

THE RIGHTS OF ENVIRONMENTAL DEFENDERS – ESCAZÚ AGREEMENT AND INTER-AMERICAN SYSTEM STANDARDS IN THE CHILEAN LEGAL SYSTEM¹

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ABSTRACT

This paper aims at examining the standards enshrined in the Escazú Agreement and the Inter-American System of protection regarding environmental defenders. According with our understanding, the Latin-American overview of environmental defenders is worrisome, specially, regarding the work they do as transcendent, the protection of their rights should be in the light of the developments incorporated into the Escazú Agreement. Particularly in Chile, where there are not specific regulations in the matter. The methodology used is the dogmatic method. We will conclude that Chile does not conform to the Inter- American standards and the Escazú Agreement.

OS DIREITOS DAS E DOS DEFENSORES AMBIENTAIS – ACORDO ESCAZÚ E NORMAS DO SISTEMA INTERAMERICANO NO SISTEMA JURÍDICO CHILENO

RESUMO

Este trabalho pretende examinar as normas provenientes do Acordo de Escazú e do sistema de proteção Interamericano no que tange aos

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defensores ambientais. Todos os relatórios sobre os riscos enfrentados pelos defensores ambientais apontam o fato de a América Latina ser o lugar mais perigoso para realizar tal trabalho e, considerando isso, a proteção de seus direitos deve ser adequada aos padrões de desenvolvimentos recentes contemplados no Acordo de Escazú. Especialmente no Chile, que não dispõe de regulamentação específica. O método de pesquisa utilizado é o dogmático. Conclui-se que o Chile não está em conformidade com as normas interamericanas e com o Acordo de Escazú.

Palavras-chave: *Acordo Escazú; defensores do meio ambiente; direitos humanos; normas interamericanas.*

INTRODUCTION

This article analyzes the protection standards for environmental defenders from the perspective of the Escazú Agreement, adding the contributions of the Inter-American system for the protection of human rights. The objective of this study also aims to highlight the presence or absence of these standards in the Chilean legal system. Thus, the general question guiding this work will be: what are the standards of protection for environmental defenders in light of the Escazú Agreement and the Inter-American System?

The initial view is that the Escazú Agreement established special protection for environmental defenders, drawing heavily on standards developed in the jurisprudence of the Inter-American Court of Human Rights (IHR Court).

The method used in this study is legal dogmatics. This article is divided into two main parts. The first part deals with conceptual issues and contextual data related to environmental defenders. The second part examines the standards developed by international human rights law, specifically the Escazú Agreement and the jurisprudence of the Inter-American Court of Human Rights.

1 THE CONCEPT AND THE REALITY

This part intends to develop the conceptualization of environmental defenders and their rights, seeking to explain why their physical and psychological integrity is often in danger. Then, the delicate regional and national situation faced by environmental defenders is briefly addressed.

1.1 Definition of environmental defender

From a conceptual perspective, it is worth mentioning the United Nations Declaration on Human Rights Defenders, which understands defenders to be those “individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means” (UN, 1999). On the other hand, an environmental defender can be defined as “those who take a firm and peaceful position against unfair, discriminatory, corrupt or harmful exploitation of natural resources or the environment” (ÚLTIMA LÍNEA DE DEFENSA...,

2021, p. 27). What characterizes environmental defenders is the work they do for environmental protection, sustainability, and balance in the use of natural resources (SCHEIDEL *et al.*, 2020; NAGENDRA, 2018; TEMPER *et al.*, 2018; GLAZEBROOK; OPOKU, 2018). Therefore, environmental defenders constitute a category among human rights defenders, for while they seek the protection and realization of human rights, environmental defenders focus their activism and struggle on the rights of nature, since often the overexploitation of natural resources, pollution, and climate change affect individual or community ways of life and livelihoods (BUTT *et al.*, 2019; GLEASON; MITCHELL, 2009).

Environmental defenders not only see their traditional human rights violated, such as life, meeting, and personal freedom, but also the right to live in a healthy environment, the rights of indigenous peoples, and the right to protect the rights of nature, such as ecological balance and social equity (LE BILLON; LUJALA, 2020; SCHNEIDER; KALLIS; MARTINEZ-ALIER, 2010).

Therefore, it can be argued that they constitute a special protection category in terms of the situations of violence they suffer. The degrees of violence to which they are exposed range from intimidation, harassment, threats, and murder (NAVAS; MINGORRÍA; AGUILAR, 2018; AGUILAR-GONZÁLEZ *et al.*, 2018; MIDDELDORP; LE BILLON, 2019; ONU, 2016).

1.2 The Latin American and national context

The reality experienced by environmental defenders, especially in Latin America, can serve as a good explanation for why the development of specific standards related to environmental defenders has been crucial.

In general, as the need to protect the environment, natural resources and biodiversity has advanced, environmental defenders have been targeted and even criminalized for their work in defense of the rights of nature (PAUCAR, 2021). In addition, defenders face daily physical and mental violence and violations of their human rights (ONU, 2016). This can be verified through the murder rate of environmental defenders.

Latin America was declared the most dangerous area for environmental defenders (PAZ, 2021; BORRÀS, 2015; GHAZOUL; KLEIN-SCHROTH, 2018; LARSEN *et al.*, 2021; ZENG; TWANG; CARRASCO,

2022; WATTS; VIDAL, 2017). The insecurity experienced by environmental defenders is not a regional problem, but could be categorized as a worldwide problem (ONU, 2016). Among the causes identified as the basis for human rights violations, the following can be mentioned:

1. Exclusion and imbalance of power. This imbalance is one of the reasons for environmental conflicts between states, businesses, and environmental human rights defenders, especially with regard to participation in environmental decision-making. Therefore, the cause of the violation is exclusion from the decision-making process. In this marginalization, the denial and/or impediment of free, prior, and informed consent of indigenous consultation has a particular impact. As for the companies, among the activities they carry out, they must ensure the participation and protection of the environmental defenders, not hindering the exercise of human rights (ONU, 2016; 2020).
2. Commercialization and financing of the environment. This perspective prioritizes economic development and the exploitation of natural resources, excluding consideration of social and cultural impacts, rather than emphasizing collective rights over the environment and sustainability (ONU, 2016).
3. Corruption and impunity. The lack of transparency in projects with effects on the environment, especially with regard to the actors, participation mechanisms, and accountability. In turn, there is a lack of investigations and sanctions for human rights violations against environmental defenders. Lack of access to justice, and specifically to prevention, perpetuates a culture of impunity (ONU, 2016).
4. Composition of the most at-risk groups of environmental human rights defenders. Environmental defenders are a heterogeneous group, consisting of individuals and varying groups of people or corporations. Some of the people who make up the defenders are those who have been historically excluded, such as women or indigenous peoples (DELINA, 2020; MAHER, 2019). The main problem they face is gender-based discrimination, xenophobia, racism, and stigmatization. A second problem is access to justice and the lack of knowledge of their rights. A third problem is the prevention and sanctioning by the state of violent practices against this group (ONU, 2016).

Thus, during 2020, 227 environmental defenders were murdered. The killings take place in a context of previous violence, such as threats, arrests, smear campaigns, etc. (ÚLTIMA LÍNEA DE DEFENSA..., 2021).

Among the countries at the top of the list is Colombia with 65 attacks, of which the victims were indigenous peoples, Afro-descendants, and small farmers. It is followed by Mexico with 30 attacks, Brazil with 20, Honduras with 17, Guatemala with 13, and Peru with 6 attacks (ÚLTIMA LÍNEA DE DEFENSA..., 2021; FRONT LINE DEFENDERS, 2021). Colombia, as well as Brazil, Guatemala, Mexico, and Peru are parties to the Escazú Agreement.

In the Chilean case, there are no reports that systematize the risk situation of environmental defenders, so the media and environmental organizations have raised their voices about the violence they suffer as a result of their actions to protect the environment (FIMA, 2020). There are cases in Chile of harassment, threats and even death of environmental defenders (FIMA, 2019). There are currently 103 cases of environmental conflicts (70 active and 33 latent) across Chile, with the productive sectors with the highest percentages of conflicts being: energy with 38% and mining with 26% (FIMA, 2019). The Chilean region with the most conflicts is Valparaíso with 21 cases, followed by the Region of los Ríos with 16 cases and the Region of los Lagos with 12 cases. Furthermore, 35% of the conflicts are on indigenous lands (INDH)³.

Regarding Chilean legislation, it is appropriate to begin by mentioning the current Political Constitution of the Republic, which in its rights legislation recognizes the right to life and to the physical and mental integrity of the person (Art. 19 N.1), the equality before the law (Art. 19 N.3), the equal protection of the law in the exercise of their rights (Art. 19 N.3), the right to personal liberty and individual security (Art. 19 N.7), the freedom to hold opinions and to inform oneself without prior censorship (Art. 19 N.12), the right to assembly peacefully without prior permission and without weapons (Art. 19 N.13) and the right to associate without prior

³ Some Chilean cases are: Alejandro Castro, representative of the S24 fishermen's union in Quintero; Macarena Valdés, a woman who fought against the installation of a hydroelectric plant by the company RP Global and Saesa in the Panguipulli sector; Rodrigo Mundaca and Carolina Vilches, leaders of the *Movimiento de Defensa del Agua, la Tierra y la Protección del Medioambiente* [Movement for the Defense of Water, Land and Environmental Protection], activists for access to drinking water in Petorca. During 2021, the following cases can be mentioned: Verónica Vilches on February 13 was threatened as a leader of the Movement for the Defense of Water, Land and Environmental Protection; Uriel González on March 22 was attacked by unknown persons for his activities regarding water recovery; Michael Lieberherr on March 28 was threatened for his thesis work on the impact of mining in rural areas; Diego Ovalle on June 23 heard three gunshots outside his home, he is a spokesperson for the Antuko Resiste Socio-Environmental Movement; Marcela Nieto, a sick environmental activist from Quintero, on July 2 began receiving harassing phone calls and even a death threat. One high-impact case was the murder of Javiera Rojas, an environmental activist and defender, who was beaten, tortured and murdered in an abandoned house. It is also possible to mention the threats suffered by the National Coordinator of Escazú Now Chile, Sebastián Benfeld. See Velásquez (2018); A La Defensa... (2021); FIMA (2021); Front Line defenders (2022); El asesinato de la ambientalista... (2021); Danneemann (2020); Coordinador Nacional... (2021).

permission (19 N.15). In this regard, it should not be forgotten that the State is at the service of the human person and that the essential rights that emanate from human nature and the international treaties ratified and in force in Chile are recognized as a limit to sovereignty (Art. 1, § 4 and Art. 5, §. 2).

From a legal point of view, it can be mentioned that criminal law does not contain specific criminal offenses related to environmental defenders. On November 23, 2021, a parliamentary motion was presented seeking to give recognition to human rights defenders, with the inclusion of environmental defenders in this category. The bill defines environmental defenders as those

[...] who speak out to protect rights related to the environment, land, and territory. They are often leaders or protectors of communities, whose rights and welfare they seek to defend, especially by protecting housing, air, water, land, territory, and forests from destruction or pollution. In many cases they are also indigenous peoples (CHILE, 2021).

In addition, it seeks to establish rights focused on the activity developed by the defenders (CHILE, 2021).

According to what has been said, there is no specific regulation regarding the protection of the rights of environmental defenders in Chile, therefore it is necessary to incorporate the norms of the Escazú Agreement, because it is an adequate and innovative instrument that guarantees the work and the rights of the defenders. On March 18, 2022, Chilean President Gabriel Boric sent the Agreement to the National Congress, which was approved on May 31.

In the list of total countries, 7 of the 10 countries with the most attacks on environmental defenders are located in Latin America, with indigenous peoples being one of the most affected groups, as well as women, which can give us an important idea of why it is relevant to incorporate a rights-based approach, a gender perspective, a gender and an intercultural perspective in the analysis (ÚLTIMA LÍNEA DE DEFENSA..., 2021; TRAN, 2021; MAHER, 2019; DELINA, 2020).

2 THE STANDARDS OF INTERNATIONAL LAW AND HUMAN RIGHTS AND THE CONTRIBUTION OF ESCAZÚ

In this section, two main areas of international norm development for the protection of environmental defenders' rights are addressed. On the

one hand, the international and environmental sphere. On the other hand, the specific area of the Inter-American system for the protection of human rights.

2.1 The international standards and the path to Escazú

The momentum of international protection for environmental defenders has been slow, and driven primarily by the application of general human rights protection instruments, accompanied by the development of soft law standards. In this evolutionary process, a binding international environmental instrument was created containing standards for the protection of environmental defenders, as shown below.

2.1.1 International standards

It is convenient, first of all, to specify two relevant aspects regarding this analysis. On the one hand, who are the obligated parties and, on the other hand, what are the obligations of each of the obligated parties.

Thus, the main obligated party is undoubtedly the State, but private companies also emerge as a relevant obligated party.

Regarding the State, it is natural that environmental human rights defenders should enjoy, on an equal basis with other persons under the jurisdiction of the State, all the rights recognized to them by international human rights law. Therefore, the State is obliged to respect the right to life, liberty, and security, which are established in article 3 of the Universal Declaration of Human Rights, in articles 6.1 and 9.1 of the International Covenant on Civil and Political Rights, and in articles 4, 5, and 11 of the American Convention on Human Rights.

Likewise, the State has an obligation to prevent and investigate human rights violations in its role as a rights guarantor. Therefore, in its duty to protect, the State must consider the United Nations Declaration on the Rights of Indigenous Peoples, the International Labor Organization's Convention n. 169 on Indigenous and Tribal Peoples, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and all instruments that refer to specific special protection groups.

With regard to business, the United Nations has developed an interesting body of standards related to the human rights obligations of companies

and including a number of regulations related to their duties to protect rights in the context of their activities. We refer to the Guiding Principles on Business and Human Rights. Concerning the addressed,

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (ONU, 2011).

In turn, “Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved” (ONU, 2011).

Consequently, according to what is known, it is possible to highlight at least ten rules that are relevant in terms of protecting the rights of environmental defenders: (a) The duty to fulfill the special position of guarantor; (b) the duty to prevent, investigate, punish and rectify human rights violations committed against environmental defenders in the context of environment-related business activities; (c) the right to promote and to strive for the protection of human rights; (d) the right to freedom of expression and opinion; (e) freedom of assembly; (f) freedom of association; (g) the right of protest; (h) the right to access to justice and an effective resource; (i) the right to access and communicate with international organizations and to receive funding; (j) the right to develop and discuss new ideas and principles related to human rights (BORRÀS, 2019; AGUILAR CAMPOS, 2020; ONU, 1999).

As to the duties of the State, the following was found: (a) to promote and protect all human rights and fundamental freedoms; (b) to ensure that all subjects within its jurisdiction may enjoy in practice all social, economic, political, and other rights and freedoms; (c) adopt the legislative, administrative and other measures necessary to ensure the effective implementation of rights and freedoms; (d) provide effective recourses to persons claiming to be victims of a human rights violation; (e) conduct prompt and impartial investigation into alleged human rights violations; (f) take all necessary measures to ensure the protection of all persons against any violence, threats, retaliation, negative discrimination, pressure or any other arbitrary action resulting from the legitimate exercise of the rights mentioned in the Declaration; (g) promote public understanding of civil, political, economic, social and cultural rights; (h) ensure and support the establishment and development of independent national institutions

charged with the promotion and protection of human rights; for example, intermediaries or human rights commissions; (i) promote and facilitate the teaching of human rights at all levels of education and official professional training (ONU, 1999).

These standards are applicable both to the State and to the Companies. Therefore, the responsibility in this matter is dual, on the one hand the State in the prevention, investigation and punishment of human rights violations, guaranteeing unrestricted access to justice. On the other hand, there are companies that do not act with due diligence in respecting the human rights of defenders, giving priority to economic growth and preventing access to information and environmental participation (ÚLTIMA LÍNEA DE DEFENSA..., 2021; FRONT LINE DEFENDERS, 2021).

It is relevant to mention some of the recommendations contained in the 2016 Report of the Special Rapporteur on the situation of human rights defenders concerning the state and business, for further comparison with the Escazú Agreement.

Regarding the States, the Report includes recommendations, of which the most important are the following:

- a) Reaffirm and recognize the role played by environmental human rights defenders and respect, protect and enforce their rights.
- b) Ensure a preventive approach to the security of environmental human rights defenders, ensuring their meaningful participation in the adoption of such measures.
- c) Create protection mechanisms for environmental human rights defenders, considering the intersectoral dimensions of violations committed against women defenders, indigenous peoples, and rural and marginalized communities.
- d) Ensure independent and diligent investigations on alleged threats and violence against environmental human rights defenders and bring to justice the direct perpetrators and those who participated in the perpetration of the crimes.

Regarding companies:

- a) Adopt and apply relevant international and regional human rights standards, including the Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights.
- b) Refrain from physical assaults or verbal or legal attacks on environmental human rights defenders and engage in meaningful consultations with them in project design, implementation, and evaluation, and in due

diligence and human rights impact assessment processes.

The aim of these recommendations is to address the situation of violence suffered by environmental defenders. To this end, human rights officials, States, and companies must establish protection mechanisms with a rights-based approach, recognizing the intersectional discrimination to which these people are subjected. Thus, it must be made explicit that this is a special protection group.

For its part, the 2020 Report of the Special Rapporteur on the situation of human rights defenders formulates, among other things, the following recommendations to States (ONU, 2020):

- a) Ensure that human rights defenders are able to exercise their functions by removing legislative and regulatory obstacles.
- b) Combat impunity by conducting impartial investigations and ensuring that perpetrators are brought to justice and victims receive compensation.
- c) Special attention to the most exposed groups, including environmental defenders, those working in remote or isolated areas, and human rights defenders in general.

In line with previous approaches, the Escazú Agreement, as a regional treaty, consolidates a long-held aspiration of international civil society to generate a binding instrument for environmental protection. Among the objectives of this instrument are the protection of the right to a clean, safe, healthy, and sustainable environment, the principle of sustainable development, and the fight against inequality and discrimination in environmental matters, with a rights-based approach to the protection of vulnerable groups. One of the major milestones of the international treaty is that, for the first time, it incorporates rules on the protection of environmental defenders into binding international regulation.

2.1.2 The standards of the Escazú Agreement

This topic addresses the standards foreseen in the Escazú Agreement with respect to environmental defenders. For this purpose, it first mentions the standards in question and then make some comments about them.

Article 9 of the Escazú Agreement indicates the duties of the State in relation to the defenders in environmental matters, as follows:

1. Each Party shall 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.

2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.

3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement (CEPAL, 2018, p. 30).

The article lays the groundwork for the obligations that States Parties have towards environmental defenders, specifically with regard to the rights to life, personal integrity, freedom of expression, the right of association, and the right to assembly. It also establishes the duty to prevent, investigate, and punish human rights violations against environmental defenders in the conduct of their work.

This is no small thing, considering that Latin America is one of the riskiest places to work in defense of the environment, and furthermore, considering that many of those who perform this function are those for whom there should be a special duty of protection, such as women and indigenous peoples (LEYVA HERNÁNDEZ; CEREMI, 2020; GAMBOA BALBÍN, 2020). This requires a recognition of the work done by the defenders, but it also requires admitting the lack of protection in which these people find themselves in the exercise of their human rights. Therefore, it is an important step not only in protecting environmental access rights (information, participation, and environmental justice), but is also a precursor to ending impunity and criminalization of environmental defenders, promoting a safe and violence-free environment (BARRIOS LINO, 2020; FIMA, 2019; LEYVA HERNÁNDEZ; CEREMI, 2020; GAMBOA BALBÍN, 2020; ONU, 2021a).

It seems relevant to mention the principle of equality, non-discrimination and *pro persona*, established in the Escazú Agreement, which will guide the fulfillment of the duties, especially since the human rights treaty must be interpreted extensively in the protection of rights, especially for the people or groups in vulnerable situations who find it difficult to exercise their access rights.

From a historical perspective, to understand the pioneering character of the Escazú Agreement, it is necessary to mention some instruments that

laid the foundations for the Treaty. First, it is necessary to mention Principle 10 of the Rio Declaration, which enshrined the access rights, indicating that:

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

The Declaration constitutes a series of standards, although it does not expressly mention environmental defenders, only highlighting in principles 20 and 22 the participation of women and indigenous peoples to achieve sustainable development, but without establishing duties regarding the protection of the work of environmental defenders.

Later, in 2012, the United Nations Conference on Sustainable Development (Rio+20) was held, which resulted in the document “The Future We Want”, which establishes specific measures for the implementation of sustainable development (UN, 2012), reinforcing the importance of the active participation of women, youth and Indigenous Peoples, among others.

In September 2015, the 2030 Agenda for Sustainable Development was approved, establishing 17 goals, among which SDG 16: Promote just, peaceful and inclusive societies in Latin America and the Caribbean stands out. This goal makes express reference to the Escazú Agreement as a mechanism to meet the objectives of goal 16, mentioning environmental defenders (CEPAL, 2019).

On January 21, 2019, the UN General Assembly adopted the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, which recognizes collective rights relevant to their relationship to the land and its natural resources. Specifically, the individual or collective right of access to land, waterbodies, coastal waters, fisheries, pastures, and forests is recognized. In turn, they have the right to the conservation and protection of the environment and the productive capacity of their lands, as well as of the resources they use and manage (Art. 18.1). The document in question refers to the rights of association, freedom of expression, participation, among others, considering its special characteristics (ONU, 2019).

At the European level, it is relevant to mention the Aarhus Convention on Access to Information, Public Participation in Decision-Making

and Access to Justice in Environmental Matters. The objective of the convention is:

[...] to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention (UNECE, 1999).

Regarding the concept of public, it comprises: “one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups” (UNECE, 1999) and concerned public: “means the public affected or likely to be affected by, or having an interest in, the environmental decision-making” (UNECE, 1999), includes non-governmental organizations that work for the protection of the environment and that meet the requirements of national legislation.

Thus, although the concept of the public is broad, it does not expressly refer to environmental defenders, nor does it establish specific obligations for them. However, Art. 3.8 states that:

Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings (UNECE, 1999).

The standard establishes a framework of protection for environmental defenders, as it protects the exercise of Convention rights, but does not establish a special mechanism of protection.

In July 2020, the report on the situation of environmental defenders in the States Parties to the Aarhus Agreement between 2017 and 2020 was published. From the data contained in this report, the following can be observed:

The situation of environmental defenders’ rights in Europe is diametrically different from the situation in Latin America. The cases of persecution, sanctions and harassment of environmental defenders reported are mainly related to fines, arbitrary arrests, arbitrary detentions, intimidation and threats as a consequence of environmental activism. None of the reported cases resulted in the death of the environmental defender. The 16 states that are party to the Aarhus Convention have filed at least one case, with Armenia, Belarus, Kazakhstan, Poland, and Ukraine reporting the most cases (UNECE, 2020).

Faced with this obvious gap, on October 22, 2021, a group of 46 countries that are part of the UN Economic Commission for Europe agreed to establish a new legally binding mechanism to protect environmental defenders. The mechanism in question includes the figure of a special rapporteur who will be in charge of responding and acting on the complaints received, which will also be confidential, and it is not necessary to exhaust internal resources to deduct this mechanism. Regarding active standing, any person, member of the Secretariat or party to the Aarhus Convention may submit a complaint (ONU, 2021b).

It is indisputable that the Escazú Agreement is unique in its characteristics and content, as it establishes a transcendental minimum baseline for the effective protection of the rights of environmental defenders, allowing them to leave behind impunity for acts of violence and violations of their human rights (AGUILAR CAMPOS, 2020).

2.2 The standards of the inter-American system for the protection of human rights

This section discusses the Inter-American standards for environmental defenders. First, reference will be made to the pronouncements of the Inter-American Commission on Human Rights (IACHR) and then to the decisions of the Inter-American Court of Human Rights (IHR Court).

2.2.1 Standards of the Inter-American Commission of Human Rights

First, the report on the criminalization of the work of human rights defenders in 2015 will be mentioned. In this regard, the IACHR indicated that within the group of human rights defenders there is a group that has been primarily affected by criminalization: peasant, indigenous and Afro-descendant leaders (CIDH; OEA, 2015).

This document contains some recommendations regarding the creation of an enabling environment without obstacles for the exercise of their human rights. The report highlights the importance of the role of human rights defenders as a key element in achieving better social, economic and political conditions, that is, they are a fundamental element in a democratic society based on the rule of law (CIDH; OEA, 2015).

Among the main forms of criminalization are: (a) Statements by public officials accusing defenders of committing crimes without any judicial

decisions. This leads to the stigmatization of people by labeling them as terrorists, criminals, ecoterrorists, etc.; thus, the work done in society is delegitimized; (b) Criminalization of speeches denouncing human rights violations and the right to peaceful social demonstration; (c) Misuse of counter-terrorism and other national security laws against human rights defenders; (d) Criminalization of the promotion and defense activities of defenders in relation to the causes they promote (CIDH; OEA, 2015).

As for the specific recommendations made by the IACHR, the following stand out:

1. Recognize the work of human rights defenders and their role in democratic societies: the following measures are highlighted here:
 - a) Instruct government authorities from the highest level to create spaces for open dialogue with human rights organizations to receive their feedback on existing policies and the impact of these policies on their work, as well as any gaps in the law. Human rights organizations should also be consulted on projects for policies, in order to provide input and opinions.
 - b) Strengthen the protection of the right to participation of human rights defenders, as well as of persons affected or possibly affected by development projects that impact the exercise of rights (CIDH; OEA, 2015).
2. Prevent the use or adoption of laws and policies contrary to the parameters of international law. The main measures are:
 - a) Ensure that the exercise of the right to assembly via social demonstrations does not depend on authorization by the authorities or on unreasonable requirements that make it difficult to hold them. States must ensure that limitations imposed on public and peaceful demonstrations are strictly necessary to prevent serious and imminent threats.
 - b) Regarding the expressions related to terrorism, restrict them to cases of intentional incitement to terrorism. In addition, the application of these criminal types should be limited in the context of social demonstrations (CIDH; OEA, 2015).
3. The proper performance of justice operators according to international human rights standards in the national justice system, it was considered important to highlight:
 - a) Conventionality control between national standards and the American Convention.
 - b) Ensure access to justice by strengthening the mechanisms for the administration of justice and guarantee the independence and impartiality

of justice operators, necessary conditions for the legitimate and non-discriminatory application and interpretation of laws (CIDH; OEA, 2015).

Regarding the standards for the protection of defenders elaborated by the IACHR, we can cite Report n. 24/98, (João Canuto de Oliveira) indicating that Brazil is responsible and must respond in the international sphere for the violation of the right to life committed by one of its officials, as well as for the acts and omissions of its agents and organs in charge of preventing the practice of an illegal act that violates human rights, investigating the act, identifying those responsible and promoting State activity to punish them (CIDH, 1998). In turn, one can also cite Report No. 80/07, which heard the case of Martín Pelicó Coxic, a Mayan indigenous, human rights promoter and active member of the Runujel Junam Council of Ethnic Communities, who was arbitrarily executed by members of the Civil Self-Defense Patrols. The Commission declared Guatemala's international responsibility for violating the right to life and failing to comply with its duty to protect, preserve, investigate and punish violations of the right to life and its obligation to conduct a serious and impartial investigation (CIDH, 2007).

It is also important to mention Report I No 100/11, concerning the case of the murder of environmental defender Carlos Antonio Luna López on May 18, 1998. The IACHR found that Honduras had not fulfilled its duty to prevent violations of the right to life. Specifically, the Commission found that

[...] At the time of Mr. Luna López's murder, a pattern of violations and impunity against environmental defenders existed in Honduras. The Commission considers that the work of defense and protection of natural resources that Mr. Luna López carried out from his position as Councilor placed him in a situation of special risk due to the pattern existing in the country at the time of the facts. This knowledge gave rise to a greater duty of protection by the State. In the case of human rights defenders, the Commission recognized that the duty of prevention implies "among other duties, [...] the eradication of environments that are incompatible or dangerous for the protection of human rights". However, Honduras has not indicated that, at the time of the events, it had adopted specific preventive measures to avoid such violence (CIDH, 2011).

He adds as violated rights the protection of judicial guarantees and judicial protection and the right to political participation.

Another case reiterating some standards on the protection of the rights of defenders is Report No. 35/17, Jose Rusbell Lara *et al*, which notes:

152. In the specific case of human rights defenders, the obligation of States to protect them when they are in situations of danger due to their activities has been recognized at the universal level by the United Nations Declaration on Human Rights Defenders and in the Inter-American system, by both the IACHR and the Court via its jurisprudence. The IACHR indicated that in the case of defenders, the duty of prevention is not limited to providing material measures to protect their personal integrity or to ensure that their agents do not interfere with the full exercise of their human rights, but also implies the duty to act on the structural causes that affect their security, in order to create the necessary conditions for the effective enjoyment of the rights set forth in the American Convention (CIDH, 2017).

The rights violated in the defenders' case, which are the subject of the IACHR's pronouncement, were the right to life and personal integrity and judicial guarantees, political participation, freedom of association, and freedom of expression. In this regard, we can cite Report No. 88/08, referring to Teodoro Cabrera García and Rodolfo Montiel Flores, members of the Civil Association Organization of Ecological Peasants of the Sierra de Petatlán y Coyuca de Catalán, who were detained by the Mexican army (CIDH, 2008). There is also Report No. 120/10, on Joe Luis Castillo González and others, regarding Venezuela, in which the victim was a human rights defender supporting peasants and indigenous people in the recovery of their lands and indigenous peoples in the State of Zulia (IACHR, 2010). Similarly, Report No. 7/16 Aristeu Guida da Silva and Family (IACHR, 2016) refers to the obligation of prevention and protection.

2.2.2 Standards of the Inter-American Court of Human Rights

The IACHR Court has ruled on several occasions regarding the protection of the rights of defenders, primarily on the basis of the violation of the right to life, personal integrity, and judicial guarantees. Regarding judicial guarantees and judicial protection, it stated that:

The Court reiterates that threats and attacks on the integrity and life of human rights defenders, and impunity for such acts, are particularly serious because they have not only an individual but also a collective effect, insofar as society is prevented from knowing the truth about the situation regarding respect for or violation of the rights of persons under the jurisdiction of a given State (CORTE IDH, 2006).

The obligation of the state is twofold: on the one hand, it must facilitate the work of defenders and refrain from imposing obstacles that make it difficult for them to carry out their work; on the other hand, it must protect them when they are under threat, in order to prevent attacks against their life and integrity, and investigate violations effectively and seriously,

combating impunity (CORTE IDH, 2014).

With respect to the general obligation of guarantee provided in Art. 1.1 of the American Convention, the State has the obligation to prevent violations of the rights of defending persons “The States Parties to this Convention undertake to respect the rights and freedoms recognized in it and to guarantee their free and full exercise to every person who is subject to their jurisdiction” (CORTE IDH, 2013). The obligation of prevention is broad in the sense that it covers legal, political, administrative, and cultural measures that lead to the protection of rights and that violations of rights are punishable by sanctions (CORTE IDH, 2013).

In a second stage, the IACHR began to rule on other violated rights, such as the right of circulation, residence, and political participation. Regarding the first, it indicated that it can be violated formally or by factual restrictions if the State has not established the conditions or provided the means to exercise it, as would be the case when a person is victim of threats or harassment and the State does not provide the necessary guarantees to the person to be able to move and reside freely in the territory (CORTE IDH, 2014). On political participation, it is noted that the right to effective political participation implies that citizens have not only the right, but also the possibility to participate in the conduct of public matters (CORTE IDH, 2014).

A third stage has to do with some special standards with respect to people in vulnerable situations, specifically in the case of women defenders, when the context of violence against women defenders implied a situation of risk for them. With respect to the duty of guarantee provided for in Art. 1.1 of the Convention, it adds that it is a special obligation that is also based on art. 1.2 of Convention 7b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (CORTE IDH, 2016). The IACHR Court established that the State has not complied with its obligations to adopt specific measures to prevent the materialization of risk situations and to guarantee the rights to life, liberty and personal integrity (CORTE IDH, 2016).

The case of *Kawas Fernandez vs. Honduras* refers to Blanca Jeannette Kawas Fernandez, who was a prominent Honduran environmental defender who promoted the protection of natural resources in Honduras. On February 6, 1995, Blanca was working with her assistant in her home in the city of Tela. Two armed men surprised her in her bedroom and shot her in the neck, causing her instantaneous death (CORTE IDH, 2009). The IACHR

found that the right to life, judicial guarantees, and judicial protection were violated (IACHR COURT, 2009). This is the first case in which the IDH Court alludes to the importance of environmental defenders:

149. The recognition of the work done in defense of the environment and its relation to human rights is becoming more relevant in the countries of the region, where there are an increasing number of reports of threats, acts of violence and murders of environmentalists due to their work (BORRÀS, 2015, p. 24).

On the other hand, there is the case of Cabrera García and Montiel Flores vs. Mexico, concerning the detention of Mr. Montiel Flores, who was outside the house of Mr. Cabrera García, along with other people, in the community of Pizotla, Municipality of Ajuchitlán del Progreso, State of Guerrero. Approximately 40 members of the Mexican Army's 40th Infantry Battalion entered the community as part of an operation against other people. Teodoro Cabrera García and Rodolfo Montiel Flores created in 1998, with other farmers, the Civil Association Organization of Ecological Peasants of the Sierra de Petatlán and Coyuca de Catalán (OCESP), to stop logging operations in the mountain forests of Guerrero, which they believed were threatening the environment and the livelihoods of the local peasant communities (CORTE IDH, 2010). The IDH Court found that the right to personal security, judicial guarantees, and personal integrity were violated.

In the case of Luna Lopez vs. Honduras, Carlos Luna Lopez was an activist in various Liberal Party movements, while supporting the land struggles of local peasant groups. In 1997 he was elected Councilor of the Municipal Corporation of Catacamas, Olancho Department in Honduras, and from his position he denounced, before the corresponding judicial authorities and the media, alleged acts of corruption and illegal exploitation of the forest. He was murdered on May 18, 1998 (CORTE IDH, 2013). The Inter-American Court considered that the right to life, the right to political participation, judicial guarantees and judicial protection, and the right to the integrity of family members were violated. In particular, the State did not act with due diligence to prevent Mr. Luna's death. Another interesting element of this decision is that it mandates the design and implementation of a comprehensive public policy for the protection of human rights and environmental defenders.

In addition, there is the case of Human Rights and others vs. Guatemala, which refers to the fact that on February 20, 2004, Mrs. B.A., a human rights defender, appeared before the Mediation Center of the Judicial Body

of Escuintla to report that she was the victim of threats received from another person. On December 20, 2004, the body of her father and human rights defender A.A. was found on the road with three gunshot wounds. As a result, the Human Rights Defender and the then Mayor of Santa Lucía Cotzumalguapa were informed about acts of intimidation against B.A. and her family by groups of unknown people who were heavily armed and who came at night and fired shots in the vicinity of the family's home. On January 21, 2005, Mrs. B.A. filed a complaint with the Public Prosecutor's Office stating that she was the victim of an alleged attack on January 14, 2005 while traveling in a pick-up vehicle from Santa Lucia Cotzumalguapa to Escuintla. However, B.A.'s case was filed on February 28, 2008 by the Santa Lucia Cotzumalguapa First Instance Court. The IACHR stated that the State is internationally responsible for violating the rights to personal integrity, movement and residence, judicial guarantees and judicial protection, to the detriment of the human rights defender and other members of her family (CORTE IDH, 2014). The joint vote in that judgment establishes the enhanced duty of protection that the state has with respect to the right to life and personal integrity of environmental defenders.

In the case of *Acosta et al. vs. Nicaragua*, March 25, 2017, the IACHR ruled in relation to the attacks that a woman defender may suffer in her family environment. The IACHR said:

The Court considers that in cases of attacks against human rights defenders, States have an obligation to ensure impartial, timely and informal justice, involving a thorough search for all information in order to design and carry out an investigation leading to a proper analysis of the hypothesis of perpetration, by action or omission, at different levels. It has to explore all relevant hypotheses to determine whether these indications could be linked to the reason for the attack, with relevant lines of investigation to identify the perpetrators of a particular act or crime. Considering the actions, it is possible to determine a reprisal for the activities or work of a human rights defender who has been attacked. Investigating authorities should consider the context of the events and such activities in order to identify the interests that could have been affected in the exercise of those events, in order to be able to establish lines of investigation and hypotheses of the crime, as well as to carry out the relevant procedures to determine whether those indications may be linked to the motive of the attack (CORTE IDH, 2017).

In turn, the existence of acts of threats, harassment, unlawful arrests, and criminal prosecutions may have had an intimidating or inhibiting effect on the free and full exercise of freedom of expression (CORTE IDH,

2017).

On the other hand, the case of Digna Ochoa and family vs. Mexico highlights the vulnerability of women defenders who may be subject to discrimination and violence because of their gender, as follows: “The Court also highlights that women human rights defenders face additional obstacles because of their gender, being victims of stigmatization, being exposed to sexist or misogynistic comments, or suffering from the fact that their complaints are not taken seriously. It should also be noted that, as the Special Rapporteur on the situation of human rights defenders noted in a 2019 report, “the threats of violence, including sexual violence, is often used to silence women defenders” and that women defenders “are also at risk of femicide, rape, acid attacks, arbitrary arrest, detention, killings, and enforced disappearances” (CORTE IDH, 2021).

From the jurisprudence analyzed, it is possible to appreciate the high degree of lack of protection that exists for defenders in the exercise of their rights. The responsibility of States has been rooted in their failure to fulfill their duty to guarantee basic rights such as life and physical integrity and access to justice, but there is also a failure to prevent and investigate human rights violations of defenders, thus perpetuating impunity for acts of violence against them. There is no doubt about the transcendence of the role of defenders, especially environmental defenders, in a democratic society, that is why the Escazú Agreement may constitute a normative and interpretative contribution for the protection of this vulnerable group (CALDERÓN-VALENCIA; ESCOBAR SIERRA, 2020).

CONCLUSIONS

Individual freedom and security are a human right of every person, and therefore of environmental defenders. The global context and especially the Latin American diagnosis of the situation of the rights of environmental defenders is worrying, as it ranks first in the world in terms of persecution, harassment, and deaths.

The Chilean case is no exception to the Latin American reality; there are deficiencies in terms of control instruments, norms, and public policies regarding the protection of environmental defenders. Despite this, violence against defenders is a reality in Chile, and it is increasing. It is striking that in areas rich in biotic and non-biotic natural resources, the work to protect the rights of nature is not subject to protection and concern by the States.

These riches are desired by corporations, and the State often prioritizes the exploitation of these resources. As a result, the state, as the main guarantor of rights, is unable to protect them, given the pressures of the market, free trade treaties, etc.

Such a bleak outlook generates the need for environmental defenders, since the work they do is in search of the environment, its resources, and the protection of the ecological balance. There is no doubt about the importance of achieving the preservation of nature, biodiversity, water, land, etc.

The Escazú Agreement is a necessary legal tool for the protection of the rights of environmental defenders, not only because of its adequacy, but also because its standards, in this matter, can achieve the effectiveness of the exercise of rights and provide essential protection. Its suitability lies, on the one hand, in establishing concrete obligations to guarantee the execution of the work they do, guaranteeing spaces free of violence and, on the other hand, its content is a necessary way to combat and eradicate the risks that these people suffer for insisting on the protection of nature.

Besides the criticism from business sectors that it is unnecessary compared to what is established and regulated nationally and that it is dangerous for economic development, it was considered that the benefits of the Agreement outweigh these superficial criticisms. The Escazú regulations are necessary, especially when considering the risks and violations of rights in Latin America. Moreover, it does not impede economic development, but incorporates elements to achieve sustainable development with a focus on rights and, especially, environmental protection, which responds to an adaptation of the standards to the prevailing social reality.

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