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# PROTECTING HUMAN RIGHTS DEFENDERS:

Analysis of the Inter-American Court of Human Right's jurisprudential lines on  
human rights defenders and the right to defend human rights.

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“The Lenca people are ancestral guardians of the rivers, in turn protected by the spirits of the young girls, who teach us that giving our lives in various ways for the protection of the river is giving our lives for the well-being of humanity and this planet. COPINH, walking alongside people struggling for their emancipation, validates the commitment to continue protecting our water, the rivers, our shared resources, and nature in general, as well as our rights as a people. Let us wake up! Let us wake up, humankind! We are out of time!”<sup>1</sup>

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<sup>1</sup> Berta Caceres Acceptance Speech, 2015 Goldman Prize Ceremony, 2015, <https://www.youtube.com/watch?v=AR1kwx8b0ms>.

She was a Lenca indigenous woman who, for the past 20 years, has been defending the territory and the rights of the Lenca people in Honduras. Co-founder of the Consejo Cívico de Organizaciones Indígenas Populares – COPINH (Civic Council of Popular Indigenous Organisations) which led fierce campaigns against megaprojects that violated the land and environmental rights of local communities. Murder on 3 of March 2016.

## ACKNOWLEDGMENT

I take a special moment to write these lines and reflect on the sacrifice and effort that has taken to get to this day. This effort is not only mine but a team effort that, with love and dedication, has brought me to where I am.

I thank the EMA team and the Global Campus for allowing me to fulfill one of my most significant academic and personal dreams, to study human rights and have the opportunity to go outside of Honduras for new experiences. Thanks for trusting and for giving me the merit of a scholarship to study in this great program that is undoubtedly changing my life. Thanks to the professors and my supervisors for this final work because their experiences and advice contributed to the realization of it; they also reminded me what it means to defend human rights, a sacrificed labor for the dignity of people.

I deliver this final work in honor of my family, whose unconditional support has pushed me this far. They, in different ways and being so far away physically, have always pushed me to follow my dreams. Thank you.

And I want to give a unique space to thank my dad, whose memory allows me to always have him by my side and inspire me to follow my goals. Thank you, Mom, and Dad, for all your sacrifices and for believing in me.

Finally, thanks to the special people who accompanied me on the way to this goal.

## ABSTRACT

Protecting Human Rights Defenders is a complex task requiring the State to assure a safe environment to exercise the right to defend human rights freely, including adopting adequate and effective protection measures. This research will analyze the jurisprudential guidelines established by the Inter-American Court of Human Rights to explore the scope of the term human rights defender, and the right to defend humans for compiling standards to implement those measures. The Court has adopted these as guarantees of non-reparation to prevent the commitment of violence against human rights defenders, and consequently strengthen the democratic structure. As it will be discussed, currently the protection strategies implemented in the region so far, are guided by a view of securitization of the right to defend human rights, that limits the risk analysis leaving aside crucial element for the design of the protection strategies, such as the particularities of the defender's identities. The previous makes necessary to contribute to the discussion of the implementation of a broader and critical approach. In that regard, this study would also be done based on reports from international and regional organizations for the protection of human rights and the main debates of civil society organizations and defenders about the protection measures.

Key words: human rights defenders, right to defend human rights, public polices, protection mechanisms.

## LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
HDRs	Human Rights Defenders
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IAHRS	Inter-American Human Rights System
NGO	Non-Governmental Organization
OAS	Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
PI	Protection International
SLAPP	Strategic lawsuit against public participation
UN	United Nations
UNDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly

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## CHAPTER 1

### INTRODUCTION

#### 1.1 Motivation and research objective:

Front Line Defenders verified and investigated 401 deaths of human rights defenders, hereinafter HRDs, from 26 countries around the world. Of those, 72.56% corresponded to the American continent, from which 291 deaths were registered in some countries of Latin America.<sup>2</sup> This figure reflects the problem in the region, which is appropriate to compare it with other data. For example, with the recent publication by Amnesty International, that highlighted concerns regarding the root of the problem.

Amnesty International, reported that in 2022 in Mexico, 13 journalists were murdered, numbers that mark that year as the deadliest in its history for the press in the country, and disclosed, that 3753 women were murdered from which only 947 were investigated as femicides by the State of Mexico.

Additionally, in Central America in 2022, El Salvador established a state of emergency in March. Since then, the government has detained 65,000 persons, an action followed by Honduras, which established the same a few months later. Moreover, in South America, in Peru, 49 people died because of State's repression in the demonstrations in December 2022.<sup>3</sup>

Although these facts can be considered isolated and are insufficient to make up conclusions about all the causes that perpetrate the violence against HRDs in the American region, they still provide initial ideas on the harsh context that people face.

Because of the above, it is not surprising that 25 years after the adoption of the Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, hereinafter Declaration on Human Rights Defenders, the issue of the protection of HRDs is continuously brought up for discussion. Scenarios of violations against HRDs are still present, due to the high levels of risk they face, which are

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<sup>2</sup> Front Line Defenders, "Global Analysis 2022" (Front Line Defenders, April 4, 2023), 5, [https://www.frontlinedefenders.org/sites/default/files/1535\\_fld\\_ga23\\_web.pdf](https://www.frontlinedefenders.org/sites/default/files/1535_fld_ga23_web.pdf).

<sup>3</sup> "Datos y cifras: Los derechos humanos en las Américas en 2022-2023," Amnesty International, March 28, 2023, <https://www.amnesty.org/es/latest/news/2023/03/facts-figures-human-rights-americas-2022-23/>.



not only physical harms that threaten life and integrity but also other fundamental rights that compound those rights. In that sense, it is essential to consider that these violations do not only harm the HRDs but also the community around them.

These scenarios are commonly surrounded by corruption and impunity, making it difficult sometimes to have an answer or reparation by the State due to different factors. These can be lengthy investigations that violate the principle of reasonable time, lack of due diligence, among others. Consequently, for that reason, HRDs and victims raised petitions to the supranational organs for the protection of human rights such as the Inter-American System of Human Rights, hereinafter IASHR, to find what the States has not provided in it.

This dynamic allows particularly the Inter-American Court of Human Rights, after this IACtHR, to decide on issues related to the protection of HRDs and the guarantee of the right to defend human rights. Therefore, these factors have inclined the present research to analyze the jurisprudential guidelines established by the IACtHR on this subject.

The overall purpose of this thesis is to compile and analyze the standards given in the interpretation of some of the judgments of the IACtHR to illustrate how to adopt adequate and effective protection for HRDs, under a broad and critical approach that goes beyond the physical security focus that has been mainly applied so far on the current mechanism and strategies for the protection to the right to defend human rights, present on the Latin American region.

As a starting point, the study intends to take the interrelation and interdependence of the primary State's obligations in human rights, of respect, prevention, and protection; to discuss the guarantees of non-repetition developed by the IACtHR to identify the elements for the protection mentioned above.

This study intends to bring to the discussion and to contribute to the recognition and legitimization of HRDs' work. Also, it intends to remind the urgency of the adequate compliance by States, of the reparations given by the IACtHR and to turn their gaze on the international standards that have been developed to vindicate with these courageous individuals and collective that have given their lives and culture for humanity and the environment.

## 1.2 Methodology:

The present study makes use of an analysis of jurisprudential character regarding the decisions made by the IACtHR in the cases of *Baraona Bray vs. Chile*,<sup>4</sup> *Bedoya Lima et al. v. Colombia*,<sup>5</sup> *Digna Ochoa and family members v. Mexico*,<sup>6</sup> *Escaleras Mejía et al. v. Honduras*<sup>7</sup>, *Human Rights Defender et al. v. Guatemala*,<sup>8</sup> *Kawas-Fernández v. Honduras*<sup>9</sup>, *Leguizamón Zaván et al. v. Paraguay*,<sup>10</sup> *Luna López v. Honduras*,<sup>11</sup> *Sales Pimenta v. Brazil*,<sup>12</sup> *Valle Jaramillo et. al. v. Colombia*,<sup>13</sup> *Velásquez Rodríguez v. Honduras*,<sup>14</sup> *Vicky Hernández et al. v. Honduras*,<sup>15</sup> and, the case of *Yarce at al. v. Colombia*<sup>16</sup>.

The cases are chosen according to a criterion that corresponded to first, because of being countries recognized as high-risk places to be a HRD, such the cases of Colombia, Honduras, Brazil, Mexico, and Guatemala, and that its States has already implemented some strategies of protection.

Second, they represent the landmark rulings of the IACtHR on the matter of protection of HRDs, which have interpreted vital concepts and terminology, such as the term HRD, the interpretation of it and for the right to defend human rights, developing with it the enhanced obligations towards HRDs.

Third, the cases chosen allows to have an overview of the diversity of identities that HRDs can have. Such as personal characteristics like gender and age; their different causes that they struggle for, like women HRDs, LGBTI+ HRDs, environmentalists, economic, social, and cultural rights defenders; and different types of professions and occupations such as a lawyer, journalists, and public servants, among others. The previous, allows to understand the inclusion of the differentiated approach in protection strategies.

Fourth, the cases share similarities regarding the type of guarantees of non-repetition given in those cases.

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<sup>4</sup> Case of *Baraona Bray vs. Chile* (Inter-American Court of Human Rights November 24, 2022).

<sup>5</sup> Case of *Bedoya Lima et al. v. Colombia* (Inter-American Court of Human Rights August 26, 2021).

<sup>6</sup> Case of *Digna Ochoa and family members v. Mexico* (Inter-American Court of Human Rights November 25, 2021).

<sup>7</sup> Case of *Escaleras Mejía et al. v. Honduras* (Inter-American Court of Human Rights September 26, 2018).

<sup>8</sup> Case of *Human Rights Defender et al. v. Guatemala* (Inter-American Court of Human Rights August 28, 2014).

<sup>9</sup> Case of *Kawas-Fernández v. Honduras* (Inter-American Court of Human Rights April 3, 2009).

<sup>10</sup> Case of *Leguizamón Zaván et al. v. Paraguay* (Inter-American Court of Human Rights November 15, 2022).

<sup>11</sup> Case of *Luna López v. Honduras* (Inter-American Court of Human Rights October 10, 2013).

<sup>12</sup> Case of *Sales Pimenta v. Brasil* (Inter-American Court of Human Rights June 30, 2022).

<sup>13</sup> Case of *Valle Jaramillo et. al. v. Colombia* (Inter-American Court of Human Rights November 27, 2008).

<sup>14</sup> Case of *Velasquez Rodriguez v. Honduras* (Inter-American Court of Human Rights July 21, 1989).

<sup>15</sup> Case of *Vicky Hernandez et al. v. Honduras* (Inter-American Court of Human Rights March 26, 2021).

<sup>16</sup> Case of *Yarce at al. v. Colombia* (Inter-American Court of Human Rights November 22, 2016).

Finally, according to the dates of their judgment. It is intended to analyze whether there is an evolution of the interpretation given by the IACtHR through time; given that the oldest case used for this study dates from 2008 and the most recent one dates from 2022.

This analysis will also use reports from bodies such as the IACHR, the Office of the United Nations High Commissioner for Human Rights, and hereinafter OHCHR, which are a main source of information due to the jurisprudence dictated on the subject. Reports from organizations worldwide working on the monitoring and protection of HRDs, and literature developed on the subject are also used.

### 1.3 Outline of the research:

This study has five chapters, each focusing on different areas regarding critical elements that will guide the discussion on protecting human rights defenders.

The second chapter offers a conceptual framework of whom are the HRDs, according to the main elements developed by the international system of protection and discusses some implications that the definition of the term could have on protection strategies. It also highlights the importance of the work done by HRDs, their role in the preservation of democracy in the Americas as well as their role in the protection of human rights. Likewise, it analyzes the conceptual and legal framework concerning the right to defend human rights; its discussion contains the analysis of the tendency that international human rights organs are proposing regarding the configuration of the autonomy of such rights.

The third chapter offers an overview of the current context in which HRDs perform their tasks in the Latin-American region, as well as a brief overview of the protection mechanisms in the Americas and some opinions of civil society regarding their functioning, considering their experiences and knowledge of the local realities on how such norms and strategies designed respond to the HRDs necessities of protection.

The fourth chapter offers an analysis of the State's general obligation on human rights that are reinforced in the cases of HRDs, also considering the guarantees of non-repetition given by the IACtHR to comply with them and that contains in its development the standards on adequate and effective protection for HRDs.

Finally, the conclusions seek to summarize the main discussions in each chapter and propose the common elements that all protection strategies must have. It also intends to give recommendations to encourage the analysis of elements that could enhance the protection of HRDs.

## CHAPTER 2

# HUMAN RIGHTS DEFENDERS AND THE RIGHT TO DEFEND HUMAN RIGHTS

### 2.1 Who are the human rights defenders?

States have adopted different ways to protect and prevent violations of the right to life and personal integrity of HRDs. Nevertheless, one of the most essential actions that States have agreed to protect human rights defenders was the adoption of the Declaration on human rights defenders.<sup>17</sup>

In this Declaration, the United Nations General Assembly, hereinafter the UNGA, recognized the right to promote, respect for, and foster knowledge of human rights and fundamental freedoms at national and international levels.<sup>18</sup>

The history of the Declaration on human rights defenders involved almost two decades of discussions and different historical events that influenced the text on how it is known today. One of the first steps in adopting these instruments was the adoption of Resolution 1980/23 in the 36th session of the Commission on Human Rights of the United Nations.<sup>19</sup>

This resolution took place during a context in which the Commission was updating its role and functions to adapt to the needs of the time. Also, during that time, some States' delegations were arguing that the direct guarantee of human rights of citizens was the primary responsibility of States and pointed out the proposals to establish supranational organs could lead to interference in the internal affairs of States. For them, to delegate this function was contrary to the United Nations Charter, undermining international cooperation in promoting and encouraging respect for human rights and

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<sup>17</sup> General Assembly of the United Nations, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," Pub. L. No. A/RES/53/144 (1998), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>.

<sup>18</sup> General Assembly of the United Nations, sec. preamble.

<sup>19</sup> Commission on Human Rights, "Resolution 1980/23 Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission: Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms," Pub. L. No. E/1980/13 E/CN.4/1408 (n.d.), <https://digitallibrary.un.org/record/36236>.

fundamental freedoms and disputing the existing system of representative bodies in this field in the United Nations.<sup>20</sup>

This resolution gave three key directions on the matter of the protection of HRDs. First, it re-emphasized the call of the Universal Declaration on Human Rights, after this UNDHR, to all individuals and all organs of society to strive by teaching an education that promotes respect for the rights and freedoms contained in that instruments. Second, it appealed to governments to encourage and support individual and organs of society exercising their rights and responsibilities, to promote the effective observance of human rights without prejudice; and third, emphasized that unlawful limitations or persecution of anyone exercising his human rights and fundamental freedoms is at variance with the obligations of States under these instruments to work for the full and effective enjoyment of human rights and fundamental freedom.<sup>21</sup>

At that moment, the task to examine the question of the individual's duties to the community and their limitation on human rights and freedom, according to article 29 of the UNDHR, was given to the Sub-commission on Prevention of Discrimination and Protection of Minorities.

As noticed from the Report of the 36th Commission of Human Rights' session, crucial discussions were happening at that time. Moreover, as compiled by Janika Spannagel, during these negotiations, events such as the collapse of the Soviet Union, the fall of dictatorships in Latin America, and the apartheid regime in South Africa were occurring. These events influenced some of the State's resistance to the proposal of the adoption of an instrument of HRDs, especially since the issue of perceiving the human being as the subject of international law was still under discussion, which was a disadvantage in the process of discussion.<sup>22</sup>

The position of the Democratic Republic of Germany in the sessions of 1986 was remarked. Their representation rejected the human being as a subject of international law and reiterated that human rights issues should be governed under the principle of sovereignty of States and non-interference in national affairs. On the other hand, the positions of Canada and Norway, were also

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<sup>20</sup> Commission on Human Rights, 73.

<sup>21</sup> Commission on Human Rights, 184–85.

<sup>22</sup> Janika Spannagel, "Declaration on Human Rights Defenders (1998)," Quellen Zur Geschichte der Menschenrechte, November 2017, <https://www.geschichte-menschenrechte.de/en/hauptnavigation/schluesstexte/declaration-on-human-rights-defenders-1998/>.

remarked, because when submitting the first draft of the instrument, both gave special attention to the rights and protection of defenders as individual subjects rather than the rights of States.<sup>23</sup>

For Spannagel, all these positions changed as political events unfolded, making the process very lengthy, which generated some non-governmental organizations; from now on NGOs, by 1990, wanted to withdraw from the process, as they were starting to be perceived it as hopeless. Throughout the negotiation, States needed to be reminded that the topic of discussion was about HRDs and not States.<sup>24</sup>

However, despite some unresolved controversies, an agreement was finally reached; nevertheless, after the adoption of the instrument, a group of 26 countries led by Egypt published an Interpretative Declaration, which emphasized the primacy of national law over international principles and announced that “various cultural, religious, economic and social background of societies must have been taken into account.”<sup>25</sup>

While this document reaffirmed that those countries did not oppose the consensual adoption of the Declaration, the message suggests decreasing the expectations regarding the Declaration’s implementation. The above contributed to the impact of the Declaration on Human Rights that it was different from the UNDHR. Nonetheless, NGOs embraced the Declaration and set it as the strict minimum standard regarding the right to defend human rights and triggered with it the expansion of defenders’ support systems, pushing with this for the strengthening and establishment of institutional changes in the United Nations’ system. An example of it was the appointment of a Special Rapporteur on the situation of human rights defenders.<sup>26</sup> Hina Jilani was the first Special Rapporteur appointed by the Secretary General of the UNGA, Kofi Annan, in 2000.

Also, all this discussion influenced the content of the Declaration of 1998, even from the definition of the concept of HRD. As explained, some countries’ positions, for example, the one of the members of the Soviet Union, argued that the instrument should not support the resistance of individuals against the State and that the exceptions of it were in the “cases of colonial, racists or repressive regimes.”<sup>27</sup>

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<sup>23</sup> Spannagel.

<sup>24</sup> Spannagel.

<sup>25</sup> Spannagel.

<sup>26</sup> Spannagel.

<sup>27</sup> Spannagel.

The Declaration on human rights defenders, as said, refers to the right to promote and strive to protect human rights; however, it does not use the term HRD in its words.<sup>28</sup> It is perceived that it transmits an open concept, leaving the understanding that there is no closed definition with requirements of who can be a human rights defender and, on the contrary, gives the possibility to everyone to be one. No matter how diverse the tasks or actions that the individual or group are carrying out. After adopting the Declaration in 1998, the term was commonly used, in moments, as a synonym for terms like activists, human rights workers, among others.

Nonetheless, the concept has been clarified through time; for instance, in 2004, the OHCHR launched Fact Sheet No. 29, which clarified the term HRD, as a common term that has been increasingly used. There, the term is described as the people who, individually or with others, act to promote or protect human rights; the characteristic of the work undertaken by them, and its contexts, are the two elements that will define them as HRDs.<sup>29</sup>

The OHCHR considers the task of defining the term HRDs as a complex issue, for what has developed a common standard of three elements to which the labor of defense should respond. This includes first the acceptance of the universality of human rights as in the UNDHR; second, the validity of the arguments, which is critical test is whether the person is defending a human right or not, and whether their concerns fall within the scope of human rights; and third, that their actions should be carried out peacefully.<sup>30</sup>

On a more regional level, in the Inter-American norms, the only instrument that directly refers to the term is the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the Escazu Agreement.<sup>31</sup> This recently adopted instrument, is the first instrument that generates legal obligations for signatory countries regarding the protection of HRDs and their right to get access to public information. This instrument defines environmentalist's defenders, as the person, groups and organizations that promote

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<sup>28</sup> General Assembly of the United Nations, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 1.

<sup>29</sup> Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights, by OHCHR (2004).

<sup>30</sup> OHCHR, *supra* note 27 at 9–10.

<sup>31</sup> Economic Commission for Latin America and the Caribbean (ECLAC), “Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean,” March 4, 2018, [https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf).



and defend human rights in environmental matters and establishes the State obligation to guarantee a safe and enabling environment for them to be able to act free from threat, restriction, and insecurity.<sup>32</sup>

On its part, the IACHR, following the mandate given by the General Assembly of the Organization of American States, hereafter OAS, in its statutes<sup>33</sup>, within its reporting activities, has stated that a HRD is one who in any way promotes or seeks the realization of human rights and fundamental freedoms recognized at the national or international level.<sup>34</sup> This broad definition covers a diversity of professional activities, or personal or social struggles occasionally linked with the defense of human rights. At the same time, factors such as receiving remuneration for their work or belonging to a civil organization do not influence whether a person should be considered an HRD.<sup>35</sup>

Also, in similar terms, the IACtHR has agreed in the attribution of the term HRDs by the activities or labor the person does as the main criteria to be considered, reaffirming the breadth and flexibility of the characteristic of the concept of HRDs.<sup>36</sup>

It can be said that HRDs' identities are diverse, since they can be of any gender, different age, and diverse backgrounds. HRDs can be chasing a personal battle for justice, a professional objective, whether they do it or not on a temporal or permanent basis; indeed, it is any individual who, individually or in association with others, promotes or seeks to realize human rights and fundamental freedoms at the local, national, or international levels.<sup>37</sup>

The IACtHR has interpreted various judgments concerning human rights violations to HRDs, and it assimilates some aspects into the interpretation given by the OHCHR. First, the IACtHR has remarked that the characteristic of an HRD resides in the type of labor that the person is doing,<sup>38</sup>

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<sup>32</sup> Economic Commission for Latin America and the Caribbean (ECLAC), Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (2018) art 9.

<sup>33</sup> General Assembly of the Organization of American States, "Statute of the Inter-American Commission on Human Rights," 1979, art. 18, <http://www.cidh.org/basicos/english/basic17.statute%20of%20the%20commission.htm>.

<sup>34</sup> Inter-American Commission on Human Rights, "Norte de Centroamérica: Personas defensoras del medio ambiente," December 16, 2022, para. 31, [https://www.oas.org/es/cidh/informes/pdfs/2023/NorteCentroamerica\\_MedioAmbiente\\_ES.pdf](https://www.oas.org/es/cidh/informes/pdfs/2023/NorteCentroamerica_MedioAmbiente_ES.pdf).

<sup>35</sup> Inter-American Commission on Human Rights, para. 31.

<sup>36</sup> Case of Luna López v. Honduras paragraph 122.

<sup>37</sup> Inter-American Commission on Human Rights, *Towards Effective Integral Protection Policies for Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 207/17, 2017, para. 26, <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/r/dddh/default.asp>.

<sup>38</sup> Case of Luna López v. Honduras paragraph 122; Case of Human Rights Defender et al.v. Guatemala paragraph 129; Case of Baraona Bray vs. Chile paragraph 70.

reaffirming that an international consensus exists about which are the activities of the HRDs. Among them, and that their activities must be realized in a peaceful way.<sup>39</sup>

Second, that permanence is not a rule. For the IACtHR, the activities of promotion and protection of rights can be temporary. In the case of *Baraona Bray v. Chile*, it has been said that those activities can be exercised intermittently or occasionally, meaning that the quality of HRDs is not necessarily a permanent condition.<sup>40</sup> Like in the case of *Human Rights Defender v. Guatemala*, where the IACtHR stated that Mr. A.A. was a human rights defender both before his exile in Mexico and after his return to Saint Lucia, and at the time of his death.<sup>41</sup> Moreover, in the same case, referred that Ms. B.A. actively promoted trade union rights and the right to the truth and carried out activities to promote women's rights between 2004 and 2006.<sup>42</sup>

As the third element, the IACtHR remarks that defense activities are not limited to certain rights, as mentioned *ut supra*. Therefore, these Tribunal has emphasized that the defense of human rights is not only concerned with civil and political rights but also with economic, social, and cultural rights under the principles of universality, indivisibility, and interdependence recognized in inter-American instruments such as the American Declaration of the Rights and Duties of Man, the American Convention, and the Inter-American Democratic Charter.<sup>43</sup>

Bringing back the Case of *Baraona Bray v. Chile*, one of the most recent cases ruled, the Tribunal recognizes that the categorization of HRD is extensive and flexible according to the nature of the activity it performs. With this interpretation, it is established that any person who carries out an activity of promotion and defense of a human right and calls himself as such or has social recognition of his or her defense must be considered a defender.<sup>44</sup> This interpretation gives specific guidelines relevant to the present discussion, especially when designing protection plans or measures to be implemented. This statement reaffirms the line that the IACtHR has been following with respect that someone can be an HRD independently, regardless of whether the person doing so is a private individual or a public official.<sup>45</sup>

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<sup>39</sup> Case of *Human Rights Defender et al.v. Guatemala* paragraph 129.

<sup>40</sup> Case of *Human Rights Defender et al.v. Guatemala* paragraph 129.

<sup>41</sup> Case of *Human Rights Defender et al.v. Guatemala* paragraph 131.

<sup>42</sup> Case of *Human Rights Defender et al.v. Guatemala* paragraph 132.

<sup>43</sup> Case of *Kawas-Fernández v. Honduras* paragraph 147.

<sup>44</sup> Case of *Baraona Bray vs. Chile* paragraph 71.

<sup>45</sup> Case of *Luna López v. Honduras* paragraph 122.

By the above interpretation is that we can identify HRDs such as lawyers like Gabriel Sales Pimenta,<sup>46</sup> journalists and social communicators like Jineth Bedoya<sup>47</sup> and Santiago Leguizamón<sup>48</sup>, and others, as mentioned by the UN Special Rapporteur, that have increased risk because of who they are or what they defend<sup>49</sup>, such as women human rights defenders, like Digna Ochoa<sup>50</sup>, LGBTI defenders like Vicky Hernández<sup>51</sup>, and the environmentalist defenders like Carlos Escaleras,<sup>52</sup> Jeannette Kawas Fernández<sup>53</sup>, and Carlos Luna Lopez<sup>54</sup>, among others.

For that reason, an evaluation case-by-case must be used whenever a situation of risk and protection of HRDs happens or the exercise of the right to defend human rights is being evaluated since the amplitude of the definition makes it necessary.<sup>55</sup>

On the other hand, this broad concept may represent some obstacles since its notion of being inclusive could become something exclusionary due the flexibility in the configuration of the elements proposed by the OHCHR, especially when creating accurate and adequate protection measures for the defenders.<sup>56</sup>

In this regard, organizations such as Protection International, hereinafter PI, have discussed that a global narrative can promote a single and abstract concept of defenders, which does not reflect the diverse realities and contexts of them.<sup>57</sup> Therefore it proposes a critical approach to the right to defend human rights. For them, the definition of HRDs must start from a relational understanding that defenders “are key interlocutors in the diffusion of human rights norms from global spaces to local

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<sup>46</sup> Case of Sales Pimenta v. Brasil paragraph 1.

<sup>47</sup> Case of Bedoya Lima et al. v. Colombia paragraph 1.

<sup>48</sup> Case of Leguizamón Zaván et al.v. Paraguay paragraph 1.

<sup>49</sup> Special Rapporteur on the situation of human rights defenders, supra note 8 at para 16.

<sup>50</sup> Case of Digna Ochoa and family members v. Mexico paragraph 1.

<sup>51</sup> Case of Vicky Hernandez et al. v. Honduras paragraph 1.

<sup>52</sup> Case of Escaleras Mejía et al. v. Honduras paragraph 1.

<sup>53</sup> Case of Kawas-Fernández v. Honduras paragraph 1.

<sup>54</sup> Case of Luna López v. Honduras paragraph 1.

<sup>55</sup> Inter-American Commission on Human Rights, supra note 19 at para 30.

<sup>56</sup> Luis Enrique Eguren Fernández & Champa Patel, “Towards developing a critical and ethical approach for better recognizing and protecting human rights defenders” (2015) 19:7 *The International Journal of Human Rights* 896–907 at 896–207.

<sup>57</sup> Protection International, “Critical Approach to The Right to Defend Human Rights,”

<https://www.protectioninternational.org/researchpublications/the-right-to-defend-human-rights-from-a-critical-approach/>.

realities,”<sup>58</sup> that facilitated through networks and “experiences that are grounded in dense relationships within particular political, social and cultural specificities”.<sup>59</sup>

For PI, no doubt recognizing the right to defend human rights grants legitimacy to the work of HRDs; however, they stand that more than a formal recognition, what is needed is the compliance by the State’s actors of these international standards on protection and guarantee. Considerably, structural relations of domination, discrimination, and power have influenced through time the work of the HRDs, especially at the time of support and compliance with the international norms set for their protection of them. In this regard, PI has reflected on the elements configured by the OHCHR in Fact Sheet No. 29, which are commonly followed since there is no formal qualification for the term.

For Eguren and Patel,

these three requirements offer an implicit code of ethics for defenders and in practice this is the usual interpretation they receive. However, this poses a contradiction between having a loose definition of who can be a human rights defender (based on their actions as and when they occur) and the requirement that a defender should meet all three strands delineated above (or at least not be inconsistent in always doing so).<sup>60</sup>

The previous could lead to numerous difficulties in trying to apply the criteria to the lived experience of human rights work because somehow requires that HRD should meet all those three standards, or at least not be inconsistent in always doing so.

First, concerning the element of the acceptance of the universality of human rights, PI identified that not all defenders could advocate for all human rights fairly and equitably, so it should not impose legal language on groups that do not usually use those terms. For what it proposes that universality can be built on the logic that all the rights are for all.

Second, for PI, the criteria of peaceful actions can be diverse since it depends on a whole lecture on the social, political, and cultural contexts, depending on how concepts of peaceful action and

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<sup>58</sup> Luis Enrique Eguren Fernández & Champa Patel, “Towards developing a critical and ethical approach for better recognizing and protecting human rights defenders” (2015) 19:7 *The International Journal of Human Rights* 896–907 at 898.

<sup>59</sup> Eguren Fernández & Patel, *supra* note 34 at 900.

<sup>60</sup> Luis Enrique Eguren Fernández and Champa Patel, “Towards Developing a Critical and Ethical Approach for Better Recognising and Protecting Human Rights Defenders,” *The International Journal of Human Rights* 19, no. 7 (October 3, 2015): 5 and 6, <https://doi.org/10.1080/13642987.2015.1075302>.

violence evolve and change. For this, it is essential to consider that governments sometimes use the qualification of violence to justify repression. PI, in this element, proposes that the focus should be to determine or identify whether the action is intended to harm or not and whether it causes direct harm within the context.<sup>61</sup>

On this element, it is essential to recall that the IACtHR has been pointing out the practices that public officials do of addressing the national courts to file libel or slander suits to silence criticism of their actions, threatening freedom of expression and constitute an abusive of the mechanisms and powers; this figure is identified as Strategic Lawsuits Against Public Participations, known as SLAPP.<sup>62</sup> The UN Human Rights Council has also expressed concern about the strategic use of the courts against public participation to pressure journalists and prevent them from critical and investigative reporting.<sup>63</sup>

Lastly, for the element whether who is right or wrong, PI remarked on the differences in political, economic, social, and cultural struggles that give defenders different points of view; HRDs should not be expected to be neutral or impartial on their causes.<sup>64</sup>

Eguren and Patel stated that HRDs are agents of change, and their work shapes and is shaped by other structures, norms, and practices that promote or oppress human rights, making it necessary to understand their diverse and multifaceted work.<sup>65</sup> When analyzing HRDs practices in context rather than only through human rights principles and commitments, better and more nuanced discussions on their protection need will be held to apply those mechanisms better.

## 2.2 The importance of the labor of human rights defenders:

Adopting the Declaration on human rights defenders, States acknowledged the valuable work that HRDs do in “contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals”.<sup>66</sup>

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<sup>61</sup> Protection International, “Critical Approach to The Right to Defend Human Rights.”

<sup>62</sup> Case of Baraona Bray vs. Chile, *supra* note 30 at para 91; Case of Palacio Urrutia v Ecuador, 2021 Inter-American Court of Human Rights.

<sup>63</sup> Human Rights Council, The safety of journalists: draft resolution (2020) , s preamble.

<sup>64</sup> Protection International, “Critical Approach to The Right to Defend Human Rights.”

<sup>65</sup> Luis Enrique Eguren Fernández and Champa Patel, “Towards Developing a Critical and Ethical Approach for Better Recognising and Protecting Human Rights Defenders,” *The International Journal of Human Rights* 19, no. 7 (October 3, 2015): 5, <https://doi.org/10.1080/13642987.2015.1075302>.

<sup>66</sup> General Assembly of the United Nations, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, sec. annex.

This acknowledgment underlines the HRDs crucial role in society and contributes to:

the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.<sup>67</sup>

The labor of HRDs has played a fundamental role in advancing the protection, promotion, and realization of human rights and fundamental freedoms worldwide. Throughout history, social and political movements led by them have contributed to the development of international, regional, and national instruments that proclaim human rights; also, they have played a crucial role as instruments in achieving liberties, establishing democracies, overthrowing dictatorships, and serving as an inspiration of hope for those still unable to realize their rights fully.

As discussed, human rights, as enjoyed today, are a consequence of the conquest of social and political movements pushed by HRDs from civil society or as public servants. HRDs' activities are circumscribed in strengthening democracy and the rule of law, which are central pillars of the political and regional organizations globally. For that instance, the UNGA and the OAS have recognized and endorsed their task highlighting their contribution to the promotion, respect, and protection of fundamental rights in the continent,<sup>68</sup> pushing more in the role of HRD in a democratic society.<sup>69</sup>

In addition, the IACHR and the IACtHR consider HRDs as a critical piece to for the execution of their mandate since human rights defenders provide the basis of information for these organs, which facilitates the monitoring of human rights in the Americas. In that sense, HRDs are considered a reliable source of information for the IAHRs since at the local levels HRDs are the ones closer to the realities and the critical situations of violations of human rights. Their activities of monitoring,

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<sup>67</sup> General Assembly of the United Nations, sec. annex.

<sup>68</sup> Case of Baraona Bray vs. Chile paragraph 75.

<sup>69</sup> Inter-American Commission on Human Rights, Basic Guidelines for Investigating Crimes against Human Rights Defenders in the Northern Triangle, OEA/Ser.L/V/II.Doc.110/21, 2021, para. 1, <https://www.oas.org/en/IACHR/jsForm/?File=/en/IACHR/r/dddh/InformesAnuales.asp>.

reporting, and education contribute to the observance of human rights. The IACtHR has stated that their role complements not only States but also the IAHRs.<sup>70</sup>

In the Advisory Opinion OC-8/87 the IACtHR referred to this subject and stated that:

In a democratic society, the rights, and freedoms inherent to the person, their guarantees and the rule of law constitute a triad, each of whose components is defined, completed and acquires meaning in the function of the others.<sup>71</sup>

For the above, when discussing democracy, HRDs are impossible to remove from the discussion. Since they are the link of that triad mentioned by the IACtHR; they push for rights, to win and maintain them, through the guarantees that were previously conquest to maintain the rule of law as if it was an infinite cycle.

The jurist Marta González Domínguez discusses the existence of “an intrinsic relationship between human rights, their guarantee, and democracy, insofar as the former develop and consolidate within the framework of its system, while at the same time establishing its margins by limiting it through the effective exercise of those rights”<sup>72</sup>, this reveals the importance of the defenders in the communities since it resides in the substantial dimension of democracy, which is the one subject to the constitutional principles and relates its content with the norms created by the political power in such a way that their substantial validity is conditioned to the guarantee of fundamental rights.<sup>73</sup>

The jurisprudence of the IACtHR has emphasized the importance of recognizing the work of defenders, especially environmental defenders, for whom it has been of particular importance, emphasizing that States must create legal and factual conditions for the exercise of defense.<sup>74</sup> In addition, these recognitions take on greater importance in countries with a growing number of

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<sup>70</sup> Case of Valle Jaramillo et. al. v. Colombia paragraph 88.

<sup>71</sup> Advisory Opinion OC-8/87: Habeas Corpus in emergency situations (arts. 27(2), 25(1) and 7 (6) American Convention on Human Rights) (Inter-American Court of Human Rights January 30, 1987).

<sup>72</sup> Marta González Domínguez, “El Derecho a Defender Los Derechos Humanos Como Un Derecho Autónomo,” n.d., 112, <https://www.corteidh.or.cr/tablas/r35519.pdf>.

<sup>73</sup> González Domínguez, 111–12.

<sup>74</sup> Case of Baraona Bray vs. Chile, supra note 53 at para 78; Case of Valle Jaramillo et. al. v. Colombia, supra note 100 at para 87.

complaints of threats, violence, and murders of environmental defenders because of the exercise of their work.<sup>75</sup>

In that regard, HRDs' labor serves as a mechanism to ensure that governments act and follow human rights principles, accountability, and the rule of law. In this case, HRDs are guardians of it, for they can act as essential checks and balances on the power of the State. Consequently, this fundamental role in society, when HRDs are being attacked or violated of their rights, those acts directly impact the rest of society. This result is known as the chilling effect, which is the inhibiting or intimidating effect, that limits the exercise of the right to the society because of the fear as a result of a violation of human rights such as the right to life against a human right defender.<sup>76</sup> For example, in the Case of Jesús María Valle v. Colombia, the IACtHR observed that his death had a chilling effect in an individual and collective scope. First, because “the fear caused by such an event could directly diminish the possibilities for such persons to exercise their right to defend human rights through denunciation”.<sup>77</sup>

Second, since most of these attacks and deaths are mostly covered by the impunity of the responsible for those acts, this situation prevents society “from knowing the truth about the situation of respect for or violation of the rights of persons under the jurisdiction of a given State”.<sup>78</sup>

Additionally, as known, this effect would have repercussions on the levels of impunity. For instance, the IACtHR, in the case of Jineth Bedoya Lima v. Colombia, identified that the “impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims and their next of kin.”<sup>79</sup> And one of the experts in the trial, Michel Forst, former UN Special Rapporteur on the situation of human rights defenders, stated that the “impunity also reinforces the culture of self-censorship and the internal displacement of journalists. When journalists stop investigating certain actors or certain areas for fear of reprisals, corruption, and violence continue unabated”.<sup>80</sup>

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<sup>75</sup> Case of Luna López v. Honduras paragraph 123.

<sup>76</sup> Case of Valle Jaramillo et. al. v. Colombia paragraph 96.

<sup>77</sup> Case of Valle Jaramillo et. al. v. Colombia paragraph 96.

<sup>78</sup> Case of Valle Jaramillo et. al. v. Colombia paragraph 96.

<sup>79</sup> Case of Bedoya Lima et al. v. Colombia paragraph 151.

<sup>80</sup> Case of Bedoya Lima et al. v. Colombia paragraph 151.



### 2.3 About the right to defend human rights:

The right to defend human rights have been defined by the IACHR in its report about the Situation of human rights defenders in the Americas of 2006, as the possibility of every person “to promote and protect any or all of the human rights, including both those whose acceptance is unquestioned, and new rights or components of rights whose formulation is still a matter of debate.”<sup>81</sup> The observance of human rights is not subject to geographical restriction, meaning that its exercise must be guaranteed under domestically and internationally jurisdiction.<sup>82</sup>

This right requires the involvement of different rights at the same time. For example, the possibility of accessing information about the administration of the States, the right to participate in the judicial activities to be able to form an opinion regarding the implementation of legal provisions and international obligations, among others. Thus, it also includes the right to protest before policies and practices of public officials or private actors that are committing violations of human rights, the exercise of the right to petition, the right to seek the adequate protection in national and international systems, the right to oppose to any activity that threatens human rights, the right to share ideas and opinion, the right to accompany victims, communities in their search for truth and justice, among others.<sup>83</sup>

Along the same lines, in the case of Carlos Escaleras Mejía, an Honduran environmentalist defender, founder and president of an organization that denounced and opposed the activities of certain companies that damaged the environment and the ecosystem, who was murdered on October 18, 1997 as a result of his labor of defense;<sup>84</sup> the IACtHR declared the State of Honduras responsible for the violation of his rights to life, right to association, and political rights, and his family rights to personal integrity, judicial guarantee, judicial protection.<sup>85</sup> Interpreting in that sense, that the right to defend human rights is broad according to the specific context in which it is involved.

On that sense the IACtHR added in that judgment that:

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<sup>81</sup> Inter-American Commission on Human Rights, “Report on the Situation of Human Rights Defenders in the Americas,” OEA/Ser.L/V/II.124 Doc. 5 rev. 1, March 7, 2006, para. 36, <https://www.cidh.oas.org/countryrep/Defenders/DEFENDERS.ENGLISH.pdf>.

<sup>82</sup> Inter-American Commission on Human Rights, para. 36.

<sup>83</sup> Inter-American Commission on Human Rights, paras. 37–40.

<sup>84</sup> Case of Escaleras Mejía et al. v. Honduras paragraph 67.

<sup>85</sup> Case of Escaleras Mejía et al. v. Honduras paragraph 110.3, 110.4.

Without prejudice to their recognition, the Inter-American norms existing to date do not establish a single right that guarantees the work of promoting and protecting human rights. On the contrary, they establish components of multiple rights whose guarantee allows the work of defenders to materialize.<sup>86</sup>

This highlights the close relationship of the right to defend human rights with the exercise of different rights such as the ones established in the American Declaration of the Rights and Duties of Men and the American Convention on Human Rights, from now on ACHR. For what the realization of those other rights is the vehicle for the realization of the right to defend rights. This implies that an aggression made against a defender in the scope of his or her labor implies multiple violations of rights recognized in the Inter-American norms, for what it has pronounced for the protection of the activity of defense and promotion of human rights concerning the other rights of the persons that exercise it.<sup>87</sup>

In this discussion, the Tribunal highlights the relationship between other political rights, freedom of expression, right to assembly, and liberty of association because they are of essential importance within the inter-American system as they are closely interrelated to enable the democratic game.<sup>88</sup>

In the same way, it stressed in previous judgments that the defense of human rights not only attends specific group of rights, as discussed before, they entail this relationship under the principles of universality, indivisibility, and interdependence recognized in the American Declaration of the Rights and Duties of Man, the ACHR, the Inter-American Democratic Charter and by its jurisprudence.<sup>89</sup>

This interpretation reaffirms what, in recent cases, the Court determined, in regard of the labor of defense, about being extensive and flexible,<sup>90</sup> since it must also be under the principle of the evolving interpretation of human rights instruments, that has given new contexts and new necessities of protection of the dignity and fundamental freedoms of all, the IACtHR has shown broader protection of rights in its jurisprudence, that are outside of the Inter-American human rights instruments.

In the *Acosta et al. v. Nicaragua* Case of 2017, the representatives asked the IACtHR to declare the responsibility for violating the right to defend human rights as an autonomous right. However, it

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<sup>86</sup> Case of *Escaleras Mejía et al. v. Honduras* paragraph 60.

<sup>87</sup> Case of *Escaleras Mejía et al. v. Honduras* paragraph 60.

<sup>88</sup> Case of *Escaleras Mejía et al. v. Honduras* paragraph 61.

<sup>89</sup> Case of *Kawas-Fernández v. Honduras* paragraph 147.

<sup>90</sup> Case of *Baraona Bray vs. Chile* paragraph 71.

decided that this right must be understood within the interpretation of the violations of the right established in articles 8 and 25 of the American Convention.<sup>91</sup>

In a more recent judgment in the Case of Digna Ochoa v. Mexico, the representatives argued that the State of Mexico failed to comply with its obligation to guarantee the right to defend the human rights of Mrs. Digna Ochoa.<sup>92</sup> In its partial recognition of international responsibility, the State of Mexico did not include this controversy, for which it filed the preliminary objection of *ratione materiae* considering the IACtHR incompetent to hear the alleged violation of the right to defend human rights as an autonomous right, and considered that is not a right included among the rights expressed in the American Convention that the IACHR or the representatives alleged<sup>93</sup>. However, the IACtHR observed that this right alleged by the representatives is related to the rights to life, personal integrity, freedom of expression, association, judicial guarantees, and judicial protection, which are contained in the American Convention and part of the material competence of the IACtHR and analyzed with them along the judgment. Therefore, the IACtHR rejected the preliminary exception and did not analyze its violation autonomously.<sup>94</sup>

In that respect, some scholars conclude that the IACtHR does not give a legal qualification to the right to defend human rights since it analyzes it in the light of the circumstances present in the specific case since it responds to the importance that the unrecognized right represents for the corpus jure of international human rights law. Moreover, they propose that it must be analyzed independently and autonomously, given the right's relevance in democracy, and that the ACHR and the whole IAHRs are very well protected.<sup>95</sup>

In this sense, the right to defend human rights implies the existence and guarantees of certain legal and factual preconditions in which the role of defenders can be freely performed,<sup>96</sup> which requires a strengthened level of protection, starting with the primary obligations of respect and guarantee according to articles 1.1 and 2 of the American Convention of Human Rights, as essential presuppositions of the human person's existence.

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<sup>91</sup> Case of Acosta et al v. Nicaragua (Inter-American Court of Human Rights March 25, 2017).

<sup>92</sup> Case of Digna Ochoa and family members v. Mexico paragraph 95.

<sup>93</sup> Case of Digna Ochoa and family members v. Mexico paragraph 26.

<sup>94</sup> Case of Digna Ochoa and family members v. Mexico paragraph 34.

<sup>95</sup> González Domínguez, "El Derecho a Defender Los Derechos Humanos Como Un Derecho Autónomo," 139.

<sup>96</sup> Case of Baraona Bray vs. Chile paragraph 79.

Consequently, the exploration of the autonomy of the right to defend human rights could present an opportunity to examine its potential for enhancing the protection of HRDs, and their labor of defense. As discussed, the continued advocacy of the IACHR in this matter, could eventually end in establishing the recognition of the autonomy of this right, within the jurisprudence of the IACtHR, as the interpretation of the right to truth for example.

## CHAPTER 3

# BACKGROUND OF THE HUMAN RIGHTS DEFENDERS IN THE AMERICAS AND THE CURRENT WAYS OF PROTECTION

### 3.1 Human Rights Defender's contexts in Latin America:

As known, HRDs have positioned themselves with courage and persistence. As individuals or in networks, they advocated for communities to be more inclusive and closer to social justice and guarantors of human dignity.<sup>97</sup> HRDs have been present at different times throughout history, actively confronting its consequences, combating discrimination, and advocating for democracy.<sup>98</sup>

Unfortunately, HRDs, in advocating for the protection of human rights, confront themselves the risk of being victims of human rights violations.<sup>99</sup> Most of the time, they confront the risks in contexts of structural violence that involve corruption, gender-based violence, extractivism, violence perpetrated by organized crimes, and para-militarism, among others.

For that reason, the IACHR has verified the existence of various practices and acts that hinder or nullify the exercise of HRDs;<sup>100</sup> and has continuously reported the reprisals and undue restrictions that human rights defenders have faced due to their work in the Americas.<sup>101</sup>

On February 21, 2023, the IACHR condemned the murder of 126 human rights defenders in the Americas in 2022 and remarked that Colombia registered more murders in that period, followed by Brazil, Mexico, Honduras, Guatemala, and Peru.<sup>102</sup>

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<sup>97</sup> Mary Lawlor Special Rapporteur on the situation of human rights defenders, “Success through Perseverance and Solidarity: 25 Years of Achievements by Human Rights Defenders” (UN Human Rights Council, December 21, 2022), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F52%2F29&Language=E&DeviceType=Desktop&LangRequested=False>.

<sup>98</sup> CEJIL, “Guía Para Defensoras y Defensores de Derechos Humanos. III Edición. La Protección de Los Derechos Humanos En El Sistema Interamericano.” (Centro por la Justicia y el Derecho Internacional, February 2023), 10, <https://cejil.org/publicaciones/guia-para-defensores-y-defensoras-de-derechos-humanos/>.

<sup>99</sup> Inter-American Commission on Human Rights, “Report on the Situation of Human Rights Defenders in the Americas,” para. 149.

<sup>100</sup> Inter-American Commission on Human Rights, para. 137.

<sup>101</sup> Inter-American Commission on Human Rights, para. 137.

<sup>102</sup> Inter-American Commission on Human Rights, “2022 Was a Violent Year for the Defense of Human Rights in the Americas, IACHR Says,” [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2023/026.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/026.asp).

Along the same line, civil society organizations, such as the initiative of the Human Rights Defenders Memorial, documented 401 killings of human rights defenders in 26 countries around the globe in 2022; they also noted that Colombia accounted for 186 of those killings, which represents the 46.38% of the total. Mexico was noted as the third place in the row.<sup>103</sup>

Front-Line Defenders reported that in 2022, around the globe, HRDs were victims of 1,583 threats and violations, from which the most targeted sectors are: 11% environmental land and indigenous people's rights<sup>104</sup>, 10% freedom of expression, 9% protest movement and freedom of assembly, 7% women's rights and 6% impunity and justice. In the Americas, the main threats across the regions represented death threats 17.1%, physical attack 15.1% arrest/detention 14.7%, surveillance 14.7%, and other harassment 10.2%.<sup>105</sup>

The numbers above can be contrasted with other figures. For example, the 2016 Global Witness report "Defenders of the Earth," disclosed numbers regarding HRDs in the American region. It mentions that almost 1000 murders have been recorded by Global Witness from 2010 until 2016 and considered it the deadliest year on record. That year, Latin America accounted for over 60% of killings and categorized Honduras as the "deadliest country to be a defender."<sup>106</sup>

The report also highlighted the rise in killings in Colombia, with 37 defenders murdered in 2016; by that time, the country was in the process of the Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace";<sup>107</sup> being this relevant since Global Witness, identified the paramilitary as potential involvement in the responsibility in cases in Colombia.<sup>108</sup>

The alarming fact is that States such as Brazil, Honduras, and Colombia are still leading the first places that indicate significant risk to exercise the right to defend human rights, regardless of the actions undertaken by the governments, for these figures should take it as a call to action to improve the current strategies of protection urgently.

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<sup>103</sup> Front Line Defenders, "Global Analysis 2022," 5.

<sup>104</sup> Front Line Defenders, "Global Analysis 2022," 7.

<sup>105</sup> Front Line Defenders, 5–8.

<sup>106</sup> Global Witness, "Defenders of the Earth: Global Killings of Land and Environmental Defenders in 2016.," July 13, 2017, 8, <https://www.globalwitness.org/en/campaigns/environmental-activists/defenders-earth/>.

<sup>107</sup> Inter-American Commission on Human Rights, *Integral Protection Policies for Human Rights Defenders*, para. 40.

<sup>108</sup> Global Witness, "Defenders of the Earth: Global Killings of Land and Environmental Defenders in 2016.," 11.

Consequently, the IACHR has addressed the causes of those high rates, and with its mechanisms, has pointed out the increase in structural violence and how it affects the right to defend human rights and the labor of HRDs. For example, the IACHR stressed that in Colombia, the risk and harassment that HRDs face are linked with the country's history, causing violence against peasants, indigenous people, afro-descendant, and social and community leaders that work as HRDs.<sup>109</sup>

This data tells us that the risks faced by HRDs are multi-causal; for example the scenarios of increased structural violence that Latin America is experiencing. Such contexts, involves other actors that have played a role during the HRDs' work, that goes beyond state actors. Particularly in the region, they could range from private companies, paramilitary groups, and organized crime, which will depend on the context in which the defenders operate. In that regard, the UNGA has also expressed the situation of systemic and structural discrimination and violence faced, especially for women HRDs.<sup>110</sup>

The current UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor; has remarked that HRDs faced terrible danger on behalf of the defense of the rights of other human beings and that some HRDs face more risk due to who they are, i.e., by their identities, such as women and LGBT HRDs.<sup>111</sup>

States have been creating norms and other actions to counteract such scenarios. However, these figures are a call to action to strengthen the measures and guarantee the exercise of the right to defend human rights freely<sup>112</sup>. In this regard, the IACHR said that it is only when HRDs have appropriate protection of their rights, they can freely seek the protection of the rights of others.<sup>113</sup>

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<sup>109</sup> Inter-American Commission on Human Rights, "IACHR Reiterates Its Concern Over the Increase in Structural Violence in Colombia," [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2022/040.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/040.asp).

<sup>110</sup> Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders (UN Human Rights Council, 2014) at 2; Protecting human rights defenders: resolution / adopted by the Human Rights Council (UN Human Rights Council, 2013) at para 12.No Reference General Assembly of the United Nations, "Implementing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through Providing a Safe and Enabling Environment for Human Rights Defenders and Ensuring Their Protection," January 8, 2020, para. 6, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/427/11/PDF/N1942711.pdf?OpenElement>.

<sup>111</sup> Special Rapporteur on the situation of human rights defenders, supra note 8.

<sup>112</sup> Inter-American Commission on Human Rights, "IACHR Reiterates Its Concern Over the Increase in Structural Violence in Colombia"; Inter-American Commission on Human Rights, "IACHR Condemns Murders of Rights Defenders in Honduras," [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2023/022.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/022.asp); Inter-American Commission on Human Rights, "2022 Was a Violent Year for the Defense of Human Rights in the Americas, IACHR Says," [https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2023/026.asp](https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/026.asp).

<sup>113</sup> Case of Escaleras Mejía et al. v. Honduras paragraph 60.

### 3.2 Mechanism of protection of human rights defenders implemented in Latin America:

In the region some countries have been acting in the implementation of protection strategies, such as Mexico<sup>114</sup>, Honduras<sup>115</sup> that have established laws that enabled the implementation of protection mechanisms. In the cases of Colombia<sup>116</sup> and Brazil<sup>117</sup> their mechanisms are based on governmental decrees. For the case of Guatemala<sup>118</sup>, Nicaragua<sup>119</sup>, and very recently Paraguay<sup>120</sup> the IACtHR ruled the creation of protection mechanisms in their country, however, this measure is yet to be fulfilled.

There are many challenges that these mechanisms face to achieve the objective for which they were created, ranging from the lack of both human and financial resources to execute the actions, and external factors that have penetrated the day to day of Latin American society, such as corruption and impunity that reinforces the high levels of violence of different natures.

Thanks to a compilation that the Inter-American Commission presented in its report “Integral Policies for the protection of human rights defenders”<sup>121</sup> in 2017, it is possible to have an overview of how the only mechanisms working in the region are being conducted in their strategies for protection. This data is important to the understanding of the ruling and decision of the Court on the matter.

Colombia was the first country in the region to create a mechanism of protection. The Program for the Protection of Human Rights Defenders, Trade Unionists, Journalists, and Social Leaders was created in 1997 and it has focused on protecting the right to life, integrity, liberty, and personal security of these groups at risk. Its protection schemes include material and human elements, such as ordinary or armored vehicles, drivers, and escorts. Also, it may include material resources to support security measures such as motorcycles, bulletproof vests, armored vehicles, means of mobilization such as

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<sup>114</sup> “Ley Para La Protección de Personas Defensoras de Derechos Humanos y Periodistas.” (2012), <https://www.diputados.gob.mx/LeyesBiblio/pdf/LPPDDHP.pdf>.

<sup>115</sup> “Ley de Protección Para Las y Los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia,” Decreto No. 34-2015 § (2015), [https://www.tsc.gob.hn/web/leyes/Ley\\_Proteccion\\_defensores\\_der\\_humanos\\_periodistas\\_op\\_just.pdf](https://www.tsc.gob.hn/web/leyes/Ley_Proteccion_defensores_der_humanos_periodistas_op_just.pdf).

<sup>116</sup> “Decreto 4065 de 2011” (2011), <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=44545>.

<sup>117</sup> “Decreto No. 6.044” (2007), [https://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2007/decreto/d6044.htm#:~:text=Decreto%20n%206044&text=DECRETO%20N%206.044%2C%20DE%2012,Hu manos%20e%20dá%20outras%20providências](https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2007/decreto/d6044.htm#:~:text=Decreto%20n%206044&text=DECRETO%20N%206.044%2C%20DE%2012,Hu manos%20e%20dá%20outras%20providências).

<sup>118</sup> Case of Human Rights Defender et al.v. Guatemala paragraph 263.

<sup>119</sup> Case of Acosta et al v. Nicaragua paragraph 223.

<sup>120</sup> Case of Leguizamón Zaván et al.v. Paraguay paragraph 123.

<sup>121</sup> Inter-American Commission on Human Rights, “Políticas Integrales de Protección de Personas Defensoras de Derechos Humanos,” diciembre 2017, 99–138, <https://www.oas.org/es/cidh/informes/pdfs/Proteccion-Personas-Defensoras.pdf>.



temporary relocation, and means of communication such as telephones and panic buttons, shielding buildings, or installing technical security systems for residences or offices.<sup>122</sup>

In the case of Mexico, a mechanism was created with the adoption of the Law for the Protection of Human Rights Defenders and Journalists in 2012. The measures of protection offered are urgent protective measures that may include evacuation, temporary relocation, specialized escorts, and protection of the property in which the beneficiary is. Also, routine preventive measures may include self-defense courses and observer accompaniment; and ordinary protective measures, which are the provision of communication devices, security cameras, locks in the person's home or workplace, bulletproof vest, metal detectors, and armored cars.<sup>123</sup>

In 2004, Brazil launched through the Executive Branch the National Program for the Protection of Human Rights Defenders. Moreover, in 2007, the National Protection Policy for Human Rights Defenders was instituted by the decree that established the preparation of the National Plan for the Protection of Human Rights Defenders. However, since 2009, the National Congress has reportedly considered creating a legal framework for the Protection Program, which still needs approval. The current program has a holistic approach that seeks to defuse the causes that cause insecurity and puts into practice the coordination of protection actions by State institutions, such as the criminal justice system and land registry.<sup>124</sup>

In Guatemala, in 2004, by an executive decree, the Coordinating Unit for the Protection of Human Rights Defenders, Administrators and Justice Officials, Journalists, and Media Workers was established, which is responsible for effectively implementing the protection measures granted by the inter-American and universal systems. In 2008, the State created an instance for the analysis of attacks against HRDs to analyze patterns of violence against HRDs and develop technical criteria to minimize the risk to which HRDs are exposed. In this unit, the State grant protection through security schemes that include personal security through escorts provided by the National Civil Police, security in predetermined places through the assignment of police officers to protect a house, office, or any other place designated by the beneficiary and perimeter security or police controls at the established location

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<sup>122</sup> Inter-American Commission on Human Rights, paras. 154 and 157.

<sup>123</sup> Inter-American Commission on Human Rights, 180 and 187.

<sup>124</sup> Inter-American Commission on Human Rights, paras. 199 and 204.

and time.<sup>125</sup> However, its effective functioning has been questioned, that they are not working at the moment.<sup>126</sup>

In 2015, Honduras adopted the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators, and Justice Operators, which establishes a list of measures that the State may adopt as preventive and protective measures for the beneficiaries of the mechanism. It provides for preventive measures that aim at reducing risk factors; reactive measures to protect the right to life, personal integrity, and liberty and security of a person; urgent protection measures aimed at urgently protecting the rights and freedoms listed above; psychosocial measures aimed at addressing the psychological and social impacts of violence on human rights defenders, their families and the organizations in which they participate; as well as measures aimed at confronting impunity which is those aimed at guaranteeing the effective investigation, prosecution, and punishment of those responsible for attacks on persons subject to the law.<sup>127</sup>

Despite the work implemented by the States and its apparent holistic or integral approach, they still need to produce the results for which they intended. The figures mentioned support this statement.

Along those lines, for 2017, Amnesty International identified through its closer work with defenders at a more localized level that States, along these mechanisms, commonly implement measures focused only on the physical protection of human rights defenders. They remarked on the mechanism established in Colombia, Honduras, México, and Guatemala. They reported that these mechanisms focused mainly on providing police measures that might respond to the defenders' specific threats. Amnesty International remarked that these mechanisms do not focus on structural measures to provide safe environments for human rights defenders to perform their defense labor. In that regard, civil society has demanded the importance of other measures, such as public recognition of their legitimate work, as an example of building holistic measures to counteract structural violence and other risks.<sup>128</sup>

PI has noted that states functionally guide these measures according to “their security priorities concerning, and despite, the work that defenders, and can divert attention away from structural causes

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<sup>125</sup> Inter-American Commission on Human Rights, para. 212.

<sup>126</sup> “Política Pública Para La Protección de Las Defensoras y Los Defensores de Derechos Humanos En Guatemala,” Front Line Defenders, September 17, 2020, <https://www.frontlinedefenders.org/es/statement-report/public-policy-protection-human-rights-defenders-guatemala>.

<sup>127</sup> Inter-American Commission on Human Rights, “Políticas Integrales de Protección de Personas Defensoras de Derechos Humanos,” para. 223.

<sup>128</sup> Amnesty International, *Americas: State protection mechanisms for human rights defenders* (2017).

of the acts of aggression to which defenders are subject.”<sup>129</sup> This approach provides a restricted focus based on security and risk, which represents a particular securitization of the right to defend human rights that position HRDs as potential objects of protection, leaving out aspects of the structural violence and the complexity of the factual circumstances in which human rights defenders performed their labor.<sup>130</sup> The goal of the protection measures should be to ensure that defenders “are treated as subjects of rights (the right to defend human rights) and not simply as objects of protection.” With this approach, States ignore all the other identities of the defenders that are a fundamental part of their labor of defense.<sup>131</sup>

So far, States have used protection programs focused on individual efforts that fail to acknowledge the potential for risk reduction, leading to a false belief in one’s ability to protect oneself<sup>132</sup>, as if the HRDs are responsible for protecting themselves. This overview of the mechanisms gives a perception circumscribed the right to defend human rights in a securitized scope. The protection of HRDs has a limited vision by guaranteeing it only through a personal security approach. On this point, organizations of HRDs considered it counterproductive and decontextualized concerning the realities and local experiences in which HRDs perform their labor of defense.

These weak protection strategies will continue to result in various risks by giving inadequate protection to HRDs, a false sense of security, and the reinforcement of the power structures that prolong structural violence. Consequently, reviewing the measures given by international protection mechanisms to understand and comprehensively address the factors involved in exercising the defense of human rights is indispensable. The IAHR’s organs have addressed the ultimate purpose of non-repetition of these complex events.

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<sup>129</sup> Luis Enrique Eguren, *The Time Is NOW! – Effective Public Policies for the Right to Defend Human Rights* (Brussels / San José: Protection International, rue de la Linière 11 1060 Brussels, Belgium CEJIL:Center for Justice and International Law, n.d.), 9, <https://www.protectioninternational.org/researchpublications/the-time-is-now-effective-public-policies-for-the-right-to-defend-human-rights/>.

<sup>130</sup> Eguren, 9.

<sup>131</sup> Eguren, *supra* note 7 at 62.

<sup>132</sup> Eguren, *supra* note 7 at 62 y 63; note 5 at para 12.

## CHAPTER 4

# JURISPRUDENTIAL LINES OF THE INTER-AMERICAN COURT FOR AN EFFECTIVE AND ADEQUATE PROTECTION OF HUMAN RIGHTS DEFENDERS: THROUGH THE ANALYSIS OF NON-REPETITION GUARANTEES

As discussed before, protecting HRDs is essential to uphold democracies; therefore, the IACtHR, through its decisions and advisory opinions, has played a crucial role in advancing the understanding and application of comprehensive protection measures for the HRDs in the American continent.

This section provides an overview of the IACtHR's jurisprudential line that guides states on the defender's protection, focusing on the dynamics of the most common non-repetition guarantees ordered by the IACtHR, namely public policies, mechanisms for protection, and protocols for the investigation of the crimes committed against defenders. These guarantees of non-repetition are designed to protect HRDs| at national levels through its enforcement by the legislative and executive bodies.<sup>133</sup>

As it has been discussed, HRDs would be able to continue their labor of protection of human rights and democracy, only with the assurance of an adequate and safe environment.

Throughout the discussion, it is perceived that protecting HRDs and exercising the right to defend human rights are mutually reinforcing elements; their interdependence makes simultaneous requirements that States must comply with in to effectively exercise the defender's role.

The latter statement results from the logic of the interpretation of the concept of HRDs that the IACtHR developed under the principle of evolving interpretation in its judgments, which has allowed it to provide a holistic approach that should be embraced by States to protect HRDs.

Therefore, the IACtHR has ordered States to assume a broader vision to address the immediate risk; not just with a physical security approach and must consider the structural causes that perpetuate

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<sup>133</sup> “Política Pública de Garantías y Respeto a La Labor de Defensa de Los Derechos Humanos y El Liderazgo Social” (2021), <https://colaboracion.dnp.gov.co/CDT/Conpes/Economicos/4063.pdf>; Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas.; Ley de Protección para las y los Defensores de Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia; Decreto 4065 de 2011.

the violence against HRDs. For this, the analysis of the contexts and the HRDs' identities must be the starting point of the measures undertaken.

This chapter aims to analyze some of the judgments of the IACtHR on how they configured the obligation to respect, prevent and protect within the description of the guarantee of non-repetition in the contexts of HRDs, the latter, by the study of notables' cases from the earliest on the matter such *Kawas Fernandez v. Honduras*<sup>134</sup>, for example, to the recent ones like the *Baraona Bray v. Chile*.<sup>135</sup>

The purpose of presenting the study in this structure is to remark on the importance of the implementation of these strategies or measures of protection for HRDs by following the logic of the purpose of the judgment of the IACtHR. Since it has been stated that this type of reparations has a greater relevance that involves high-impact HRDs to prevent similar events, do not happen again.<sup>136</sup> Also, the IACtHR has emphasized that any violation of an international obligation resulting in harm entails providing adequate reparation. While indemnification has traditionally been the standard method of reparation in international law, the IACtHR works under the logic for a case-specific approach to determine the appropriate reparations, with the purpose of compensating in an integral way, nor other regional systems, such as the European Court of Human Rights.<sup>137</sup>

#### 4.1 The obligation to respect:

Article 1.1 of the ACHR established as one of the primary obligations for States, the respect of human rights. It recalled the compromise of the States' members to respect the rights and freedoms that the convention guarantees, for their free exercise to all persons under its jurisdiction without any discrimination. Therefore States must refrain from committing acts that arbitrarily affect or interfere with recognized fundamental rights and freedoms.

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<sup>134</sup> Case of *Kawas-Fernández v. Honduras*.

<sup>135</sup> Case of *Baraona Bray vs. Chile* section IX Reparations.

<sup>136</sup> Case of *Escaleras Mejía et al. v. Honduras* paragraph 234.

<sup>137</sup> This approach is known as the two-track approach, which “encourages adjudicators to separate out the question of the appropriate remedy to protect and compensate specific litigants from the broader questions of appropriate measures to prevent the repetition of similar violations in the future”. This approach combines remedies that provide immediate benefits to litigants with remedies designed to allow other institutions of government to achieve systemic reforms, ideally in consultation with civil society, and recognizes that the main purposes of remedies for violations of human rights can frequently be reduced to: (1) the need, respond through restitution or compensation to the violation and the harms it causes; and (2) the need to ensure ongoing compliance with human rights and the non-repetition of future violations. Kent Roach, *Remedies for Human Rights Violations: A Two-Track Approach to Supra-national and National Law*, 1st ed (Cambridge University Press, 2021) at 88,92, 124 and 125.

The IACtHR has stated that the obligation to respect human rights necessarily includes the notion of restriction on the exercise of State power.<sup>138</sup> Human rights, acts as the limit of the public power, for that sense, the IACtHR has stated that:

The protection of human rights requires that State acts, that fundamentally affect them, should not be left to the discretion of the public authorities, but should be surrounded by a set of guarantees aimed at ensuring that the inviolable attributes of the individual are not violated, among which, perhaps the most relevant must be that the limitations be established by a law adopted by the Legislative Branch, in accordance with the provisions of the Constitution.<sup>139</sup>

In that regard, the right to defend human rights is part of the guarantee that monitors public power to ensure it does not pass its limits. As so the obligation of respect implies that the State's actions do not hinder the work of defenders or may lead to a hostile environment for the defense of human rights. As discussed above, the obstacles presented in the labor of defense of human rights that may be positioned or permitted by the State affect three dimensions. First, individually, since the right of the defender to defend rights is affected, since their labor cannot be exercised freely. Second, collectively, since the public interest in defending rights is affected. And third, in a social dimension, since limits the interest of seeking positive changes in rights for society, affecting this way, the main purpose of HRDs.<sup>140</sup>

Commonly a violation of the obligation of respect is identified when the State, through its agents, commits an arbitrary action, i.e., a murder, an extrajudicial execution, or arbitrary detention, among others. Evidently, when these situations occur, the obligation to respect is violated since it directly transgresses a protected right; in this case, such as life or personal integrity. However, when talking of the right to defend human rights, the scope of the violation, is wider. A violation of the obligation to respect human rights, can also occur when State's agents are disseminating stigmatizing

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<sup>138</sup> Inter-American Commission on Human Rights, "Norte de Centroamérica: Personas defensoras del medio ambiente," para. 172.

<sup>139</sup> Advisory Opinion OC-6/86: The Expression "Laws" in Article 30 of the American Convention on Human Rights. (n.d.).

<sup>140</sup> Inter-American Commission on Human Rights, "Norte de Centroamérica: Personas defensoras del medio ambiente," paras. 172 and 173.

discourses on the work of HRDs. This is extremely worrying since it is an essential factor that contributes to the contexts of violence that situates defenders at risk.<sup>141</sup>

It has been observed that in many cases, these positions serve as a basis for initiating unfounded criminal actions against the defenders to obstruct their work, as discussed before, to provoke the SLAPP effect. Meaning the criminalization of HRDs through the improper use of criminal law, through the manipulation of the State's punitive power; either by States' agents or non-state actors with the aim of "controlling, punishing, or preventing the exercise of the right to defend human rights".<sup>142</sup>

In these situations, the IACtHR commonly dictates measures of satisfaction, like public acts of acknowledgment of responsibility to be done by States, whose purpose is to "contribute to awakening awareness to prevent and avoid the repetition of harmful acts."<sup>143</sup> And dictates act of preservation of the memory of the victims, which serves to preserve the figure of the victim and as a commemoration of the work of HRDs. This act has an educational potential on the importance of the defender's work. In the judgment of the case of Sales Pimenta v. Brazil, the Court dictated these measures of satisfaction were ruled with the purpose of sensitize the society about the situation of violence and risk that HRDs are facing in Brazil.<sup>144</sup>

Also, for these cases, the IACtHR has dictated guarantees of non-repetition, which involves the obligation for States to adopt and adapt their domestic legislation in accordance with the State's obligations under the standards of human rights emanating from the ACHR and other norms that have emerged from the interpretation of the IACtHR. This Tribunal has dictated also, the adoption of training measures for officials in the field of human rights in general or in specific fields of human rights defenders.<sup>145</sup>

In this regard, in the Case of Baraona Bray v. Chile, which deals with the alleged international responsibility of the State for the violation of the right to freedom of expression due to the imposition of subsequent liability and the inappropriateness of the use of criminal law in the matter of the public

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<sup>141</sup> Inter-American Commission on Human Rights, "Políticas Integrales de Protección de Personas Defensoras de Derechos Humanos," para. 128.

<sup>142</sup> Inter-American Commission on Human Rights, "Criminalización de La Labor de Las Defensoras y Los Defensores de Derechos Humanos," December 31, 2015, paras. 11–12, <http://www.oas.org/es/cidh/informes/pdfs/criminalizacion2016.pdf>.

<sup>143</sup> Case of Sales Pimenta v. Brasil paragraph 158.

<sup>144</sup> Case of Sales Pimenta v. Brasil paragraph 161.

<sup>145</sup> Case of Baraona Bray vs. Chile paragraph 177.

interest, the IACtHR noted that the sanction imposed on him was producing a chilling effect, and that also was disproportionate to the purpose it pursued.<sup>146</sup>

Carlos Baraona Bray, was an environmental defender, that claimed, that in a series of interviews and statements, that a State senator exerted pressure and influenced the authorities to carry out the illegal cutting of trees; after this issue a criminal complaint was filed against Mr. Baraona, who was sentenced for the crime of serious offenses.<sup>147</sup>

In addition, the IACtHR found that the application of the criminal offense in the case under analysis constituted an indirect means of restricting freedom of expression by affecting his individual and the social spheres.<sup>148</sup> Criminal law would have the potential to generate a chilling effect on society, and it will be an obstacle for people to express an opinion or make criticisms regarding the actions of public officials.<sup>149</sup>

Finally, Chile was sentenced to adapt the legislative measures related to the criminalization of libel in accordance with the human rights standards and must consider its obligation of the exercise and implementation of the conventionality control by national authorities, meaning that legislation must be adopted in accordance with the content of the ACHR and its interpretation made by the Court through its double competences.<sup>150</sup>

## 4.2 The obligation to prevent:

The obligation to prevent is a specific duty that, in the Inter-American normative framework, derives from the obligation to guarantee contained in Article 1.1 of the ACHR. This guarantee implies that the State must adopt positive actions through its apparatus, whether they are political, legal, administrative, or cultural, that promote the safeguarding of human rights and ensure that their violations are effectively considered and treated as illegal acts which, as such, is susceptible to sanctions for those who commit them.<sup>151</sup>

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<sup>146</sup> Case of Baraona Bray vs. Chile paragraph 121.

<sup>147</sup> Case of Baraona Bray vs. Chile paragraph 1.

<sup>148</sup> Case of Baraona Bray vs. Chile paragraph 121.

<sup>149</sup> Case of Baraona Bray vs. Chile paragraph 131.

<sup>150</sup> Case of Baraona Bray vs. Chile paragraph 175.

<sup>151</sup> Case of Velasquez Rodriguez v. Honduras paragraphs 174–175.



In cases of HRDs, the IACtHR has developed this obligation in an enhanced form; this means that States are obliged to adopt all necessary and reasonable measures to guarantee the rights of persons who find themselves in a situation of vulnerability, mainly as a result of their work. It also implies providing people with the necessary conditions to prevent human rights violations from occurring; thus, allowing the free exercise of their rights and fundamental freedoms; and suppressing hostile or dangerous environments for the protection of human rights.<sup>152</sup>

The obligation of prevention is infringed when the States fail to adopt the measures and comply with the obligation to respect. This is by the infringement of an unlawful act, a violation of human rights, attributable to the State or to a private individual, and when it is proven that at the time of the facts, there was a situation of real and immediate risk to the life of a particular individual or group of individuals. In this aspect, authorities must know or should have known and did not adopt the necessary measures within their competence and mandate that could have prevented or avoided such risk.<sup>153</sup>

In other words, for this obligation of prevention to be considered infringed, the IACtHR said that is when there have been actions or commissions that have allowed the perpetration of these violations.<sup>154</sup> States are obliged to develop positive actions that generate environments conducive to the defense of human rights.

In this obligation, it is important to remember that the defense of human rights can only be exercised freely when human rights defenders are not being victims of threats, aggression, or other acts of harassment. In this context, the duty to prevent violations of human rights of HRDs converts more relevant in those countries where there is a proven context of violence and intimidation against these groups.

It is compulsory for States to adopt comprehensive measures aimed at responding to this situation to prevent risk factors and strengthen their institutions to provide an effective response to the needs of these populations. For this section, the Cases of *Luna Lopez v. Honduras*<sup>155</sup>, *Escaleras Mejia v. Honduras*<sup>156</sup>, *Sales Pimenta v. Brazil*<sup>157</sup>, and *Digna Ochoa v. Mexico*<sup>158</sup> will be used to identify minimum elements required in the implementation of public policies and protocols of investigation that

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<sup>152</sup> Case of Luna López v. Honduras paragraph 123.

<sup>153</sup> Case of Luna López v. Honduras paragraph 125.

<sup>154</sup> Case of Luna López v. Honduras paragraphs 118 and 119.

<sup>155</sup> Case of Luna López v. Honduras paragraph 1.

<sup>156</sup> Case of Escaleras Mejía et al. v. Honduras section VIII Reparations.

<sup>157</sup> Case of Sales Pimenta v. Brasil section IX Reparations.

<sup>158</sup> Case of Digna Ochoa and family members v. Mexico section IX Reparations.

are of the common measures given by the Court to comply and reinforce the guarantees of non-repetition.

#### *4.2.1 Approval and implementation of public policies:*

The IACtHR warned in the judgment of *Luna Lopez v. Honduras*, with the annotation of the expert, Luis Eguren, who stated that whenever is a general context of risk for the exercise of the defense of human rights, it is time to develop a public policy to reduce that risk and to promote and protect the right and duty to defend human rights.<sup>159</sup>

So accordingly, with what has been discussed regarding the nature of the duty to prevent, and the Court's annotation, it can be said that one of the main elements to take into account when analyzing a situation that involves HRD protection, the consideration of the context in which this develops itself, in order to make adequate decisions for prevention strategies. Also, it is important to recall that the duty to prevent does not end with the mere act of providing measures to protect personal integrity or to ensure that state agents do not interfere with the full exercise of the human rights of human rights defenders but also requires acting on the structural causes that affect their security.

For that instance, the IACtHR has dictated, as a measure of non-repetition, the adoption of a comprehensive public policy for protecting HRDs in those cases where it identifies a situation of structural violence that's been an obstacle for the exercise of the right to defend human rights. Although this measure was agreed upon in 2013 in the Case of *Luna López v. Honduras*<sup>160</sup>, some indications have been made by the IACtHR before this judgment.

For example, in the case of *Valle Jaramillo v. Colombia*, the Court obliged the State to continue with the Human Rights Defenders Policy, based on the programs, measures, and actions that already existed in the country and that the State presented as “a form of expression of the guarantee of non-repetition with respect to the protection of human rights defenders.”<sup>161</sup>

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<sup>159</sup> Case of *Luna López v. Honduras* paragraph 243.

<sup>160</sup> Case of *Luna López v. Honduras* paragraph 265.10.

<sup>161</sup> Case of *Valle Jaramillo et. al. v. Colombia* paragraph 227.d.

In other cases, such as *Kawas Fernandez v. Honduras*, although it does not dictate the creation of a public policy as a measure of reparation, the Court reminds the State of its duty to adopt legislative, administrative, or judicial measures, or the improvement of existing ones, that guarantee the free performance of the activities of environmental defenders; the immediate protection of ecological defenders against the danger or threats that arise in connection with their work, and immediate investigation in accordance with Article 1.1 of the ACHR.<sup>162</sup>

Bringing back the Case of Carlos Luna Lopez to use as a reference, in this judgment, the Court defined minimum elements for the creation and implementation of these measures. Even though Luna Lopez was an environmental defender,<sup>163</sup> the IACtHR has extended these elements as a standard requirement for the protection of all defenders. This can be observed in the Case of Human Rights Defender v. Guatemala.<sup>164</sup>

One particularity of this judgment is that the Court identifies the necessity to implement a specific public policy on the issue of HRDs regarding the existence of the State's other policies on human rights. In this case, the State of Honduras would have provided information, by that time, on the recent creation and implementation of the First Public Policy on Human Rights and its National Plan of Action, likewise, on the dissemination and socialization of the Project of Law of Protection Mechanisms for Human Rights Defenders, Justice Operators, Journalist, and Social Communicators.<sup>165</sup> The same project that the IACtHR applauded in Escaleras Mejia's case and which dictated the measure to enhance the interinstitutional coordination for the improvement of the implementation of the law described.<sup>166</sup>

As has been considered before, the Court, in Carlos Luna Lopez's case, stressed the existence of the immediate risk that he was facing and evaluated the same by the complaints that were filed before public bodies or officials, with respect to which it is possible to verify prior State. With knowledge of the alleged concrete risk to the life or personal integrity of Mr. Luna López, the Court mentioned that the defender thus complied with an obligation to activate the bodies responsible for offering a response to the risk he faced.<sup>167</sup>

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<sup>162</sup> Case of *Kawas-Fernández v. Honduras* paragraph 223.

<sup>163</sup> Case of *Luna López v. Honduras* paragraph 243.

<sup>164</sup> Case of *Human Rights Defender et al. v. Guatemala* paragraph 263.

<sup>165</sup> Case of *Luna López v. Honduras* paragraph 246.

<sup>166</sup> Case of *Escaleras Mejía et al. v. Honduras* paragraph 108.

<sup>167</sup> Case of *Luna López v. Honduras* paragraphs 125 and 127.

In this context, the duty arises on the part of the State to act with due diligence in the face of the situation of special risk that arose because of the comprehensive analysis of what was happening in Honduras, and there for the Court, were enough reasons to conclude that the reason for the threat against Luna Lopez, was related to his actions as a defender of the environment. The State failed to comply with this duty of prevention by not adopting the appropriate and necessary protection measures; since it required the granting of security and protection measures that would allow the exercise of the right to defend the environment to continue and required immediate and effective investigations in this regard<sup>168</sup> This will be deepened in the later sections. For the Court, the State did not demonstrate that it had carried out a serious and exhaustive investigation of the fact of a death threat in breach of the duty of due diligence, therefore, the duty of prevention.<sup>169</sup>

Consequently, taking up the purpose of the judgments of this IACtHR, which seeks to prevent such events from occurring again, as well as the emphasis on the need to adopt this type of guarantee in contexts such as those experienced by Luna Lopez and that persists to this day, the IACtHR defined the following mandatory elements that must be included at the time of the construction and implementation of a comprehensive public policy for the protection of HRDs and environmental defenders:

1. The participation of human rights defenders, civil society organizations, and experts in the formulation of the standards that could regulate protection for the collective in question.
2. The protection program should address the problem in a comprehensive and inter-institutional manner, according to the risk of each situation, and adopt measures to address the complaints made by defenders immediately.
3. The creation of a risk analysis model that allows for the effective assessment of the risk and protection needs of each defender or group.
4. The creation of an information management system about the prevention and protection of human rights defenders.
5. The design of protection plans that respond to the specific risk faced by each defender and the characteristics of their work.
6. The promotion of a culture that legitimates and protects the work of human rights defenders.

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<sup>168</sup> Case of Luna López v. Honduras paragraph 137.

<sup>169</sup> Case of Luna López v. Honduras paragraph 139.

7. The allocation of sufficient human and financial resources to respond to the real needs for the protection of human rights defenders.<sup>170</sup>

Along the same lines, in 2022, the IACtHR ruled on the case of the human rights lawyer Gabriel Sales Pimenta v. Brazil; and as it has been contextualized before, in Brazil, there are institutions and mechanisms for protecting HRDs. However, the IACtHR noted that despite the presence of those mechanisms in the statal apparatus, the context of violence and vulnerability of land human rights defenders in Brazil remained extremely serious from the 1980s to that time.<sup>171</sup>

Following the logic of the purpose of the reparations that have been dictated by the Court, in the hearings of this case, Gabriel's brother said, "what we want is that no one dies anymore [...] that no more lawyer dies for his work in defense of minorities"<sup>172</sup> and adding the context described by the expert of the case, reported that since the facts of the case until that date of the hearing have persisted. As an example, she mentioned that only in 2020, 158 death threats, 35 attempted murders, and 18 murders of defenders in Brazil were registered.<sup>173</sup>

In this case, the IACtHR was also concerned with the fact that the current strategies for the protection of HRDs in Brazil were not made as laws in the strict sense, creating the possibility to be altered or revoked at any time by the President of the Republic, which could generate lack of continuity in its application, low budget level, non-uniform implementation, restrictive requirements for HRDs to be beneficiaries and lack of equal participation of civil society.<sup>174</sup> In this regard, it ruled that as part of a guarantee of non-repetition, a National Public Policy for the Protection of HRDs should be adopted and that it should include the following:

1. Regulated by an ordinary law at the state and federal level and taking into account the risks inherent to the activity of defending human rights.
2. The equal participation of human rights defenders, civil society organizations and experts in the elaboration of the norms that may regulate a program for the protection of the group in question.

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<sup>170</sup> Case of Luna López v. Honduras paragraph 243.

<sup>171</sup> Case of Sales Pimenta v. Brasil paragraph 173.

<sup>172</sup> Case of Sales Pimenta v. Brasil paragraph 174.

<sup>173</sup> Case of Sales Pimenta v. Brasil paragraph 174.

<sup>174</sup> Case of Sales Pimenta v. Brasil paragraph 176.

3. To have flexible criteria for the inclusion of beneficiaries, which respond to the considerations already made by this Court regarding the concept of human rights defenders.
4. The creation of a risk analysis model that allows for an adequate determination of the risk and protection needs of each defender or group.
5. The design of protection plans that respond to the particular risk of each defender and the characteristics of their work.
6. The promotion of a culture of legitimization and protection of the work of human rights defenders.
7. The provision of sufficient human and financial resources to meet the real protection needs of human rights defenders, as well as the proper execution of the allocated budget.

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It can be analyzed that there is a clear indication that there is a State's obligation to combat the structural problem in order to allow the exercise of the defense of human rights; therefore, is necessary a global and comprehensive approach to prevention. The IACHR has added that in the cases where risks must be assessed, it is important to remember that the risk not only comes from the States but can be perpetuated by private individuals. In that sense, it is of great importance that when implementing these public policies, the scope of possibility of other actors should be open. The last, to identify patterns of attacks, aggressions, and obstacles, including the actions of illegal armed groups and organized crime entities, as well as companies that may be involved in those actions against HRDs, community leaders and indigenous or afro-descendant people.<sup>176</sup>

Although the IACtHR cannot make a detailed list of the prevention measures that should be implemented, since they vary according to what is in controversy and according to the characteristic of each State, these must prevent risks and strengthen institutions to respond effectively. The IACtHR has strengthened the IACtHR's jurisprudence and has considered that the states must start with implementing a serious policy that allows identifying the possible patterns of attacks, aggressions, and

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<sup>175</sup> Case of Sales Pimenta v. Brasil paragraph 177.

<sup>176</sup> Inter-American Commission on Human Rights, "Políticas Integrales de Protección de Personas Defensoras de Derechos Humanos," para. 143.

obstacles that confront the defenders of human rights and the interaction that the different actors have.<sup>177</sup>

#### 4.2.2 Approval and implementation of a protocol for due diligence in the investigation of crimes committed against human rights defenders:

The duty to investigate human rights violations also derives from the obligation to guarantee human rights in Article 1.1 of the ACHR. The IACtHR has constantly interpreted it since the first case of *Velasquez Rodriguez v. Honduras* in 1989.<sup>178</sup> The characteristic of this duty is that it is an obligation of means and not of results. However, still, it must be assumed by the State as its legal duty, which does not depend solely or necessarily on the procedural initiative of the victims or their relatives or on the private contribution of evidence.<sup>179</sup>

In contexts such as the cases of HRDs, this duty to investigate can be said that has two moments: first, when the State becomes aware of a risk of a human rights violation, and second, when the unlawful act was committed against the defenders, either because of their failure to comply with the obligation to respect or to prevent.

In that sense, in the first moment, this duty is demarcated in the obligation of due diligence, meaning the obligation to investigate immediately, exhaustively, and impartially where the risks and threats come from to punish those responsible, to try to prevent the configuration of the threat or unlawful act against the HRDs.

The second moment implies that the State punishes the perpetrator of the unlawful act against the human rights of the HRD in order to know the truth of the facts to access justice, to grant a reparation for the victim, and to counteract the chilling effect that these facts produce, which will ultimately lead to providing a safe environment to exercise the right to defend human rights freely.<sup>180</sup>

As the former Special Rapporteur on the situation of Human Rights Defenders, Michel Forst remarked after he visited Mexico in 2017 that:

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<sup>177</sup> Inter-American Commission on Human Rights, 143.

<sup>178</sup> Case of *Velasquez Rodriguez v. Honduras* paragraph 174.

<sup>179</sup> Case of *Digna Ochoa and family members v. Mexico* paragraph 99.

<sup>180</sup> Case of *Digna Ochoa and family members v. Mexico* paragraph 100.

Impunity feeds the criminalization of defenders, which fuels fear among broader civil society, undermining the general aspirations for human rights and the rule of law. [...] For human rights defenders, the best protection they could have is, when justices is served and perpetrators are held accountable since the failure to investigate and sanction aggressors has signaled a dangerous message that there are no consequences for committing such crimes. This creates an environment conducive to the repetition of violations.<sup>181</sup>

The IACHR has remarked that protection starts with risk prevention and mitigation. That escorting a person does not enable a free environment to exercise their labor; since a person threatened will not be safe if his persecutors are free. In this sense, the duty to investigate must be subsumed within the edges that an adequate and effective public policy would contain; this one cannot be truly effective unless a diligent investigation sends a clear message that those acts of violence against defenders will be appropriately sanctioned.<sup>182</sup>

In this regard, in the Case of Carlos Escaleras v. Honduras, the IACtHR approved the State's commitment to the friendly settlement agreement that includes the approval and implementation of due diligence protocol to investigate crimes committed against human rights defenders. For what the IACtHR stated that it should be included the following minimum requirements as follows:

1. The risks inherent to the work of defending human rights.
2. The context in which human rights defenders carry out their work.
3. The gender and intercultural perspective in the investigation of the crimes involved.
4. Best practices and international standards on due diligence according to the type of crime (for example, extrajudicial executions, homicides, torture, and threats).<sup>183</sup>

Recently, in 2021, the IACtHR released the judgment in the case of the death of Digna Ochoa, a HRD that her death occurred in the context of widespread impunity for the murders of HRDs in Mexico the ones that were preceded by years of threats against her.<sup>184</sup>

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<sup>181</sup> Michel Forst, "Mexico / Rights Defenders: 'The Best Way to Protect Them Is Fighting Impunity' – UN Expert" (Geneva/Mexico, January 25, 2017), <https://www.ohchr.org/en/press-releases/2017/01/mexico-rights-defenders-best-way-protect-them-fighting-impunity-un-expert?LangID=S&NewsID=21117>.

<sup>182</sup> Inter-American Commission on Human Rights, "Políticas Integrales de Protección de Personas Defensoras de Derechos Humanos," paras. 336 and 337.

<sup>183</sup> Case of Escaleras Mejía et al. v. Honduras paragraph 98.



In this case, the obligation is reinforced two-fold, by the characteristics of Digna because of her work as a defender and her condition as a woman, so the investigations had to revolve around these factors. In these cases, the Court considers it necessary to use methodological tools for the association of cases to identify patterns of systematicity and to apply protocols for the investigation of gender-based violent deaths, mainly when there is no suspicion of criminality.<sup>185</sup>

Consequently, when there are indications or allegations that a specific act against an HRD may have been motivated precisely by his or her work in the defense and promotion of human rights, the investigating authorities must take into account the context of the facts and their activities to identify the interests that could have been affected in the exercise of these activities, in order to establish and exhaust the lines of investigation that take into account their work, determine the hypothesis of the crime and identify the perpetrators.<sup>186</sup>

For that instance, as a guarantee of non-repetition, the IACtHR has been dictating the responsibility to create a specific and specialized protocol for investigating attacks against as HRDs, which must consider, the risk inherent to the labor of defense, the examination of the motivation of the attack, and must be done with a gender and ethnic perspective, and should include:

1. The concept of a human rights defender.
2. The standards on the development of due diligence investigation tools, including best practices and international standards on due diligence according to the type of crime (e.g., extrajudicial executions, murders, torture, threats, inter alia).
3. The risks inherent to the work of defending human rights in Mexico.
4. The context in which human rights defenders carry out their work and the interests they oppose in the country.
5. The existence of patterns of threats and any typology used to intimidate, threaten, intimidate, or attack human rights defenders in the exercise of their activities.
6. Criteria and investigation techniques to determine whether the criminal act is related to the activity carried out by the human rights defender.

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<sup>184</sup> Case of Digna Ochoa and family members v. Mexico paragraph 1.

<sup>185</sup> Case of Digna Ochoa and family members v. Mexico paragraph 104.

<sup>186</sup> Case of Human Rights Defender et al.v. Guatemala paragraph 131; Case of Digna Ochoa and family members v. Mexico paragraph 100.

7. Techniques for investigating the existence and functioning of complex criminal structures in the area where human rights defenders work, as well as context analysis of other power groups outside the public authorities.
8. Techniques for investigating material and intellectual authorship.<sup>187</sup>

In 2022, regarding the context of Brazil, the IACtHR likewise ordered the creation and implementation at the national level of an investigation protocol under the same characteristics. It stressed that these tools are essential in the homicides of human rights defenders found in Brazil for victims' access to justice.<sup>188</sup>

In these cases, the IACtHR adds the importance of joint interinstitutional work between the specific powers and responsibilities of the Public Prosecutor's Office, the Police, the Judiciary, the institutes of expertise, and other bodies involved in investigating serious human rights violations. It shall also consider and states that the whole protocol must be incorporated into the work that the public servants do, either by a resolution or any internal normative that obliges its application by all the state servants, to provide sustainability and security of those processes.<sup>189</sup>

#### 4.3 The obligation to protect:

To achieve an enabling environment for exercising the right to defend human rights, the duty to protect them comes into play. As stated at the beginning of this research, this is one of the most crucial and debatable points for civil society and other human rights organizations, as well as for international human rights protection organizations, due to the exposure of the deficient result of protection measures, evidenced by the high-risk rates of threats and violent deaths against human rights defenders.

This duty of protection is activated when the duty of prevention has failed because of an immediate risk filtered in the preventive measures.

The IACtHR reinforced in its jurisprudence the determination that:

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<sup>187</sup> Case of Digna Ochoa and family members v. Mexico paragraph 173.

<sup>188</sup> Case of Sales Pimenta v. Brasil paragraph 170.

<sup>189</sup> Case of Escaleras Mejía et al. v. Honduras paragraph 106; Case of Sales Pimenta v. Brasil paragraph 176.

In addition to the general obligations to respect and guarantee of human rights found in Article 1.1. special duties derive from the Convention, which may be determined according to the protection needs of the subject of law, either because of his personal status or because of the specific situation in which the person finds himself.<sup>190</sup>

When cases of HRDs' rights violations are being discussed, a special duty of protection arises due to being under threat or in a situation of risk due to their work. Therefore, States must provide the necessary means to allow HRDs to carry out their activities freely. This special duty implies creating conditions for eliminating obstacles to exercising their right that both state agents and individuals may put, as well as fulfilling the obligation of respect and the duty to investigate the violations committed against them seriously and effectively, thus combating impunity.

This duty does not presuppose an unlimited responsibility of States for any act or acts committed by individuals because it requires prior knowledge by the State of the real and immediate risk that a person or group would face and that the State can avoid that risk.<sup>191</sup>

As argued, the knowledge by the authorities of the situation of a real and immediate risk to the defender is the clue to determine whether there was a violation of human rights for the non-compliance of the duty to protect.<sup>192</sup>

A good example to discuss the position of the IACtHR with this is the case of Human Rights Defender v. Guatemala, in which the Court referred in it to the situation of particular vulnerability in which A.A. found himself due to the context of an armed conflict that was experienced in Guatemala during the event.<sup>193</sup> However, although this context was considered, and both the IACHR and the representatives in the case provided information on some complaints, they were not considered by the Court as sufficient to prove that the State had or should have been aware of the situation of risk to Mr. A.A.'s life.<sup>194</sup>

This decision generates certain contradictions because although the IACtHR alluded in its interpretation to the context that the defenders suffered during that time in Guatemala, the decision seems limited to a mere formalism. Regarding this decision, Judges Roberto F. Caldas and Eduardo

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<sup>190</sup> Ibid at for 141.

<sup>191</sup> Case of Human Rights Defender et al.v. Guatemala paragraphs 138 and 140.

<sup>192</sup> Ibid at for 143.

<sup>193</sup> Case of Human Rights Defender et al.v. Guatemala paragraph 143.

<sup>194</sup> Ibid at for 145.

Ferrer Mac-Gregor Poisot presented a dissenting vote to the IACtHR. Both would consider that if the element of knowledge of the risk by the State was fulfilled and, therefore, it should have protected the life and guaranteed the political rights of Mr. A.A. And that the context for the evaluation of the evidence provided, the Court should have considered it, since Mr. A.A. was in a vulnerable group, which required special attention from the State for his protection of rights. They consider that the State was negligent concerning their protection and determined that in these cases, it is essential that the evidentiary elements be read comprehensively and always in the light of the context in which they are framed.<sup>195</sup>

Two years later, in the case of *Yarce v. Colombia*, the Court analyzed the case within the general framework that existed in Colombia on armed conflict and the presence of military operations in the country, particularly in Comuna 13.

In its analysis, the IACtHR recognized Ms. Yarce's status of HRD, which presented a situation of risk that was known previously by the State. This fact created an special obligation for the State regarding its protection by being a women HRD. Consequently, the IACtHR held Colombia responsible for the violation of the duty to prevent the violation of the right to life since it did not evaluate the risk of Ms. Yarce as a potential victim of the person who attempted against her life, nor would it have taken adequate, suitable, and effective measures to protect her.<sup>196</sup>

These elements of the duty of protection imply that the authorities must identify or assess whether the personnel subject to threats and harassment requires protection measures, refer the matter to the competent authority to do so, and offer the person at risk timely information about the available measures. The assessment of whether a person requires protection measures and what the appropriate measures are is an obligation incumbent on the State and cannot be restricted to the victim himself requesting it from the competent authorities, nor can be acknowledged the responsibility to the HRD of knowing which authority is best able to address his situation since it is up to the State to establish coordination measures between its entities and officials for that purpose.<sup>197</sup>

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<sup>195</sup> Roberto F. Caldas and Eduardo Ferrer Mac-Gregor Poisot, Joint partially dissenting opinion of judges Roberto F. Caldas and Eduardo Ferrer Mac-Gregor Poisot. Case of human rights defender et al. v. Guatemala (Inter-American Court of Human Rights August 28, 2014).

<sup>196</sup> Case of *Yarce at al. v. Colombia* paragraphs 183, 185 and 196.

<sup>197</sup> Case of Human Rights Defender et al.v. Guatemala paragraph 155; Case of *Luna López v. Honduras* paragraph 127.

For the above reasons, the IACtHR has identified the creation and implementation of protection mechanisms as the ideal measure for the non-repetition of such events.<sup>198</sup>

#### *4.3.1 The implementation of adequate and effective mechanisms for the protection of human rights defenders*

The complex contexts of violence that persist in countries of the Americas, particularly in the Latin American region, where HRDs have the most levels of vulnerability, some countries have developed protection programs or mechanisms to tackle the risks and threats. These mechanisms have served to mitigate the risks to defenders' life and personal integrity in their jurisdiction.

As a guarantee of non-repetition, the Court in the Case of Acosta et al. v. Nicaragua, due to the high impact context in which the case took place, considering the context of Nicaragua and the antecedents of the defenders in the IAHRs of having precautionary and provisional measures, ruled for the State of Nicaragua the implementation of a protection mechanism for the situations of risk, threats, and aggression against human rights defenders.<sup>199</sup> For what it is required to include the following elements:

1. The participation of human rights defenders, civil society organizations and experts in the elaboration of the norms that may regulate a protection program for the group in question, in which the participation of the office of the ombudsperson of Nicaragua [...] would be particularly relevant, within the framework of its competencies and the programs it is currently developing.
2. The protection program should address the problem in a comprehensive and inter-institutional manner according to the risk of each situation and adopt immediate measures to deal with complaints from human rights defenders.
3. The creation of a risk analysis model to adequately determine the risk and protection needs of each defender or group.

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<sup>198</sup> Case of Acosta et al v. Nicaragua paragraph 223; Case of Sales Pimenta v. Brasil paragraph 177; Case of Digna Ochoa and family members v. Mexico paragraph 177.4.

<sup>199</sup> Case of Acosta et al v. Nicaragua paragraphs 222 and 252.11.

4. The creation of an information management system on the situation of prevention and protection of human rights defenders.
5. The promotion of a culture of legitimization and protection of the work of human rights defenders.
6. The provision of sufficient human and financial resources to meet the real protection needs of human rights defenders.<sup>200</sup>

In that sense, a year before, in the case of Yarce et al. v. Colombia, the IACtHR identified that the suitability of the mechanism requires to be under the roles of defenders, subject to an evaluation according to the level of risk, to adopt and monitor the measures in force. They can be modified according to the variation of the intensity of risk.<sup>201</sup>

The IACHR has also added to reinforce this element required in the mechanisms by the Court and addressed that if they are carried out properly, they allow for timely, specialized intervention that is proportionate to the risk that human rights defenders may face. Furthermore, it stressed the need for them in scenarios where defending human rights is risky and where multiple aggressions and attacks are evidenced. These measures need to be adequate and effective. Being adequate in the IACtHR means that they must be suitable to address the situation of risk in which the person is and, by effective, that they can produce the results for which they are intended.<sup>202</sup>

In this regard, the consideration of a solid legal framework has been proposed to support the protection mechanism, to ensure that the processes are secure and transparent and to avoid any arbitrariness; the allocation of sustainable human and financial resources; collaboration with other state entities and agencies to enhance protection schemes, especially the involvement of national human rights institutions that, thanks to their proximity to defenders, may have adequate information to achieve suitable protection in accordance with local and personalized realities; the granting of independence and autonomy to the institution granting the measures; flexible and individualized risk analysis; adequacy and effectiveness of protection measures; participation of beneficiaries, access to

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<sup>200</sup> Case of Acosta et al v. Nicaragua paragraph 223.

<sup>201</sup> Case of Yarce at al. v. Colombia paragraph 193.

<sup>202</sup> Inter-American Commission on Human Rights, “Políticas Integrales de Protección de Personas Defensoras de Derechos Humanos,” para. 60.

information and transparency; the decision to modify or lift protection schemes; and an adequate relationship between national protection measures and those granted by the IAHRs.<sup>203</sup>

#### 4.4 The gender approach in the guarantees of non-repetition for human rights defenders' cases:

Along the discussion, it has been said that the risk must be analyzed according to the circumstances of the vulnerability of each person or group for the adequate protection of both the right to defend human rights and the HRDs.

As mentioned, the context is one of the critical aspects that the IACtHR has emphasized in protecting the right to defend human rights, meaning the inclusion and analysis of the facts. The latter implied that both States and those who are obliged to respect the rights of HRD stop at unique aspects that identify the person or group of HRDs, characteristics such as gender, age, ethnic group, and disabilities, among others. This scenario requires that a differentiated approach must be adopted throughout the entire process of protecting defenders, as discussed in the previous sections.

The differentiated approach is the list of actions and public policies that, by giving differentiated treatment to subjects of special constitutional protection, contribute to eliminating barriers between the different groups of the population, creating equality in their access to opportunities in political, economic, social, community, and cultural life.<sup>204</sup>

For instance, the IACtHR, in the exercise of its advisory competence in the decision of the advisory opinion OC-29/22, to refer to this approach, determined that “not all distinctions in the treatment can itself be considered offensive to human dignity.”<sup>205</sup> Since distinction can be established based on factual inequalities, however, it may constitute an instrument for the protection of the ones that must be protected, considering their situation of advantage or disadvantage they might be.<sup>206</sup>

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<sup>203</sup> Inter-American Commission on Human Rights, 143–78.

<sup>204</sup> José Rory Forero-Salcedo, “Derechos Humanos, Enfoque Diferencial y Construcción de Paz. Breves Reflexiones Desde Una Visión Constitucional,” n.d., 51, <https://doi.org/10.18041/2382-3240/saber.2019v14n1.5204>.

<sup>205</sup> Advisory Opinion OC-29/22: Differentiated approaches with respect to certain groups of persons deprived of liberty (Inter-American Court of Human Rights May 30, 2022).

<sup>206</sup> Advisory Opinion OC-29/22: Differentiated approaches with respect to certain groups of persons deprived of liberty paragraph 62.

The IACHR, has stated that these differentiated approaches must be always observed in the process of executing protection plans or strategies; since their observance is of great importance at the time of incorporation, risk analysis, definition of protection measures, and during their implementation, monitoring, review, and evaluation.<sup>207</sup> In that sense, along the jurisprudence of the IAHRS it can be found terms such as ethnic-racial approach, a gender-sensitive approach and a diversity approach. These allow guaranteeing an adequate application of protection measures according to the specific contexts and situations of HRDs, among other conditions such as human mobility, collective risk context involving their families, communities or organizations, and the cultural components of their contexts.<sup>208</sup>

The distinctions that the IACtHR referred to can be exemplified by the formula used in the risk analysis of HRDs when creating protection plans, which uses the factors of threats, vulnerability, and capacities to determine the nature or characterization of the risk. This distinction is crucial in achieving effective and adequate protection for HRDs.

From this concept, it can be said that some groups are more exposed to the infringement of their rights than others, such as women HRDs because of their gender, are exposed to specific threats or attacks of a sexual nature for example.<sup>209</sup>

The need to pay attention to defenders' identities is crucial because even though Inter-American bodies continuously pushes the countries to adopt adequate and appropriate measures to protect defenders, there is a perception that this simplification of the picture defines or portrays the daily experience of HRDs as unusual and turns acts of aggression into exceptions to supposed safe normality, this safe normalcy is projected as the reassuring backdrop to human rights advocacy work, diverting attention from a broader view of the power structures that seek to silence the voice of HRDs.<sup>210</sup>

The current realities of the protection mechanisms or programs implemented so far see the victims of domination, or the excluded, as such only because they are HRDs, and the significance of their other identities are often ignored. The characteristics of HRDs, in general, are foregrounded, with stress on

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<sup>207</sup> Inter-American Commission on Human Rights, "Norte de Centroamérica: Personas defensoras del medio ambiente," para. 222.

<sup>208</sup> Inter-American Commission on Human Rights, paras. 222–225.

<sup>209</sup> Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, by Inter-American Commission on Human Rights, OEA/Ser.L/V/II.124 Doc. 5 rev. 1 (2006) at para 208.

<sup>210</sup> Eguren, *The Time Is NOW! – Effective Public Policies for the Right to Defend Human Rights*, 62.



their vulnerabilities and their capacities, with the result that individuals are portrayed in a way that isolates them from their context.<sup>211</sup>

In that regard, the IACtHR has approached cases of women HRDs, LGBTIQ+ HRDs, and territorial and indigenous defenders, and it has addressed other group's vulnerable situations through its case law; for example, the cases of Vicky Hernandez v. Honduras,<sup>212</sup> and others mentioned before in the text like Digna Ochoa et al. v. Mexico, among others.<sup>213</sup> In that sense, when talking about the creation and implementation of a protection measure, specific approaches, for example the gender approach is crucial to be included as a traversal axis in those measures and actions to be adopted.

Although the social processes of the last decades, and the processes of transition to democracy, have implied the recognition of rights and freedoms relevant to the defense of human rights, in practice, they have not generated favorable environments for the people who carry out the work of defense, on the contrary, they are currently affected by new risks and threats.

In the case of women HRDs, they face daily discrimination and gender-based violence that is deeply rooted in Latin American societies. These aggressions, the invisibility and social acceptance of violence against women, stigmas, and stereotypes make the barrier to access to justice and adequate means of protection increasingly higher. When women defend human rights by taking a political and social space that has been a traditional norm, they break the paradigm of the role and stereotypes to which they have been traditionally assigned, implying that this gender component in violence against women defenders is also manifested in that they are not only assaulted for the work they do in defense of human rights, but also for doing it as women.

These acts of violence against women create more significant risks for women HRDs, not only with the attacks and their consequences but also affect the possibilities of being protected, cared for, and repaired. Therefore, it is not enough to ensure women's access to protection; it is also necessary to adapt to their own protection needs without reproducing traditional roles.<sup>214</sup>

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<sup>211</sup> Eguren, 62.

<sup>212</sup> Case of Vicky Hernandez et al. v. Honduras paragraph 1.

<sup>213</sup> Case of Digna Ochoa and family members v. Mexico paragraph 1.

<sup>214</sup> Asociadas por lo justo JASS, Centro por la Justicia y el Derecho Internacional CEJIL, and Protection International PI, "El Enfoque de Género En La Protección a Defensoras de Derechos Humanos: Las Experiencias de México y de Honduras," n.d., 9–11, <https://justassociates.org/es/all-resources/el-enfoque-de-genero-en-la-proteccion-a-defensoras-las-experiencias-de-mexico-y-honduras/>.

The IACtHR sets the obligation to include a gender perspective and intersectional approach in the measures aimed to mitigate the risk in cases of attacks against women HRDs. This approach will provide broader protection based on consideration and understanding and give a central place to the complexities of the different forms of violence face by women defenders due to their profession and gender. These complexities refer to the political, social, economic, environmental, and systemic factors, including patriarchal attitudes and practices, that produce and reproduce this type of violence. With this approach, women defenders rely on a logic of respect for their will, being the ones that establish the priorities and the necessary protection.<sup>215</sup>

For this reason, the IACtHR asked the State the guarantee of an unrestricted access to justice for women without discrimination by ensuring that women HRDs receive effective protection against harassment, threats, reprisals, and violence; a justice system that conforms to international standards of competence, efficiency, independence, impartiality, integrity, and credibility, and ensures the diligent and prompt investigation of acts of violence; and the application of mechanisms that guarantee that evidentiary standards, and investigations are impartial and not influenced by gender bias or stereotypes.

<sup>216</sup>

Thus, the need to adopt a differentiated approach to address the gender issue is based on the obligation of States to combat forms of gender discrimination and stereotypes that have historically accentuated violence against women with due diligence.<sup>217</sup>

In its case law, the IACtHR has found out that the investigation and prosecution process of the death of women HRDs, such as the case of Digna Ochoa<sup>218</sup> and Ana Yarce<sup>219</sup>, did not comply the standards of the reinforced due diligence, and interprets the state obligation to protect under the scope of the obligations that emanates from the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, the Convention of Belem do Pará, and the general obligations of the American Convention on Human Rights.<sup>220</sup>

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<sup>215</sup> Case of Digna Ochoa and family members v. Mexico paragraph 101.

<sup>216</sup> Case of Digna Ochoa and family members v. Mexico paragraph 101.

<sup>217</sup> Case of Digna Ochoa and family members v. Mexico paragraph 124.

<sup>218</sup> Case of Digna Ochoa and family members v. Mexico paragraph 178.9.

<sup>219</sup> Case of Yarce at al. v. Colombia paragraph 202.

<sup>220</sup> Case of Digna Ochoa and family members v. Mexico paragraph 148.

In cases involving violations of the rights of women HRDs, the Court has noted that gender stereotypes are used, and applied in the investigation procedures hindered it, also public statements happen that damage the image and honor of the women HRDs and has established the need to implement the gender perspectives in the protection strategies, such as the ones discussed in the last sections.

## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

The protection of HRDs remains a pressing issue that demands immediate attention. For HRDs to successfully carry out their work without fear of reprisals, it is fundamental for the State to establish an environment that is free from threats and sufficient to their activities, which safeguards, at the same time, the guarantee of the exercise of the right to defend human rights. The task of providing protection is complex and requires the simultaneous fulfillment of general human rights obligations, with a reinforced focus given the vulnerability of HRDs in these contexts.

Under these assumptions regarding the protection of HRDs, this research draws the following conclusions:

- That the conception of the term HRDs is vital in ensuring the greatest ability to identify the subjects or groups to be protected. The broad definition provided by the universal system of the United Nations and the Inter-American Human Rights System (IAHRS) poses a challenge for states when applying protective measures, since they could produce a certain homogeneity when applying protection measures, leaving aside the qualities of each HRDs or group of HRDs.
- The interpretation of the right to defend human rights by the IACtHR is noteworthy. It differs from the interpretation of other rights that the IAHR has protected even though they are not within a codified instrument, such as the right to the truth. For in the right to defend human rights, although it has been proposed in the processes either by the IACHR or by the representatives, and States have also refused to allow the IACtHR to analyze it, the IACtHR analyzes its violation or not according to other rights that have been violated in the particular case, for example through the right to life or the right to freedom of expression or association.
- Similarly, it was identified that there is strong criticism of the current national protection mechanism in the region because of the critical figures of violence against HRDs. These flaws in the system have prompted HRDs, civil society organizations, and NGOs to demand the implementation of comprehensive measures to ensure their adequate and effective protection.

In that sense, as the claims are arising, both the IACtHR, and the IACHR have had the opportunity to study this situation and through its jurisprudence have highlighted that comprehensive

measures imply, among other things, the determination of the structural causes affecting HRDs, which could be translated into the implementation of the relational approach proposed.

The IACtHR has also established that when a hostile environment persists, endangering the lives of HRDs, States must adopt public policies and strategies to safeguard their well-being. Therefore, that moment is the right scenario to create and effectively implement a comprehensive public policy for the protection of HRDs that among other task that have been discussed includes the implementation of protection mechanisms that can also get along simultaneously with implementation of due diligence protocols for the investigation of crimes committed against HRDs. Meaning that is needed a joint an inter-institutional labor that will respond to the duty to protect HRDs to prevent that violations of their human rights will not happen again.

Although the IACtHR issued requirements for each guarantee of non-repetition, there are cross-cutting elements that, regardless of the measure, must be included. At this point it is important to remember that from the analysis of the organs of protection, there is no specific measure that works for all States and for all HRDs.

These strategies should include, among other things, the participation of HRDs, civil society, and experts in the elaboration of norms that regulate protection and the inclusion of information systems about prevention and protection of HRDs.

Furthermore, it is essential to foster a culture that legitimizes and protects the vital work of HRDs, applying a differentiated approach as a gender and intercultural perspective that recognizes the diverse contexts in which they operate.

It also should address the problem in a comprehensive and inter-institutional manner, endowing it with financial resources that can support the real protection of HRDs, considering the risk analysis adequately according to the needs of each HRD. Moreover, it is crucial to enshrine these programs in law at the state or federal level to guarantee their sustainability and provide security to HRDs.

For these essential strategies for protection to take place and after analyzing the logic of the IACtHR in its cases, the following recommendations are proposed:

- To further explore the interpretation of the right to defend human rights within the IAHRs to study if the continued advocacy that HRDs and the IACHR are doing before the IACtHR can result in recognition of the autonomy of the right to defend right and if it's the case, which

would be the implications regarding the protection of HRDs. Considering if this recognition would enhance the protection of HRDs, or also if it's the case to see that it is not necessary that the Court declares a violation of this right per se. Considering that has been treating this right under the interpretation of the rest of rights in detriment in the case-by-case situation.

- Promote a culture of legitimization of human rights defenders' work and recognize their role in democracies. Although the Declaration on Human Rights Defenders was a significant support for HRDs, additional efforts are required to address the structural causes underlying violence against them. This will allow a differentiated approach to be applied in the protection strategies to be implemented in the States, as it will be how the identities of the defenders are considered, and how they can be granted protection according to their needs. The latter will result in a departure from the securitization vision of the right to defend human rights that the States have taken up to now.
- Continuously advocate for the compliance with and implementation of the judgments issued by regional bodies, and universal protection entities, and with the claims of civil society. Although, as mentioned above, some of the countries in the Latin American region already have seeds of protection programs for HRDs, some of them have not yet complied with the points of the rulings such as Guatemala<sup>221</sup>, Nicaragua<sup>222</sup>, Honduras<sup>223</sup> which will undoubtedly benefit the protection of HRDs if the elements discussed above are considered.

This compliance involves the institutionalization of the State's protection duty; by i.e., providing protection strategies in a sustainable and long-lasting manner that offers confidence for the security of HRDs. Consider the essential elements that the IACtHR has dictated as mandatory for States. These actions would lead the State to comply with its obligations of respect and guarantee.

By embracing these recommendations and considering the perspectives discussed, progress can be made towards providing robust and sustainable protection for HRDs in the region.

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<sup>221</sup> "Política Pública Para La Protección de Las Defensoras y Los Defensores de Derechos Humanos En Guatemala."

<sup>222</sup> Case of Acosta et al. v. Nicaragua. Monitoring Compliance with Judgment (Inter-American Court of Human Rights March 16, 2021).

<sup>223</sup> Case of Luna Lopez et al. v. Honduras. Monitoring Compliance with Judgment (Inter-American Court of Human Rights September 2, 2020).

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