

WRITTEN SUBMISSION

Submission before the International Court of Justice
with regard to the Request for Advisory Opinion
on the Obligations of States in respect of Climate Change

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)

The logo for Robert F. Kennedy Human Rights, featuring the text "ROBERT F. KENNEDY HUMAN RIGHTS" in white on a blue background.

ROBERT F.
KENNEDY
HUMAN
RIGHTS

The logo for Article 19, featuring the text "ARTICLE 19" in white on a red background.

ARTICLE 19



STATEMENT OF IDENTITY AND INTEREST OF WRITTEN SUBMISSION

1. Pursuant to the Court's Practice Direction XII, 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 document, with the aim of contributing respectfully, independently and impartially with some legal considerations to the Advisory Opinion that the Honorable International Court of Justice (hereinafter the "Honorable Court") will issue "on the Obligations of States with respect of Climate Change." The listed signatories submit this document to provide the Honorable Court with relevant standards and information related to their expertise on civic space, environmental defenders, and international human rights law. We understand this document will not be included in the official case file under Practice Direction XII. Still, it will be available for States participating in the proceedings and we hope it is used to inform their submissions.
2. This submission is put forth by the organizations mentioned above 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. A version of this submission was also sent to the Inter-American Court of Human Rights during its own Advisory Opinion process.² This brief provides the Honorable Court with jurisprudence from various regional and international legal authorities to contribute to the analysis of the obligations of States under international law regarding the climate crisis in a manner that is inclusive of the implications for and obligations toward environmental defenders. The written submission addresses some of the relevant legal standards that we hope are useful for the Court to answer question (a) regarding the "obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations."³ We believe that this Advisory Opinion represents an important opportunity to deepen and expand international legal standards on the rights of the aforementioned groups, especially due to the urgent nature of the climate crisis and the impact on and risk for environmental defenders.
3. This submission references law and jurisprudence from various regional human rights systems, including the Inter-American, African, and European Human Rights Systems. The Statute of the International Court of Justice states that the Court has the

¹ Description and signatures of the organization joining the written submission can be found on the last sections of the document.

² [Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile](#), January 9, 2023.

³ [International Court of Justice Request for Advisory Opinion on Obligations of States in Respect of Climate Change](#), at 2, April 12, 2023.

competency to apply international conventions, international custom, “the general principles of law recognized by civilized nations,” and “judicial decisions and the teachings of the most highly qualified publicists of the various nations.”⁴ While the Statute does not expressly discuss whether the Honorable Court may use standards or jurisprudence from regional systems, regional human rights treaties provide States with the same obligations as various international human rights instruments, including the International Covenant on Civil and Political Rights. In interpreting those regional human rights treaties, over the last decades different specialized Human Rights systems have developed legal standards related to human rights defenders, and provided a progressive understanding of State obligations in this regard.⁵ We hope that by providing information about these legal developments at the regional level, this Honorable Court will count with additional sources for consideration of States’ obligations to protect the climate system as well as environmental defenders.

4. Given the importance and relevance of a decision from the International Court of Justice, the impacts of climate change on present and future generations cannot be discussed without addressing the human rights implications, both to specific impacted communities and environmental defenders, as they are inextricably linked. Therefore, in order to adequately outline States’ obligations regarding climate change under international law, this Honorable Court must include States’ obligations under international human rights law. Additionally, as the Honorable Court has previously weighed in on human rights issues related to States’ obligations, it should be permitted to do so in this Advisory Opinion.⁶
5. Therefore, 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 regional and international legal standards regarding States’ obligations to address climate change, the Honorable Court could take this opportunity to further clarify the scope of States’ duties to protect environmental defenders and how this relates to the obligations related to climate change. This is particularly important because of the critical role these defenders play in addressing the climate emergency. In order to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, States must also ensure the protection of environmental defenders. The Honorable Court should also highlight the importance

⁴ [Statute of the International Court of Justice](#), Art. 38(1).

⁵ Cf. Alexandra R. Harrington, [The Expansion of the Right to Life Under the Jurisprudence of the Inter-American Court of Human Rights](#), 35 Loy. L.A. Int'l & Comp. L. Rev. 313, 2013.

⁶ See, e.g., International Court of Justice, [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Croatia v. Serbia\)](#), February 3, 2015; International Court of Justice, [Questions relating to the Obligation to Prosecute or Extradite \(Belgium v. Senegal\)](#), July 20, 2012; International Court of Justice, [Ahmadou Sadio Diallo \(Republic of Guinea v. Democratic Republic of the Congo\)](#), November 30, 2010 (merits) and June 19, 2012 (compensation); International Court of Justice, [Application of the Convention on the Prevention and Punishment of the Crime of Genocide \(Bosnia and Herzegovina v. Serbia and Montenegro\)](#), July 11, 1996 and February 26, 2007; International Court of Justice, [Armed Activities on the Territory of the Congo \(New Application: 2002\) \(Democratic Republic of the Congo v. Rwanda\)](#), February 3, 2006; International Court of Justice, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion](#), July 9, 2004.

of taking a differentiated approach to protecting environmental defenders in order to address the additional struggles faced by those at risk or who have already become victims of intentional or systematic exclusion, marginalization, and/or oppression, who may or may not identify as environmental defenders and are disproportionately impacted by climate change.

I. STATES' OBLIGATIONS TO ADDRESS CLIMATE CHANGE

6. Several authorities have clearly asserted that States have the obligation to mitigate and prevent climate change. 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
7. Various international and regional human rights mechanisms reinforce and further elaborate on this obligation. 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.”¹⁰ 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.”¹¹ 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.”¹²

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.

¹⁰ 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.

¹¹ 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.

¹² 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.

8. Multiple 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]."¹³
9. 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).¹⁴ 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 their carbon emissions on children both within and outside its territory.¹⁵
10. While the international human rights system clearly holds States accountable for mitigating climate change and the human rights violations that derive thereof, 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 Honorable Court should detail the measures States must take to mitigate climate change and reinforce the fact that States not fulfilling their climate obligations also violate their human rights obligations. Additionally, this Honourable Court should establish clear guidance for States on how mitigation measures must take place. In that sense, it should be considered that mitigation measures that aim to reduce emissions can also have negative effects on local communities if their rights are not duly considered. For instance, local communities have been dispossessed from their land by renewable energy production or reforestation projects.¹⁶ This, in turn, implies serious human rights violations of environmental and human rights defenders. Thus, this Court should indicate what and how mitigation measures are required of States to comply with their human rights obligations.

¹³ United Nations Office of the High Commissioner for Human Rights, [Human Rights and Climate Change](#), at 2, 2016.

¹⁴ Human Rights Committee, [Daniel Billy and others v Australia \(Torres Strait Islanders Petition\)](#), at 16, 2019.

¹⁵ Committee on the Rights of the Child, [Chiara Sacchi, et al. v Argentina, Brazil, France, Germany and Turkey](#), 2019.

¹⁶ 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.

II. ENVIRONMENTAL DEFENDERS FACE ENORMOUS RISKS AND ADDRESS CLIMATE CHANGE

11. 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.”¹⁷ 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, profiles and trajectories, from small-scale farmers with no land deeds to environmental lawyers and journalists, from well-organized non-governmental organizations to isolated [I]ndigenous communities.”¹⁸
12. Environmental human rights defenders face numerous threats, as they are the most targeted human rights defenders.¹⁹ 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 2012.²⁰ Murders of environmental defenders are on the rise; no less than 1,390 killings took place between December 2015 and December 2022.²¹ 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.²²
13. The killing of environmental defenders is just one dimension of the various forms of violence perpetrated against them.²³ 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 environmental defenders, intimidation, and judicial harassment, including strategic lawsuits against public participation (SLAPP) to dissuade activism.²⁴ In 2018, John

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

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 9, September 13, 2023.

²² Global Witness, [Standing Firm: The Land and Environmental Defenders on the frontlines of the climate crisis](#), at 28, September 13, 2023.

²³ Nathalie Butt et al., [The supply chain of violence](#), at 15, May 8, 2019.

²⁴ 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](#)

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.”²⁵ Further, environmental defenders’ family members, communities, associates, and legal representatives also face threats because of their connections to them.²⁶

14. Studies have shown that despite facing various challenges, environmental defenders play a critical role in mitigating and adapting to climate change through their work.²⁷ For example, some defenders tackle extractive industries, which are among the largest generators of greenhouse gas emissions that cause climate change.²⁸ When environmental defenders protect the planet from these industries, they help protect the atmosphere from greenhouse gas emissions, which in turn helps defend the planet from climate change.²⁹ Additionally, many environmental human rights defenders work towards protecting forests, as deforestation leads to climate change.³⁰ Thus, defenders who protect trees and forests are inherently involved in mitigating climate change.³¹
15. In 2019, the HR Council unanimously adopted a resolution that formally recognized the role of defenders in environmental protection.³² 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%.”³³ 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.”³⁴

[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.

²⁵ United Nations Environment Programme, [Who are environmental defenders](#), 2020.

²⁶ 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.

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 93, 2018.

²⁹ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 93, 2018.

³⁰ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 94, 2018.

³¹ Trish Glazebrook & Emmanuela Opoku, [Defending the Defenders: Environmental Protectors, Climate Change and Human Rights](#), at 94, 2018.

³² 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.

³³ Arnim Scheidel et al., [Environmental conflicts and defenders: A global overview](#), Global Environmental Change, Volume 63, 2020, at 1.

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

16. The mitigation and adaptation work that environmental defenders conduct is essential to fighting the climate crisis and defending human rights. These 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 and adapt to climate change, States have a duty to protect these defenders in order to fulfill their climate change obligations as well.

III. BECAUSE ENVIRONMENTAL DEFENDERS ADDRESS CLIMATE CHANGE THROUGH THEIR WORK, STATES' CLIMATE AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS REQUIRE THEM TO PROTECT ENVIRONMENTAL DEFENDERS

17. 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 unlawful surveillance.³⁵ The Honorable Court should look to these recommendations when discussing States' obligations to environmental defenders in its opinion.

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

18. As discussed above, environmental defenders play a fundamental role in mitigating and addressing 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. While people around the world feel the human rights implications of environmental damage, the consequences are felt most acutely by communities that are already in

³⁵ 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.

vulnerable situations, like the aforementioned groups.³⁶ 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, adequate protection for environmental defenders requires an intersectional response by States that addresses all factors of discrimination and inequality.

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

19. Former UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, has emphasized that international human rights standards necessitate an intersectional approach to all measures taken by the State to protect the rights of human rights defenders, including environmental human rights defenders.³⁷ 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.³⁸

20. 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.³⁹ For example, in the case of *Ana Teresa Yarce and others*, the Inter-American Court of Human Rights established that in Colombia at that time, there was a context 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.⁴⁰ 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.

³⁶ 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.

³⁷ 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.

³⁸ 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.

³⁹ 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.

⁴⁰ 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.

21. States must also give careful consideration to the structural racism and violence that environmental defenders face especially considering their intersecting identities.⁴¹ 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.⁴²
22. 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.⁴³ This gives States a reinforced obligation to protect Indigenous and Afro-descendent environmental defenders.⁴⁴
23. One way States should fulfill this reinforced obligation is by deciding on protective measures for environmental defenders in consultation with Indigenous and Afro-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."⁴⁵ 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."⁴⁶ 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."⁴⁷

⁴¹ 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.

⁴² 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.

⁴³ Inter-American Court of Human Rights, [Case of the Yakye Axa Indigenous Community v. Paraguay](#), para. 137, June 17, 2005; *see also*, [Case of the Kichwa Indigenous People of Sarayaku v. Ecuador](#), para. 145, June 27, 2012; [Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama](#), para. 111 and 112, October 14, 2014; [Case of the Garifuna Community of Punta Piedra and its members v. Honduras](#), para. 165, October 8, 2015; [Case of the Triunfo de la Cruz Garifuna Community and its members v. Honduras](#), para. 100, October 8, 2015; [Case of the Kaliña and Lokono Peoples v. Suriname](#), para. 129, November 25, 2015; [Case of the Xucuru Indigenous People and its members v. Brazil](#), para. 115.

⁴⁴ 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 17, December 31, 2021.

⁴⁵ 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.

⁴⁶ International Labour Organization, [Indigenous and Tribal Peoples Convention, \(No. 169\)](#), Art. 6(1)(a), 1989.

⁴⁷ 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.

24. 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 Peoples' 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.⁴⁸ Similar findings were made by the African Court on Human and Peoples' Rights in *African Commission on Human and Peoples' Rights v Kenya*.⁴⁹ In another case regarding Indigenous territory, *Kichwa Indigenous People of Sarayaku v. Ecuador*, the Inter-American 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."⁵⁰ 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.
25. It is especially important that governments take into account the heightened risk that defenders face when they oppose development megaprojects,⁵¹ 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."⁵² 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.⁵³ 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.

⁴⁸ African Commission on Human and Peoples' Rights, [Centre for Minority Rights Development \(Kenya\) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya](#), 276/2003, 2003.

⁴⁹ African Commission on Human and Peoples' Rights, [African Commission on Human and Peoples' Rights v. Republic of Kenya](#), 006/2012, 2017.

⁵⁰ Inter-American Court of Human Rights, [Case of The Kichwa Indigenous People of Sarayaku v. Ecuador](#), at 82, para. 301, June 12, 2012.

⁵¹ 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.

⁵² 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.

⁵³ United Nations Office of High Commissioner, [Guiding Principles on Business and Human Rights](#), at I(A)(1), 2011.

26. 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

27. Environmental defenders play the indispensable role of protecting the planet and mitigating and adapting to climate change. Because States are also obligated to mitigate the climate emergency, they are required to protect environmental defenders in order to fulfill their climate obligations.

28. While instructing States on their obligations to environmental defenders in the context of the climate emergency, the International Court of Justice 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.”⁵⁴ The Court should also encourage States to ratify and implement the Escazú Agreement. To prevent the unjust criminalization of environmental defenders in particular, the Honorable 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.”⁵⁵ 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.”⁵⁶ The Honorable 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.

29. 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

⁵⁴ Aarhus Convention’s Special Rapporteur on Environmental Defenders, [Vision for the Mandate](#), at 1, November 23, 2022; Michel Forst, [Special Rapporteur Letter on EU Anti-SLAPP Directive](#), at 6, July 12, 2013.

⁵⁵ Michel Forst, [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.

⁵⁶ Michel Forst, [The criminalisation of environmental defenders is not an adequate response to civil disobedience](#), April 11, 2023.

and family members who share their risks.”⁵⁷ 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.⁵⁸ Importantly, the Honorable 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 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.”⁵⁹

⁵⁷ Aarhus Convention’s Special Rapporteur on Environmental Defenders, [Vision for the Mandate](#), at 1, November 23, 2022.

⁵⁸ Aarhus Convention’s Special Rapporteur on Environmental Defenders, [Vision for the Mandate](#), at 1-4, November 23, 2022.

⁵⁹ 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)⁶⁰ 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 Watch⁶¹ 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 Expression⁶², 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 the Inter-American 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)**⁶³ 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)**⁶⁴ 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

⁶⁰ [Robert F. Kennedy Human Rights](#).

⁶¹ [Amazon Watch](#).

⁶² [Article 19](#).

⁶³ [Centre for Human Rights](#).

⁶⁴ [Global Initiative for Economic, Social and Cultural Rights \(GI-ESCR\)](#).

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.

The **Latin American and Caribbean Network for Democracy (REDLAD)**⁶⁵ 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)**⁶⁶ 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.

⁶⁵ [REDLAD](#).

⁶⁶ [ISHR](#).