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HOW MANY MORE BRAZILIAN ENVIRONMENTAL DEFENDERS HAVE TO PERISH BEFORE WE ACT? PRESIDENT LULA'S CHALLENGE TO PROTECT ENVIRONMENTAL QUILOMBOLA DEFENDERS

SARAH DÁVILA A.*

ABSTRACT

The Global South has been historically marginalized and continues to suffer from systemic oppression, impeding the realization of their human rights. Afro-descendants and other minority populations in the Global South live in disproportionately environmentally unsafe conditions and are disproportionately more vulnerable to climate change and environmental harm. One of those populations are Quilombolas. Quilombolas are Brazilian Afro-descendant communities who continue to fight to protect their community rights to ancestral lands, natural resources, and survival as a people. The Brazilian government under former Brazilian President Bolsonaro engaged in a persistent and systematic campaign to target, attack, and kill defenders, including Quilombola defenders, who sought to protect the environment and human rights. His government engaged in the systematic deforestation and extraction of natural resources in the Amazon. It is up to Brazil's re-elected President Luiz Inácio Lula da Silva and his new administration to ensure that the Amazon is protected, and that human rights defenders, including Quilombola defenders, are protected and are able to have justice and accountability for their human rights violations. We must hold the Brazilian state and private actors responsible for human rights violations through the existing rights-based framework through the newly ratified Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean ("Escazú Agreement") and the Esperanza Protocol.

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INTRODUCTION

How many more environmental human rights defenders¹ must perish to save us, themselves, and our environment? How many times will we read their stories in the paper before moving on to the next news? Their stories are part of a bigger problem. They are part of a systems problem. States and private corporations have historically targeted environmental human rights defenders who have sought to protect their communities and their environment. Defenders have been targeted because they continuously pushed back against governmental and private interests exploiting marginalized and vulnerable communities and the natural resources on which they rely. They have been criminalized and harassed for protecting basic human rights and for protecting the dignity of living in a healthy and sustainable environment. They have been punished for giving a voice to many who have been silenced and erased from history. This story is old as ages. This time, however, this Article highlights the stories of Brazilian Afro-descendant² defenders who, for centuries, have been fighting for their rights to survive in their ancestral lands and argue that the Brazilian government must be accountable for violations of their human rights. This Article argues that Brazilian Afro-descendant Quilombolas must be protected through an environmental human rights framework while defending their communities and ancestral lands.

¹ Human rights defenders are persons that work to protect and promote human rights. The Declaration on Human Rights Defenders provides that there is no specific definition on who is or can be a human rights defender, but that “individuals, groups and associations . . . contributing to . . . the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” are protected. . . . Environmental human rights defenders are those who work to protect the environment from harm, and who seek to protect the communities affected by environmental harm.

Sarah Dávila A., *Making the Case for a Right to a Healthy Environment for the Protection of Vulnerable Communities: A Case of Coal-Ash Disaster in Puerto Rico*, 9 MICH. J. ENV'T & ADMIN. L. 379, 403 (2020) (footnote omitted) (quoting G.A. Res. A/RES/53/144, annex, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Mar. 8, 1999)).

² Afro-descendants are persons from African descent in the Americas. See Inter-Am. Comm'n H.R., Report on the Situation of People of African Descent in the Americas, OEA/Ser.L/V/II., Doc. 62, Dec. 5, 2011, ¶ 2. The term “Afro-descendant” has been used as a broad category to identify and provide rights-based protections to this historically marginalized and vulnerable group in the Americas. See *id.*

The Global South has been historically marginalized and continues to suffer from systemic oppression, impeding the realization of their human rights. “Historical injustices had undeniably contributed to the poverty, underdevelopment, marginalization, social exclusion, economic disparities, instability and insecurity that affect many people in different parts of the world, in particular in developing countries, where the vast majority of people of African descent resided and suffered from the legacy of colonialism.”³ It is estimated that there are 200 million Afro-descendants in Latin America, representing one-third of the population in the Americas.⁴ A disproportionate number of Afro-descendants live in poverty and are subjected to systematic and persistent racial discrimination.⁵

Afro-descendants and other minority⁶ populations in the Global South live in disproportionately environmentally unsafe conditions and are more vulnerable to climate change.⁷ They endure environmental racism and injustice.⁸ “Environmental racism refers to environmental injustice in practice and in policies in racialized societies. Environmental racism is a measurable contemporary manifestation of racism, racial discrimination, xenophobia, Afrophobia and related intolerance.”⁹ Historical and structural racism along with exploitation and legacies of slavery continue to perpetuate systems of oppression for Afro-descendants and to disproportionately expose them to environmentally hazardous environments.¹⁰ Further,

people of African descent have reduced access to information about environmental matters, to participation in environmental decision-making and to remedies for

³ See Hum. Rts. Council, Rep. of the Working Group of Experts on People of African Descent, ¶ 43, U.N. Doc. A/HRC/48/78 (Sept. 21, 2021) [hereinafter U.N. Doc. A/HRC/48/78].

⁴ *The Afro-Descendant Theme in the Americas*, ORG. OF AM. STATES, <https://www.oas.org/dil/afrodescendants.htm> [<https://perma.cc/4CPP-CQ87>] (last visited Apr. 12, 2023).

⁵ *Id.*

⁶ Under international law, the term “minority” is used to refer to a group that has shared characteristics and are in non-dominant positions of power. Sarah Dávila A., *Time to Wake Up! Pushing the Boundaries in the Americas to Protect the Most Vulnerable*, 39 UCLA J. ENV'T L. & POL'Y 123, 157 (2021).

⁷ Michael Gochfeld & Joanna Burger, *Disproportionate Exposures in Environmental Justice and Other Populations: The Importance of Outliers*, 101 AM. J. PUB. HEALTH S53, S53 (2011).

⁸ U.N. Doc. A/HRC/48/78, *supra* note 3, ¶ 55.

⁹ *Id.*

¹⁰ *Id.* ¶ 56.

environmental harm. States authorizing hazardous facilities in communities that are predominantly composed of people of African descent disproportionately interfere with their rights, including their rights to life, health, food and water.¹¹

In Brazil, Afro-descendants make up approximately 50% of the population, and 78% of them live in poverty.¹² Of those, a significant portion—around sixteen million Afro-descendants—are Quilombolas.¹³ Quilombolas is the term used to refer to the members of a Quilombo, which is the denomination for communities of former escaped Black slaves who resisted the slavery regime existing in Brazil for over 300 years.¹⁴ Many Quilombolas in Brazil do not have access to clean water and sanitation, adequate food, education, and limited healthcare.¹⁵ As such, they have historically relied on what the land provides without access to basic resources.¹⁶

While Quilombolas have asked the Brazilian government to provide these basic services,¹⁷ they remain living in uninhabitable conditions. Their living conditions reflect the historical treatment of Afro-Brazilians because “[a]lthough slavery was officially banished in Brazil in 1888, the problems of racial segregation and the lack of access to basic rights like healthcare, education, and basic sanitation for the Quilombola Communities were not resolved, the consequences of which are still noticeable

¹¹ *Id.* ¶ 58.

¹² About 120 million people in Brazil identify as Afro-Brazilians. Luciana Brito, *Portraits of Black Politics and Resistance in Brazil*, NACLA (June 17, 2022), <https://nacla.org/black-politics-resistance-brazil> [<https://perma.cc/M25K-MTVE>]. This data makes the country the home to the largest Black population in the Americas. *Id.*

¹³ Data from the Brazilian *Fundação Cultural Palmares* indicates that, nowadays, there are about 5,000 different Quilombola communities spread across Brazil. *Afro-Brazilians*, MINORITY RTS. GRP. INT'L, <https://minorityrights.org/minorities/afro-brazilians/> [<https://perma.cc/DPG3-7L5F>] (last visited Apr. 12, 2023).

¹⁴ *Id.*

¹⁵ MÁRCIA ARAÚJO VAN DER BOOR, RAIMUNDO RODRIGUEZ DOS SANTOS FILHO, JÚLIO CÉSAR REIS DA SILVA & JAÍZA LIMA LEITE LIRA, SITUATIONAL STUDY OF DRINKING WATER QUALITY IN QUILOMBOLA COMMUNITIES IN THE MUNICIPALITY OF SÃO-LUÍS-GONZAGA, MA, BRAZIL 2–3, 6, 13 (2017); Donna Bowater, *Brazil's Quilombos, Founded by Escaped Slaves, Offer a Window to the Past*, AL JAZEERA (Sept. 20, 2014, 6:00 AM), <http://america.aljazeera.com/articles/2014/9/20/brazil-s-quilombosfoundedbyescapedslavesofferawindowtothepast.html> [<https://perma.cc/PN2P-QX5G>].

¹⁶ Bowater, *supra* note 15.

¹⁷ *Id.*

today.”¹⁸ The Quilombolas’ right to a healthy environment has been violated, and the injury can be proven through the quality of the environmental conditions in which they live, the lack of access to systems and infrastructure that can provide clean water and sanitation, and the discriminatory treatment to which they have been subjected.¹⁹

Quilombola defenders²⁰ (those defending their human rights and their environment), have taken to the front lines to protect the rights to their ancestral lands, natural environment, and frankly, their survival. Quilombola defenders have been struggling to gain access to their ancestral sites due to the Brazilian government and private companies’ abuse of their lands.²¹ Nevertheless, Quilombola communities have preserved their traditional way of life through resistance and freedom seeking.²² The work done by Quilombola defenders is therefore extremely important for the preservation of their identity and culture, ties to their ancestral lands, use and conservation of their natural environment, and survival of their communities.

In recent years, Brazilian defenders have continuously struggled against former President Bolsonaro’s efforts to support “deforestation and extraction of natural resources in the Amazon, exacerbating the impact of the climate crisis on Indigenous peoples’ lands and territories.”²³ Brazilian human rights defenders, as well as other defenders in

¹⁸ The list of human rights violations that Quilombolas suffer is a long one that includes the lack of access to food security, health, education, freedom from discrimination, public participation, and many more. VAN DER BOOR ET AL., *supra* note 15, at 3.

¹⁹ The discrimination and inequality experienced by the Quilombolas fits into Special Rapporteur Achiume’s structural racial equality analysis where the historic distribution of power and the experienced racial discrimination clarify that their right to a healthy environment has been violated. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance), *Global Extractivism and Racial Equality*, U.N. Doc. 41/54, ¶ 55 (May 14, 2019).

²⁰ The Declaration on Human Rights Defenders provides that there is no specific definition on who is or can be a human rights defender, but that “individuals, groups and associations . . . contributing to . . . the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals’ are protected.” See Dávila A., *supra* note 1, at 403 (quoting G.A. Res. A/RES/53/144, annex, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Mar. 8, 1999)).

²¹ Jurema Machado de Andrade Souza & Elionice Conceição Sacramento, *Resistance and Solidarity in Quilombo Territory*, NACLA (June 27, 2022), <https://nacla.org/resistance-solidarity-quilombo> [<https://perma.cc/7MWT-F9ED>].

²² *Id.*

²³ Brazilian President Bolsonaro’s environmental policies have been labeled as “total extractivism.” Roberto Goulart Menezes & Ricardo Barbosa Jr., *Environmental Governance*

the region, have been targeted for protecting human rights.²⁴ They undertake the task to defend the human rights of all persons, but of particular importance is the protection of those most vulnerable, such as “women, children, indigenous peoples, refugees and forcibly displaced persons.”²⁵ Now that Luiz Inácio Lula da Silva has won the presidential election in Brazil and has promised to protect the environment,²⁶ it is an imperative for Brazil to halt the disastrous environmental harmful policies and attacks on environmental human rights defenders. The Brazilian government must protect defenders, including Quilombola defenders, and ensure justice and accountability for violations of their human rights.²⁷

This Article will focus on the mistreatment and abuse of Quilombola Afro-descendants outside of the urban context. While there are pervasive systems of oppression against Afro-descendant Brazilians living in the “favelas,”²⁸ the scope of this Article is focused on the targeting

Under Bolsonaro: Dismantling Institutions, Curtailing Participation, Delegitimizing Opposition, in 15 ZEITSCHRIFT FÜR VERGLEICHENDE POLITIKWISSENSCHAFT 229, 231 (2021) (citing ALEXANDER DUNLAP & JOSTEIN JAKOBSEN, *THE VIOLENT TECHNOLOGIES OF EXTRACTION: POLITICAL ECOLOGY, CRITICAL AGRARIAN STUDIES AND THE CAPITALIST WORLDEATER* (1st ed. 2020)). Total extractivism prioritizes an economic development agenda based on “large-scale monoculture, ranching, mining, loggers, land grabbers, and others.” *Id.*; see also *Americas: Defence of Human Rights Under Fire in Pandemic-Hit Region*, AMNESTY INT’L (Mar. 29, 2022) [hereinafter *Americas: Defence*], <https://www.amnesty.org/en/latest/news/2022/03/americas-human-rights-under-fire/> [<https://perma.cc/KC4V-TMPJ>].

²⁴ See *Report on the Situation of Human Rights Defenders in the Americas*, INTER-AM. COMM’N H.R., ¶¶ 3–4 (Mar. 7, 2006) [hereinafter *Human Rights Defenders Report*], <http://www.cidh.org/countryrep/defenders/defenderschap1-4.htm> [<https://perma.cc/ZK9Y-NFWL>]; see also Andrea Carvalho, *How to Protect Forest Defenders in Brazil*, HUM. RTS. WATCH (Oct. 14, 2022, 9:24 AM), <https://www.hrw.org/news/2022/10/14/how-protect-forest-defenders-brazil> [<https://perma.cc/B6SM-UXUK>] (noting that in May 2021 a court ordered the government to develop a national plan to protect human rights defenders, but it has not happened yet).

²⁵ *Human Rights Defenders Report*, *supra* note 24, ¶ 15.

²⁶ President Lula addressed the United Nations’ Climate Conference on November 16, 2022, and pledged for Brazil to return as a global climate leader. *STATEMENT: Brasil’s Lula Pledges a Return to Global Climate Action; Promises to Protect Amazon*, WORLD RES. INST. (Nov. 17, 2022), <https://www.wri.org/news/statement-brasils-lula-pledges-return-global-climate-action-promises-protect-amazon> [<https://perma.cc/D887-AQH2>].

²⁷ *Id.*

²⁸ In common usage, a “favela” is an informally built housing settlement lacking basic urban services and infrastructure, or shantytown. *Favela*, BRITANNICA ONLINE ENCYC., <https://www.britannica.com/topic/favela> [<https://perma.cc/H8LH-Y4GP>] (last visited Apr. 12, 2023). In Brazil specifically, favelas are defined as normative cities in which any form of self-built or informal construction is designed as abnormal. *Id.* Favelas house about 20% of the population in Brazilian cities. Sebastian Saborio & Sara León Spesny, *Favelas*, in

of Afro-descendant defenders in non-urban environments, living in their natural environment and ancestral lands. Specifically, this Article seeks to argue that in order to protect environmental defenders of African descent, we must hold States accountable for State-sanctioned violence, and/or for private action acquiesced by States with the existing rights-based frameworks through newly ratified and adopted instruments, such as the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (“Escazú Agreement”) and the Esperanza Protocol.²⁹ The use of these new human rights instruments will support a nuanced protection of Brazilian Afro-descendant environmental defenders that will compass further environmental and human rights protections, even if States like Brazil are pervasive violators of human rights.

This Article is divided into four substantive parts. Part I discusses the historic and systematic oppression of Brazilian Afro-descendants in Brazil. This part emphasizes the violence they have suffered, and the particular vulnerability of Quilombola communities in Brazil. Specifically, this part explains how Quilombola defenders have been victimized for their work in defending their communities and ancestral lands. This part provides stories of Quilombola defenders who have been targeted, harassed, and killed for protecting their environment. Part II discusses the protection of human rights in the Americas. Specifically, it provides how individuals are able to bring claims in front of human rights mechanisms in the Americas and the Caribbean. This part discusses the human rights judicial and quasi-judicial organs under the Organization of American States (“OAS”). It also explains how decisions and findings from the Inter-American System for the Protection of Human Rights are complementary to domestic courts and how States are responsible to protect human rights. Additionally, this part explains how the recently adopted Escazú Agreement is a separate body of law but can be used in conjunction with Inter-American jurisprudence and sources of law.

Part III discusses Brazilian Afro-descendants defending their environment and human rights. This part provides a discussion on the

THE WILEY BLACKWELL ENCYCLOPEDIA OF URBAN AND REGIONAL STUDIES 1, 4 (Anthony Orum ed., 2019).

²⁹ See ECON. COMM'N FOR LATIN AM. & THE CARIBBEAN (“ECLAC”), REGIONAL AGREEMENT ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION AND JUSTICE IN ENVIRONMENTAL MATTERS IN LATIN AMERICA AND THE CARIBBEAN 7–8, art. 9 (2018) [hereinafter ESCAZÚ AGREEMENT]; see also CTR. FOR JUST. AND INT'L L., THE ESPERANZA PROTOCOL: AN EFFECTIVE RESPONSE TO THREATS AGAINST HUMAN RIGHTS DEFENDERS, at Executive Summary, 1 (2021) [hereinafter ESPERANZA PROTOCOL].

historic and contemporary subjugation of Afro-descendants in Brazil and the systemic violence they have suffered at the hands of Brazilian state agents. This part also discusses traditional Quilombola populations as one of Brazil's most marginalized Afro-descendants. This part discusses how Quilombolas have had to fight to protect their natural environment and their survival from State and private entities using Quilombo lands for environmentally exploitative purposes. Additionally, and most importantly, Part III provides the stories of Quilombolas and defenders who have been targeted for protecting their ancestral lands and rights to their natural environment. This part provides for specific stories of defenders who have paid the ultimate price for protecting their close relationship to the land and environment, with targeting, harassment, and extrajudicial killings.

Part IV provides for a foundation on what are defenders and how they are contributing to environmental human rights work. This part explains how Afro-descendant defenders have been particularly vulnerable to attacks from State and private actors under former President Bolsonaro's government. This part discusses the rights-based framework that is available to protect human rights defenders and how particular provisions from the Escazú Agreement can be used in the protection of environmental human rights as well as the right to defend human rights. This part emphasizes the robust protections under the Escazú Agreement under its three pillars: right to information, participation, and access to justice in environmental matters. Finally, this part explains who these particular provisions may be used to protect and advocate on behalf of Quilombola defenders in Brazil.

I. BRAZILIAN AFRO-DESCENDANTS DEFENDING THEIR ENVIRONMENT

In Brazil, Afro-descendants have faced historic marginalization, racism, and systemic discrimination.³⁰ Perceptions of subjugation of Afro-descendants are persistent in Brazilian society and State structures, resulting in the violations of human rights to equality, non-discrimination, and dignity.³¹ Violence against Afro-descendants is systemic and perpetrated by "members of police institutions and agents in justice systems rife with racial profiling designed to criminalize and punish the

³⁰ Inter-Am. Comm'n H.R., Situation of Human Rights in Brazil, OEA/Ser.L/V/II, Doc. 9, ¶ 20 (Feb. 12, 2021) [hereinafter Situation of Human Rights in Brazil].

³¹ *Id.*

Afro-descendant population.”³² The systematic discrimination of Afro-descendants is particularly concerning because 56.8% of Brazilian society is of African descent.³³

Between 2007 and 2017, Afro-descendants in Brazil suffered a 23.1% increase of homicides committed against them.³⁴ Impunity and state-sponsored violence are also a contributing systemic issue. “[I]n 2015 and 2016, 75% of persons killed in interventions carried out by agents of the State security forces, in crimes that for the most part go unpunished, were Afro-descendants.”³⁵ According to the Inter-American Commission on Human Rights, the process of disproportionately killing Afro-descendants at such proportions suggests a “social cleansing” that is “geared to exterminating sectors deemed ‘undesirable,’ ‘marginal,’ ‘dangerous,’ or ‘potentially criminal.’”³⁶ Additionally, “[t]he Inter-American Commission asserts that those murders cannot be considered isolated acts of violence. Rather, they constitute a systematic and generalized process led by State security institutions and judicial organs and geared to exterminating people of African descent with using extremely and deliberately cruel methods.”³⁷

A. *Quilombola Afro-descendant Communities Are Particularly Vulnerable*

Traditional Quilombola Afro-descendant communities are particularly vulnerable to state-sponsored violence or non-state actor impunity.³⁸

³² *Id.* ¶ 21 (footnote omitted) (citing Inter-Am. Comm’n H.R., Report on the Merits, No. 23/03, Néri de Fonseca (Mar. 11, 2004); Inter-Am. Comm’n H.R., Report on the Merits, No. 66, Simone André Diniz (Oct. 21, 2006)).

³³ Ciara Nugent & Thaís Regina, *How Black Brazilians Are Righting Racial Injustice Today*, TIME (Dec. 16, 2020), <https://time.com/5915902/brazil-racism-quilombos/> [<https://perma.cc/8FJQ-H22G>]; *Pesquisa Nacional por Amostra de Domicílios Contínua Trimestral 2019*, BRAZILIAN INST. OF GEOGRAPHY & STAT., <https://www.ibge.gov.br/estatisticas/sociais/trabalho/9173-pesquisa-nacional-por-amostra-de-domicilios-continua-trimestral.html?edicao=34635&t=o-que-e> [<https://perma.cc/7JHF-Z7F6>] (last visited Apr. 12, 2023).

³⁴ See Situation of Human Rights in Brazil, *supra* note 30, ¶ 28 (citing INSTITUTO DE PESQUISA ECONÓMICA APLICADA, ATLAS DA VIOLÊNCIA 2019 (2019)).

³⁵ *Id.* (footnote omitted) (citing FEDERAL SENATE, RELATÓRIO FINAL DA COMISSÃO PARLAMENTAR DE INQUÉRITO SOBRE ASSASSINATO DE JOVENS 41 (2016)).

³⁶ *Id.* ¶ 29 (footnotes omitted) (citing INTER-AM. COMM’N H.R., *Follow-up of the Recommendations Formulated by the IACHR in Its Reports on the Situation of Human Rights in Member States Annual Report of the Inter-American Commission of Human Rights 2002*, ch. V (Mar. 7, 2003)).

³⁷ Situation of Human Rights in Brazil, *supra* note 30, ¶ 33 (footnotes omitted).

³⁸ Quilombolas are community members of a Quilombo. David Fleischer, *Making Their*

As mentioned above, Quilombos are communities of Quilombolas, whose ancestors were escaped slaves who fought continually for their freedom.³⁹ Today, they continue to seek to protect their traditional tribal and ancestral traditions.⁴⁰ Historically, Quilombola communities have been invisible and subjugated due to structural systems of racial discrimination in Brazilian society and its legal system.⁴¹ Although the 1988 Brazilian Constitution granted Quilombolas the rights to their ancestral lands, the Brazilian government has failed to demarcate⁴² and guarantee their lands from state and private intervention.⁴³ Additionally, the Brazilian

Own Way: Brazil's Quilombola Communities, INTER-AM. FOUND. (Feb. 26, 2021), <https://www.iaf.gov/content/story/making-their-own-way-brazils-quilombola-communities/> [<https://perma.cc/2388-AGNQ>]. Private companies and individuals have been responsible for forced labor practices, taking of lands, and related violence to continue engaging in their exploitative practices in Quilombola and non-Afro-descendant Indigenous lands. Paula Ramón, *Their Identity Was Forged Through Resistance: Inside the Lives of Brazil's Quilombos*, NAT'L GEOGRAPHIC MAG. (Mar. 14, 2022), <https://www.nationalgeographic.com/history/article/their-identity-was-forged-through-resistance-inside-the-lives-of-brazils-quilombos> [<https://perma.cc/2YFL-DLZD>]. According to the Inter-American Commission, there is a "Dirty List" of these companies and individuals that have engaged in these practices violating human rights and have largely remained free from being held accountable. Situation of Human Rights in Brazil, *supra* note 30, ¶ 131 (citing *Cadastro de Empregadores—“Lista Suja”*, GOV.BR (Apr. 23, 2019), <https://www.gov.br/mdh/pt-br/navegue-por-temas/combate-ao-trabalho-escravo/cadastro-de-empregadores-201clista-suja201d> [<https://perma.cc/MB8D-N5SU>]).

³⁹ Lúcia Gaspara, *Quilombo dos Palmares*, JOAQUIM NABUCO FOUND. LIBR., http://basilio.fundaj.gov.br/pesquisaescolar_en/index.php?option=com_content&id=836 [<https://perma.cc/9SMV-FTNA>] (Aug. 31, 2009); *see also* Joao Jose Gomes & Flavio dos Santos, *Quilombo: Brazilian Maroons During Slavery*, CULTURAL SURVIVAL (Apr. 28, 2010), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/quilombo-brazilian-maroons-during-slavery> [<https://perma.cc/DMQ6-UB4D>].

⁴⁰ Gaspara, *supra* note 39; Gomes & dos Santos, *supra* note 39.

⁴¹ Situation of Human Rights in Brazil, *supra* note 30, ¶ 38.

⁴² Delimitation and demarcation of Indigenous territories are preconditions of their effective enjoyment in practice. *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 115 (Nov. 28, 2007). In fact, according to the Inter-American Court for Human Rights, territories traditionally used and occupied by the members of Indigenous peoples must first be delimited and demarcated, in consultation with such people and other neighboring peoples. *Id.* "Merely abstract or judicial recognition of indigenous lands, territories, or resources, is practically meaningless if the property is not physically delimited and established." *Id.* *See also* Inter-Am. Comm'n H.R., Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources, OEA/Ser.L/V/II., Doc. 59/09, ¶ 94 (Dec. 30, 2009) [hereinafter Indigenous and Tribal Peoples' Rights].

⁴³ CONSTITUIÇÃO FEDERAL [C.F.] [CONSTITUTION] art. 176 (Braz.); Anna Sophie Gross, *The Brazilian Government's Land War Against Rebel Slave Descendants*, MONGABAY (Oct. 29, 2018), <https://news.mongabay.com/2018/10/the-brazilian-governments-land-war-against-rebel-slave-descendants/> [<https://perma.cc/368Q-RA2H>].

government has failed to recognize many Quilombola communities through the certification process, thus creating obstacles for Quilombolas to claim rights to their ancestral lands.⁴⁴

Generations of Quilombolas have used what their natural environment provides for survival, have organized with self-government, and enjoyed collective ties to their lands.⁴⁵ They have a special relationship to their natural environment and ancestral land. Quilombolas have the right

to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities.⁴⁶

Quilombolas have had to fight against state and private entities seeking to use Quilombo lands for agribusiness and exploitative industries.⁴⁷ The private industry has engaged in commercial activities that have encroached or damaged Quilombola ancestral lands.⁴⁸ Additionally, Quilombolas have been prevented from using and enjoying their territory due to the building of walls, dams, and even an aerospace facility.⁴⁹ They have been victims of threats, coercion, and various forms of violence for seeking to protect their right to their lands and rights interconnected with access to their lands.⁵⁰ For example, in Rio dos Macacos, the Brazilian military built a dam on the river, Rio dos Macacos, and a fence around the dam, preventing access to the river.⁵¹ In order for Quilombolas to

⁴⁴ Gross, *supra* note 43.

⁴⁵ Situation of Human Rights in Brazil, *supra* note 30, ¶ 37.

⁴⁶ *Id.* ¶ 36 (footnotes omitted) (quoting *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 194(c) (Nov. 28, 2007)); *id.* ¶ 194.

⁴⁷ Gross, *supra* note 43.

⁴⁸ Situation of Human Rights in Brazil, *supra* note 30, ¶¶ 42–45.

⁴⁹ *Id.*; see also Press Release, IACHR Takes to Inter-American Court of Human Rights Case Involving the Collective Property of Alcântara's Quilombola Communities, With Regard to Brazil (Jan. 12, 2022) [hereinafter Press Release, Alcântara's Quilombola Communities], https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/013.asp [<https://perma.cc/8CCM-ET4S>].

⁵⁰ Situation of Human Rights in Brazil, *supra* note 30, ¶¶ 42–45.

⁵¹ A public hearing was held at the deferral Prosecutor's Office in Salvador, in the state of Bahia, regarding the conflict between the Quilombola community of Rio dos Macacos and the Brazilian Navy. *Public Hearing About Rio dos Macacos Ends in Impasse Between*

access the river water in Rio dos Macacos—particularly for subsistence fishing—Quilombolas have to cross the wall erected by the military.⁵² Crossing the wall to access the river is more akin to a checkpoint than accessing a natural resource inside a community's territory.⁵³

Quilombolas have shared their lived experiences with harassment, assault, sexual violence, and even murder.⁵⁴ The Inter-American Commission on Human Rights adopted Resolution 44/2020, granting precautionary measures to members of the Remnant Community of Quilombo Rios dos Macacos for suffering threats, harassment, and violence by the hands of state officers and private persons or entities.⁵⁵ In subsequent reports, the Inter-American Commission emphasized that the Inter-American Court had found that Quilombolas have the right to free, prior, and informed consent for activities in their ancestral territories, regardless of whether lands have been demarcated.⁵⁶ The Inter-American Commission emphasized that a “large-scale development or investment project” is understood as a

process of investment of public and/or private, national or international capital for the purpose of building or improving the physical infrastructure of a specified region, the

the Navy and the Quilombola Community, CESE, <https://www.cese.org.br/en/public-hearing-about-rio-dos-macacos-ends-in-impasse-between-the-navy-and-the-quilombola-community/> [<https://perma.cc/R6QC-UGVL>] (last visited Apr. 12, 2023). The latter wanted a gate to be installed on the river to effectively restrict the Quilombo community's access to it. *Id.* One of the community leaders stated:

We cannot allow this gate, to once again have women raped . . . and different types of violence, which have taken place, because we are going to get water. We cannot accept that wall, which will completely destroy our community, our lives. I wouldn't mind being dead, but I will not carry the coffin handle of one of my daughters, nor of any of my people within the community.

Id. This conflict between the Quilombo and the Navy is not new; it started in the 1950s when the Navy invaded their land and has been marked by aggression, threats, the practice of torture, the destruction of the community's economic potential, the violation of social rights, and the expulsion of a number of families who had lived on the land for generations. *Id.*

⁵² *Id.*

⁵³ See Edson Krenak Naknanuk, *Cementing Dispossession: Terror and Violence of the Brazilian Navy Against Quilombola Peoples*, CULTURAL SURVIVAL (Dec. 9, 2020), <https://www.culturalsurvival.org/news/cementing-dispossession-terror-and-violence-brazilian-navy-against-quilombola-peoples> [<https://perma.cc/2X6X-DCLZ>].

⁵⁴ *Id.*

⁵⁵ COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, COMUNIDAD REMANENTE DEL QUILOMBO RIO DOS MACACOS RESPECTO DE BRASIL ¶¶ 4, 46, 58 (2020).

⁵⁶ See TEHTENA MEBRATU-TSEGAYE, COLUMBIA CTR. ON SUSTAINABLE INV., FREE PRIOR AND INFORMED CONSENT: ADDRESSING POLITICAL REALITIES TO IMPROVE IMPACT 4 (2020).

transformation over the long run of productive activities involving changes in the use of and property rights to land, the large-scale exploitation of natural resources including subsoil resources, the building of urban centers, manufacturing and/or mining, power, extraction and refining plants, tourist developments, port facilities, military bases and similar undertakings.⁵⁷

Additionally, the Inter-American Commission has emphasized the need for prior consultation as necessary for Quilombola survival.⁵⁸ Quilombolas have been excluded from enjoying: their right to ancestral lands; practicing free, prior, and informed consent; and accessing economic, social, cultural, and environmental rights.⁵⁹ Therefore, it is clear how Quilombolas have historically been rendered marginalized and vulnerable due to systems of oppression and structural racial discrimination.⁶⁰

B. Quilombola Defenders in the State of Pará in the Context of Land and Environmental Struggle in Brazil

The Brazilian state of Pará has been one of the most heated and violent areas where land and environmental rights have been affected.⁶¹ The state of Pará is located in northern Brazil in the Amazon region, with the Amazon River flowing into the sea.⁶² Pará is the second largest state in Brazil and the densest region in terms of tropical forest (“selva”).⁶³ The population in Pará is also primarily Afro-Brazilians or Brazilians of

⁵⁷ Situation of Human Rights in Brazil, *supra* note 30, ¶ 51 (quoting Rodolfo Stavenhagen (Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People), *Human Rights and Indigenous Issues*, ¶ 6, Doc. E/CN.4/2003/90 (Jan. 21, 2003)).

⁵⁸ See Press Release, Alcântara’s Quilombola Communities, *supra* note 49.

⁵⁹ Situation of Human Rights in Brazil, *supra* note 30, ¶ 53.

⁶⁰ *Id.*

⁶¹ In Pará, as in other states in Brazil, the land struggle has involved seeking title to ancestral lands, taking possession or, at a minimum, access to lands that rightly belong to Quilombola and other rural workers, and the struggle against forced labor and slavery in some cases. *Id.* According to the Inter-American Commission, “forced labor or labor ‘under conditions akin to slavery’ have been identified and recognized by the State [Brazil] since 1995.” *Id.* ¶ 129 (quoting INT’L LABOUR OFF., FIGHTING FORCED LABOUR: THE EXAMPLE OF BRAZIL 43 n.73 (2010)).

⁶² *Pará, Brazil*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Para-state-Brazil> [<https://perma.cc/TQB5-US38>] (last visited Apr. 12, 2023).

⁶³ *Id.*

Afro-descent.⁶⁴ Access to health, education, and welfare is limited or nonexistent outside of urban centers.⁶⁵ Further, the population in Pará has experienced the highest level of violence targeting land, with environmental defenders seeking to protect their lands and environment.⁶⁶ It is important that, in this discussion of defenders, we discuss and share the stories of environmental and human rights defenders who died on the front line protecting their natural environment and fighting to protect the human rights of those in their communities, as well as their own. It is through their stories and the need to press for accountability that we can seek to protect the right of Brazilian Afro-descendant defenders.

Rural workers, Quilombolas, and defenders (including defenders from these communities) have occupied territories to “return” or claim rights to their lands.⁶⁷ State security forces and private security, known as Jagunços, have attacked individuals with guns and set homes ablaze.⁶⁸ Brazilian state policies have sought to destroy these social movements, to depoliticize these communities, and to dismantle the public and education systems living in the camps.⁶⁹ For example, the massacre of Pau D’Arco (perpetrated against twenty-one rural workers) occurred in the same location as the massacre of 1996 Eldorado dos Carajás, where 1,500 landless persons camping and protesting were violently executed by Brazilian security forces.⁷⁰ Given the frequency of these massacres, the Inter-American Commission declared that the systematic use of violence against landless, rural workers, campesinos, and Quilombolas is part of a statewide public policy instead of being merely a number of isolated instances.⁷¹ Below are some of examples of Brazilian-implemented state

⁶⁴ The population in Pará includes people of European, Indigenous, and mixed European/Indigenous descent in addition to Afro-descendants. *Id.*

⁶⁵ *See id.*

⁶⁶ Michelle Foley, *Brazil: Impunity Fuels the Cycle of Violence Against Land and Environmental Rights Defenders in the State of Pará, Amazon Region*, FRONTLINE DEFENDERS (May 27, 2021), <https://www.frontlinedefenders.org/en/blog/post/brazil-impunity-fuels-cycle-violence-against-land-and-environmental-rights-defenders-state> [<https://perma.cc/93P3-HRNW>].

⁶⁷ *See* Situation of Human Rights in Brazil, *supra* note 30, ¶ 106.

⁶⁸ *See id.*

⁶⁹ *See id.* ¶ 105 (citing COMISSÃO PASTORAL DA TERRA (CPT), RELATÓRIO ANNUAL: CONFLICTOS NO CAMPO BRASIL 2019, at 172–79 (2020)).

⁷⁰ *See* Situation of Human Rights in Brazil, *supra* note 30, ¶ 108.

⁷¹ Additionally, the Inter-American Commission has reported that Brazil is “promoting the legalization and arming of militias in rural territories, in addition to seeking ways to get rid of the ban on military involvement in property repossession operations.” Situation of Human Rights in Brazil, *supra* note 30, ¶¶ 108–09 (footnotes omitted).

policies against Quilombolas and Afro-descendants, through the recounts of members of the communities who sought to protect the rights to their lands and environment.

Biko Rodrigues of the National Coalition of Quilombola communities testified in front of the Working Group of Experts on People of African Descent during their twenty-eighth session held in March of 2021.⁷² He testified that violence against Quilombola communities in Brazil had increased during the COVID-19 pandemic.⁷³ He described that more than 1,200 megaprojects in Quilombo lands would displace Quilombo communities without title to lands or those living in lands without demarcation.⁷⁴ The demarcation of territory in the Amazon region has been imperative in protecting Quilombo communities. From more than 6,000 communities in the Amazon, fewer than 200 of them had titles to their lands.⁷⁵ From those communities, 70% of people are Black (Quilombolas) who have lived with a close relationship to their lands, honoring their spiritual and cultural traditions.⁷⁶ Due to their close relationship to their land, they have played an instrumental role in protecting their natural environment, the ecosystems, and the lives there.⁷⁷ Quilombolas defending their lands and environment have faced increasing threats to their land and lives, pillaging of their natural resources, and killing of defenders and leaders.⁷⁸ Further, Quilombola communities have been fighting in the front lines to protect the biodiversity of their lands, and to prevent agribusiness from destroying the very land their grandchildren are entitled to, as their ancestors intended.⁷⁹

Fernando dos Santos Araújo was a human rights defender in the Pará region.⁸⁰ He was one of the survivors of the Pau D'Arco massacre of 2017, where the Brazilian civilian and military police executed ten landless rural workers from the Santa Lúcia farm in the Pará municipality

⁷² See U.N. Doc. A/HRC/48/78, *supra* note 3, ¶ 35.

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ See VAN DER BOOR ET AL., *supra* note 15, at 2; see also U.N. Doc. A/HRC/48/78, *supra* note 3, ¶ 35.

⁷⁷ See VAN DER BOOR ET AL., *supra* note 15, at 2; see also U.N. Doc. A/HRC/48/78, *supra* note 3, ¶ 35.

⁷⁸ See U.N. Doc. A/HRC/48/78, *supra* note 3, ¶ 35.

⁷⁹ See *id.*

⁸⁰ See *Fernando Dos Santos Araújo*, FRONTLINE DEFENDERS., <https://www.frontlinedefenders.org/en/profile/fernando-dos-santos-araujo> [<https://perma.cc/S5KQ-E879>] (last visited Apr. 12, 2023).

of Pau D'Arco.⁸¹ Landless rural workers have organized in the Movimento dos Trabalhadores Rurais Sem Terra ("MST"),⁸² fighting for land and agrarian reform of rural working conditions and access to public lands.⁸³ Dos Santos Araújo became a witness to the massacre and a witness in its criminal case.⁸⁴ He left the Santa Lúcia farm (now called the Jane Júlia Camp), where defenders and campesinos had been fighting for land and agrarian reform, out of fear of his life.⁸⁵ He lived under witness protection and returned to the Jane Júlia Camp, where he was killed in 2021.⁸⁶ José Vargas Junior, dos Santos Araújo's attorney, who was imprisoned in 2021, was instrumental in advocating against state-sponsored violence inflicted upon defenders and campesinos.⁸⁷ Before his imprisonment, Vargas Junior said: "For me, the only possible and urgent question to be answered was 'Why is it that state police forces think they can kill ten people and be sure that they will remain unpunished?'"⁸⁸

In January 2022, campesino and defender José Francisco Lopes Rodrigues (known as Quiqui) died after being hospitalized for being shot inside his home with his ten year old granddaughter in the Cedro community in Arari in the Brazilian State of Maranhão.⁸⁹ To date, the police

⁸¹ See Nathalia Urban, *The Pau D'arco Massacre: A History of Impunity, Persecution and Death*, BRASILWIRE (Jan. 29, 2021), <https://www.brasilwire.com/pau-darco-massacre-a-history-of-impunity-persecution-and-death/> [https://perma.cc/F65V-SMHM].

⁸² The Landless Rural Worker's Movement, Movimento dos Trabalhadores Rurais Sem Terra in Portuguese, is the largest and most well-known social movement fighting for rural workers' rights in Brazil. *Landless Rural Workers Movement (MST), Brazil*, PARTICIPEDIA, <https://participedia.net/organization/4405> [https://perma.cc/DB7V-JMQX] (last visited Apr. 12, 2023). The MST has been critical for defenders and campesinos to organize socially and politically to advocate for more autonomy and sustainability. *Id.* The MST has had an impact in ensuring access to rural lands, food sovereignty, and the need for campesinos to obtain access to government support structures. *Id.*

⁸³ *See id.*

⁸⁴ *See Fernando Dos Santos Araújo*, *supra* note 80.

⁸⁵ *See id.*

⁸⁶ *See id.*

⁸⁷ José Vargas Sobrinho Junior is a university professor and human rights defender. *José Vargas Sobrinho Junior*, FRONTLINEDEFENDERS., <https://www.frontlinedefenders.org/en/profile/jose-vargas-sobrinho-junior> [https://perma.cc/8A4L-S6F9] (last visited Apr. 12, 2023). He worked on the defense of the Pau D'Arco massacre victims and the Kayapó indigenous people against extractive industries in Cumaru do Norte, Brazil. *Id.* Similar to his client, Fernando dos Santos Araújo, José Vargas Sobrinho Junior was also "included in the Program for the Protection of Human Rights Defenders in Pará due to the constant threats in retaliation for his work" as a human rights defender. *Id.*

⁸⁸ *See id.* (internal quotations omitted).

⁸⁹ *See* Press Release, Inter-Am. Comm'n H.R., IACHR and UN Human Rights Condemn

investigation has not named any suspects.⁹⁰ Community leaders, community members, and his family believe that his killing is directly related to his defender work and years-long struggle to defend Quilombo lands.⁹¹ Maranhão is the Brazilian state with the highest rates of human rights defender killings.⁹² The Comissão Pastoral da Terra (“CPT”) released a statement indicating that Lopes Rodrigues was another victim of the land conflict defending Quilombola lands.⁹³ “Maranhão is marked by violence, criminalization of social movements, assassinations of leaders and attacks on human rights defenders.”⁹⁴ According to the CPT, Maranhão, a traditionally populated Quilombola state, is the most dangerous for Quilombola and defender murders as of 2021.⁹⁵

Also in January 2022, environmental defenders José Gomes, his wife Marcia Nunes Lisboa, and their underage daughter Joane were killed for their environmental work in São Félix do Xingu in Pará.⁹⁶ The family worked to repopulate the Xingu River with turtles; they did so to maintain the turtle population in the river since indigenous and riverine communities in the region eat turtles.⁹⁷ As part of their work, the family defended and demanded environmental protections of the region.⁹⁸ The

Murders of Environmental Activists and Quilombolas in Brazil (Jan. 24, 2022) [hereinafter IACHR Press Release], https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/017.asp [<https://perma.cc/2M66-AUWB>]; see also *José Francisco Lopes Rodrigues—Quilombola Community of Cedro (Comunidade Quilombola de Cedro)*, BUS. & HUM. RTS. RES. CTR. (Jan. 5, 2022), <https://www.business-humanrights.org/en/latest-news/jos%C3%A9-francisco-lopes-rodrigues-quiui/> [<https://perma.cc/DA5D-MK9S>].

⁹⁰ See Julia Dulce, *In Two Years, Five Community Leaders Murdered Over Land Dispute Involving Authorities in North Brazil*, INFOAMAZONIA, <https://infoamazonia.org/en/2022/02/10/in-two-years-five-community-leaders-murdered-over-land-dispute-involving-authorities-in-north-brazil/> [<https://perma.cc/YKM4-ZH6T>] (Feb. 25, 2022).

⁹¹ See *id.*

⁹² See *id.*

⁹³ See *id.*

⁹⁴ Andressa Zumpano, *Maranhão Registra o Primeiro Assassinato No Campo em 2022 [Maranhão Registers the First Murder in the Countryside of 2022]*, COMISSÃO PASTORAL DA TERRA (Jan. 10, 2022), <https://www.cptnacional.org.br/publicacoes/noticias/conflitos-no-campo/5901-maranhao-registra-o-primeiro-assassinato-no-campo-em-2022> [<https://perma.cc/8BLN-WDAJ>] (translation by author).

⁹⁵ See *id.*; see also Dulce, *supra* note 90.

⁹⁶ See Sam Cowie, *Brazilian Turtle Breeders Shot Dead Along with Teenage Daughter*, GUARDIAN (Jan. 13, 2022), <https://www.theguardian.com/global-development/2022/jan/13/brazilian-turtle-breeders-shot-dead-along-with-teenage-daughter> [<https://perma.cc/Z8T2-65XX>].

⁹⁷ *Id.*

⁹⁸ IACHR Press Release, *supra* note 89.

Brazilian Federal Public Ministry⁹⁹ considered the killing of this defender family as part of “a context of repeated attacks on environmentalists and human rights defenders in the country.”¹⁰⁰

Maria do Socorro Costa da Silva, a defender who lives in a Quilombo community in Barcarena,¹⁰¹ has already been threatened due to her activism fighting against the environmental injustice resulting from the Hydro Alunorte, the largest aluminum processing plant in the Amazon, and one of the world’s largest aluminum processing plants outside of China.¹⁰² Specifically, she and other activists have been fighting against illegal occupation of Afro-descendant ancestral lands, pollution, and corruption.¹⁰³ The Hydro Alunorte processing plant’s discharging of heavy metals in the river and subsequent release into the air has resulted in heavy toxic chemicals and metals such as lead, cadmium, and aluminum polluting water sources and soil used for farming.¹⁰⁴ Out of “the residents of the *quilombos* [] and the indigenous peoples, children are particularly at risk. Most have stopped playing in the nearby *igarapés*,

⁹⁹ The Brazilian Federal Public Ministry (Ministério Público Federal in Portuguese) is the Brazilian state agency empowered to defend social and individual rights, rule of law, and democracy. See *Sobre o MPF*, MINISTÉRIO PÚBLICO FED., <http://www.mpf.mp.br/o-mpf/sobre-o-mpf/sobre-o-mpf-1> [<https://perma.cc/C4FB-DNFR>] (last visited Apr. 12, 2023).

¹⁰⁰ *São Félix do Xingu: MPF Wants Rigor in Inquiry into Murder of Environmentalists—ISTOÉ DINHEIRO*, PLEDGE TIMES (Jan. 17, 2022), <https://pledgetimes.com/sao-felix-do-xingu-mpf-wants-rigor-in-inquiry-into-murder-of-environmentalists-istoe-dinheiro/> [<https://perma.cc/7ADC-4FNE>] (quoting Federal Public Ministry).

¹⁰¹ Jonathan Watts, *‘They Should Be Put in Prison’: Battling Brazil’s Huge Alumina Plant*, GUARDIAN (July 21, 2018, 1:12 PM), <https://www.theguardian.com/environment/2018/jul/21/land-grab-corruption-pollution-amazon-rainforest-brazil-maria-do-socorro-silva> [<https://perma.cc/EX2T-KZHD>]. Barcarena is located near Tocantins River in the state of Pará in northern Brazil. Patrícia Menezes, *Barcarena: An Amazonian Municipality Moving Towards Disaster Preparedness, Climate Adaptation and Sustainable Development*, UN OFF. FOR DISASTER RISK DEDUCTION (Sept. 19, 2022), <https://mcr2030.undrr.org/news/barcarena-amazonian-municipality-moving-towards-disaster-preparedness-climate-adaptation-and> [<https://perma.cc/WE7D-LDHZ>]. “As a coastal town located in the Amazon and at the intersection of several rivers and the Atlantic Ocean, Barcarena is highly vulnerable to the effects of climate change.” *Id.* Since this town has been facing increased “threats of soil erosion and landslides, the municipality has been implementing actions to achieve sustainability for more than a decade.” *Id.*

¹⁰² See *Alunorte*, HYDRO, <https://www.hydro.com/en/about-hydro/hydro-worldwide/north-america/brazil/barcarena/alunorte/> [<https://perma.cc/9UYQ-QJGF>] (last visited Apr. 12, 2023); Adriana Erthal Abdenur, *Environmental Activists Under Assault in Brazil*, CLIMATE DIPLO. (Oct. 30, 2018), <https://climate-diplomacy.org/magazine/conflict/environmental-rights-threats-activists-brazil> [<https://perma.cc/GS2J-X3SF>].

¹⁰³ *Id.*

¹⁰⁴ *Id.*

the small streams that split off the main rivers in the Amazon, due to the water and soil contamination.”¹⁰⁵

The attacks on these Quilombola defenders have been part of a systematic and persistent practice of targeting, harassing, attacking, and killing Quilombola defenders. The Brazilian military police and other law enforcement has consistently carried out the systematic criminalization, harassment, and arbitrary killings of environmental defenders.¹⁰⁶

Brazilian state police, military, and other law enforcement bodies have been primarily responsible for the use of lethal violence in Brazil.¹⁰⁷ Under Brazil's Constitution, public security is largely militarized even though it is allegedly under “civilian” agency control.¹⁰⁸ The Brazilian Constitution provides for a militaristic approach to security operations.¹⁰⁹ Article 144 of the Brazilian Constitution provides that “[i]t is within the competence of the military polices the ostensive policing and the maintenance of the public order; it is incumbent upon the military fire brigades, in addition to the duties defined by law, to carry out activities of civil defense.”¹¹⁰

Additionally, Brazilian bill 9432/17 amends the Brazilian Military Criminal Code and provides for a broader definition of “self-defense.”¹¹¹ This bill allows for police or military agents to use “unintentional[]” excessive force when they have an “excusable fear, surprise, or violent emotion” “in an armed conflict or risk of armed conflict.”¹¹² Judges are permitted to use this “self-defense” definition and exception to reduce or

¹⁰⁵ *Id.*

¹⁰⁶ See *Brazil: Environmental and Land Defenders Killed, Journalists Attacked, and Pandemic Data Blackout*, CIVICUS (Jan. 18, 2022), <https://monitor.civicus.org/updates/2022/01/18/brazil-environmental-and-land-defenders-killed-journalists-attacked-and-pandemic-data-blackout/> [<https://perma.cc/43XY-CGHC>].

¹⁰⁷ See *Situation of Human Rights in Brazil*, *supra* note 30, ¶ 311 (“[B]etween 2009 and 2018, 35,414 people died as a result of actions by (on or off-duty) police. Between 2013 and 2018, that number increased by 178.5%, coming from 2,212 to 6,620.”).

¹⁰⁸ See Andrés del Rio, *The Militarization of the Bolsonaro Administration*, LATINOAMÉRICA21 (Aug. 9, 2021), <https://latinoamerica21.com/en/the-militarization-of-the-bolsonaro-administration/> [<https://perma.cc/Y2UR-ZNKD>] (“By the end of 2020, about half of the ministers in the federal government were members of the military. There were more than 6,157 active or reserve military personnel working in the civil service.”). See also *Situation of Human Rights in Brazil*, *supra* note 30, ¶ 331; CONSTITUIÇÃO FEDERAL [C.F.] art. 144 (Braz.).

¹⁰⁹ See *Situation of Human Rights in Brazil*, *supra* note 30, ¶ 331; see also CONSTITUIÇÃO FEDERAL [C.F.] [Constitution] art. 144 (Braz.).

¹¹⁰ CONSTITUIÇÃO FEDERAL [C.F.] [Constitution] art. 144, pt. IV, ¶ 5.

¹¹¹ *Situation of Human Rights in Brazil*, *supra* note 30, ¶ 342.

¹¹² *Id.* (quoting proposed new language for Article 23 and Article 25 of the Criminal Code).

refrain from imposing sentences on military and police that use excessive force, thus institutionalizing impunity.¹¹³ This bill, together with the already existing military criminal justice system, creates a system that perpetuates impunity by giving police, military, and security forces a “license to kill.”¹¹⁴

In Brazil, Afro-descendant defenders have been systematically targeted, harassed, abused, and killed. It is in this context that we must consider an existing legal framework that protects Afro-descendant defenders. A comprehensive understanding of the international human rights framework protecting defenders and the right to a healthy environment of communities is critical for their voices to be heard. The next section will discuss how advocacy must consider the existing legal framework, along with recent international instruments protecting defenders and their environments.

II. BACKGROUND ON INTER-AMERICAN AND THE ESCAZÚ AGREEMENT

The protection of human rights in the Americas and the Caribbean can occur at the domestic, regional, and international levels. At the domestic level, states protect human rights and the environment through constitutional as well as legislative protections.¹¹⁵ By 2010, 70% of states globally explicitly recognized environmental rights or duties owed to their nationals or residents.¹¹⁶ This is crucial because state constitutions are considered a source of environmental rights that “can be invoked by citizens, governments, and non-governmental organizations to protect the environment or public health.”¹¹⁷ The regulation of environmental matters in the domestic level, generally involves a regulatory scheme, environmental law enforcement, incorporation of environmental matters to decision-making, and general environmental education.¹¹⁸

Human rights can be protected through regional instruments and bodies. In the Americas and the Caribbean, the regional human rights system is the Inter-American System for the Protection of Human Rights

¹¹³ *Id.*

¹¹⁴ *Id.* ¶ 343.

¹¹⁵ Erin Daly & James May, *Learning from Constitutional Environment Rights*, in *THE RIGHT TO A HEALTHY ENVIRONMENT* 42, 42–45, 51 (John H. Knox & Ramin Pejan eds., 2018).

¹¹⁶ Rep. of the UN High Comm’r for Hum. Rts., *Analytical Study on the Relationship Between Human Rights and the Environment*, ¶ 30, U.N. Doc. A/HRC/19/34 (2011).

¹¹⁷ Carl Bruch, Elana Roffman & Eugene Kim, *Legislative Representation and the Environment in African Constitutions*, 21 *PACE ENV’T L. REV.* 119, 119 (2004).

¹¹⁸ *Id.*

(“Inter-American System”).¹¹⁹ The Inter-American System is responsible for monitoring, preventing, and protecting against human rights violations.¹²⁰ Its primary judicial and quasi-judicial organs are the Inter-American Commission on Human Rights (“Inter-American Commission” or “Commission”) and the Inter-American Court of Human Rights (“Inter-American Court” or “Court”).¹²¹ Both organs are complementary to state domestic courts in the Americas and are responsible for the protection of human rights, by monitoring the implementation of international human rights norms by member States.¹²² The Commission and Court both rely on the Inter-American normative framework composed by the regional Inter-American instruments.¹²³ They may refer to international

¹¹⁹ The Inter-American System is the regional human rights system under the Organization of American States (“OAS”). INTER-AM. COMM’N H.R., INTRODUCTION 1, <https://www.oas.org/en/iachr/mandate/Basics/introduction-basic-documents.pdf> [<https://perma.cc/43KE-TWLE>] (last visited Apr. 12, 2023). The OAS is the regional political organization in the Americas and Caribbean. *Id.* Its mission and objectives are the promotion and strengthening of peace and security in the continent; the consolidation of democracy; the promotion of cooperative action in the economic, cultural, and social development of the member states; and to seek solutions for political, judicial, and economic problem that may arise between the states. *About the OAS*, OAS, <https://www.oas.org/en/about/purpose.asp> [<https://perma.cc/TAW4-D7L2>] (last visited Apr. 12, 2023).

¹²⁰ The Inter-American System of Human Rights is composed of the Inter-American Court and Commission of Human Rights under the Organization of American States. INTER-AM. COMM’N H.R., *supra* note 119, at 1. The Organization of American States is the regional organization of the Americas. *Id.* at 1 n.2. The OAS is composed of the General Assembly, Meeting of Consultation of Ministers of Foreign Affairs, the Permanent Council, the Inter-American Council for Integral Development, the Inter-American Judicial Committee, the Inter-American Commission on Human Rights, the General Secretariat, the Inter-American Specialized Conferences, and the Inter-American Specialized Organizations. *Id.*

¹²¹ *What is the I/A Court H.R.?*, INTER-AM. CT. OF H.R., https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en [<https://perma.cc/8EW5-KQWH>] (select dropdown “What organs comprise the Inter-American System of Human Rights?”) (last visited Apr. 12, 2023).

¹²² See *Inter-American Human Rights System*, INT’L JUST. RES. CTR., <https://ijrcenter.org/regional/inter-american-system/> [<https://perma.cc/74KM-Z56T>] (last visited Apr. 12, 2023).

¹²³ State obligations arise out of Inter-American instruments, such as the American Declaration of the Rights and Duties of Man (“American Declaration”), the American Convention, and specialized instruments such as the Additional Protocol of San Salvador. *Id.*; American Declaration on the Rights and Duties of Man, Res. XXX, Apr. 30, 1948, O.A.S.T.S. Nos. 17, 61, U.N.T.S. 449, *reprinted in* Inter-Am. Comm’n H.R., *Basic Documents Pertaining to Human Rights*, Doc. OAS/ser.L/V/I.4, rev. 9 (2003), https://www.oas.org/36ag/english/doc_referencia/Derechos_Hombre.pdf [<https://perma.cc/U2SD-RF8C>]; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”, art. 11, Nov. 17, 1988, O.A.S.T.S. No. 69, 28 I.L.M. 156, 165 (1989) [hereinafter Protocol of San Salvador].

or regional instruments from other systems for guidance when interpreting novel international concepts.¹²⁴

Additionally, there is a body of law centered on protecting environmental human rights outside of the Inter-American System. For example, the Escazú Agreement entered into force in April 2021.¹²⁵ The Escazú Agreement is an instrument under the auspices of the United Nations Economic Commission for Latin America and the Caribbean (“ECLAC” in English and “CEPAL” in Spanish).¹²⁶ One of ECLAC’s purposes has been to assist and organize the region, to examine global problems, and to formulate activities that reflect the region’s priorities, such as environmental protections.¹²⁷ In this context, the Escazú Agreement has become the first environmental treaty in the region and is particularly important for the protection of environmental human rights defenders.¹²⁸

Another recent regional instrument is the Esperanza Protocol. The Esperanza Protocol is a non-binding protocol created by the coming together of fifty experts in the field of international law, international human rights, and criminal law.¹²⁹ The Esperanza Protocol was led by the Center for Justice and International Law (“CEJIL”) and provides critical guidance on international human rights law in the protection of defenders, and in holding state and non-state actors accountable for violations of human rights.¹³⁰ While non-binding, the Esperanza Protocol seeks to

¹²⁴ Article 64 of the American Convention provides that “[t]he member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states.” OAS, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 143, art. 64 [hereinafter American Convention].

¹²⁵ *Depositary*, UNTREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-18&chapter=27&clang=_en#:~:text=22%20April%202021%2C%20in%20accordance,%2C%20acceptance%2C%20approval%20or%20accession [https://perma.cc/UN5A-KUCN] (Jan. 4, 2023, 9:15 AM).

¹²⁶ *Id.*; *Mandate and Mission*, ECON. COMM’N FOR LATIN AM. & THE CARIBBEAN, <https://www.cepal.org/en/about/mandate-and-mission> [https://perma.cc/EXU6-HYUY] (last visited Apr. 12, 2023).

¹²⁷ *Mandate and Mission*, *supra* note 126.

¹²⁸ *The Escazú Agreement’s Adoption Two Years Ago Is Celebrated as Its Entry into Force Approaches*, CEPAL (Mar. 4, 2020), <https://www.cepal.org/en/pressreleases/escazu-agreements-adoption-two-years-ago-celebrated-its-entry-force-approaches> [https://perma.cc/529S-UE2Z].

¹²⁹ ESPERANZA PROTOCOL, *supra* note 29, at Foreword.

¹³⁰ *Id.* The process of creation of the Esperanza Protocol began in 2016 as a result of many defenders who perished, like Berta Cáceres, a Honduran Indigenous environmental defender, who was targeted and killed for her work defending Lenca Indigenous rights against land and environmental rights violations. *Id.*

codify a framework of protections that are afforded for human rights defenders and the responsibility of states to adequately respond to threats against defenders, specifically with investigation, prosecution, and punishment of such threats.¹³¹

III. HUMAN RIGHTS DEFENDERS

A. *Human Rights Defenders Engaging in Environmental Work*

Defenders, whether called human rights defenders or environmental defenders, are persons who work to protect and promote human rights.¹³² The Declaration on Human Rights Defenders provides that there is no specific definition on who is or can be a human rights defender.¹³³ However, it does specify that “individuals, groups and associations . . . contributing to . . . the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals” are protected.¹³⁴ Human rights defenders generally work at the local or national level, but can also work internationally, and perform a range of tasks such as investigating and shedding light on human rights violations; facilitate a community’s, or public’s, participation in decision-making processes; provide training or equipment to improve access to information; assist individuals and communities in accessing basic services; and teach human rights or disseminate information about human rights standards.¹³⁵

Human rights defenders can be of any age, sexual orientation and gender identity, race and ethnic background, and be of any professional or other background.¹³⁶ They do not have to self-identify as such and can be engaged in the protection of human rights by virtue of what they do. For example, “[a]n inhabitant of a rural community who coordinates a demonstration by members of the community against environmental degradation of their farmland by factory waste could also be described as a human rights defender.”¹³⁷ A student protester organizing students to

¹³¹ *Id.*

¹³² G.A. Res. A/RES/53/144, *supra* note 1, at annex.

¹³³ *Id.*

¹³⁴ *Id.* ¶ 4.

¹³⁵ UN OFF. OF THE HIGH COMM’R FOR HUM. RTS., HUMAN RIGHTS DEFENDERS: PROTECTING THE RIGHT TO DEFEND HUMAN RIGHTS, FACT SHEET NO. 29, at 3–5 (2004) [hereinafter FACT SHEET 29].

¹³⁶ *Id.* at 6.

¹³⁷ *Id.* at 8.

campaign to end torture in detention could also be a human rights defender.¹³⁸ The critical test to determine whether someone can be considered a human rights defender is whether the person is actually defending a human right.¹³⁹

Likewise, environmental human rights defenders are those who work to protect the environment from harm and who seek to protect the communities affected by environmental harm.¹⁴⁰ Environmental human rights defenders engage in the protection of the environment in different ways. While some environmental human rights defenders self-identify as environmental justice lawyers and advocates working towards the protection of the environment, other environmental human rights defenders are community or indigenous leaders, organizers, unionist, teachers, journalists, and other active community members advocating to protect their communities from environmental harm.¹⁴¹ Other less obvious environmental human rights defenders are individuals safeguarding the environment as a way to protect their family or community from harm.

B. Afro-descendant Defenders Engaging in Environmental Work

Human rights defenders' identity is an important component to consider when evaluating their vulnerability to human rights violations. Their race, ethnicity, sexual orientation and gender identity, or membership to an indigenous or tribal community are critical when considering their vulnerability to attacks by state agents or private actors.¹⁴² Indigenous and Afro-descendant individuals and communities are at a higher risk due to their relationship to their natural environment and role as land and environmental protectors.¹⁴³ Indigenous and tribal communities have suffered systematic, persistent, and historic mistreatment due to their involvement in protecting their natural environment, demanding

¹³⁸ *Id.*

¹³⁹ *Id.* at 9, 29.

¹⁴⁰ “[T]he term ‘environmental human rights defenders’ has been used by Special Rapporteur Knox, to refer to individuals working to protect the environment. They have also been referred to as ‘environmental defenders.’” Dávila A., *supra* note 1, at 404 n.158 (citing John Knox (Special Rapporteur on Human Rights and the Environment), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, U.N. Doc. A/71/281, ¶ 7 (Aug. 3, 2016)).

¹⁴¹ *See* Dávila A., *supra* note 1, at 404.

¹⁴² FACT SHEET 29, *supra* note 135, at 3–5.

¹⁴³ *Case of Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs. Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 129 (Nov. 28, 2007).

the demarcation of ancestral lands, protecting natural resources, and overall understanding that exploitative industries and activities in their land threaten their survival.¹⁴⁴

Afro-descendant defenders have been particularly vulnerable to attacks—by state and private actors—for their critical role in protecting their natural environments, communities, and for defending their cultural ties to their environment.¹⁴⁵ Specifically in the Americas, race has been historically used to normalize and systematize marginalization and exploitation.¹⁴⁶ Afro-descendants have been subjugated, their communities exploited for the benefit of those in power to gain access to natural resources, and generate profit based on their continued marginalization.¹⁴⁷ Colonialism and structural racism have thus created systems that perpetuate environmental racism, and the marginalization of communities.¹⁴⁸ Specifically, Afro-descendant defenders have become the first responders of the climate crisis and frontline defense against environmental exploitation by State and private actors.¹⁴⁹ They continue to fight against pervasive systems of oppression and “economic systems of extraction, exploitation, accumulation through dispossession, and white supremacy.”¹⁵⁰

C. *Marginalization and Human Rights Violations Against Quilombola Defenders*

Quilombolas have been historically marginalized and discriminated against for their identity as Afro-descendants and for their tribal identity as Maroon communities.¹⁵¹ They have lacked access to basic resources and lived in uninhabitable conditions.¹⁵² As discussed earlier in this Article, they have chosen a way of life that honors their

¹⁴⁴ *Id.* See also *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparation, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 205 (June 27, 2012).

¹⁴⁵ U.N. Doc. A/HRC/48/78, *supra* note 3, ¶ 26.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*; see also *Saramaka People*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶¶ 1–2; *Kichwa Indigenous People*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 2.

¹⁴⁸ U.N. Doc. A/HRC/48/78, *supra* note 3, ¶ 28.

¹⁴⁹ Ashoka Mukpo, *More Than Half of Activists Killed in 2021 Were Land, Environmental Defenders*, MONGABAY (Apr. 7, 2022), <https://news.mongabay.com/2022/04/more-than-half-of-activists-killed-in-2021-were-land-environment-defenders/> [https://perma.cc/A9G6-95CC].

¹⁵⁰ U.N. Doc. A/HRC/48/78, *supra* note 3, ¶ 32.

¹⁵¹ See Dávila A., *supra* note 1, at 359.

¹⁵² The list of human rights violations that Quilombolas suffer is a long one that includes the lack of access to food security, health, education, freedom from discrimination, public participation, and many more. VAN DER BOOR ET AL., *supra* note 15, at 3.

identity, culture, and ancestry from escaped slaves living in close relationship with their land.¹⁵³ In Brazil, they have served as protectors of their ancestral lands and natural environment.¹⁵⁴ Quilombolas have fought against state and private entities seeking to exploit their natural resources located within ancestral lands and stripping them of the use and enjoyment of such lands.¹⁵⁵ As a result, they have been the victims of human rights abuses, consisting of harassment, criminalization, rape, and killings.¹⁵⁶

Quilombola defenders in the state of Pará have been particularly vulnerable to state-sponsored attacks.¹⁵⁷ The personal safety and integrity of defenders has continuously been threatened. Brazilian state police were responsible for the extrajudicial killing and massacre of Quilombola defenders in the Pau D'Arco massacre and later in the Eldorado dos Carajás massacre.¹⁵⁸ Recently, as discussed above, defenders have continued to be attacked and killed for their environmental and human rights defense work.¹⁵⁹ Biko Rodrigues, Fernando dos Santos Araújo, José Francisco Lopes Rodrigues, and José Gomes (and his family), among many others have been targeted and killed for their work as Afro-descendant defenders in Quilombola lands.¹⁶⁰ Brazilian state police have carried out a systematic pattern of abuse where defenders have been silenced, harassed, criminalized, and killed for their human rights and environmental defense work.¹⁶¹

Now that Brazil's recently re-elected President Luiz Inácio Lula da Silva has come into power, Quilombola defenders are calling for justice, accountability, and a greater voice and visibility in participatory processes to protect their healthy environment. Socorro do Burajuba, a Quilombola leader from the municipal district of Barcarena in the state of Pará, has called upon President Lula da Silva to pay attention to the Quilombos and the environmental contamination in their state.¹⁶²

¹⁵³ *Id.* at 2.

¹⁵⁴ *Id.*

¹⁵⁵ See Gross, *supra* note 43; Situation of Human Rights in Brazil, *supra* note 30, ¶¶ 42–45.

¹⁵⁶ See Naknanuk, *supra* note 53.

¹⁵⁷ See Situation of Human Rights in Brazil, *supra* note 30, ¶ 129 (citing INT'L LAB. ORG., FIGHTING FORCED LABOUR: THE EXAMPLE OF BRAZIL 1 (2009)).

¹⁵⁸ *Id.* ¶ 108.

¹⁵⁹ Mukpo, *supra* note 149.

¹⁶⁰ See discussion *supra* Section I.B.

¹⁶¹ See Naknanuk, *supra* note 53.

¹⁶² *Message to Lula 2: Listen to Brazil's Quilombola and Riverine Peoples*, SUMAÚMA (Nov. 5, 2022), <https://sumauma.com/en/escute-quilombolas-ribeirinhos-lula/> [<https://perma.cc/EMM7-LMGJ>].

I hope when Lula takes office he'll pay attention to the people of Barcarena and Abaetetuba, and from the islands of Pará. There's a real problem with contamination here. We have heavy metals in our blood, and we can't plant, harvest or sell crops. Each new generation is born and dies, and every day we die a little too, from the mining companies' heavy metal poison in our blood.¹⁶³

She and other defenders have called upon President Lula da Silva and his government to include them in conservation policies, adopting the human rights disability slogan of “[n]othing about us, without us.”¹⁶⁴

Marizelha Carlos Lopes, Quilombola from On Ilha de Mare island, has said that “[o]ne of our objectives is to escape intentional invisibility.”¹⁶⁵ She and countless others have been organizing to increase presence in the political participatory process, for Quilombos to have more elected officials representing their voices and protecting their rights.¹⁶⁶ This Black Movement has sought to organize Afro-descendants and Quilombolas and is called by many “Quilombo in the Parliaments.”¹⁶⁷

One of the many challenges that President Lula da Silva will face, is to adopt a comprehensive framework to promote justice and accountability for Quilombolas. His administration will have to reckon not only with former president Bolsonaro's policies of environmental destruction but also with the historic marginalization and victimization of Quilombolas' rights.¹⁶⁸ The next section will discuss a legal human rights framework to protect Quilombola defenders.

IV. LEGAL FRAMEWORK PROTECTING HUMAN RIGHTS DEFENDERS

The Declaration on Human Rights Defenders (“Declaration on Defenders”) recognizes the critical role played by defenders in protecting

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Jimin Kang & Amanda Perobelli, *Black Brazilians in Remote ‘Quilombo’ Hamlets Stand Up to Be Counted*, REUTERS (Sept. 20, 2022, 5:04 PM), <https://www.reuters.com/world/americas/black-brazilians-remote-quilombo-hamlets-stand-up-be-counted-2022-09-20/> [<https://perma.cc/V2TD-LMFJ>].

¹⁶⁶ *Id.*

¹⁶⁷ Tatiana Lima, *Quilombo in the Parliaments: The Brazilian Black Movement's Proposal to Reconstruct the Nation Through Its 2022 Elections*, RIOONWATCH (Aug. 9, 2022), <https://rioonwatch.org/?p=71272> [<https://perma.cc/95X6-B7M3>].

¹⁶⁸ *Id.*

human rights and the duty of states in creating an environment where they are able to “recognize[] the key role of human rights defenders in the realization of . . . human rights.”¹⁶⁹ Article 1 of the Declaration on Defenders provides that “[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”¹⁷⁰ As previously mentioned, there is not a set definition for human rights defender.¹⁷¹ A human rights defender “can be any person or group of persons working to promote human rights, ranging from intergovernmental organizations based in the world’s largest cities to individuals working within their local communities.”¹⁷² It is not the identity of the defender that matters, but rather, the role they play in protecting and promoting human rights.

Human rights defenders protect human rights in a variety of ways. They investigate, collect, and disseminate information on human rights violations.¹⁷³ By engaging in human rights reporting, they bring attention to issues that are invisible or in need of highlighting to the public and political arenas.¹⁷⁴ They use investigative techniques to establish patterns of abuse and to show that human rights crises may be widespread and systematic.¹⁷⁵ As part of grassroots work or targeted advocacy, they may assist victims or survivors of violence and human rights violations to seek accountability through legal mechanisms in local, regional, or international courts.¹⁷⁶ They may seek effective remedies for victims and guarantees of non-repetition through the adoption of policies and changes in domestic legislation.¹⁷⁷ To obtain such effective remedies, human rights defenders test access to justice systems, both for victims of human rights violations and themselves and for violations suffered for engaging in human rights work.¹⁷⁸ At a higher level, human rights

¹⁶⁹ HELEN NOLAN, STIMSON, PROTECTING THOSE WHO PROTECT HUMAN RIGHTS: OPPORTUNITIES AND RISKS FOR ACTION AT THE UN 4 (2022).

¹⁷⁰ G.A. Res. A/RES/53/144, *supra* note 1, art. 1.

¹⁷¹ *See id.* and accompanying text.

¹⁷² FACT SHEET 29, *supra* note 135, at 6.

¹⁷³ *About Human Rights Defenders*, UN OFF. OF THE HIGH COMM’R FOR H.R., <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders> [<https://perma.cc/CYY5-J8PY>] (last visited Apr. 12, 2023).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ G.A. Res. 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Nov. 29, 1985).

defenders may work on mobilizing cross-sectors of society to engage in movement advocacy and lawyering. They seek to strengthen mechanisms for vulnerable persons and communities, by pushing for anti-corruption measures and governmental transparency, as well as the development of normative frameworks strengthening human rights protections.¹⁷⁹

Due to their work, human rights defenders are subjected to a range of human rights abuses, including being the “target of executions, torture, beatings, arbitrary arrest and detention, death threats, harassment and defamation, as well as restrictions on their freedoms of movement, expression, association and assembly. [Additionally, such human rights] [d]efenders have been the victims of false accusations and unfair trial and conviction.”¹⁸⁰ In essence, they are targeted, harassed, threatened, raped, tortured, and killed for protecting the rights of those who are invisible and voiceless. “There is no more direct attack on civil society space than the killing of human rights defenders.”¹⁸¹

Threats and attacks on defenders constitute a violation of multiple human rights, including their

right to defend human rights, the right to life, the right to security and integrity; the right to be free from torture and cruel, inhuman, and degrading treatment; the right to freedom of opinion and expression, the right to freedom of assembly, the right to freedom of association, the right to access and communicate with international bodies, the right to a fair trial and judicial protection; the right to freedom of movement, residence, and protection from forced displacement; the right to privacy, and the right to the protection of honor and dignity.¹⁸²

¹⁷⁹ *Special Rapporteur on Human Rights Defenders*, *supra* note 173.

¹⁸⁰ *Challenges Faced by Human Rights Defenders*, UN OFF. OF THE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/challenges-faced-human-rights-defenders> [<https://perma.cc/AE8C-6WE4>] (last visited Apr. 12, 2023); *Berta Cáceres' Murder: UN Experts Renew Call to Honduras to End Impunity*, UN OFF. OF THE HIGH COMM'R FOR HUM. RTS. (Apr. 11, 2016), <https://www.ohchr.org/en/press-releases/2016/04/berta-caceres-murder-un-experts-renew-call-honduras-end-impunity?LangID=E&NewsID=19805> [<https://perma.cc/3VM4-Z4PE>]; *Berta Cáceres, 2015 Goldman Prize Recipient South and Central America*, THE GOLDMAN ENV'T PRIZE, <https://www.goldmanprize.org/recipient/berta-caceres/> [<https://perma.cc/BZ99-XJFG>] (last visited Apr. 12, 2023).

¹⁸¹ Mary Lawlor (Special Rapporteur on the Situation of Human Rights Defenders), *Final Warning: Death Threats and Killings of Human Rights Defenders*, ¶ 2, U.N. Doc. A/HRC/46/35 (Dec. 24, 2020) [hereinafter *Final Warning*].

¹⁸² ESPERANZA PROTOCOL, *supra* note 29, at 7.

A violation of any of these rights is not only a violation of their human rights as individuals, but also as human rights defenders. In particular, violations of human rights for engaging in human rights work is a violation of the right to defend rights, “which has universal scope and is fundamental to achieving universal respect for human rights.”¹⁸³ As such, violating the rights of defenders is not only an attack on them, but on the protection of human rights in general.

A. *Right to Information*

Of particular importance, is the defenders’ right to seek, receive, and impart information.¹⁸⁴ Specifically, it is particularly important for human rights defenders to have access to information regarding human rights abuses and impart information necessary for persons and communities to navigate access to justice mechanisms.¹⁸⁵ While access to information is not absolute, there is a presumption of maximum disclosure.¹⁸⁶ States may not impose “prior censorship,” but rather, they can restrict access to information “to ensure . . . the rights or reputations of others; or . . . the protection of national security, public order, or public health or morals.”¹⁸⁷

The right to information is closely linked to the right to freedom of expression, association, and assembly.¹⁸⁸ Article 13 of the American Convention and Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”) provide that individuals have the “freedom to seek, receive, and impart information.”¹⁸⁹ This right is inclusive of receiving information from governmental and non-governmental entities, as well as sharing that information with the public and affected communities.

A regional agreement providing particular protections strengthening the right to information in relation to environmental matters is the

¹⁸³ *Id.* at 8.

¹⁸⁴ *Id.*; see also Dávila A., *supra* note 1, at 408.

¹⁸⁵ See John H. Knox (Special Rapporteur on Human Rights and the Environment), *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶ 5, U.N. Doc. A/HRC/34/49 (Jan. 19, 2017) [hereinafter Knox Report].

¹⁸⁶ *Id.* ¶ 19.

¹⁸⁷ American Convention, *supra* note 124, art. 13(2).

¹⁸⁸ *Id.* ¶ 27; see also International Covenant on Civil and Political Rights arts. 19, 21, 22, adopted Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

¹⁸⁹ ICCPR, *supra* note 188, art. 19; see also American Convention, *supra* note 124, art. 13.

Escazú Agreement. The Escazú Agreement defines environmental information as “any information . . . regarding the environment and its elements and natural resources, including information related to environmental risks, and any possible adverse impacts affecting or likely to affect the environment and health, as well as to environmental protection and management.”¹⁹⁰ This broad definition of environmental information is critical for the protection of environmental rights and environmental human rights defense work. This broad conception of environmental information encompasses information relating to possible environmental risks or adverse impacts, as well as interrelated issues that may be relevant to a population’s health.¹⁹¹ Human rights defense work cannot be performed without adequate information regarding possible environmental harms and/or impacts on the population. Specifically, it is critical for defenders to have access and be able to disseminate information relating to air and water quality, pollution, waste, chemicals, and other potentially harmful substances.¹⁹²

In most states, including Brazil, defenders have to overcome onerous barriers, created by the States themselves, for trying to access environmental information.¹⁹³ The Inter-American Court has recognized that all persons have the right to information and to participatory processes.¹⁹⁴ In *Claude-Reyes v. Chile*, the Inter-American Court found that there is a presumption of disclosure, establishing that all information is accessible to the public.¹⁹⁵ The Court established the proportionality test, according to which a restriction imposed by a state on accessing information must be related to a “[legitimate] objective[] . . . [and] it must also be shown that disclosure could cause substantial prejudice to this objective and that the prejudice to the objective is greater than the public interest in having the information.”¹⁹⁶ In this case, Chile restricted access to information related to a forestry exploitation project with potential environmental impact and failed to provide a purpose for such restriction.¹⁹⁷ The Court later extended the scope of the right to information in *Gomes*

¹⁹⁰ ESCAZÚ AGREEMENT, *supra* note 29, art. 2(c).

¹⁹¹ *Id.*

¹⁹² See Knox Report, *supra* note 185, ¶¶ 11, 17, 18.

¹⁹³ See *Claude-Reyes v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151, ¶¶ 2, 8 (Sept. 19, 2006) [hereinafter *Claude-Reyes v. Chile*].

¹⁹⁴ The Court found in *Claude-Reyes v. Chile* that the public had a right to information regarding exploitative projects and that Chile had a positive obligation to provide access to information through the least restrictive measures. *Id.* ¶¶ 76–77, 87.

¹⁹⁵ *Id.* ¶ 92.

¹⁹⁶ *Id.* ¶ 58(c).

¹⁹⁷ *Id.* ¶ 73.

Lund v. Brazil, with the specific requirement that information must be timely and without undue delays.¹⁹⁸

The Escazú Agreement reaffirms the two requirements of timeliness and maximum disclosure. Article 5(2) of the Escazú Agreement, provides that the right to access to information includes the right to “(a) . . . explaining the reasons for that request; (b) being informed promptly whether the requested information is in possession or not of the competent authority receiving the request; and (c) being informed of the right to challenge and appeal when information is not delivered”¹⁹⁹ For defenders, having a procedural protection in place through which they can follow up on information requests and potentially appeal denials is incredibly powerful.

As discussed above, there is a presumption of maximum disclosure in regard to access to information. As General Comment No. 34 to the ICCPR provides that for the right to information to be protected, States should proactively publish information concerning public interest and enact necessary procedures to facilitate access to information.²⁰⁰ Article 19 of the ICCPR emphasizes that restrictions to the right to information must only be as provided by law, and necessary for the protection of national security or other public justification, such as public order or health.²⁰¹ Once again—due to the nature of human rights defense work—the ability of defenders to receive and disseminate information is particularly important.²⁰²

Recently, the Inter-American Court reaffirmed the importance of the proportionality test established in *Claude-Reyes v. Chile*.²⁰³ In *Gomes Lund v. Brazil*, the Court added that for States to justify restrictions of access to information, they had to show “the impossibility of presenting

¹⁹⁸ *Gomes Lund et al. v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶ 201 (Nov. 24, 2010).

¹⁹⁹ ESCAZÚ AGREEMENT, *supra* note 29, art. 5(2).

²⁰⁰ U.N. Hum. Rts. Comm., *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, ¶ 5, U.N. Doc. CCPR/C/21/Rev.1 (Aug. 31, 2001).

²⁰¹ ICCPR, *supra* note 188, art. 19.

²⁰² See David Kaye (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 21 U.N. Doc. A/HRC/38/35 (Apr. 6, 2018) (“The Declaration also protects the right to develop and discuss new human rights ideas, allowing all people to be part of the progressive development of human rights ideas and to be actively engaged in setting new directions for the human rights project. This right recognizes that some of these new ideas may be culturally, religiously or politically controversial; it is precisely this potential for controversy that demands space for free and open discussion and debate.”).

²⁰³ See *Claude-Reyes v. Chile*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 151, ¶ 59 (Sept. 19, 2006).

said information.”²⁰⁴ Additionally, in its Advisory Opinion on *The Environment and Human Rights*, the Court reaffirmed that “the principle of maximum disclosure is applicable [to access to State-held information], based on the presumption that all information is accessible, subject to a limited system of exceptions.”²⁰⁵ This recent analysis from the Inter-American Court is critical for defenders seeking information, and claiming that their rights to access information have been denied. In fact, the Court’s finding that refusals lacking justifications will be considered arbitrary and fall outside the protected flow of information complies with the Court’s jurisprudence and the Escazú Agreement.²⁰⁶

Furthermore, the Escazú Agreement provides additional requirements as to State dissemination of information. According to Article Six of the Escazú Agreement, the State must abide by specific requirements in generating, collecting, publicizing, and disseminating information.²⁰⁷ The State’s information system must be tailored to disseminate information in a way appropriate for vulnerable individuals and communities, and includes environmental impact assessments (“EIAs”).²⁰⁸ Of significant

²⁰⁴ *Gomes Lund v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶ 230 (Nov. 24, 2010).

²⁰⁵ *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(1) in Relation to Articles (1) and 2 of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A.) No. 23, ¶ 224 (Nov. 15, 2017) [hereinafter *The Environment and Human Rights*].

²⁰⁶ ESCAZÚ AGREEMENT, *supra* note 29, at 18.

²⁰⁷ *Id.* art. 6(1).

²⁰⁸ *Id.* arts. 6(6), 6(3). An EIA can be defined as environmental information that is critical for the public to engage in participatory processes relating to the environmental and social impacts of projects with environmental dimensions. *Id.* arts. 21, 25. EIAs are critical to provide a population information relating to the environmental and social impacts of projects, which can be particularly important for a population’s ability to exercise their right to participation. *Id.* arts. 1, 13, 22. EIAs are the primary mechanism with which States and private entities provide the public with information regarding the environmental and social impact of a proposed project. See *Environmental (and Social) Impact Assessments (EIAs)*, INTER-AM. DEV. BANK, <https://www.iadb.org/en/projects/environmental-and-social-impact-assessments-eias> [<https://perma.cc/ZTA7-DRSN>] (last visited Apr. 12, 2023). EIAs evaluate the impact that State and non-State actors have on the environment, important environmental considerations in decision-making, participation and public consultations, alternatives to proposed actions affecting the environment, and possible environmental safeguards to mitigate or avoid environmental harm. See *Domestic Environmental Law*, ORG. OF AM. STATES, <http://www.oas.org/dsd/tool-kit/documentos/moduleii/domestic%20environmental%20law.pdf> [<https://perma.cc/EF4S-9FBX>] (Feb. 23, 2007).

importance for defenders is also the obligation that States “immediately disclose and disseminate [information] through the most effective means . . . that could help the public take measures to prevent or limit potential damage.”²⁰⁹ The positive “obligation of active transparency” reaffirms the Escazú Agreement’s obligation to disseminate information so that it is accessible and understandable.²¹⁰ The Escazú Agreement prioritizes the protection of vulnerable individuals and communities and requires States to facilitate and provide accessible information that addresses their specific vulnerabilities and conditions, such as language proficiencies.²¹¹ Defenders seek to lift barriers and open the door to what would happen “behind closed doors” if the information were not accessible.²¹² In fact, consent can only be granted when the public or a community is able to make informed decisions relating to proposed projects.²¹³

Like other vulnerable populations, Quilombolas have historically been marginalized and prevented from accessing information relating to matters that affect them and their natural environment. For example, Quilombolas have been prevented from accessing information relating to the recognition of their ancestral lands through the Cadastro Ambiental Rural (“CAR”),²¹⁴ the registry where titles to rural lands are recorded.²¹⁵ “We do not receive information from the federal government and the states on how to carry out the CAR and, therefore, many [Q]uilombolas are afraid to register collectively and choose to do so individually . . .”²¹⁶ Access to

²⁰⁹ ESCAZÚ AGREEMENT, *supra* note 29, art. 6(5).

²¹⁰ The Environment and Human Rights, *supra* note 205, ¶ 221.

²¹¹ ESCAZÚ AGREEMENT, *supra* note 29, arts. 5(3), 6(6).

²¹² Knox Report, *supra* note 185, ¶¶ 11, 42; ALAN GILPIN, ENVIRONMENTAL IMPACT ASSESSMENT: CUTTING EDGE FOR THE TWENTY-FIRST CENTURY § 1.5 (1995); MEBRATU-TSEGAYE, *supra* note 56, at 29.

²¹³ Knox Report, *supra* note 185, at Principle 15(b), ¶ 51.

²¹⁴ The Brazilian Forest Code requires that rural properties and native vegetation are protected and recorded through the CAR in Portuguese and the “Environmental Rural Registry” in English. See Anselm Duchrow, *An Environmental Registry Is Protecting the Amazon Rainforest (CAR)*, DEUTSCHE GESELLSCHAFT FÜR INTERNATIONALE ZUSAMMENARBEIT (GIZ), <https://www.giz.de/en/worldwide/34060.html> [<https://perma.cc/2MNX-T33M>] (last visited Apr. 12, 2023). The registration of Quilombola ancestral lands has been critical for their ability to defend their traditional use of the land and prevent illegal land seizures. See *id.*

²¹⁵ Andressa Cabral Botelho, *New Environmental Regularization Process Harms Quilombolas and Traditional Peoples*, INSTITUTO SOCIOAMBIENTAL (May 13, 2022, 8:00 AM), <https://www.socioambiental.org/en/socio-environmental-news/new-environmental-regularization-process-harms-quilombolas-and-peoples> [<https://perma.cc/PVX9-EEFU>].

²¹⁶ *Id.* (quoting Francisco Chagas).

information relating to the registration of their collective titles to ancestral lands is a precondition for the enjoyment of their collective rights to the natural resources in their ancestral lands. These obstacles to receiving and accessing information impacts their ability to engage in a meaningful dialogue with Brazilian federal agencies and state environmental and specialized agencies.²¹⁷ Their inability to receive information and register their lands prevents Quilombolas from utilizing their lands through “collective use,” the traditional form of using their natural resources.²¹⁸

Quilombolas' rights to free, prior, and informed consent are violated when they are unable to receive information necessary to claim the rightful titles to their land and engage in a meaningful dialogue with State authorities. As such, barriers to access to information continue to prevent Quilombolas from seeking, receiving, and imparting information, as well as engaging in participatory processes relating to their environment.

Similarly, Quilombolas have lacked access to information from EIAs. They have not had access to the EIAs of projects affecting their ancestral lands.²¹⁹ “[M]ore than 10% of Brazilian [Q]uilombos are under pressure in their territories, either by the implementation of infrastructure projects or by the action of enterprises.”²²⁰ Brazil's failure to ensure Quilombolas' access to information relating to the environmental and social impacts of projects affecting their lands creates obstacles to their meaningful participation in and consent to activities in their ancestral lands.²²¹

B. *Right to Participation*

As mentioned above, freedom of expression and association are interrelated and interdependent. The ability to exercise the right to

²¹⁷ *Id.*

²¹⁸ *Id.* Although the 1988 Brazilian Constitution granted Quilombolas the rights to their ancestral lands, the Brazilian government has failed to demarcate and guarantee their lands from state and private intervention. *Quilombos and Land Rights in Contemporary Brazil*, CULTURAL SURVIVAL (Apr. 28, 2010), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/quilombos-and-land-rights-contemporary-brazil> [<https://perma.cc/5A9D-JHAM>]. Further, the Brazilian government has failed to recognize many Quilombola communities through the certification process, thus creating obstacles for Quilombolas to claim rights to their ancestral lands. See Indigenous and Tribal Peoples' Rights, *supra* note 42, ¶¶ 94, 114.

²¹⁹ See Maryellen Chrysostom, *Quilombolas Denounce at COP27 Invisibility on the Climate and Environmental Agenda*, INSTITUTO SOCIOAMBIENTAL (Nov. 7, 2022, 2:56 PM), <https://www.socioambiental.org/en/socio-environmental-news/quilombolas-denounce-in-COP27-invisibility-in-the-climate-and> [<https://perma.cc/A42W-3E2Z>].

²²⁰ *Id.*

²²¹ *Id.*

association largely rests on the possibility of exercising the expression of ideological, religious, political, social, cultural, and other views.²²² The right to participate in governmental and public affairs includes the ability to meaningfully participate in decision-making processes.²²³

All persons have the right to participation. However, of particular importance to human rights defenders is the right “[t]o meet or assemble peacefully,” “[t]o form, join and participate in . . . associations or groups,” and “[t]o communicate with non-governmental or intergovernmental organizations.”²²⁴ Their work as human rights defenders largely depends on their ability to engage in different forms of advocacy through participatory processes, including demanding the right of consultation for marginalized and vulnerable communities who have been prevented from engaging in meaningful participation.²²⁵ In the context of indigenous and tribal communities, the right to participation has included the right to free, prior, and informed consent. This provides that indigenous and tribal persons have the right to be informed and consulted on activities that may impact them, including the environmental and social impacts of such projects.²²⁶

Environmental and social impact assessments are critical to inform a population—whether the public, affected person, or community—of the environmental and social impacts of a project. EIAs and Environmental and Social Impact Assessments (“ESIAs”) are important components of the participatory process because they “inform and elicit feedback from those who may be affected.”²²⁷

The Inter-American System has a well-established framework recognizing the importance of ESIAs.²²⁸ In *Saramaka People v. Suriname*,

²²² See American Convention, *supra* note 124, art. 16.

²²³ *Id.* art. 23.

²²⁴ G.A. Res. A/RES/53/144, *supra* note 1, arts. 5, 12(1).

²²⁵ See Dávila A., *supra* note 1, at 407, 411, 429.

²²⁶ *Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparation, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶¶ 167, 177–78 (June 27, 2012). Note that the Court also summarized this normative framework in *The Environment and Human Rights*, *supra* note 205, ¶ 227.

²²⁷ SARAH DÁVILA A., FRANCISCO RIVERA JUARISTI & BRITTON SCHWARTZ, UNIV. OF ILL. CHI. INT’L HUM. RTS. CLINIC & SANTA CLARA UNIV. INT’L HUM. RTS. CLINIC, ESCAZU’ TOOLKIT: USING THE ESCAZU’ AGREEMENT IN CASES BEFORE THE INTER-AMERICAN SYSTEM 26 (2022) (citing Tseming Yang, *The Emergence of the Environmental Impact Assessment Duty as a Global Legal Norm and General Principle of Law*, 70 HASTINGS L.J. 525, 529 (2019); Sarah Dávila-Ruhaak, *Making the Case for a Right to a Healthy Environment for the Protection of Vulnerable Communities: A Case of Coal-Ash Disaster in Puerto Rico*, 9 MICH. J. OF ENV’T & ADMIN. L. 379, 410–11 (2020)).

²²⁸ *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 129 (Nov. 28, 2007).

the Court held that States must conduct environmental and social impact assessments prior to granting concessions affecting indigenous ancestral land.²²⁹ Similarly, the Court explained that ESIA's must be realized by State-supervised independent and technically competent bodies.²³⁰ ESIA's must consider the possible risks, including environmental and health risks, and other impacts that concessions and projects will (or may) have on environmental conditions and a community's traditions, culture, and social relationship with their land.²³¹ Therefore, state officials must facilitate adaptable processes reflecting "the social, economic, cultural, geographical and gender characteristics of the public."²³²

Recently, the Court recognized that the responsibility to carry out ESIA's belongs to the State and private persons, thus extending what has been traditionally considered a State function to private persons or third parties.²³³ Additionally, the Escazú Agreement provides that States must ensure access to environmental information for persons or groups in vulnerable situations so as to ensure the equal exercise of their right to participation.²³⁴ This provision is consistent with the Inter-American Court finding that vulnerable groups must be provided "special protection," including in their enjoyment of the right to a healthy environment.²³⁵

This broadening of the international responsibility to protect the right to information and the participatory process is incredibly important for vulnerable populations and defenders. Quilombola communities and defenders have suffered from exclusion, marginalization, and historic systems of oppression. They have lived in disproportionately poorer communities subject to environmental racism, where their environments are polluted and subject to environmentally harmful policies.²³⁶ "There are still no specific studies or public policies that will guarantee our safety[;] . . . [w]e have no escape route," said a Quilombola from Quilombo Bananeiras, Ilha de Mare, Salvador State of Bahia in Brazil.²³⁷

²²⁹ *Id.*; see also *Kichwa Indigenous People of Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 205.

²³⁰ *Saramaka People*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 129.

²³¹ *Id.*

²³² ESCAZÚ AGREEMENT, *supra* note 29, art. 7(10).

²³³ *The Environment and Human Rights*, *supra* note 205, ¶¶ 109, 118.

²³⁴ ESCAZÚ AGREEMENT, *supra* note 29, art. 5(3); *Ximenes Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, ¶ 103 (July 4, 2006); *The Environment and Human Rights*, *supra* note 205, ¶¶ 67–68.

²³⁵ *Ximenes Lopes*, Inter-Am. Ct. H.R. (ser. C) No. 149 ¶ 103.

²³⁶ Kang & Perobelli, *supra* note 165.

²³⁷ *Id.*

Quilombolas and Afro-descendants in Brazil have less representation and face higher barriers in accessing public participatory and decision-making processes:

According to the Brazilian Institute for Geography and Statistics (IBGE), despite Afro-Brazilians making up 54.1% of the population, only 124 of the 513 federal deputies elected to the National Congress in 2018 self-identified as black. This is just 24% of the Congress, less than half of the corresponding percentage of the Brazilian population. 385 (or 75%) of representatives self-identified as white, 2 (0.39%) identified as Asian-Brazilian and 1 (0.19%) as indigenous.²³⁸

Recently, Quilombolas and other Afro-descendants in Brazil have organized as Brazil's Black Coalition for Rights (in Portuguese, "Coalizão Negra por Direitos do Brasil").²³⁹ This coalition includes Quilombolas and has been referred to as "Quilombolo in the Parliaments."²⁴⁰ Quilombolo in the Parliaments seeks to organize and get elected Afro-descendant leaders who are committed to their agenda of promoting a collective and anti-racist movement.²⁴¹

History requires of the Brazilian black population and of the entire African diaspora a coordinated action for the confrontation of racism, genocide and inequalities, injustices and violence derived from this reality. This Coalition comes together to advocate in our own name, from the values of collaboration, ancestry, circularity, the sharing of axé (inherited and transmitted life force), orality, transparency, self-care, solidarity, collectivism, memory, acknowledgement of differences, horizontality, and love. In defense of life, of well-being and of hard-won, inalienable and non-negotiable rights, we will continue to honor our ancestors, unifying the entire Afro-diasporic population in our struggle for a future free of racism and all oppressions.²⁴²

²³⁸ Lima, *supra* note 167.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Tatiana Lima, *The Significant Political Advocacy of Brazil's Black Coalition for Rights*,

This coalition was created as a result of former Brazilian President Bolsonaro's affirmative policies against Afro-descendants, and especially Quilombolas defending their environmental human rights.²⁴³ Current Brazilian President Lula da Silva must rectify the historic exclusion and marginalization of Quilombolas. They must be protected as a historically marginalized community, a community vulnerable to State officials and private entities seeking to silence their voices and their defense of ancestral lands and the natural environment. For too long, they have endured invisibility, targeted harassment, abuse, criminalization, and killings, among other forms of violence.²⁴⁴

As such, Brazil has an obligation to ensure the protection and freedom of Quilombola human rights defenders from interference with their work. As will be discussed in the next section, when an individual or group's human rights are violated, there must be accountability and access to justice.

C. Access to Justice

All persons have the right to access to justice.²⁴⁵ Access to justice is "the right of access to judicial and other remedies that serve as suitable and effective grievance mechanisms against violations of human rights."²⁴⁶ The right to access to justice encompasses multiple forms of redress, including the access to counsel, guarantees of procedural fairness, effective remedies, and guarantees of non-discrimination.²⁴⁷ Access to justice ensures that individuals and groups are able to hold state authorities and private actors accountable for violations of human rights.²⁴⁸

Defenders must be afforded their right to protect human rights, as well as effective protections and remedies for violations of their human rights.²⁴⁹ Articles 8 and 25 of the American Convention provide for the

RIOONWATCH (Feb. 27, 2022, 11:52 AM), <https://rioonwatch.org/?p=69440> [<https://perma.cc/A4XQ-TA6T>] (quoting Black Coalition Proposal Letter).

²⁴³ *Id.*; see also Menezes & Barbosa, *supra* note 23, at 231; *Americas: Defence*, *supra* note 23.

²⁴⁴ ESPERANZA PROTOCOL, *supra* note 29, at 8.

²⁴⁵ *Access to Justice*, U.N. & RULE OF L., <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/> [<https://perma.cc/TU4H-KH7F>] (last visited Apr. 12, 2023).

²⁴⁶ Inter-Am. Comm'n H.R., *Access to Justice as a Guarantee of Economic, Social and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*, OEA/Ser.L/V/II.129, doc. 4, ¶ 41 (Sept. 7, 2007).

²⁴⁷ ICCPR, *supra* note 188, arts. 2, 14, 26.

²⁴⁸ *Access to Justice*, *supra* note 245.

²⁴⁹ See G.A. Res. A/RES/53/144, *supra* note 1, art. 1.

right to effective remedies and access to justice “with due guarantees and within a reasonable time.”²⁵⁰ The right to an effective remedy recognizes that all persons have a right to a remedy that can be obtained through competent judicial, quasi-judicial, administrative, or legislative mechanisms.²⁵¹ The right to an effective remedy includes equal and effective access; adequate, effective, and prompt reparations; access to information related to harms that could lead to human rights violations; and the mechanisms available for redress.²⁵² “Reparations” for human rights violations may include recognition of wrongs committed, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.²⁵³ As such, States must provide reparations for harms committed against individuals or communities.

States have an obligation to protect all persons in their territory (or in some cases extraterritorially), and especially those particularly vulnerable to human rights violations.²⁵⁴ They have an obligation to protect human rights, as well as to take appropriate measures and exercise “due diligence to *prevent, investigate, prosecute, and punish violations*, and *provid[e] redress, including rehabilitation*, where there is State responsibility for violations.”²⁵⁵ This obligation provides that:

States may be liable for human rights violations committed by either State or non-State actors. Direct responsibility may be incurred by a State when a violation is committed by a State actor or with the State’s support, collaboration, acquiescence, or tolerance, including deliberate or pervasive inaction. Indirect responsibility may be incurred when the violation is committed by a non-State actor and the State fails to act with due diligence to prevent the violation; or fails to investigate and punish those responsible. The obligations to prevent, investigate, prosecute, and punish violations and provide reparations to victims are

²⁵⁰ American Convention, *supra* note 124, arts. 8, 25.

²⁵¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 8 (Dec. 10, 1948); ICCPR, *supra* note 188, arts. 2(2)–(3).

²⁵² G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, ¶ 2 (Mar. 21, 2006).

²⁵³ *Id.* ¶ 18; Hum. Rts. Comm., 68th Sess., Communication No. 711/1996, ¶ 10, U.N. Doc. CCPR/C/68/D/711/1996 (Mar. 20, 2000).

²⁵⁴ See Dávila A., *supra* note 6, at 160.

²⁵⁵ ESPERANZA PROTOCOL, *supra* note 29, at 9.

applicable to acts committed by both State and non-State actors. Individuals and business corporations may be liable for violations of national and international law relating to the commission of threats. Where the State is responsible for a human rights violation, directly or indirectly, it is obligated to provide redress.²⁵⁶

For violations of environmental human rights, states must ensure that effective remedies are prompt, the harms committed are addressed, and the remedies are understandable and accessible to the persons or communities affected.²⁵⁷ As part of this obligation to ensure access to justice and effective remedies, states must take all appropriate measures to end the discrimination of vulnerable populations, including legislation and regulation, customs and practices of the affected population, and any other measures necessary.²⁵⁸ Additionally, effective remedies may include “remediation of contaminated sites, the cessation of actions or inactions that give rise to impacts, the provision of health care, and the dissemination of information to ensure that parents and children know how to prevent recurrence.”²⁵⁹

The Escazú Agreement requires that all persons have “the right of access to justice in environmental matters.”²⁶⁰ States must also ensure due process protections through judicial and administrative mechanisms.²⁶¹ Challenges to access to justice are protected on procedural and substantive grounds, ensuring

access to judicial and administrative mechanisms to challenge and appeal . . . (a) any decision, action or omission related to the access to environmental information; (b) any decision, action or omission related to public participation in the decision-making process regarding environmental

²⁵⁶ *Id.*

²⁵⁷ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, ¶ 10, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992); G.A. Res. 60/147, *supra* note 252, ¶ 14.

²⁵⁸ G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples, arts. 17(2), 17(3) (Sept. 13, 2007).

²⁵⁹ Baskut Tuncak (Special Rapporteur on Human Rights and Toxics), *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, ¶ 40, U.N. Doc. A/HRC/33/41 (Aug. 2, 2016) [hereinafter Tuncak Report].

²⁶⁰ ESCAZÚ AGREEMENT, *supra* note 29, art. 8(1).

²⁶¹ *Id.* art. 8(2).

matters; and (c) any other decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment.²⁶²

Thus, persons or groups, including defenders, may navigate judicial or quasi-judicial mechanisms to vindicate rights violated due to environmental harm, risk, or the lack of participatory environmental rights.²⁶³ Individuals or groups can vindicate rights to substantive environmental protection when their rights to clean water and air, safe and adequate housing, health and reproductive health, adequate standard of living, and adequate food, among others, have been violated.²⁶⁴ As such, they may challenge state actions or omissions that have resulted in violations of their environmental rights or the communities they represent.²⁶⁵

Access to justice must be “effective, timely, public, transparent[,] . . . impartial” and affordable.²⁶⁶ In the case of vulnerable populations, including defenders, states must ensure measures to ease the burden of proof, facilitating the production of evidence in cases of environmental harm.²⁶⁷ This is particularly important for defenders bringing claims for environmental human rights violations stemming from harms by state agents, or private corporations protected by the state, that have access to critical information or access to scientific evidence of risk of harm.²⁶⁸ However, defenders bringing claims may not have access to the information relating to how particular substances move through air, soil, and water, or the particular levels of exposure for the community’s habitat or

²⁶² *Id.*

²⁶³ *Id.* art. 8.

²⁶⁴ Tuncak Report, *supra* note 259, ¶ 40; Knox Report, *supra* note 185, ¶ 4 (citing Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 1, June 25, 1998, 2161 U.N.T.S. 447; African Charter on Human and Peoples’ Rights, art. 24, June 27, 1981, 21 I.L.M. 58; Protocol of San Salvador, *supra* note 123, art. 11; Arab Charter on Human Rights, art. 38, May 22, 2004 (entered into force Mar. 15, 2008), *translated in* Mohammed Amin Al-Al-Midani & Mathilde Cabanettes, *Arab Charter on Human Rights 2004*, 24 B.U. INT’LL.J. 147 (2006); ASEAN Human Rights Declaration, art. 28, Nov. 19, 2012); *see also* Hum. Rts. Council, *CCPR General Comment No. 6: Art. 6 (Right to Life)*, ¶ 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (May 27, 1982); Knox Report, *supra* note 185, ¶ 5; International Covenant on Economic, Social and Cultural Rights, art. 12., Jan. 3, 1976, 993 U.N.T.S. 3.

²⁶⁵ ESCAZÚ AGREEMENT, *supra* note 29, art. 8(2)(c).

²⁶⁶ *Id.* art. 8(3)(a)–(b).

²⁶⁷ *Id.* art. 8(3)(e).

²⁶⁸ UN HUM. RTS. OFF. OF THE HIGH COMM’R, HUMAN RIGHTS, CLIMATE CHANGE AND BUSINESS 3, <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf> [<https://perma.cc/JY2Z-7S3G>] (last visited Apr. 12, 2023).

local population.²⁶⁹ It is also possible for defenders bringing claims not to have access to information regarding particular pollutants resulting in specific injuries affecting the population.²⁷⁰

The Inter-American Court has recognized the right of effective remedies for violations of environmental rights.²⁷¹ In the case of *Yakye Axa Indigenous Community v. Paraguay*, the Yakye Axa Indigenous community submitted a case for the violation of human rights stemming from environmentally harmful activities in their ancestral lands, natural resources, and community.²⁷² The Court found that the Yakye Axa community had suffered human rights violations due to environmental harm, and emphasized the importance of the availability of adequate procedures able to provide redress to the community.²⁷³

In its recent decision *Comunidades Indígenas Miembros de la Asociación Lhaka Honhat (Nuestra Tierra) v. Argentina*, the Court found that in addition to ensuring access to justice, effective remedies may include state actions to respond to situations to rectify environmental harms.²⁷⁴ The Court required Argentina:

to submit a report to the Court identifying, from among all the individuals who are members of the indigenous communities victims, critical situations of lack of access to drinking water or to food that could endanger their health or their life, and to draw up an action plan establishing the actions that the State will take, which must be appropriate to respond adequately to such critical situations, indicating the implementation timetable. The State must begin to implement the actions set out in the action plan as soon as this has been submitted to the Court. The

²⁶⁹ See, e.g., Kristin E. Schleiter, *Proving Causation in Environmental Litigation*, 11 AM. MED. ASS'N J. ETHICS 456, 460 (2009).

²⁷⁰ See *id.*

²⁷¹ E.g., *Yakye Axa Indigenous Cmty. v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 242.6–.13 (June 17, 2005); *Indigenous Cmty. of the Lhaka Honhat (Our Land) Ass'n v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶¶ 370.7–.13, 370.15 (Feb. 6, 2020).

²⁷² The Yakye Axa community is an indigenous community of hunter-gatherers that lives in the Paraguayan Chaco and has primarily relied on their ancestral lands for cultural and physical survival. *Yakye Axa Indigenous Cmty.*, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶¶ 50.1, 50.3, 50.10.

²⁷³ *Id.* ¶¶ 95–96 (quoting Int'l Lab. Org. Convention No. 169, art. 14(3), incorporated into Paraguayan domestic legislation by Law No. 234/93).

²⁷⁴ *Indigenous Cmty. of the Lhaka Honhat*, Inter-Am. Ct. H.R. (ser. C) No. 400, ¶ 332.

Court will transmit the said report to the Commission and the representatives so that they may forward any comments they deem pertinent. Based on the opinions of the parties and the Commission, the Court will evaluate whether this report and action plan are adequate and meet the terms of this judgment, and may require that they be completed or expanded. The Court will monitor the implementation of the respective actions until it considers that it has sufficient information to consider that this measure of reparation has been completed.²⁷⁵

As such, *Nuestra Tierra v. Argentina* affirmed the Court's long-standing position that access to justice must provide redress for violations of environmental rights.²⁷⁶ The redress needs to ensure that the measures to repair the harms are adequate and effective.

The Draft Decision I/6 on Article Nine of the Escazú Agreement emphasizes that human rights defenders contribute fundamentally by "strengthening democracy, access rights and sustainable development."²⁷⁷ Therefore, it is essential to enable a safe environment for defenders to engage in environmental protection and protection of human rights.²⁷⁸ States must also ensure protection of the right to access to justice in environmental matters.²⁷⁹ A person or community's ability to navigate judicial and quasi-judicial mechanisms is critical to enjoy their right to effective remedies in relation to environmental harms.²⁸⁰

Defenders, including Quilombola defenders, may use the Escazú Agreement to compel Brazilian authorities to secure protective measures and other forms of redress, such as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.²⁸¹

²⁷⁵ *Id.*

²⁷⁶ *Id.* ¶¶ 294–95.

²⁷⁷ Conf. of the Parties, *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, ¶ 2, U.N. Doc. I/6 (Apr. 22, 2022).

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Brazil has not ratified the Escazú Agreement, but it is a signatory and was part of the treaty's negotiations. Amel Notini Moreira Bahia & Lucas Carlos Lima, *The Escazú Agreement: Human Rights and Environmental Protection in Brazil*, GLOB. NETWORK FOR HUM. RTS. & THE ENV'T (Aug. 31, 2021), <https://gnhre.org/community/the-escazu-agreement-human-rights-and-environmental-protection-in-brazil/> [https://perma.cc/8AP7-HUUB]. The Brazilian Executive has not yet engaged in the process of sending the Escazú Agreement to Congress to ratify the agreement. *Id.* It will be important for Brazilian President

The Escazú Agreement recognizes the importance of defenders and provides that states must guarantee “a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.”²⁸² The agreement recognizes the importance of protecting defenders, and requires states to protect them in their ability to defend human rights as well as their enjoyment of human rights.²⁸³ Specifically, it calls on states to ensure the investigation and punishing of attacks, threats, intimidations, and other forms of human rights violations.²⁸⁴ The Esperanza Protocol clarifies that all cases against defenders must be investigated by independent and impartial authorities.²⁸⁵ Independent investigations must be “free from intimidation, harassment, threat of prosecution, or retaliation.”²⁸⁶ It is critical that during the investigatory processes persons engaging in such investigations are trained and ensure that investigations are carried out in a diligent and impartial manner.²⁸⁷ In the case of vulnerable communities, especially indigenous and tribal, they have a right to have investigators that “ensure that the investigation is carried out with the participation of and in accordance with the indigenous or tribal people’s knowledge and practices, and that it is culturally sensitive, according to the worldview of the respective community or tribe.”²⁸⁸

Access to justice measures must take into consideration the vulnerability of the population and ensure that states “take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders . . . including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights.”²⁸⁹

Given the attacks carried out by former Brazilian President Bolsonaro against defenders protecting the Amazon and the systematic destruction of indigenous and Quilombola lands, current President Lula

Lula da Silva to press for this process to move forward and provide for accountability measures in relation to environmental harms. *See id.*

²⁸² ESCAZÚ AGREEMENT, *supra* note 29, art. 9(1).

²⁸³ *Id.* art. 9(3).

²⁸⁴ *Id.*

²⁸⁵ ESPERANZA PROTOCOL, *supra* note 29, at 34.

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 34–35.

²⁸⁸ *Id.* at 56.

²⁸⁹ ESCAZÚ AGREEMENT, *supra* note 29, art. 9(2).

da Silva must ensure that affected populations and defenders are granted justice and accountability. “Bolsonaro’s great achievement when it comes to the environment has been this tragic destruction of forests which has turned Brazil into perhaps one of the greatest enemies of the global environment” said Carlos Rittl, a Brazilian environmentalist working at Germany’s Institute for Advanced Sustainability Studies.²⁹⁰ Quilombola defenders must be able to continue to protect their ancestral territory, culture, and lives.

In January of 2022, the Inter-American Commission of Human Rights filed an application before the Court for violations of human rights in regard to the Alcântara Quilombola communities.²⁹¹ The Alcântara Quilombola communities ancestral lands’ rights to property, rights to consultation, protection from expropriation of their lands, and effective remedies were violated.²⁹² The Alcântara Quilombola community was dispossessed of their ancestral lands due to the Brazilian government creating the Alcântara Quilombola Center for a national space program.²⁹³ The Inter-American Commission found that this project caused environmental degradation due to logging, affecting the Quilombolas’ ability to use their ancestral lands for farming, hunting, and fishing.²⁹⁴ Additionally, the Commission found that due to the Quilombola community’s vulnerability and the expropriation of their lands without due regard to the community’s right to consultation, a violation of human rights was committed, including the Quilombola’s inability to access their remedies.²⁹⁵ Therefore, the Commission found the petition to be admissible and recommended it to the Court for consideration on the merits.²⁹⁶

This case illustrates the continuous need to protect Quilombola communities and their natural environment. Quilombola defenders must be provided the right to defend their lands, environment, and communities. The ability to bring challenges and navigate access to justice mechanisms is critical for the vindication of Quilombola human rights. Bringing human rights claims is a core element to defenders’ work to protect human

²⁹⁰ Tom Phillips, *Amazon Deforestation Surges to 12-Year High Under Bolsonaro*, GUARDIAN (Nov. 30, 2020, 6:43 PM), <https://www.theguardian.com/environment/2020/dec/01/amazon-deforestation-surges-to-12-year-high-under-bolsonaro> [<https://perma.cc/NX5D-HX93>].

²⁹¹ Press Release, Alcântara’s Quilombola Communities, *supra* note 49.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

rights. States, including Brazil, must provide for measures that guarantee access to justice in a manner that minimizes barriers for individuals and communities and protects defenders in engaging in human rights defense work.²⁹⁷

CONCLUSION

According to Frontline Defenders, in 2021, at least 358 defenders were killed in the defense and protection of human rights.²⁹⁸ Brazil is one of the deadliest countries for defenders in the world.²⁹⁹ In Brazil, the targeting, criminalization, and killings of environmental defenders is so serious that, in August 2021, Brazil's Indigenous People Articulation filed a statement before the International Criminal Court alleging genocide and crimes against humanity against the "systematic and anti-indigenous" elimination of social and environmental protections, and the ". . . escalation of invasions in Indigenous Lands, deforestation and fires in Brazilian biomes, and also increased illegal mining in the territories."³⁰⁰ Afro-descendants and Indigenous Peoples in Brazil organized a participatory and political mobilization at the domestic level, and a comprehensive action at the international stage, to vindicate their human rights.³⁰¹ They have called upon Brazil and the international community to address the widespread attack on the environment, the populations living in those communities, and defenders. Brazil's inaction to investigations, prosecutions, and trials against perpetrators continues to be a pressing call to action.

The United Nations Special Rapporteur on the situation of human rights defenders, Mary Lawlor, has emphasized that states are failing to protect defenders from "attacks and killings by State and non-State actors."³⁰² Threats have been used as a weapon to silence defenders, their families, and the communities they defend and seek to protect.³⁰³ "Despite the seriousness of threats, most of these crimes remain unpunished

²⁹⁷ ESCAZÚ AGREEMENT, *supra* note 29, art. 8(4)(a).

²⁹⁸ Mukpo, *supra* note 149.

²⁹⁹ *Id.*

³⁰⁰ *Unprecedented: APIB Denounces Bolsonaro Before the ICC, in The Hague, for Indigenous Genocide*, ARTICULATION OF INDIGENOUS PEOPLES OF BRAZ. (Aug. 9, 2021), <https://apiboficial.org/2021/08/09/unprecedented-apib-denounces-bolsonaro-before-the-icc-in-the-hague-for-indigenous-genocide/?lang=en> [<https://perma.cc/BVA7-JX98>].

³⁰¹ *Human Rights Defenders Report*, *supra* note 24, ¶¶ 220–21.

³⁰² *Final Warning*, *supra* note 181, ¶ 9.

³⁰³ ESPERANZA PROTOCOL, *supra* note 29, at Foreword.

and perpetrators unidentified. Impunity enables additional harm, fuels cycles of violence, further inhibits [human rights defenders'] work, and erodes civic engagement.”³⁰⁴

While the primary obligation to protect human rights rests on states, they tend to be the persistent violator of human rights abuses, directly through state action or by acquiescing to private actors or entities violating human rights.³⁰⁵ States often suppress defenders by criminalizing their work and penalizing them or their families.³⁰⁶ Corporate interests, as well as state acquiescence to corporate interests to silence defenders, continue to pose one of the most dangerous threats to defenders' lives. In many instances, corporations perpetrate attacks on defenders or acquiesce to targeted violence.³⁰⁷ Corporations exploit communities to take lands, use natural resources, and silence those who oppose them.³⁰⁸

President Lula da Silva must, without further delay, ensure the protection of Quilombola communities and defenders in Brazil. He and his government must address Brazil's perpetuation of systemic racism, widespread land disputes, pervasive patterns of social inequality, and indiscriminate and systematic attacks on Afro-descendants.³⁰⁹ Finally, land disputes and the environmental destruction of Quilombola lands and attacks on Quilombola defenders must cease immediately.

The Working Group of Experts on People of African Descent's report emphasized the connection between Africans and the systemic racism and marginalization of Afro-descendants in the present. “For over 400 years, millions of Africans had lost the basic human right to their legal identity, and thus remained invisible in legislation and policies. The cumulative result of racial inequality, systemic discrimination and invisibility constituted a debilitating challenge in many countries.”³¹⁰

In 2021, the United Nations General Assembly voted to establish the Permanent Forum for People of African Descent.³¹¹ It will consider the development of a United Nations declaration on the promotion and

³⁰⁴ *Id.* at Executive Summary.

³⁰⁵ FACT SHEET 29, *supra* note 135, at 15.

³⁰⁶ *Id.* at 16.

³⁰⁷ *Final Warning*, *supra* note 181, ¶ 10.

³⁰⁸ TRÓCAIRE, CIDSE, MAKING A KILLING: HOLDING CORPORATIONS TO ACCOUNT FOR LAND AND HUMAN RIGHTS VIOLATIONS 4 (2019).

³⁰⁹ Situation of Human Rights in Brazil, *supra* note 30, ¶ 104.

³¹⁰ Hum. Rts. Council, *Report of the Working Group of Experts on People of African Descent on Its Seventeenth and Eighteenth Sessions*, ¶ 21, U.N. Doc. A/HRC/33/61 (July 19, 2016).

³¹¹ G.A. Res. A/75/L.119/Rev.1, Establishment for Permanent Forum of People of African Descent, § 1 (July 28, 2021).

protection of, and full respect for, the human rights of people of African descent.³¹² As such, Quilombolas and other Afro-descendants will not only have the Escazú Agreement as a normative tool to bring claims for violations of their environmental human rights and right to defend human rights, but the future United Nations Declaration on Afro-descendants.³¹³ These tools, along with the Esperanza Protocol, will elaborate a comprehensive normative framework for the protection of Afro-descendants defending their lands, natural environment, and survival as peoples living in a close relationship with their natural environment.

³¹² *Id.* § 1(c).

³¹³ *See generally* G.A. Res. 76/226, A Global Call for Concrete Action for the Elimination of Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Comprehensive Implementation of and Follow-up to the Durban Declaration and Programme of Action (Dec. 24, 2021).