A Right to Defend the Environment

Legal Protection for Environmental Advocacy in the IACtHR's Climate Advisory Opinion

Nina Alizadeh Marandi & Philipp Schönberger

16.09.2025 doi: 10.59704/9cb577e494c7079a

As the world faces an escalating triple planetary crisis – climate change, biodiversity loss, and pollution – those who step forward to defend the environment are increasingly stigmatized, criminalized, and subjected to violence. Nowhere is this threat more acute than in Latin America, which accounts for nearly80% of all documented killings of human rights defenders and85% of the killings of environmental defenders worldwide.

It is therefore not surprising that the protection of environmental defenders features prominently in the Inter-American Court of Human Rights' (IACtHR) recentAdvisory Opinion OC-32/25 on the climate emergency and human rights. In a remarkable yet underexplored section, the IACtHR establishes a right to defend the environment, along with corresponding duties of States to protect environmental defenders. By recognizing environmental defenders as essential actors in democratic climate governance, the IACtHR's advisory opinion advances a bold vision of environmental democracy that positions civic engagement as a vital precondition for legitimate and effective climate action. While grounded in the Inter-American context, the IACtHR's recognition of a right to defend the environment should inform the interpretation of existing legal frameworks and catalyze more robust protection of environmental defenders worldwide.

The crucial role of environmental defenders in the climate emergency

The IACtHR addresses the protection of environmental defenders within the broader framework of States' procedural human rights obligations in the context of the climate emergency. The section is introduced with a strong endorsement of environmental democracy as the guiding principle for tackling the climate crisis (paras. 460-470). Emphasizing the need to "strengthen the democratic rule of law as a framework for the protection of all human rights against threats arising from the climate emergency," the IACtHR underscores that democratic governance is "vital to ensuring the legitimacy of state decisions and the effectiveness of public action" (para. 467).

According to the IACtHR, environmental defenders play a "fundamental role" in strengthening democracy and the rule of law and make essential contributions to democratic governance in environmental matters (para. 563). Drawing on international instruments, the IACtHR adopts a broad definition of environmental defenders that includes any individual or collective actor striving to protect and promote human rights relating to the environment (paras. 562, 564). By disseminating information, sharing diverse perspectives, and participating actively in decision-making processes, environmental defenders promote "transparency, accountability and public participation" in climate responses (para. 565). Moreover, they strengthen the rule of law by exposing illegal activities, demanding government and corporate accountability, and defending human rights in environmental matters, includingthe right to a healthy environment (paras. 563, 565).

The urgency, gravity, and complexity of the climate emergency, the IACtHR notes, has elevated the stakes of environmental advocacy. In a context marked by inadequate climate policies, environmental defenders become key facilitator for participation and involvement of society in climate governance (para. 563) and play an important role in supporting States to fulfil their obligations under the Paris Agreement (para. 565) as previously also recognized by theInter-

American Commission (para. 35), the Human Rights Council, and theEscazu Agreement (Rec. 11).

Despite – or perhaps precisely because of – their essential contribution to the protection of environmental rights and inclusive democratic processes, environmental defenders are increasingly under attack. The advisory opinion explicitly recognizes their "heightened risk of suffering violations of their rights due to their activities in the context of the climate emergency," including censorship, violence, threats, suppression of protests, arbitrary detention or strategic lawsuits against public participation (SLAPPs) (para. 568). The IACtHR acknowledges that the inadequacy of most States' climate policies has intensified civil society pressure, which is often met with repression and violence. This has created a "context of criminalization and violence against environmental defenders aimed at inhibiting their work" (para. 568).

A special duty to protect environmental defenders and the right to defend human rights

The IACtHR's recognition of both the fundamental role played by environmental defenders and the elevated risks they face lays the groundwork for recognizing a distinct right to defend human rights in environmental matters and a corresponding special duty to protect environmental defenders.

This finding builds on the IACtHR's jurisprudence on the protection of human rights defenders, especially the landmark judgement inCAJAR v. Colombia, where it established that the right to defend human rights constitutes an autonomous right under the American Convention on Human Rights (ACHR). This interpretation departs from traditional understandings that viewed human rights defenders' protections as merely derivative of other fundamental rights, such as the right to life, personal integrity, or freedoms of expression, assembly, and association (as discussedhere).

As an autonomous right, the right to defend rights protects "the effective possibility of exercising freely, without limitations and without risk of any kind, different activities and tasks aimed at the promotion, surveillance, promotion, dissemination, education, defense, advocacy or protection of human rights and universally recognized fundamental freedoms" (CAJAR v. Colombia, para. 978).

This evolutionary interpretation is grounded in a constellation of international instruments that provide both normative content and institutional recognition to the protection of human rights defenders. Central to this framework is the1998 UN Declaration on Human Rights Defenders, widely acknowledged as the foundational text defining the scope of such protections. Regional and international bodies, such as theOrganization of American States, theAfrican Commission on Human Rights, and theOrganization for Security and Co-operation in Europe, have echoed the Declaration, contributing to an emerging international consensus regarding the special protection of human rights defenders. Through the jurisprudence of the IACtHR, this protection has evolved into an autonomous human rights obligation – still a unique feature of the Inter-American human rights system.

The advisory opinion further refines this framework in the context of the climate emergency by deriving a right to defend human rights in environmental matters, along with corresponding obligations for States to protect those who exercise that right. Notably, the IACtHR situates the duty to protect environmental defenders within a broader framework of environmental democracy, which it considers essential for guiding responses to the climate emergency (paras. 458, 462). Alongside the right to science and the recognition of traditional and Indigenous knowledge (para. 471), access to information (para. 488), political participation (para. 530), and access to justice (para. 540) – each deserving separate, detailed analysis – the right to defend human rights in environmental matters is understood as an integral component of the democratic environmental governance architecture required to effectively address the planetary crisis. This approach draws upon the Escazú Agreement – particularly Article 9 – which, as the first international treaty, explicitly recognizes the rights of environmental defenders in binding terms.

As a cornerstone of environmental democracy, the duty to protect environmental defenders requires

States to (i) recognize, promote, and guarantee the rights of environmental defenders and refrain from obstructing, stigmatizing, or delegitimizing their work, (ii) guarantee a safe and enabling environment, and (iii) effectively investigate and sanction attacks on environmental defenders (para. 574).

In light of the widespread violence, persecution, and criminalization faced by environmental defenders in the region, the IACtHR does not stop at abstract principles. It sets out a concrete framework of measures that States must adopt to fulfill their enhanced duty of protection. These include collecting data on violence and intimidation against defenders, adopting public policies to address the structural causes of criminalization and violence, and promoting societal and institutional recognition of the right to defend environmental human rights. Crucially, the IACtHR emphasizes the need for an intersectional approach that accounts for the specific risks faced by women defenders, journalists, rural communities, Afro-descendant populations, and Indigenous peoples (para. 576).

The IACtHR also establishes an enhanced duty of due diligence to investigate, prosecute, and sanction acts of violence against environmental defenders effectively. This duty extends beyond the procedural aspect of the right to life to include threats, defamation, and other forms of hostility intended to silence or delegitimize their work (para. 582). In addition, the IACtHR identifies the misuse of legal tools – such as unfounded criminal charges or civil claims – as a serious form of repression and urges States to identify and reform misused laws and establish procedures for the prompt dismissal of abusive legal actions (para. 587). Finally, the IACtHR emphasizes the role of education in promoting a broader culture of respect and support for environmental defenders, urging States to raise awareness of their legitimacy and importance in safeguarding both human rights and democratic governance (para. 579).

Recognizing environmental defenders as democratic infrastructure: a global imperative

By recognizing that environmental defenders are essential to democratic governance and the rule of law in the face of an escalating planetary crisis, the IACtHR integrates a progressive understanding of environmental democracy into the Inter-American human rights regime. Its approach should inspire climate governance and human rights frameworks beyond its regional jurisdiction.

Although the intensity of repression differs globally, the democratic value of defending the environment and environmental human rights is universal. Many national and international frameworks lack adequate channels for meaningful civil society participation, while most governments continue to fail to adopt climate policies that meet their international and constitutional obligations. Environmental defenders increasingly fill this gap, facilitating transparency, accountability, and public engagement. To exercise this function effectively, they require adequate legal protection.

For the Americas, the advisory opinion has responded to the strong call from civil society (e.g. here), acknowledged the violent realities environmental defenders operate in, and awarded them strong legal protection by defining a detailed set of State obligations necessary to create the enabling environment the ACHR presupposes. The practical relevance of these protections will now depend on the manifold implementation at the domestic levels by governments, legislators, state officials, judges, prosecutors and lawyers.

The IACtHR's findings also bear relevance for the rest of the world. In many regions, defenders are regularly threatened, disappeared, or killed for opposing extractive or agribusiness interests and insufficient climate governance (here). While environmental activists rarely face comparable levels of violence in Europe or North America, they encounter escalatingcriminalization,surveillance,abusive lawsuits, andpunitive fines thatchill public debate. Acknowledging this contrast should not breed complacency.

Instead, it should reinforce a shared global imperative: to treat environmental advocacy as a legitimate and essential form of democratic engagement. In this regard, the advisory opinion makes an important contribution by countering widespread narratives discrediting environmental defenders as undemocratic, criminals, or even terrorists.

Even in the absence of explicit recognition in other human rights regimes, the rationale articulated by the IACtHR in the advisory opinion has the potential to substantially improve the protection of environmental defenders against defamation, harassment, persecution, and criminalization – provided it is meaningfully integrated into the interpretation and application of existing legal frameworks and human rights guarantees. An illustration of such an approach can be found in the European Court of Human Rights' recent judgment in Ludes and others v. France (published on the same day as the advisory opinion), which established a high threshold for justifying the criminal prosecution of environmental defenders based on their recognized importance in international instruments (para. 51-59).

Embracing environmental democracy and acknowledging the central role of environmental defenders provides a valuable blueprint for advancing their protection globally and for reimagining civic engagement as a cornerstone of effective and legitimate climate governance. The clear pronouncements of the IACtHR on the matter will serve as an important point of reference for rights-based advocacy and litigation efforts to protect environmental defenders worldwide.

ABOUT THE AUTHORS

Nina Alizadeh Marandi
Nina Alizadeh Marandi is an advisor on strengthening participation and protest rights and on protecting the fundamental and human rights of the climate movement at Green Legal Impact.

Philipp Schönberger
Philipp Schönberger works as a lawyer for the freedom of information at FragDenStaat. As a 2024/25 re:constitution fellow, he researches the criminalization of climate activism across Europe

SUGGESTED CITATION

Marandi, Nina Alizadeh; Schönberger, Philipp: A Right to Defend the Environment: Legal Protection for Environmental Advocacy in the IACtHR's Climate Advisory Opinion, Verfassungsblog, 16.09.2025, doi: 10.59704/9cb577e494c7079a.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20250916-175738-0.