), U.N. Doc. A/HRC/40/L.22/Rev.1, at 2, March 20, 2019.

¹¹⁰ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 96, 2018.

¹¹¹ Women and Gender Constituency, [Report on the UNFCCC](#), at 4, 2010; Trish Glazebrook, [Women and Climate Change: A Case-study from Northeast Ghana](#), at 774-75, 2011.

¹¹² United Nations Framework Convention on Climate Change, [Decision 23/CP.18: Promoting Gender Balance and Improving the Participation of Women in UNFCCC Negotiations and in the Representation of Parties in Bodies Established Pursuant to the Convention or the Kyoto Protocol](#), 2013.

¹¹³ United Nations Human Rights Council, [Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development](#), U.N. Doc. A/HRC/40/L.22/Rev.1, at 2, March 20, 2019.

¹¹⁴ United Nations Human Rights Council, [Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development](#), U.N. Doc. A/HRC/40/L.22/Rev.1, at 2, March 20, 2019.

¹¹⁵ United Nations, Human Rights Council, [Report of the Special Rapporteur on the Rights of Indigenous Peoples](#), U.N. Doc. A/HRC/36/46, 2017.

¹¹⁶ United Nations Human Rights Council, [Report of the Special Rapporteur on the Rights of Indigenous Peoples](#), U.N. Doc. A/HRC/36/46, November 1, 2017; World Bank, [Indigenous Latin America in the Twenty-First Century: The First Decade](#), at 9, 2015.

¹¹⁷ Michael Burger & Maria Antonia Tigre, [Global Climate Litigation Report: 2023 Status Review](#), at 68, 2023; Alexander Pearl M., [Human Rights, Indigenous Peoples, and the Global Climate Crisis](#), at 713-14, 2019.

¹¹⁸ M. Alexander Pearl, [Human Rights, Indigenous Peoples, and the Global Climate Crisis](#), at 713-14, 2019.

processes do not follow human rights and gender equality principles. While adaptation aims to minimize harm, in certain cases, global adaptation measures can end up amplifying harm for communities. This occurs, for example, when new climate-related infrastructure limits land access for groups in situations of vulnerability or intensifies environmental risks like flooding.¹¹⁹ Mitigation measures that aim to reduce emissions can also have negative effects for Indigenous Peoples if their rights are not duly considered. For instance, local communities have been dispossessed from their land by renewable energy production or reforestation projects.¹²⁰ This, in turn, implies serious human rights violations of indigenous environmental and human rights defenders. Women defenders are particularly subjected to harassment, threats, intimidations and other forms of violence due to their role in defense of their communities.

50. Indigenous People are not monolithic in their opinions or experiences regarding the climate emergency, and it is crucial to understand the wide political and cultural diversity among Indigenous Peoples all over the world.¹²¹ At the same time, various commonalities do exist—especially in the context of how climate change uniquely impacts these communities.¹²² Understanding these parallels between different Indigenous Peoples is vital to protecting these communities and the environmental defenders who live within them.

51. Indigenous Peoples, whether they define themselves as environmental defenders or not, actively protect the planet and mitigate climate change. The territories that Indigenous Peoples govern are home to almost 80 percent of the world’s biodiversity and play a key role in stabilizing the local and regional climate.¹²³ Indigenous land management and environmental defending practices have made a quantifiable impact on the health of the environment. For example, while 7.0% of non-Indigenous lands in the Brazilian Amazon experienced deforestation between 2000 and 2012, deforestation only occurred during that time in 0.6% of lands protected by Indigenous communities in the region.¹²⁴ Additionally, Indigenous protection of forests in the Brazilian Amazon have led them to contain 36% more carbon per hectare than non-Indigenous lands in the region.¹²⁵ In the Brazilian Amazon alone, Indigenous territories and government-protected lands could prevent 27.2 million

¹¹⁹ Annah E Piggott-McKellar et. al, [Dam\(n\) Seawalls: A Case of Climate Change Maladaptation in Fiji](#), 2020.; Farhana Sultana, [Living in hazardous waterscapes: Gendered vulnerabilities and experiences of floods and disasters](#), 2010.

¹²⁰ Melissa Leach et. al, [Gender Equality and Sustainable Development: A Pathways Approach](#), UN Women Discussion Paper No. 13. United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), 2016. Miriam Gay-Antaki, [“Now We Have Equality”: A Feminist Political Ecology Analysis of Carbon Markets in Oaxaca, Mexico](#), *Journal of Latin American Geography* 15(3) at 49-66, 2016.

¹²¹ M. Alexander Pearl, [Human Rights, Indigenous Peoples, and the Global Climate Crisis](#), at 728, 2019.

¹²² M. Alexander Pearl, [Human Rights, Indigenous Peoples, and the Global Climate Crisis](#), at 728, 2019.

¹²³ Linda Etchart, [The role of Indigenous Peoples in combating climate change](#), 2017; FAO & FILAC, [Forest Governance by Indigenous and Tribal People. An Opportunity for Climate Action in Latin America and the Caribbean](#), (2021).

¹²⁴ World Resources Institute & Rights and Resources Initiative, [Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change](#), at 27-29, 2014.

¹²⁵ World Resources Institute & Rights and Resources Initiative, [Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change](#), at 27-29, 2014.

hectares of deforestation by 2050, saving the equivalent of three years worth of CO₂ emissions from all countries in Latin America and the Caribbean.¹²⁶

52. This role of Indigenous communities as stewards of the land can be extrapolated to rural farming, Afro-descendant and traditional communities throughout Latin America, as these groups play the same role to protect the environment and further climate action.¹²⁷
53. Rural farming communities, sometimes referred to as *campesinos* or “peasants,” are groups who engage in “small-scale agricultural production for subsistence and/or for the market, and who [rely] significantly...on family or household labour and other non-monetized ways of organizing labour, and who has a special dependency on and attachment to the land.”¹²⁸ Through their dependence on and protection of the land, rural farming communities play the same mitigating role as environmental defenders, even if they do not label themselves as such. *Campesinos* in the Andes, for example, engage in various local mitigation strategies, including reforestation, reducing contamination, and improving environmental education in their communities.¹²⁹
54. The term “Afro-descendant Peoples” encompasses a heterogeneous group with diverse histories, experiences, and identities.¹³⁰ Various Afro-descendant collective communities live in the Americas, including “Quilombolas” in Brazil; “Raizales,” “Community Councils,” “Palenqueras y Palenqueros” in Colombia; “Garífunas” in Central America; “Mascogos” in México; and “Maroons” in Suriname.¹³¹ While Afro-descendant communities throughout the region differ culturally and politically, they all continue to suffer discrimination as a result of the historic legacy of the transatlantic slave trade.¹³² This has led Peoples of African descent to face common challenges, including having unequal access to health services and housing, lacking recognition of their territorial rights, and being disproportionately impacted by climate change.¹³³
55. Though they may not self-identify as environmental defenders, Afro-descendant Peoples of the Americas often take on this role through performing valuable environmental services for humanity, including fighting for the preservation of their

¹²⁶ World Resources Institute & Rights and Resources Initiative, [Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change](#), at 27-29, 2014.

¹²⁷ FAO & FILAC, [Forest Governance by Indigenous and Tribal People. An Opportunity for Climate Action in Latin America and the Caribbean](#), (2021).

¹²⁸ United Nations General Assembly, [United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas](#), U.N. Doc. A/HRC/RES/39/12, September 2018.

¹²⁹ Noortje Wauben, [Experiencing and Responding to Climate Change in the Andes: Campesino Experiences with—and Responses to—Changes in the Climate in the Andean Highlands of Southern Ecuador](#), at 52-53, 2020.

¹³⁰ United Nations Office of the High Commissioner for Human Rights, [People of African Descent](#), 2015.

¹³¹ Inter-American Commission on Human Rights, [People of African Descent](#), 2023.

¹³² United Nations Office of the High Commissioner for Human Rights, [People of African Descent](#), 2015.

¹³³ United Nations Office of the High Commissioner for Human Rights, [People of African Descent](#), 2015.

territory as well as conserving and improving biodiversity.¹³⁴ Much of this comes from these Peoples' deep connection to the land; for example, as this Honorable Court is well aware, the Saramaka people in Suriname "maintain a strong spiritual relationship with the ancestral territory they have traditionally used and occupied. Land is more than merely a source of subsistence for them; it is also a necessary source for the continuation of the life and cultural identity of the Saramaka people. The lands and resources of the Saramaka people are part of their social, ancestral, and spiritual essence."¹³⁵

56. While the traditional farming practices used by *campesinos* and Afro-descendant communities across South America are mitigating the climate crisis, these methods are simultaneously at greater risk of failure due to increased temperatures.¹³⁶ Climate change and its drivers also impact these communities in other ways; extractive activities pollute water sources, cause deforestation, destroy wetlands, and cause diseases, disparately impacting *campesinos*, Indigenous Peoples, and Afro-descendant Peoples living in rural areas.¹³⁷ Additionally, thirteen countries in the Americas have a significant presence of Afro-descendant Peoples in marine-coastal areas.¹³⁸ These ecosystems, which support Afro-descendant Peoples' way of life, are at high risk of experiencing hurricanes, sea level rise, storm surges and coastal flooding.¹³⁹ Weather-related climate impacts will therefore likely have a negative effect on the enjoyment of rights of Afro-descendant Peoples.¹⁴⁰ Overall, the effects of climate change pose a severe threat to rural communities and the Afro-descendant population of the Americas by destroying the land they depend upon for survival, exacerbating the conditions of vulnerability they already face, and increasing their exposure to natural disasters, thus perpetuating extreme poverty and inequality.¹⁴¹

V. IN ORDER TO ACCOUNT FOR THE ADDITIONAL STRUGGLES FACED BY WOMEN, INDIGENOUS PEOPLES, AFRO-DESCENDANTS, AND RURAL FARMING COMMUNITIES, STATES MUST TAKE A DIFFERENTIATED APPROACH TO PROTECTING ENVIRONMENTAL DEFENDERS

57. Former UN Special Rapporteur on the Situation of Human Rights Defenders Michel Forst, has emphasized that international human rights standards necessitate an

¹³⁴ Luis Gilberto Murillo & Marcela Angel Lalinde, *Environmental Equity and Racial Justice*, at 144-46, 2021; United Nations General Assembly, *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, U.N. Doc. A/HRC/RES/39/12, at 2, 2018.

¹³⁵ Inter-American Court on Human Rights, *Case of the Saramaka People v. Suriname*, para. 82, November 28, 2007.

¹³⁶ Randall S. Abate & Elizabeth Ann Kronk, *Commonality Among Unique Indigenous Communities: An Introduction to Climate Change and Its Impacts on Indigenous Peoples*, at 182, 2013.

¹³⁷ Jorge Rojas Hernández, *Society, Environment, Vulnerability, and Climate Change in Latin America: Challenges of the Twenty-first Century*, 2016.

¹³⁸ Proceso de Comunidades Negras & Rights + Resources, *Mapping the Presence, Lands, and Territories of Afro-descendant Peoples in Latin America and the Caribbean*, at 2, October 2022.

¹³⁹ Proceso de Comunidades Negras & Rights + Resources, *Mapping the Presence, Lands, and Territories of Afro-descendant Peoples in Latin America and the Caribbean*, at 2, October 2022; Olivier Flamand-Lapointe et al., *Climate Change Impacts on the Rights of People of African Descent*, at 12, 2020.

¹⁴⁰ Olivier Flamand-Lapointe et al., *Climate Change Impacts on the Rights of People of African Descent*, at 12, 2020.

¹⁴¹ Luis Gilberto Murillo & Marcela Angel Lalinde, *Environmental Equity and Racial Justice*, at 144, 2021.

intersectional approach to all measures taken by the State to protect the rights of human rights defenders, including environmental human rights defenders.¹⁴² Though climate change has a disparate impact on women, Indigenous Peoples, Afro-Descendants, and rural farming communities, these groups heavily contribute to climate mitigation, whether they self-identify as environmental defenders or not. Because of this, States must take a differentiated approach to providing protections for environmental defenders and “apply a gender, ethno, racial and cultural perspective” when determining an environmental defender’s level of risk.¹⁴³

58. In order to adequately protect women environmental defenders, States must take “all the forms of discrimination and stereotypes that women have faced historically” into consideration, as they accentuate their risks when performing environmental defense work.¹⁴⁴ For example, in the case of *Ana Teresa Yarce and others*, this Honorable Court established that in Colombia at that time, there was an environment of insecurity and violence perpetrated against women human rights defenders due to the armed conflict and the prominent roles these women played in community organizing; the Court highlighted how this situation jeopardized their lives, personal integrity, families, and their ability to perform their work.¹⁴⁵ In circumstances like this, States must respond to these conditions of heightened risk by extending extra protections to women environmental and human rights defenders, including protection from the unique gender-based violence they face.

59. States must also give careful consideration to the structural racism and violence that environmental defenders face especially considering their intersecting identities.¹⁴⁶ Because Indigenous Peoples, Afro-descendent Peoples, and rural farming communities face systemic inequality and often live in rural areas, the State must consider the geographical location, the specific needs, and the special situation these communities face when implementing protection schemes for defenders.¹⁴⁷

60. As Indigenous Peoples and Afro-descendent Peoples are both deeply connected to the land culturally and spiritually, protecting their right to defend the environment also protects their rights to culture, religion and belief. This gives States a reinforced obligation to protect Indigenous and Afro-descendent environmental defenders.

61. One way States should fulfill this reinforced obligation is by deciding on protective measures for environmental defenders in consultation with Indigenous and Afro-

¹⁴² Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), [Report of the Special Rapporteur on the Situation of Human Rights Defenders](#), U.N. Doc. A/HRC/31/55, at para. 111, 2016.

¹⁴³ Inter-American Commission on Human Rights, [Toward a Comprehensive Policy to Protect Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17, at 153, para. 269, December 29, 2017.

¹⁴⁴ Inter-American Commission on Human Rights, [Toward a Comprehensive Policy to Protect Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17, at 153, para. 269, December 29, 2017.

¹⁴⁵ Inter-American Court of Human Rights, [Case of Yarce et al v. Colombia \(Preliminary Objections, Merits, Reparations and Costs\)](#), para. 91-99, November 22, 2016.

¹⁴⁶ Inter-American Commission on Human Rights, [Toward a Comprehensive Policy to Protect Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17, at 153, para. 270, December 29, 2017.

¹⁴⁷ Inter-American Commission on Human Rights, [Toward a Comprehensive Policy to Protect Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17, at 170, para. 311, December 29, 2017.

descendant communities. In a hearing requested by Colombia, civil society organizations drew the Commission's attention to the "lack of consultation with Indigenous and Afro-descendant leaders on adapting protection arrangements to their particular circumstances."¹⁴⁸ Additionally, under International Labour Organization Convention No. 169, States must "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly."¹⁴⁹ Because Indigenous and Afro-descendant Peoples often do the work of environmental defenders, protective measures for environmental defenders directly affect them. Therefore, these groups must be consulted in order for States to implement protection measures that are in line with Afro-descendant and Indigenous "ethnic groups' own worldviews on their security and territories."¹⁵⁰

62. The need to consult Indigenous Peoples for policies or practices that impact their land or the environment is well established. For example, in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, the African Commission on Human and People's Rights recognized Indigenous Peoples' rights over traditionally owned land, and stated that not consulting them about making this land a tourist reserve violated a number of rights.¹⁵¹ Similar findings were made by the African Court on Human and Peoples' Rights in *African Commission on Human and Peoples' Rights v Kenya*.¹⁵² In another case regarding Indigenous territory, *Kichwa Indigenous People of Sarayaku v. Ecuador*, this Honorable Court stated that "under Article 2 of the American Convention, the State must adopt...[any] measures that may be necessary to implement effectively the right to prior consultation of the indigenous and tribal peoples and communities, and amend those measures that prevent its full and free exercise and...ensure the participation of the communities themselves."¹⁵³ While States must continue consulting Indigenous Peoples about measures that will impact their land, the right to consultation needs to go further and must address protections for their territorial and environmental defense work specifically.

¹⁴⁸ Inter-American Commission on Human Rights, [Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc. 262, para. 289, December 6, 2019; *see also* Inter-American Commission on Human Rights, [Hearing, Investigation of Attacks on Human Rights Defenders in Colombia](#), March 21, 2017.

¹⁴⁹ International Labour Organization, [Indigenous and Tribal Peoples Convention, \(No. 169\)](#), Art. 6(1)(a), 1989.

¹⁵⁰ Inter-American Commission on Human Rights, [Human Rights Defenders and Social Leaders in Colombia](#), OEA/Ser.L/V/II. Doc. 262, at para. 291, December 6, 2019; Inter-American Commission on Human Rights, [Hearing, Implementation of Precautionary Measures with Differential and Collective Ethnic Approach in Colombia](#), May 9, 2019; Organization of American States, [Twenty-Fifth Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia \(MAPP/OAS\)](#), at 13-14, 2019.

¹⁵¹ African Commission on Human and People's Rights, [Centre for Minority Rights Development \(Kenya\) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya](#), 276/2003, 2003.

¹⁵² African Commission on Human and Peoples' Rights, [African Commission on Human and Peoples' Rights v. Republic of Kenya](#), 006/2012, 2017.

¹⁵³ Inter-American Court of Human Rights, [Case of The Kichwa Indigenous People of Sarayaku v. Ecuador](#), at 82, para. 301, June 12, 2012.

63. It is especially important that governments take into account the heightened risk that defenders face when they oppose development megaprojects,¹⁵⁴ as many of the individuals and groups conducting this work are part of Indigenous Peoples, Afro-descendent Peoples, and rural farming communities. According to the UN, “States have an obligation to protect human rights abuses within their territory and/or jurisdiction by third parties, including by effectively regulating and monitoring the activities of businesses in order to prevent harm and to ensure access to remedy when harm occurs. States should set out clearly the expectation that all business enterprises operating in their territory and/or jurisdiction respect human rights, including the rights of [environmental human rights defenders], throughout their operations.”¹⁵⁵ Therefore, the Honorable Court must require States to act in accordance with the UN Guiding Principles of Business and Human Rights and protect against human rights abuse within their territory by business enterprises.¹⁵⁶ Further, because of the extreme risk environmental defenders and groups who conduct environmental defense work face, States must implement protections specifically for environmental defenders against corporations.
64. Because of the role these groups play in defending the environment, the State must make those that do the work of environmental defenders but do not identify as such aware of their rights.

VI. CONCLUSION

65. Environmental defenders play the indispensable role of protecting the planet and mitigating climate change, and by doing so, defending human rights more broadly. Because States are also obligated to mitigate the climate emergency and protect human rights, they are required to protect environmental defenders in order to fulfill these obligations.
66. States also have various obligations with respect to human rights defenders, including: to ensure conditions that enable human rights defenders to carry out their activities freely, to prevent threats against human rights defenders, to protect human rights defenders, and to investigate, prosecute, and punish crimes committed against human rights defenders. Since environmental defenders are also human rights defenders, States have the same obligations regarding them. However, because environmental defenders are in a situation of “special risk,” States have a reinforced obligation to protect them. Because of this reinforced obligation and environmental defenders’ particular vulnerability to attacks, the Inter-American Court must use the opportunity of this advisory opinion to articulate that States have these obligations particularly with respect to environmental defenders.

¹⁵⁴ Inter-American Commission on Human Rights, [Toward a Comprehensive Policy to Protect Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17, at 153, para. 270, December 29, 2017.

¹⁵⁵ United Nations, [GUIDANCE NOTE FOR UNITED NATIONS RESIDENT COORDINATORS & COUNTRY TEAMS: SUPPORTING GOVERNMENTS TO BETTER RESPECT, PROMOTE AND PROTECT ENVIRONMENTAL HUMAN RIGHTS DEFENDERS](#), at 12, November 2023.

¹⁵⁶ United Nations Office of High Commissioner, [Guiding Principles on Business and Human Rights](#), at I(A)(1), 2011.

67. While instructing States on their obligations to environmental defenders in the context of the climate emergency, the Inter-American Court should encourage States to adopt certain best practices. For example, the Honorable Court should advise States to provide extensive support to defenders who are victims of violations, focusing on “the ‘holistic’ security of defenders, in particular their physical safety, digital security and psychosocial well-being.”¹⁵⁷ The Court should also encourage States to ratify and implement the Escazú Agreement. To prevent the unjust criminalization of environmental defenders in particular, the Inter-American Court should instruct states to adopt legislation to combat SLAPPs with explicit references to “environmental defenders” and “increase corporate due diligence obligations in relation to adverse human rights and environmental impacts.”¹⁵⁸ The Honorable Court should also require States to “improve their response to the mobilisation of activists and refrain from adopting laws and practices that criminalise them. The judicial treatment of civil disobedience deserves careful reflection. Some good practices exist in Canada or Germany, where judges have given only symbolic sentences to peaceful climate activists, in acknowledgment that their motivations were just.”¹⁵⁹ The Inter-American Court should also put forth a definition of criminalization that reflects the range of tactics being used, label this criminalization as a form of human rights violation against defenders, and call on States to develop accountability measures to punish those who use criminalization tactics.

68. In order to account for the additional struggles faced by environmental defenders who are women, Indigenous Peoples, Afro-descendants, and rural farming communities, the Honorable Court must require States to take a differentiated approach when performing their obligations to environmental defenders. States should take a differentiated approach by acknowledging that “defenders are interconnected. Protection initiatives should not focus on the rights and security of individual defenders alone, but also include the groups, organizations, communities and family members who share their risks.”¹⁶⁰ Additionally, States must ensure that protection measures promote a broad and inclusive definition of environmental defenders and are flexible, adaptable and tailored to the specific needs and circumstances of defenders.¹⁶¹ Importantly, the Inter-American Court should encourage States to consult with human rights experts, environmental defenders, Indigenous Peoples, Afro-descendant Peoples, and rural communities to implement protections that fit communities’ specific needs. As the Special Rapporteur on Environmental Defenders under the Aarhus Convention states: “Involving defenders

¹⁵⁷ Aarhus Convention’s Special Rapporteur on Environmental Defenders, [Vision for the Mandate](#), at 1, November 23, 2022; Michel Frost, [Special Rapporteur Letter on EU Anti-SLAPP Directive](#), at 6, July 12, 2013.

¹⁵⁸ Michel Frost, [Special Rapporteur Letter on EU Anti-SLAPP Directive](#), at 2, July 12, 2013; Michel Frost, [Special Rapporteur Letter on Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters \(Aarhus Convention\)](#), at 2, June 9, 2023.

¹⁵⁹ Michel Frost, [The criminalisation of environmental defenders is not an adequate response to civil disobedience](#), April 11, 2023.

¹⁶⁰ Aarhus Convention’s Special Rapporteur on Environmental Defenders, [Vision for the Mandate](#), at 1, November 23, 2022.

¹⁶¹ Aarhus Convention’s Special Rapporteur on Environmental Defenders, [Vision for the Mandate](#), at 1-4, November 23, 2022.

in the development, choice, implementation and evaluation of strategies and tactics for their protection. The participation of environmental defenders is a key factor in their security.”¹⁶²

¹⁶² Aarhus Convention’s Special Rapporteur on Environmental Defenders, [Vision for the Mandate](#), at 1, November 23, 2022.

VII. SIGNATORY ORGANIZATIONS

Robert F. Kennedy Human Rights (RFKHR)¹⁶³ is a non-governmental organization, dedicated since 1968 to advancing the legacy of former United States Attorney General and Senator Robert F. Kennedy and the promotion of human rights around the world. Through its international advocacy and litigation program, RFKHR monitors and promotes democracy and the rule of law and protects the fundamental freedoms of human rights defenders and activists. All this through advocacy activities and strategic litigation in close collaboration with local actors. One of the fundamental pillars of our mandate is the protection of civic space and fundamental freedoms.

Amazon Watch¹⁶⁴ is a nonprofit organization founded in 1996 to protect the rainforest and advance the rights of Indigenous peoples in the Amazon Basin. We partner with Indigenous and environmental organizations in campaigns for human rights, corporate accountability, and the preservation of the Amazon's ecological systems.

ARTICLE 19, Global Campaign for Free Expression¹⁶⁵, is an international freedom of expression NGO, based in London with regional and national offices in Brazil, Mexico, Bangladesh, Senegal, Kenya and Tunisia. ARTICLE 19 works globally to protect and promote the right to freedom of expression, including access to information and the means of communication. It has contributed to the elaboration and advocacy of international law and standards, and has been engaged in litigation in national and international fora involving states' obligations arising from international law on freedom of expression and other human rights. ARTICLE 19 regularly intervenes before international and regional courts, including this Court in the Marcel Claude Reyes and Others v. Chile, Ulloa and Rohrmoser vs Costa Rica, Gonzalez and Fries vs. Chile and other cases.

The **Centre for Human Rights (CHR)**¹⁶⁶ is a hybrid institution that functions as an academic department within the Faculty of Law, University of Pretoria, and a non-governmental organization (NGO). A leader in human rights education in Africa, the Centre works towards a greater awareness of human rights, the wide dissemination of publications on human rights in Africa, and the improvement of the rights of women, people living with HIV, indigenous peoples, sexual minorities and other disadvantaged or marginalized persons or groups across the continent. The Centre was granted observer status before the African Commission on Human and Peoples' Rights (African Commission) in 1993.

The **Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)**¹⁶⁷ is an international non-governmental human rights advocacy organization that works to end social, economic and gender injustice through a human rights approach. Its mission is to transform power relations so that every person and community can enjoy their economic, social, cultural rights and all other human rights now and in the future.

¹⁶³ [Robert F. Kennedy Human Rights](#).

¹⁶⁴ [Amazon Watch](#).

¹⁶⁵ [Article 19](#).

¹⁶⁶ [Centre for Human Rights](#).

¹⁶⁷ [Global Initiative for Economic, Social and Cultural Rights \(GI-ESCR\)](#).

The **Latin American and Caribbean Network for Democracy (REDLAD)**¹⁶⁸ is a non-profit platform with nearly 100 members and more than 300 allies among civil society organizations, networks, activists and other social actors in Latin America and the Caribbean, working to strengthen the democratic system, the defense of human rights and the social cohesion of Latin American citizens.

The **International Service for Human Rights (ISHR)**¹⁶⁹ is an international non-government organisation dedicated to the service of other organisations and individuals working for the promotion and protection of human rights. It voices the concerns of human rights organisations and defenders worldwide that the rights contained in international and regional instruments be implemented at national, regional and international levels. Its vision is the effective implementation of all international and regional human rights instruments in all nations and for all peoples.

VIII. SIGNATURES



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¹⁶⁸ [REDLAD](#).

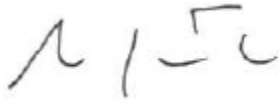
¹⁶⁹ [ISHR](#).



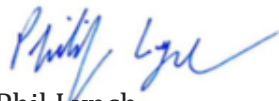
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IX. ANNEX

The single annex includes the documents proving the legal existence of all the signatory organizations: Robert F. Kennedy Human Rights (RFKHR), Centre for Human Rights, University of Pretoria, Amazon Watch, Red Latinoamericana y del Caribe para la Democracia (REDLAD), ARTICLE 19: Global Campaign for Free Expression, the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and the International Service for Human Rights (ISHR).