

**Inter-American Court of Human Rights**

**Case No. 12.449**

**Teodoro Cabrera García and Rodolfo Montiel Flores**

**v.**

**Mexico**

***Amicus Curiae***

*presented by:*

Environmental Defender Law Center

Honorable Inter-American Court of Human Rights:

Nicholas Hesterberg, in representation of the Environmental Defender Law Center, 407 W. Koch Street, Bozeman, MT 59715 USA., respectfully submits to this Honorable Court the following *amicus curiae* brief in the case of *Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico*.



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## **REQUEST TO BE CONSIDERED *AMICUS CURIAE***

Pursuant to Article 44 of the Rules of Procedure of this Honorable Court,<sup>1</sup> the Environmental Defender Law Center respectfully requests to be considered *amicus curiae* in this matter and asks the Tribunal to take into account the issues addressed in this brief.

## **INTERESTS OF *AMICUS CURIAE***

The Environmental Defender Law Center (EDLC)<sup>2</sup> is the only organization in the world that was created solely to protect the human rights of environmental defenders. EDLC arranges free legal representation for those who fight for a healthy environment and for their affected communities, and who have suffered abuses of their human rights. EDLC is among those organizations combating a global crisis- particularly acute in the Americas- in which human rights defenders who speak out in defense of the right to a healthy environment are singled out for persecution as part of a deliberate attempt to silence and intimidate them and those on whose behalf they speak.<sup>3</sup> As discussed below, EDLC believes that the acts and omissions of the State of Mexico in this case constitute a clear violation of the fundamental human rights guaranteed to environmental defenders Teodoro Cabrera García and Rodolfo Montiel Flores.

EDLC has a particular interest in the case of Mr. Cabrera and Mr. Montiel because their case before the Inter-American Commission on Human Rights in 2002 was the impetus for EDLC's subsequent founding in 2003. Thereafter, EDLC worked on the case of Felipe Arreaga, another member of the environmental organization to which Montiel and Cabrera belonged, who similarly was targeted with false criminal charges and subsequently declared innocent after spending ten months in prison.<sup>4</sup>

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<sup>1</sup> Rules of Procedure of the Inter-American Court of Human Rights, Art. 44 (December 2009). *See also* Inter-American Court of Human Rights, *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 16 (noting the Court's preference to consider the submissions of *amici curiae* because the opinions and specialized knowledge they present strengthens the Inter-American System of Human Rights).

<sup>2</sup> Extensive information concerning EDLC can be found on its website at <http://www.edlc.org/>.

<sup>3</sup> As discussed in greater detail below, this Court recently acknowledged the pattern of threats, acts of violence, and assassinations facing environmental defenders. Inter-American Court of Human Rights, *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of 3 April 2009. Series C No. 196, paras. 149, 69-70 [hereinafter *Case of Kawas Fernández*]. EDLC also served as *amicus curiae* in that matter. *Id.* at para. 13.

<sup>4</sup> *See* <http://www.edlc.org/cases/individuals/felipe-arreaga/>

## BRIEF SUMMARY OF THE FACTS

Teodoro Cabrera García and Rodolfo Montiel Flores are environmental defenders whose efforts to protect the forests of Guerrero led to grave violations of their fundamental human rights by Mexican government officials.<sup>5</sup> Although they were released from prison two years after their illegal arrest, incommunicado detention, torture-induced confession, and irregular criminal trial, their rights have not been vindicated and impunity continues for the abuses committed against them.

Concerned with the environmental harm caused by logging operations in the region, Rodolfo Montiel and Teodoro Cabrera began defending local forests in the late 1990s by forming and actively participating in the Organization of Farmer Ecologists of the Sierra of Petatlán and Coyuca of Catalán (OCESP). Through OCESP, Montiel and Cabrera mobilized fellow campesinos to advocate for environmental protection, filed several formal complaints with local, state and federal government officials, and organized social actions to protest the devastating effects of excessive logging. Although their appeals to government authorities were generally met with silence, the group's efforts led to the temporary suspension of logging, changes and the withdrawal of multinational lumber company Boise Cascade from the region.

The environmental activism of OCESP members led to numerous acts of reprisal against them, including intimidation efforts, violence, and assassinations. In May, 1999, the Mexican Army stormed the village of Pizotla, killing one member of the community before illegally capturing and detaining Montiel and Cabrera. The ecologists were thrown to the ground, beaten, dragged and threatened with death by military officers. During the next four days of illegal, incommunicado detention by the Mexican Army, Montiel and Cabrera were subjected to various forms of physical and psychological torture, interrogated about their activities within OCESP, and forced to sign self-incriminating confessions admitting to crimes that they did not commit. These confessions served as the basis of their convictions in a criminal trial marred by significant irregularities. Throughout the process their allegations of torture were not sufficiently investigated by government authorities.

Domestic and international criticism of the arrest, mistreatment, and conviction quickly mounted as it became increasingly evident that Montiel and Cabrera were unjustly targeted due to their environmental activism. The ecologists were declared "prisoners of conscience" by Amnesty International and were awarded several international prizes for their defense of Guerrero's forests. In November 2001, the President of the Republic, in what can be construed as tacit acknowledgment of the injustices perpetrated against the ecologists before and during their two and a half year wrongful imprisonment, ordered their release.

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<sup>5</sup> The facts contained herein are taken from the *Escrito de solicitudes, argumentos y pruebas de los representatntes de las víctimas y sus familiares* [hereinafter ESAP] and the Application of the Inter-American Commission on Human Rights [hereinafter Application of the Commission].

Unfortunately, the release of Montiel and Cabrera from prison did not restore their rights, nor did it put an end to the human rights violations perpetrated against them and other OCESP members. In the past decade, several members of the organization have been subjected to abuses ranging from imprisonment on false criminal charges to acts of violence and even murder. The abuses committed against Montiel and Cabrera, coupled with the continuing impunity for their commission, led the ecologists to fear for their safety in Guerrero, forcing them to flee their communities and abandon their environmental defense efforts there. Teodoro Cabrera now resides elsewhere in Mexico, while Rodolfo Montiel received political asylum in the United States due to the persecution he faced for his environmental activism. The departure of Montiel and Cabrera from the community undermined the important work of OCESP, which eventually all but ceased its efforts to save the area's forests. All told, the acts and omissions of the Mexican government in this case have been devastating to environmental defenders in the region.

## **SUMMARY OF THE ARGUMENT**

The international community has long recognized the important role played by human rights defenders in civil society. In recent years several international entities, including the United Nations, the Organization of American States, and this Honorable Court, have expressed growing concern over the increasing level of danger to which these individuals are regularly exposed.

At the same time, the community of nations has acknowledged the importance of the protection of the environment in relation to the enjoyment of the human rights guaranteed by the Inter-American Human Rights System and other sources of national and international law.<sup>6</sup> As a recent decision by this Honorable Tribunal demonstrates, environmental devastation and consequent human rights violations are increasingly coming to world attention, often in the context of disputes involving natural resources and lands.<sup>7</sup>

As a result of these developments, there has emerged a subset of human rights defenders entitled to and in need of protection: "environmental defenders," those who defend the earth and advocate for the human rights of the victims of environmental degradation. Rodolfo Montiel and Teodoro Cabrera are leading examples of this subset. When environmental defenders advocate on behalf of these victims and against

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<sup>6</sup> Judge Weeramantry of the International Court of Justice reflects this view:

"The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments." *Gabcikovo-Nagymaros Project* (Hungary-Slovakia), 1997 I.C.J. 7 (Sept. 25) (Separate Opinion of Vice President Weeramantry), at 91-2.

<sup>7</sup> *Case of Kawas Fernández*, *op. cit.*, paras. 148-49.

environmentally destructive projects, all too often the defenders have their own human rights violated, as happened in this case. Regrettably, this was not an isolated event: there is a pervasive global pattern of environmental defenders like Montiel and Cabrera being subjected to abuses of their human rights as a penalty for their advocacy.

There is a troubling additional dimension to the violation of the human rights of individual environmental defenders. Not only are their rights to express opinions, associate with like-minded individuals, seek judicial redress, and participate in government decision-making violated, but the rights of those they represent are violated as well. This Court has noted that the violation of an environmental defender's human rights intimidates others who are dedicated to protecting the environment, particularly when there is impunity for the offense.<sup>8</sup> When leaders like Rodolfo Montiel and Teodoro Cabrera suffer human rights violations, the intent and effect of these abuses is to violate collective rights by silencing and intimidating others as well. This makes the individual human rights violations all the more egregious, and all the more deserving of a strong response from the Court.

This brief begins by discussing the global pattern of attacks against environmental defenders, noting the role played by powerful private actors in these abuses and the culture of impunity for the offenses. Next, it contextualizes the abuses perpetrated against Montiel and Cabrera by examining the grave situation facing Mexican environmental defenders, particularly those who advocate on behalf of the nation's forests. Thereafter, it considers the evolution of international recognition of environmental defenders, the protections guaranteed to defenders under the Inter-American Human Rights system, and the violations of the American Convention rights of Montiel and Cabrera perpetrated by the Mexican government.

In light of these grave human rights violations, this Honorable Court should order the State of Mexico to provide adequate remedies for the harms perpetrated against Rodolfo Montiel Flores, Teodoro Cabrera García, and their community.

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<sup>8</sup> *Id.* at para. 153.

## ARGUMENT

### I. ENVIRONMENTAL DEFENDERS THROUGHOUT THE WORLD FACE GRAVE VIOLATIONS OF THEIR FUNDAMENTAL HUMAN RIGHTS

In early 1999, the human rights organization Amnesty International and the environmental organization Sierra Club announced a joint campaign to highlight attacks on environmental defenders and mobilize pressure on governments that abused the rights of those defenders. Their subsequent report underscored the severity of the human rights abuses of environmental defenders:

Today, in too many countries, it is dangerous business to be an environmentalist. In democracies and dictatorships, in developed and developing economies, the basic human rights of environmental activists are being abused... We believe the human rights and environmental challenge of the next decade will be to defend the people who defend the environment- to fight for the rights of citizens worldwide who risk their lives by speaking out to protect our planet.<sup>9</sup>

Unfortunately, that prediction has proven to be accurate as scores of environmental defenders around the world – particularly those in the Americas – have suffered abuses of their fundamental human rights in recent years. In many cases powerful private interests with a stake in the continuation of environmentally destructive practices are involved in these abuses. Making matters worse, impunity for human rights violations is all too common. Abuses committed against environmental defenders frequently remain uninvestigated or unpunished, which has a chilling effect on the activities of the victims and other defenders.

#### A. The pattern of attacks against environmental defenders evidences a crisis that is particularly acute in the Americas

According to the United Nations Special Rapporteur on the Situation of Human Rights Defenders, environmental defenders around the world have been “systematically attacked and threatened” in response to their efforts to protect the environment.<sup>10</sup> Violations of the fundamental human rights of environmental defenders take many forms and frequently involve threats, harassment, wrongful criminal prosecutions, physical and psychological attacks, torture, and even assassinations.<sup>11</sup> Commenting on the alarming number of attacks perpetrated against those working on environmental issues, the United Nations Secretary-General’s Special Representative on Human Rights Defenders noted

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<sup>9</sup> Sierra Club and Amnesty International, *Environmentalists Under Fire: Ten Urgent Cases of Human Rights Abuses, Introduction to the 2<sup>nd</sup> edition*, January 2000, pp. 3.

<sup>10</sup> U.N. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 30 December 2009, U.N. Doc. A/HRC/13/22, para. 40.

<sup>11</sup> *See id.*



that environmental defenders are the second most vulnerable group of human rights defenders in terms of the danger of being killed for their activities.<sup>12</sup> According to that report, environmental defenders are “particularly vulnerable to attacks and violations of their rights...in countries of Latin America and parts of Asia.”<sup>13</sup>

As the only organization in the world solely dedicated to the protection of the human rights of environmental defenders, EDLC carefully analyzes reports of such violations. In doing so, EDLC has compiled a list of cases, attached as an appendix to this brief, which documents the alarming rise in the number of threats, murders, and other abuses committed against environmental defenders. The list is by no means exhaustive, but it is the most complete report of its kind currently in existence. It documents a global pattern in which those who speak out to protect their right to a healthy environment and the rights of communities affected by environmental harm are systematically singled out for persecution as part of an attempt to silence and intimidate them and those on whose behalf they speak. The dramatic growth of the list during the eight years since it was first submitted to the Inter-American Commission in an amicus brief before that body, demonstrates the increasing severity of the problem, and the urgent need for resolute action by this Honorable Court.

A review of the cases contained in the Appendix reveals two trends, both of which are exemplified by the case of Rodolfo Montiel and Teodoro Cabrera. First, the majority of abuses reported in recent years involve Latin American environmental defenders confronting resource extraction projects in their communities. Second, the underlying environmental issue which led to the human rights violation typically concerns the environmental degradation of land used or owned by indigenous and/or poor and politically powerless local peoples.<sup>14</sup> As discussed below, the lack of political and economic power of many environmental defenders contrasts sharply with the power and influence of the parties against whom they struggle.

### **B. Powerful private interests are often involved in the persecution of environmental defenders**

Environmental defenders frequently challenge natural resource extraction projects or other development activities that stand to benefit a handful of actors at the expense of the environment and neighboring communities. As such, it is perhaps unsurprising that those with a stake in environmentally destructive practices are often involved in the abuses

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<sup>12</sup> U.N. Human Rights Council, Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, U.N. Doc. A/HRC/4/37, 24 January 2007, para. 45.

<sup>13</sup> *Id.* at para. 40.

<sup>14</sup> According to U.N. Special Rapporteur on Human Rights and the Environment Mrs. Fatma Ksentini, “the human rights violations at issue almost always arise as a consequence of land rights violations and environmental degradation and indeed are inseparable from these factors.” Human Rights and the Environment: Final Report prepared by Mrs. Fatma Ksentini, Special Rapporteur, U.N. Doc. E/CN.4/Sub.2/1994/9, 6 July 1994, para. 88.

perpetrated against environmental advocates. According to the UN Special Rapporteur on the Situation of Human Rights Defenders:

[T]he safety of defenders has been increasingly threatened by a growing number of non-State actors in a climate of impunity. Individuals acting on their own or as part of groups, whether in collusion with States or not, have been increasingly involved in attacks on human rights defenders... Private companies have also been directly or indirectly involved in acts of violence against defenders. In this regard, the Special Rapporteur would particularly like to underline the situation of defenders working on economic, social and cultural rights... [D]efenders...working on environmental issues are systematically attacked and threatened.<sup>15</sup>

Although the persecution of environmental defenders at the behest of private interests sometimes occurs with little evidence of State involvement, in many cases the government participates in the abuses committed by private parties.<sup>16</sup> This is particularly true in the case of baseless criminal prosecutions of defenders. As the Special Representative of the Secretary-General on Human Rights Defenders has noted:

Criminal proceedings against defenders are at times initiated by politicians, powerful landowners and big business concerns, in order to cause harassment in retaliation for activities of human rights defenders in advocacy of land rights [and] environmental protection.<sup>17</sup>

The list of violations of human rights contained in the Appendix to this brief evidences the risks environmental defenders face when they stand up to private interests: nearly all of the cases involved advocacy for a healthy environment, which posed a direct challenge to the economic interests and goals of powerful local actors. In country after country, regardless of whether the natural resource at issue is minerals, forests, or rivers, environmental defenders risk “being beaten, harassed, detained, raped, tortured, and murdered” by those whose economic interests are threatened, as well as government agents who act on their behalf.<sup>18</sup>

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<sup>15</sup> U.N. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, U.N. Doc. A/HRC/13/22, 30 December 2009, paras. 38-40.

<sup>16</sup> As discussed below, governments often fail to investigate and prosecute abuses committed against environmental defenders by both public and private actors, thus violating the victims’ rights.

<sup>17</sup> Human Rights Defenders, Report prepared by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, U.N. Doc. A/56/341, 10 September 2001, para. 29.

<sup>18</sup> Sierra Club and Amnesty International, *Environmentalists Under Fire: Ten Urgent Cases of Human Rights Abuses*, *op. cit.*, pp. 3.

**C. These human rights violations, coupled with impunity for their commission, have a chilling effect on the invaluable work of environmental defenders**

Environmental defenders are not only the frequent targets of human rights violations, but in many cases they are also the victims of the miscarriage of justice when the attacks against them are not sufficiently investigated, prosecuted, or otherwise sanctioned. Like the persecution itself, the failure to combat abuses is often attributable to the influence of powerful private actors and self-interested government officials. Together, human rights violations and the impunity for their commission undermine the efforts of environmental defenders and intimidate others from working to protect the environment.

Although human rights violations perpetrated against environmental defenders are often egregious, States frequently fail to take effective measures to punish those responsible. A comprehensive study of the human rights abuses committed against environmental defenders in the Americas found that investigations into such violations are often so “riddled with irregularities and discretionary decisions on the part of the investigative organizations which deliberately ignore evidence provided by civil society” that the actors responsible for abuses are often not held accountable for their crimes.<sup>19</sup> An Amnesty International report reached a similar conclusion and indicated that international mechanisms are often critical to combat impunity:

Lack of official commitment to tackle difficulties faced by human rights defenders is most obvious during judicial proceedings and investigations. Investigations into offences committed against human rights defenders are frequently veiled in secrecy, inconsistencies and irregularities as the perpetrators seek to cover up their crimes and pervert the course of justice. Most frequently, allegations are not taken seriously and no judicial investigation is initiated. Progress on a small number of cases is due in the main to pressure from the international community.<sup>20</sup>

The dangers facing environmental defenders deter some from taking action to protect nature, and government inaction in the face of these abuses contributes to this chilling of environmental advocacy. Sometimes referred to as the “terror effect,” individual human rights violations may successfully silence other members of environmental groups because they become terrified of exercising their own rights.<sup>21</sup> This Honorable Court recently acknowledged that violations of the human rights of environmental activists

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<sup>19</sup> Center for Human Rights and Environment (CEDHA) and the Center of International Environmental Law (CIEL), *The Human Cost of Defending the Planet: Human Rights Violations against Environmental Defenders in the Americas*, pp. 7, available at: <http://www.cedha.org.ar/docs/doc170-eng.doc>.

<sup>20</sup> Amnesty International, *Essential Actors of Our Times: Human Rights Defenders in the Americas*, November 2003, AMR 01/009/2003, pp.4, available at: <http://www.amnesty.org/en/library/info/AMR01/009/2003/en>.

<sup>21</sup> CEDHA and CIEL, *The Human Cost of Defending the Planet*, *op. cit.*, pp. 5-6.

intimidate others who are dedicated to the defense of the environment and noted that the intimidation is greater when there is impunity for the underlying offense.<sup>22</sup>

## **II. THE STATE OF MEXICO IS RESPONSIBLE FOR NUMEROUS VIOLATIONS OF THE HUMAN RIGHTS OF ENVIRONMENTAL DEFENDERS**

The human rights violations perpetrated against Rodolfo Montiel and Teodoro Cabrera are not unique but instead are part of a broad pattern of abuses targeting Mexican environmental defenders. As in the case currently before the Court, violations in Mexico often involve the mistreatment and wrongful prosecution of individuals who are working to protect the forests. In addition to state agents, powerful private interests who stand to benefit from unsustainable or illegal logging are involved in many of these cases. Local and national government authorities in Mexico typically fail to take effective action to combat abuses committed against environmental defenders, leaving the vast majority of cases in a state of impunity.

### **A. Environmental defenders in Mexico face grave threats to their fundamental human rights**

The human rights crisis facing Mexican human rights defenders in general – and environmental defenders in particular – has been well documented by the international community. A report published earlier this year by Amnesty International catalogued a number of these cases, noted that the majority involved individuals who focus on economic, social and cultural rights, and summarized the organization’s findings as follows:

Mexico is a dangerous country in which to defend human rights... [T]he perpetrators of abuses suffered by human rights defenders are sometimes local, state or federal authorities. The authorities are sometimes responsible for bringing spurious and wrongful prosecutions against human rights defenders, simply to punish them for their human rights campaigning... [S]tate and federal authorities are frequently slow to respond and investigate, compounding the abuses still further...<sup>23</sup>

Violations of the human rights of environmental defenders in Mexico frequently include spurious criminal charges by federal and state officials aimed to “discredit[] the work of human rights defenders, for the purpose of shielding public officials from

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<sup>22</sup> *Case of Kawas Fernández, op. cit.*, para. 152.

<sup>23</sup> Amnesty International, *Standing Up for Justice and Dignity: Human Rights Defenders in Mexico*, January 2010, AMR 41/032/2009, pp.1-2, available at: <http://www.amnesty.org/en/library/info/AMR41/032/2009/en>.

prosecutions relating to human rights violations...”<sup>24</sup> The United Nations High Commissioner for Human Rights in Mexico recently expressed concern over the “arbitrary use of the penal system that, especially at the local level, is employed as a strategy to slow down and erode work in the defense of human rights.”<sup>25</sup> Observers have documented a number of cases in which Mexican authorities misuse the judicial system to punish, take revenge upon, or silence members of civil society with fabricated or politically motivated criminal charges.<sup>26</sup> An alarming number of these cases have involved “local peasant and political leaders detained for political reasons, on the basis of weak evidence or confessions extracted under torture, on account of their beliefs or non-violent protest activities.”<sup>27</sup> The arbitrary arrest and detention of human rights defenders is especially common in the state of Guerrero.<sup>28</sup>

Environmental activists working to protect the forests of Mexico are particularly vulnerable to abuses involving the misuse of the criminal justice system:

Several environmentalists in Mexico have been imprisoned on spurious, often politically motivated, charges on account of their campaigns to protect communities against the effects of unregulated logging. In Mexico, the misuse of the judicial system to punish or harm critics is common. The weakness of the judiciary, particularly at state level, where the prosecution services are not adequately supervised by the judiciary or independent of the executive, leaves defenders exposed to fabricated charges designed to deter them from their activities.<sup>29</sup>

Illegal detention, mistreatment, and torture of human rights defenders in Mexico are also shockingly common, particularly in cases involving the military. These abuses are often committed in order to silence human rights defenders or obstruct their work.<sup>30</sup> Torture and ill-treatment, which are widespread in Mexico, are used “not only for the extraction of false confessions, but also as methods of extortion and punishment.”<sup>31</sup> In

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<sup>24</sup> Amnesty International, *Mexico: Daring to Raise their Voices*, December 2001, AMR 41/040/2001, pp.12-13, available at: <http://www.amnesty.org/en/library/info/AMR41/040/2001>.

<sup>25</sup> Office of the United Nations High Commissioner for Human Rights in Mexico, *Defending Human Rights: Between Commitment and Risk. Report on the Situation of Human Rights Defenders in Mexico*, October 2009, para. 118.

<sup>26</sup> See, e.g., Amnesty International, *Mexico: Daring to Raise their Voices*, *op. cit.*, at pp. 13, fn. 18 (citing several cases involving prisoners of conscience).

<sup>27</sup> *Id.*

<sup>28</sup> See Amnesty International, *Standing Up for Justice and Dignity: Human Rights Defenders in Mexico*, *op. cit.*, pp. 9-10, 13.

<sup>29</sup> Amnesty International, *Essential Actors of Our Times: Human Rights Defenders in the Americas*, *op. cit.*, pp. 32

<sup>30</sup> Amnesty International, *Mexico: Daring to Raise their Voices*, *op. cit.*, pp. 24.

1998 the United Nations Special Rapporteur on Torture noted abundant reports of torture committed against campesino activists in Guerrero after the victims had been unlawfully detained by police and military forces.<sup>32</sup> Recent reports indicate that human rights abuses (including intimidation, death threats, and torture) committed by military officials during periods of arbitrary detention are common in Mexico.<sup>33</sup>

As discussed below, officials who torture or otherwise violate the human rights of Mexican environmental defenders are rarely investigated or prosecuted, leaving most cases in a state of impunity.<sup>34</sup> Wrongful incrimination and acts of torture, like other human rights abuses and the subsequent impunity for their commission, not only harm the individuals involved but also the broader environmental defense movement because they deter others from standing up to defend their rights.<sup>35</sup>

### **B. Private actors are often implicated in these violations, especially in cases involving anti-logging activists**

Environmental defenders around the world often challenge resource extraction initiatives or other development projects which stand to benefit certain parties, both private and public. This is the case in Mexico, where opposition to environmentally unsound projects often risks retaliation by parties that have a vested interest in seeing the project go forward. In the words of one recent report:

Those working to strengthen economic, social and cultural rights frequently confront powerful economic interests and are exposed to attack. The cases in this report show how such attacks are often carried out by individuals or non-state actors who are frequently not held to account for their actions, or by state actors acting partially to defend and protect economic interests.<sup>36</sup>

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<sup>31</sup> *Id.* at 20.

<sup>32</sup> United Nations Special Rapporteur for Torture Sir Nigel Rodley. *Visit to Mexico*, UN Doc. E/CN.4/1998/38/Add.2, 14 January 1998, paras. 13, 15, available at: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/ef7f322482fbf473c1256613002ffb2f?Opendocument>

<sup>33</sup> Amnesty International, *Mexico: New Reports of Human Rights Violations by the Military*, 8 December 2009, AMR 41/058/2009, pp. 5-6, available at <http://www.amnesty.org/es/library/info/AMR41/058/2009/en>; United Nations Office of the High Commissioner of Human Rights in Mexico, *Diagnostic of the situation of Human Rights in Mexico, 2003*, pp. 157, available at: <http://www.sre.gob.mx/derechoshumanos/images/docs/Diagnostico.pdf>.

<sup>34</sup> *See also* Amnesty International, *Mexico: Daring to Raise their Voices*, *op. cit.*, pp. 24.

<sup>35</sup> *Id.* at 13.

<sup>36</sup> Amnesty International, *Standing Up for Justice and Dignity: Human Rights Defenders in Mexico*, *op. cit.*, pp. 2.

Forest defenders in the Americas have faced countless abuses aimed to silence their criticism of unsustainable or illegal logging. Although persecution often takes place at the behest of powerful private interests, public officials are frequently perpetrators of the wrongdoing. This pattern of collusion often starts with complicity in the underlying environmental devastation. According to Amnesty International:

In the course of their struggle to demonstrate the link between environmental decline and violations of people's economic, social and cultural rights, many environmental activists in the Americas have been killed and threatened. One case in point is the struggle to stop unregulated logging. Illegal logging can have devastating consequences at the local level. Farm production levels may be lowered by depleted soil quality as a result of logging; the size of land plots may be reduced by encroaching logging companies; or, communities may face unprecedented levels of violence. Governments frequently turn a blind eye failing to either take action against the logging companies or to address the violations that occur as a result of their activities.<sup>37</sup>

Mexican environmental defenders working on forestry issues have faced threats from both legal and illegal loggers. An article by Greenpeace Mexico entitled "A Risky Fight" identified the types of abuses perpetrated against environmental defenders who work to protect the forests of Mexico, including repression, torture, incarceration, and even death.<sup>38</sup> Brief summaries of the cases cited in that article are included in the Appendix. Illustrative cases involving abuses committed against forest defenders in Mexico include:

- *Aldo Zamora and Misael Zamora*

In 2007, Aldo Zamora was killed and his brother Misael was seriously wounded in an attack attributed to the sons of local loggers. Along with their father, the Zamora brothers were prominent in the fight against illegal logging in a nearby protected area. The case remains in impunity.<sup>39</sup>

- *Isidro Baldenegro and Felipe Arreaga*

Like Rodolfo Montiel and Teodoro Cabrera, Isidro Baldenegro and Felipe Arreaga were subjected to fabricated criminal charges as a result of their anti-logging advocacy in two separate cases. Charges were filed against Baldenegro just days after he obtained a court injunction to halt logging in the forests of his

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<sup>37</sup> Amnesty International, *Essential Actors of Our Times: Human Rights Defenders in the Americas*, *op. cit.*, pp. 31.

<sup>38</sup> Greenpeace Mexico, "Una Lucha Riesgosa," available at: <http://www.greenpeace.org/mexico/campaigns/bosques-y-selvas-de-m-eacute-x/una-lucha-riesgosa>

<sup>39</sup> *Infra*, at Appendix. The issue of impunity in the Zamora case is also discussed in greater depth below. See Section II.C, *infra*.

community. He spent over a year in prison before an international effort led the Attorney General to drop the charges and unconditionally release him from jail.<sup>40</sup> Similarly, OCESP co-founder Felipe Arreaga was wrongfully arrested on a murder charge and spent ten months in prison before being absolved of the crime and set free.<sup>41</sup>

### **C. Impunity for human rights violations is endemic in Mexico, particularly when military personnel are involved**

The failure of government authorities to adequately investigate, prosecute, and sanction those responsible for human rights violations in Mexico results in an alarming degree of impunity for such abuses. The institutional weaknesses that contribute to impunity are especially pronounced within the military justice system. Lack of sufficient government response to human rights violations is common in cases involving environmental defenders, including those in the State of Guerrero.

As a recent report by the United Nations High Commission for Human Rights in Mexico noted, a particularly troubling issue facing Mexican human rights defenders is the lack of exhaustive, impartial and effective investigations to reduce the level of impunity for aggressions committed against them.<sup>42</sup> In fact, the High Commission concluded that impunity is the single factor that most increases the risks facing human rights defenders.<sup>43</sup> The endemic nature of impunity in Mexico has led the United Nations and the Inter-American Commission on Human Rights to issue numerous reports requesting that the government implement measures to improve the situation.<sup>44</sup>

Unfortunately, the government's failure to take action to combat impunity means that state and federal authorities continue to be slow to respond to and investigate abuses committed against human rights defenders.<sup>45</sup> Part of the impunity problem can be

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<sup>40</sup> See <http://www.edlc.org/es/cases/individuals/isidro-baldenegro/>.

<sup>41</sup> See *supra* Brief Summary of the Facts; <http://www.edlc.org/es/cases/individuals/felipe-arreaga/>.

<sup>42</sup> Office of the United Nations High Commissioner for Human Rights in Mexico, *Defending Human Rights: Between Commitment and Risk*. *op. cit.*, para. 118.

<sup>43</sup> *Id.* at para. 120.

<sup>44</sup> Amnesty International, *Mexico: Daring to Raise their Voices*, *op. cit.*, pp. 5 (citing United Nations Committee against Torture, *Concluding observations of the Committee against Torture: Mexico*, UN Doc. A/52/44, 2 April 1997, paras. 164-65; United Nations Human Rights Committee, *Considerations of reports submitted by states parties under article 40 of the International Covenant on Civil and Political Rights - Comments of the Human Rights Committee*, UN Doc. CCPR/C/79/Add.32, 18 April 1994, paras. 7, 14; United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Resolution 1998/4, 20 August 1998, para. 1; United Nations Special Rapporteur on Torture, *Report of visit to Mexico*, UN Doc. E/CN.4/1998/38/Add.2, 14 January 1998, paras. 82, 86, 88; United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. E/CN.4/1996/4, para. 321; Inter-American Commission on Human Rights, *Report on the situation of Human Rights in Mexico*, OEA/Ser.L/V/II.100, 24 September 1998, paras. 303, 351).



attributed to structural deficiencies in civilian public prosecution system and the weakness of the judiciary.<sup>46</sup> Misconduct by government authorities is also often a factor: in some cases government officials have been directly implicated in attacks and in others they have acquiesced in covering up the abuses by failing to take action to condemn or punish the crimes, meaning that those responsible for abuses are rarely brought to justice.<sup>47</sup> Observers have noted the prevalence of impunity in cases of alleged torture by government agents.<sup>48</sup>

The impunity problem is even more acute within the military. Although cases of serious human rights violations involving members of the army are constitutionally subject to civilian jurisdiction, frequently they are passed to the jurisdiction of the military justice system.<sup>49</sup> This presents a “key obstacle to ending impunity for human rights violations” because the “lack of independence and impartiality of the military justice system denies victims and their relatives access to justice.”<sup>50</sup> The United Nations Special Rapporteur for Torture has stated that military personnel are effectively immune from the civilian justice system and receive protection within the military justice system when they commit acts of torture.<sup>51</sup> The military justice system’s failure to investigate and sanction grave human rights violations committed against civilians creates a cultural of impunity which makes the future commission of such abuses more likely.<sup>52</sup>

Many human rights violations committed against environmental defenders in Guerrero remain in impunity. For example, authorities have failed to make any arrests for the ambush attack on OCESP member Albertano Peñaloza and his family, which resulted in

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<sup>45</sup> See *id.*; Amnesty International, *Standing Up for Justice and Dignity: Human Rights Defenders in Mexico*, *op. cit.*, pp. 1-2.

<sup>46</sup> Amnesty International, *Standing Up for Justice and Dignity: Human Rights Defenders in Mexico*, *op. cit.*, p. 5; Amnesty International, *Mexico: Daring to Raise their Voices*, *op. cit.*, pp. 12-13.

<sup>47</sup> Amnesty International, *Mexico: Daring to Raise their Voices*, *op. cit.*, pp. 34-5.

<sup>48</sup> Amnistía Internacional, México: Juicios Injustos: Tortura en la Administración de Justicia, AMR 41/007/2003, 25 de marzo de 2003, pp. 2, 6, available at: <http://www.amnesty.org/es/library/info/AMR41/007/2003>.

<sup>49</sup> Amnesty International, *Mexico: Daring to Raise their Voices*, *op. cit.*, pp. 5-6.

<sup>50</sup> Amnesty International, *Mexico: New Reports of Human Rights Violations by the Military*, *op. cit.*, pp. 5-6.

<sup>51</sup> United Nations Special Rapporteur for Torture Sir Nigel Rodley, *Visita a México*, *op. cit.*, paras. 86, 88(j). The UN Office of the High Commissioner for Human Rights has also recognized this problem. See *Diagnóstico sobre la situación de los Derechos Humanos en México*, *op. cit.*, pp. 35.

<sup>52</sup> Human Rights Watch, *Uniform Impunity: Mexico’s Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations*, 29 April 2009, pp. 25-26, available at: <http://www.hrw.org/en/reports/2009/04/28/uniform-impunity-0>; Human Rights Watch, *Lost in Transition: Bold Ambitions, Limited Results for Human Rights Under Fox*, 16 May 2006, available at: <http://www.hrw.org/en/reports/2006/05/16/mexico-lost-transition-0>.

the deaths of two of his sons, a situation that has led another local environmental defender to note “we live in a state of impunity.”<sup>53</sup> Impunity of this sort is commonplace in cases of violations committed against human rights defenders in Guerrero in part because some local authorities or strongmen see demands made by social groups as a threat to their power.<sup>54</sup> This “perpetuates an attitude of fear, mistrust, and fatalism in the population, which no longer wants anything to do with human rights issues.”<sup>55</sup>

### **III. INTERNATIONAL LAW REQUIRES STATES TO SAFEGUARD THE HUMAN RIGHTS OF ENVIRONMENTAL DEFENDERS**

In order to promote the protection of the multitude of human rights that may only be enjoyed within the confines of a healthy environment, international law guarantees the rights of environmental defenders. As this Honorable Court recently acknowledged, there is a vital link between the protection of the environment and the fulfillment of other human rights, and those who advocate for conservation of the environment and natural resources are “human rights defenders” who must be protected as such.<sup>56</sup> To contextualize Mexico’s violations of the rights guaranteed to environmental defenders under the American Convention of Human Rights,<sup>57</sup> this section discusses the evolving recognition of environmental defenders’ rights within the United Nations’ Human Rights System and the Inter-American Human Rights System.

#### **A. The United Nations’ Human Rights System protects the rights of environmental defenders**

The United Nations has long recognized the importance of environmental defenders and acknowledged their rights by means of a General Assembly declaration, official pronouncements of U.N. officials, and reports issued by U.N. expert panels.

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<sup>53</sup> Kent Patterson, *Mexico’s Prophets of Climate Change: Women Forest Defenders*, Americas Program Center for International Policy, 13 September 2007, available at: <http://americas.irc-online.org/am/4544>

<sup>54</sup> *Id.*

<sup>55</sup> International Peace Brigadas Mexico Project, *Human Rights Defenders in the State of Guerrero: Cases of Resistance and Initiatives from Civil Society Regarding the Defense and Promotion of Fundamental Rights in Mexico*, December 2007, p. 22.

<sup>56</sup> *Case of Kawas Fernández, op. cit.*, para. 147. See also United Nations Human Rights Council, Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, 24 January 2007, U.N. Doc. A/HRC/4/37, para. 27; United Nations Commission on Human Rights, Promotion and Protection of Human Rights Defenders: Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders in accordance with Commission resolution 2000/61, 26 January 2001, U.N. Doc. E/CN.4/2001/94, Annex II.

<sup>57</sup> See *infra* Section IV.

1. The Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms<sup>58</sup>

The right to defend human rights is protected by a variety of international standards and principles. In 1998, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.<sup>59</sup> The document has become commonly known as the “Declaration on Human Rights Defenders.”

The adoption of the Declaration was the culmination of more than twelve years of negotiations and lobbying by human rights organizations and governments to ensure international recognition for the crucial role human rights defenders are playing across the world in advancing the promotion and protection of human rights. By establishing a set of principles to safeguard this important work and those who carry it out, the Declaration highlights the increasing significance of the role of individuals and groups from civil society in scrutinizing official policy and practice on human rights.

The Declaration sets out the rights of human rights defenders, identifying specific freedoms and activities that are fundamental to their work, including the right to seek and receive information about human rights and fundamental freedoms,<sup>60</sup> the right to participate in peaceful activities against violations of human rights,<sup>61</sup> and the right to criticize and protest governments’ failures to enforce human rights standards.<sup>62</sup> By referring repeatedly to the right to act collectively, the Declaration pays special attention to freedom of association and the right to collaborate with others for the protection of human rights.<sup>63</sup> Furthermore, the Declaration requires States to ensure that human rights defenders may carry out their work freely, without interference or fear of threats, retaliation or discrimination, requiring governments to protect defenders in the performance of their valuable role:

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

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<sup>58</sup> U.N.Doc.A/RES/53/144, March 8, 1999 (hereinafter “Declaration on Human Rights Defenders”).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at Art. 6.

<sup>61</sup> *Id.* at Art. 8.

<sup>62</sup> *Id.* at Art. 9.

<sup>63</sup> *See id.* at Arts. 1, 2, 5-9, 11-13, 17, 18.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.<sup>64</sup>

To encourage implementation of the Declaration, the 1999 session of the U.N. Commission on Human Rights called on all states to give effect to the Declaration and to report on their efforts.<sup>65</sup> Subsequent Commission resolutions emphasize the importance of the Declaration's provisions for environmental defenders, including a 2005 resolution in which the Commission called upon States to:

[T]ake all necessary measures to protect the legitimate exercise of everyone's human rights when promoting environmental protection and sustainable development and reaffirms, in this context, that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.<sup>66</sup>

## 2. The Special Representative & Rapporteur on Human Rights Defenders

Two years after the adoption of the Declaration, the U.N. Secretary-General appointed a Special Representative on Human Rights Defenders with a mandate to monitor, document and intervene on behalf of human rights defenders under threat. In accordance with Commission Resolution 2000/61 of April 26, 2000, Special Representative Hina Jilani issued her first annual report in January 2001. In that report, Ms. Jilani specifically identified advocates for a healthy environment as among the group of human rights defenders requiring protection:

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<sup>64</sup> *Id.* at Art. 12.

<sup>65</sup> As discussed below, the Organization of American States (OAS) has also declared its support for the Declaration. See AG/RES. 1671 (XXIX-O/99) and discussion *infra* Section III.B.

<sup>66</sup> U.N. Commission on Human Rights, Resolution 2005/60, *Human rights and the environment as part of sustainable development*, 20 April 2005, E/CN.4/RES/2005/60.

In my view the term ‘human rights defenders’ is not restricted only to those seeking protection and promotion of civil and political rights. The Declaration... recognizes those striving for the promotion, protection and realization of social, economic and cultural rights as human rights defenders. Therefore, those defending the right to a healthy environment, or promoting the rights of indigenous peoples would, by no means, fall outside the ambit of any definition of a human rights defender.<sup>67</sup>

In March 2008 the U.N. Human Rights Council extended its special procedure for human rights defenders and replaced the Special Representative with a Special Rapporteur on the Situation of Human Rights Defenders.<sup>68</sup> As discussed previously, the most recent report issued by Special Rapporteur Margaret Sekaggya recognized the important work undertaken by environmental defenders and acknowledged the systematic attacks they face in response to their efforts to protect the environment.<sup>69</sup>

### 3. Expert Assessment of the need for Protection of Environmental Human Rights Defenders

A United Nations joint expert seminar on the connections between human rights and the environment included in its study the importance of protecting both “traditional” human rights advocates and environmental advocates.<sup>70</sup> The seminar was centered on an expert assessment that concluded that the “normative links between the fields of human rights and the environment need to be reinforced” and that there is a need to “ensure that persons promoting the protection of human rights and the environment are not penalized, persecuted or harassed for their activities.”<sup>71</sup> The experts further “noted with concern that in certain jurisdictions individuals and groups associated with the protection and promotion of human rights and the environment are being prevented from carrying out their legitimate activities.”<sup>72</sup>

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<sup>67</sup> U.N. Commission on Human Rights, Promotion and Protection of Human Rights Defenders: Report submitted by Ms. Hina Jilani, *op. cit.*, Annex II.

<sup>68</sup> U.N. Human Rights Council, Resolution 7/8 (2008).

<sup>69</sup> *See supra* Section I.A; U.N. Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, *op. cit.*, para. 40

<sup>70</sup> The seminar took place in Geneva on January 16, 2002 as a collaboration of the Office of the High Commissioner for Human Rights and the United Nations Environment Programme. It was organized at the invitation of the United Nations Commission on Human Rights, pursuant to Sub-Commission on Human Rights Decision 2001/111 (U.N. Doc. E/CN.4/SUB.2/DEC/2001/111).

<sup>71</sup> Final text (January 16, 2002), Meeting of Experts on Human Rights and the Environment, January 14-15, 2002, para. 18, available at <http://www2.ohchr.org/english/issues/environment/environ/conclusions.htm>.

<sup>72</sup> *Id.* at para. 13.

## **B. The Inter-American Human Rights System protects the rights of environmental defenders**

Like its United Nations counterpart, the Inter-American Human Rights System has recognized the role and rights of environmental defenders for over a decade. This recognition has come in the form of OAS General Assembly resolutions and country reports, adoption of the Protocol of San Salvador, pronouncements of the Inter-American Commission on Human Rights, and the jurisprudence of this Honorable Court.

### 1. OAS General Assembly Resolutions and Country Reports

As early as 1990, the OAS General Assembly spoke of the importance of protecting human rights defenders and organizations, resolving:

To reiterate the recommendation made in previous years to governments of member states that they provide the guarantees and facilities needed to non-governmental human rights organizations so that they may continue their efforts to promote and defend human rights, and that they respect the freedom and integrity of the members of those organizations.<sup>73</sup>

The governments of the Americas gave particular recognition to the importance of human rights defenders in June 1999, when a resolution entitled “Human Rights Defenders in the Americas,” was adopted by the General Assembly of the OAS.<sup>74</sup> In the resolution, governments stated their intention to implement the Declaration on Human Rights Defenders passed by the United Nations. In particular, they agreed to recognize and support the “important work [carried out by human rights defenders] and their valuable contribution to the promotion, observance, and protection of fundamental rights” in the Americas.<sup>75</sup> The resolution calls on state members to provide “Human Rights Defenders with the necessary guarantees and facilities to continue freely carrying out their work of promoting and protecting human rights,” as well as to adopt “the necessary steps to guarantee their life, liberty, and integrity.”<sup>76</sup>

In each subsequent year, the OAS General Assembly has adopted similar resolutions regarding human rights defenders, reiterating its support for their valuable work and urging member states to intensify their efforts to adopt the necessary measures to guarantee the life, personal well-being, and freedom of expression of human rights defenders, in keeping with internationally accepted principles and standards.<sup>77</sup>

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<sup>73</sup> AG/RES. 1044 (XX-O/90) at operative paragraph 4.

<sup>74</sup> AG/RES. 1671 (XXIX-O/99).

<sup>75</sup> *Id.* at operative paragraph 1.

<sup>76</sup> *Id.* at operative paragraphs 2-3.

<sup>77</sup> *See, e.g.*, AG/RES. 2517 (XXXIX-O/09).

The OAS General Assembly acknowledged the connection between human rights and the environment in Resolution 1819 of 2001.<sup>78</sup> Similarly, Resolution 1926 of 2003 states “the Organization of American States took on a leading international role, stressing the importance of promoting environmental protection and the full realization of human rights.”<sup>79</sup> As discussed below, the Inter-American Commission on Human Rights has commented on the measures that States should take in order to protect environmental defenders.<sup>80</sup>

## 2. Recognition of A Right to a Healthy Environment in the Inter-American System

Mexico has ratified the “Protocol of San Salvador” to the American Convention on Human Rights,<sup>81</sup> which gives express recognition to the right to a healthy environment:

### Article 11: Right to a Healthy Environment

1. Everyone shall have the right to live in a healthy environment and have access to basic public services.

2. The States Parties shall promote the protection, preservation, and improvement of the environment.<sup>82</sup>

This acknowledgement of the right to a healthy environment in the Inter-American system reflects the general trend in human rights and environmental law to recognize the right to a healthy environment.<sup>83</sup> In fact, the constitutions of eighteen Latin American

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<sup>78</sup> AG/RES. 1819 (XXXI-O/01)

<sup>79</sup> AG/RES. 1926 (XXXIII-O/03).

<sup>80</sup> *See infra* Section III.B.3.

<sup>81</sup> Additional Protocol to the American Convention on Human Rights in the Areas of Economic, Social and Cultural Rights, 17 Nov. 1988, O.A.S. T.S. No. 69 (ratified by Mexico March 8, 1996) [hereinafter Protocol of San Salvador].

<sup>82</sup> *Id.* at Art. 11.

<sup>83</sup> The right to a healthy environment has been included in many national constitutions and statutory schemes around the world, and has been recognized in a growing number of national judicial decisions. *See* “Human Rights and the Environment: Final Report prepared by Mrs. Fatma Ksentini, Special Rapporteur,” E/CN.4/Sub.2/1994/9, July 6, 1994 at Annex III. The Ksentini Report itself supports the right to a healthy environment (discussing the legal foundations of a right to a “satisfactory” environment). Other instruments include Article 24 of the African Charter on Human and Peoples Rights, 21 I.L.M. 58 (1982) (providing that “[a]ll peoples shall have the right to a general satisfactory environment favorable to their development.”); the United Nations Declaration on the Rights of Indigenous Peoples, adopted by General Assembly Resolution 61/295 on 13 September 2007 (providing at Article 29 that “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources”); Article XIII(1) of the Draft of the Inter-American Declaration on the Rights of Indigenous Peoples, approved by the Inter-American Commission on Human Rights, O.A.S. Doc. OEA/Ser/L/V/II.90, Doc. 9 rev. 1, September 18, 1995 (recognizing “the right to a safe and healthy

nations recognize the importance of a healthy environment, including Mexico, which in 1998 added Constitutional language stating that "all persons have the right to an environment appropriate for their development and well-being."<sup>84</sup> Despite stylistic variations, each articulation of the right to a healthy environment contains the same identifiable core: the right to an environment that supports physical and spiritual well-being and development.

### 3. Pronouncements of the Inter-American Commission on Human Rights and this Honorable Court

In a document prepared in connection with OAS General Assembly Resolution 1926, the Inter-American Commission on Human Rights emphasized the connection between the right to a healthy environment and other critical human rights:

A habitable environment is of course a fundamental prerequisite for the realization of human rights. Life, for instance, a fundamental human right essential for all other human rights, tends to be extinguished if an environment in which life can subsist is altered in a certain way or destroyed altogether. By the same token, the right to personal integrity can be seriously impaired by government omissions or actions that concern the environment.

[. . .]

Without necessarily identifying them as ‘environmental issues’ per se, the system has been called upon to deal with environmental conditions affecting, first and foremost, the rights to life and personal integrity. The Commission has also examined situations concerning the right of individuals to have access to information, the right to participate in public affairs, the right to judicial protection and guarantees, and the right to use and enjoy property where environmental conditions were at issue.

[. . .]

Both the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man recognize rights that can be

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environment, which is an essential condition for the enjoyment of the right to life and collective well-being.”).

<sup>84</sup> See Constitution of México of 1917 (Art. 4), amended in 1998. See also the Constitutions of: Bolivia of 2009 (Art. 30(10)), Brazil of 1988 (Art. 225), Chile of 1980 (Art. 19), Colombia of 1991 (Arts. 8, 49, 79, 80, 86 and 88), Costa Rica of 1949, (Arts. 46 and 50), amended in 1996 and 1994, respectively; Cuba of 1992 (Arts. 11 and 27), El Salvador of 1983 (Art. 69), Ecuador of 2008 (Arts. 14, 15, 27, 32, 66(27), 74, and 83(6)), Guatemala of 1985 (Art. 97), Guyana of 1980 (Arts. 25 and 36), Haiti of 1987 (Arts. 253 and 258), Honduras of 1982 (Art. 145), Nicaragua of 1987 (Arts. 60 and 102), Panama of 1972 (Art. 118), Paraguay of 1992 (Art. 7), Peru of 1993 (Art. 2(22)), and Uruguay of 1967, amended (Art. 47).



violated by state actions and omissions relating to the environment, such as, for example, the right to life, the right to personal integrity, the right to health, the right to equal protection of the law, the right to judicial protection, and the right to property.<sup>85</sup>

The Commission has also noted the importance of harmonizing the measures adopted by States with other sources of international law in relation to the environment and human rights:

[I]t is very important for measures adopted by states concerning the environment to be in line with the international standards espoused by states in the area of human rights. That entails prevention of violations, punishment of those responsible for violations of fundamental rights (even when they are committed by private persons), and making their environmental laws compatible with the American Convention on Human Rights.<sup>86</sup>

Nor is the need to protect against violations of the human rights of environmental defenders a new issue for the Inter-American system. According to the Commission:

[S]everal situations...have given rise to precautionary measures to protect fundamental human rights in circumstances concerning environmental protection activities. In several instances the Commission has addressed states to request that precautionary measures be adopted to protect the lives and physical integrity of human rights defenders working on issues of environmental protection who had received threats or been subject to attack.<sup>87</sup>

Beyond these pronouncements, the Commission has admitted several cases involving alleged violations committed against environmental defenders.<sup>88</sup> In at least two cases the Commission has found States responsible for violations of the human rights of individuals who were working to protect the environment, made recommendations to the

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<sup>85</sup> Document prepared by the Inter-American Commission on Human Rights in connection with operative paragraph 4 of resolution AG/RES. 1926 (XXXIII-0/03), "*Human Rights and the Environment in the Americas*": *The activities of the Inter-American Commission on Human Rights in the field of human rights and the environment*, 18 November 2003, OEA Ser.G, CP/CAJP-2102/03.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *See, e.g.* Inter-American Commission on Human Rights, Report No. 11/04 (admissibility), Petition 735/01, Teodoro García-Cabrera and Rodolfo Montiel-Flores, Mexico, 27 February 2004; Report No. 63/04 (admissibility), Petition 60/2003, Carlos Antonio Luna, Honduras, 13 October 2004; Report No. 58/06 (admissibility), Petition 1083/05, Erwin Haroldo Ochoa-López and Julio Armando Vásquez-Ramírez, Guatemala, 20 July 2006.

States in question, and then referred the cases to the jurisdiction of this Honorable Court.<sup>89</sup>

This Court has recognized the relationship between human rights and the environment and has upheld the rights of environmental defenders. As discussed in greater detail below, the Court's recent decision in the *Case of Kawas Fernández* acknowledged that "there is an undeniable link between the protection of the environment and the enjoyment of other human rights."<sup>90</sup> Because environmental degradation directly affects the ability to exercise other rights, efforts to conserve the environment and natural resources constitute defense of human rights.<sup>91</sup>

#### **IV. THE ACTS AND OMISSIONS OF THE STATE OF MEXICO IN THIS CASE VIOLATED THE RIGHTS GUARANTEED TO ENVIRONMENTAL DEFENDERS BY THE AMERICAN CONVENTION ON HUMAN RIGHTS**

The American Convention on Human Rights guarantees several rights which are vital to the protection of environmental defenders and other advocates for human rights. As the Inter-American Commission on Human Rights has noted:

Several other articles of the Convention may have particular relevance for human rights workers. Among others, Article 13 of the Convention, providing for the right to freedom of thought and expression, plays an important role in the analysis of attacks against human rights workers. Article 15, establishing the right of assembly, and Article 16, establishing the right to freedom of association, also provide protections relevant to human rights workers.<sup>92</sup>

The largely procedural human rights contained in the American Convention, which are reinforced by the San Salvador Protocol's recognition of the substantive right to a healthy environment,<sup>93</sup> have come to be known as "environmental due process" rights when they are exercised by individuals who are working to protect nature:

Procedural rights are a necessary complement to the substantive environmental human rights... These procedural rights provide an

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<sup>89</sup> See Inter-American Commission on Human Rights, Report No. 88/08 (Merits), Case 12.449, Teodoro García Cabrera and Rodolfo Montiel-Flores, Mexico, 30 October 2008; Report No. 63/06 (Merits), Case 12.507, Blanca Jeannette Kawas Fernández, Honduras, 20 July 2006.

<sup>90</sup> *Case of Kawas Fernández*, *op. cit.*, para. 148; see also Section IV, *infra*.

<sup>91</sup> *Id.* at paras. 147-50.

<sup>92</sup> Inter-American Commission on Human Rights, *Third Report on the Human Rights Situation in Colombia*, 26 February 1999, OEA/Ser.L/V/II.102, Doc. 9, Rev. 1, Chapter VII, para. 3.

<sup>93</sup> See *supra* Section III.B.2.

essential link to substantive rights because they enable the enforcement of those substantive rights. The procedural rights to be informed of and participate in decisions that affect the environment have come to be known as 'environmental due process.'

Denial of these fundamental rights of freedom of association, of opinion and of expression, and of the right to take part in government, endangers the protection of substantive human rights.... These rights are enabling rights; they make it possible for people to contribute actively to the protection of their environment. Likewise, the absence of respect for these rights not only increases the likelihood of environmental degradation, but also increases the chances that such damage will be irreversible.

Three of the major rights embodied in environmental due process are the right to receive information, the right to impart information (freedom of expression), and the right to participate in environmental decision-making. ... Meaningful participation in environmental decision-making also requires being informed of actions with environmental effects, having a basic understanding of environmental issues, and having the right to express one's opinion regarding environmental affairs. It also requires that an effective means of redress be available to the victims of both environmental harm and violations of procedural rights.

...Only when procedural rights are honored is collective action in support of environmental protection possible... The environmental dimension of these procedural human rights constitutes the foundation of environmental protection because without these procedural protections, no protection of substantive environmental rights is possible.<sup>94</sup>

In order to exercise these or any other rights, an individual must be afforded the whole panoply of rights guaranteed by the American Convention. The U.N. Declaration on Human Rights Defenders has specifically recognized and protected this corollary right:

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.<sup>95</sup>

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<sup>94</sup> Laura S. Ziemer, *Application in Tibet of the Principles on Human Rights and the Environment*, 14 Harv. Hum. Rts. J. 233 (Spring 2001), pp. 263-65.

<sup>95</sup> U.N.Doc.A/RES/53/144, March 8, 1999, Art. 2.

The American Convention provides to the same effect in Article 1.1 when it obligates the States Parties to “undertake to respect the rights and freedoms recognized herein and to ensure to all persons ...the free and full exercise of those rights and freedoms...,” and in Article 2, when it further obligates the States Parties to “adopt...such legislative or other measures as may be necessary to give effect to those rights or freedoms [referred to in Article 1].”

The State of Mexico violated the environmental due process rights guaranteed to Rodolfo Montiel and Teodoro Cabrera by the American Convention and failed to uphold its obligations under Articles 1 and 2 of the Convention. Cabrera and Montiel were subjected to illegal arrest, incommunicado detention, mistreatment and torture, deprivation of due process, and wrongful incarceration. Compounding these abuses, the government has failed meaningfully to investigate, sanction, or otherwise remedy the harms perpetrated against them. The persecution of Cabrera and Montiel occurred in response to the entirely lawful activities they undertook:

- they were organizers and active members of OCESP, a peaceful environmental organization dedicated to the defense of local forests, in lawful exercise of the right of association guaranteed by Article 16 of the American Convention; and
- they spoke out against environmentally destructive logging, organized anti-logging meetings and actions in local communities, and advocated for a healthy environment, in lawful exercise of their right to freedom of expression guaranteed under Article 13 of the American Convention; and
- through OCESP, they frequently communicated their concerns to the government and repeatedly petitioned the government to halt destructive logging in the forests of Guerrero, in lawful exercise of their right to participate in government guaranteed under Article 23 of the American Convention.

What is more, the State of Mexico’s failure to respect and protect the rights and freedoms guaranteed to Cabrera and Montiel by the American Convention violated Article 1.1. Finally, the State of Mexico violated Article 2 because the large number of cases of this type in Mexico put the State on notice as to the need to adopt measures to give effect to the human rights and freedoms of environmental defenders, yet it failed to take the recommended measures.<sup>96</sup>

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<sup>96</sup> See *supra* Section II. In 1998 the Inter-American Commission on Human Rights recommended that Mexico take a number of specific steps to eliminate exactly the type of human rights abuses later perpetrated against Montiel and Cabrera. In fact, as one reads the following excerpts from those recommendations, it becomes apparent that had Mexico adopted those recommendations, the human rights violations that are the subject of the instant petition would never have even occurred:

717. To adopt the measures toward ensuring that acts of torture are characterized and punished as such by jurisdictional organs, in accordance with the international definition of this violation of the right to personal integrity.

718. To take the necessary measures to exercise effective judicial supervision over the arrest and the agencies entrusted with making the arrest, since detention and arrest are among the most critical phases in any criminal proceeding during which the detainee is under the exclusive control of the police.

## **A. Mexico Violated the Right to Freedom of Association Guaranteed by Article 16 of the American Convention**

The State of Mexico violated the right to freedom of association of Rodolfo Montiel and Teodoro Cabrera by punishing them for pursuing legitimate anti-logging activities within OCESP, by creating obstacles to their participation in the duly-registered environmental group, and by failing to combat impunity for the abuses committed against them. These actions also violated the collective associational rights of other OCESP members and forest defenders throughout Mexico because they undermined the group's activities and had an intimidating effect on the broader anti-logging movement. As a direct result of the abuses committed by the Mexican government, Montiel and Cabrera were forced to flee the State of Guerrero and OCESP ceased many of its environmental protection activities, which demonstrates the gravity of the impact on the freedom of association of the ecologists and their colleagues.

### 1. Mexico's acts and omissions constitute a flagrant violation of the freedom of association of Rodolfo Montiel and Teodoro Cabrera

The right to freedom of association of Rodolfo Montiel and Teodoro Cabrera is guaranteed by Article 16 of the American Convention:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

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720. To implement specific programs to educate and train public officials responsible for enforcing the law about the absolute prohibition of acts of torture and of all cruel, inhuman or degrading treatment or punishment.

721. To guarantee the right of those arrested to communicate immediately with an attorney of their choice.

723. To adopt the necessary measures, legislative or of other nature, to ensure that the statement which the accused makes before the competent judge in the case is deemed to be the only valid confession, eliminating expressly the incriminating value of confessions made to the judicial police.

724. To provide specific guidelines for the competent authorities requesting them to reject any statement or testimony in which there are presumptions or good reason for believing that such statement or testimony was obtained by coercion or physical or moral torture.

725. To investigate and punish, with the severity required by each specific case, those responsible for acts of torture.

726. To take all necessary steps to ensure that victims of torture are rehabilitated and provided with fair and adequate compensation.

759. To adopt the measures needed to punish perpetrators of crimes committed against persons exercising their right to freedom of expression, including a speedy, effective, and impartial investigation of complaints related to harassment of journalists, human rights defenders, and members of community organizations.

760. To offer all guarantees so that both Mexican and foreign human rights defenders can perform their important work in promoting and defending those rights, without any abusive interference on the part of the authorities; especially, to review claims of arbitrary expulsion of foreigners who reside legally in Mexican territory, so as to strictly conform such decisions to rules of due process set forth in internal and international law.

Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Mexico*, 24 September 1998, OEA/Ser.L/V/II.100, Doc. 7, rev. 1, Chapter XI.

[...]

Freedom of association is also recognized in a number of international law instruments and pronouncements, and pursuant to Article 29 of the American Convention the right should be interpreted to the full extent that it is guaranteed elsewhere.<sup>97</sup>

This Honorable Court has clarified the content of the right to freedom of association and recognized its vital importance to defenders of a healthy environment and other fundamental human rights. First, Article 16 guarantees an individual's right to associate with others in the pursuit of legal ends without facing intervention, pressure or other interference by government officials that could alter or undermine the group's work.<sup>98</sup> In the case of human rights defenders, this encompasses the right to form and join organizations that are dedicated to the promotion of human rights or the surveillance and reporting of rights violations.<sup>99</sup> The Inter-American Commission has stated that "[w]hen individual members [of human rights organizations] are forced to abandon their activities, they also suffer violations of their right to freedom of association."<sup>100</sup>

Article 16 also obligates the State to take certain actions to create an environment in which individuals may freely exercise the right to associate with others.<sup>101</sup> A State's positive obligations include, *inter alia*, the duty to protect these individuals, prevent attacks against them, and to investigate effectively alleged violations of their rights.<sup>102</sup> As the Court recently explained, these obligations are of particular importance in cases involving human rights defenders:

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<sup>97</sup> See, e.g., Article XXII of the American Declaration; Article 20 of the Universal Declaration of Human Rights of 1948; Article 22 of the ICCPR; Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 11 of the African Charter on Human and Peoples' Rights. The right to freedom of association has been enumerated in the context of environmental issues in paragraph 19 of the 1994 "Draft Declaration of Principles on Human Rights and the Environment": "All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm." See Draft Declaration Principles on Human Rights and the Environment, contained in Final Report prepared by Mrs. Fatma Ksentini, Special Rapporteur on Human Rights and the Environment, U.N. Doc. E/CN.4/Sub.2/1994/9, 6 July 1994, Annex I. Additionally, the Declaration on Human Rights Defenders speaks throughout in terms of rights to be exercised "individually and in association with others." See The Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N.Doc.A/RES/53/144, March 8, 1999.

<sup>98</sup> See Inter-American Court of Human Rights, *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of 10 July 2007. Series C No. 167, para. 144; *Case of Kawas Fernández*, *op. cit.*, para. 143.

<sup>99</sup> *Case of Kawas Fernández*, *op. cit.*, para. 146.

<sup>100</sup> Inter-American Commission on Human Rights, *Third Report on the Human Rights Situation in Colombia*, *op. cit.*, Chapter VII, para. 73.

<sup>101</sup> See Inter-American Court of Human Rights, *Case of Cantoral Huamaní*, *op. cit.*, para. 144; *Case of Kawas Fernández*, *op. cit.*, paras. 144, 146.

<sup>102</sup> *Case of Cantoral Huamaní*, *op. cit.*, para. 144; *Case of Kawas Fernández*, *op. cit.*, para. 145

In the instant case, the analysis of the potential violation of the right of freedom of association, as alleged by the representatives, must be made in the context of the link between the exercise of said right and the promotion and defense of human rights. In this regard, the Court has established that the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.<sup>103</sup>

The obligations imposed by Article 16 unquestionably apply in cases involving environmental defenders. As discussed above and acknowledged by this Honorable Court in the *Kawas Fernández* decision, those who work to defend the right to a healthy environment necessarily protect the other rights that can only be enjoyed within a healthy environment, and therefore are entitled to the protections enjoyed by other human rights defenders.<sup>104</sup> The need to protect the freedom of association of Mexican environmental defenders is particularly acute given the deplorable human rights situation facing environmental advocates there:

The recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work.<sup>105</sup>

Furthermore, because freedom of association can only be exercised in an environment in which fundamental human rights are fully respected and guaranteed, a State's violation of an individual's human rights (such as due process rights or the right not to be tortured) also constitutes a violation of Article 16 when the abuse is motivated by the individual's legitimate exercise of his or her freedom of association.<sup>106</sup> In accordance with the jurisprudence of this Honorable Tribunal, proof of this wrongful motivation does not require evidence of the intent or culpability of particular government agents and instead may be inferred from the circumstantial evidence surrounding the abuses.<sup>107</sup>

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<sup>103</sup> *Case of Kawas Fernández, op. cit.*, para. 145.

<sup>104</sup> *See supra* Section III; *Case of Kawas Fernández, op. cit.*, paras. 147-49.

<sup>105</sup> *Case of Kawas Fernández, op. cit.*, para. 149; *see also supra* Section II.

<sup>106</sup> *Id.* at para. 150.

<sup>107</sup> *Id.* at para. 73.

In this case, the Mexican government violated the individual rights of Rodolfo Montiel and Teodoro Cabrera by interfering with their ability to associate freely with others, by failing to create an environment where they could exercise their association rights, and by targeting them in response to the lawful exercise of their rights.

The legitimate environmental defense activities carried out by Rodolfo Montiel and Teodoro Cabrera have been discussed elsewhere and will be reviewed here briefly.<sup>108</sup> Together with fellow ecologists, Montiel founded OCESP in 1998 to challenge the destruction of the forests of Guerrero. Both Montiel and Cabrera were active members of OCESP and through the organization they held community meetings to mobilize anti-logging opposition, filed formal complaints with the government, and organized social actions to protest excessive logging. As a result of the exercise of their freedom of association rights, the multinational logging company Boise Cascade left the region, likely taking with it many of the benefits that were realized by powerful local interests as a result of the company's unsustainable logging.

Like scores of other Mexican environmental defenders, including fellow members of OCESP, Montiel and Cabrera were targeted for exercising their legitimate right to associate with members of their community by participating in a lawful environmental organization. The circumstances surrounding their unlawful apprehension, interrogation, and torture at the hands of the Mexican Army, as well as the due process irregularities in the subsequent trial against them show that the campesino ecologists were singled out in response to their effective environmental activism. This represented a brazen attempt to silence their efforts while sending a message to others that the defense of the forests of Guerrero would not be tolerated. The government's abuses directly interfered with Montiel and Cabrera's ability to participate in OCESP during and after their two years of incarceration as prisoners of conscience.

The Mexican government's failure to uphold its positive obligations under Article 16 have compounded the harm created by these abuses. The government failed to create an environment in which Montiel and Cabrera could defend the human rights of their community, and as is all too common in Mexico, the government did not investigate properly or sanction the acts of torture committed against the campesino ecologists. The ongoing impunity for the abuses they suffered, coupled with the government's failure to address post-release threats to their safety, led Montiel and Cabrera to flee Guerrero, which forced them to abandon the environmental organization they helped create. Ultimately the continuing violation of the rights of Montiel and Cabrera, coupled with abuses suffered by other OCESP members, led the organization to cease most of its environmental defense efforts.

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<sup>108</sup> See *supra* at Brief Summary of the Facts. See also ESAP; Application of the Commission.



## 2. Mexico violated the collective associational rights of all OCESP members

The right to freedom of association guaranteed by Article 16 of the American Convention has both an individual aspect and a collective aspect. As this Honorable Court has explained, human rights abuses committed against one member of an organization may violate the collective right of the group to associate freely and without fear:

Article 16(1) of the Convention includes the “right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.” These words establish literally that those who are protected by the Convention not only have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right, which thus represents a right of each individual; but they also enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose. Therefore, the execution of a trade union leader, in a context such as that of this case, not only restricts the freedom of association of an individual, but also the right and freedom of a determined group to associate freely, without fear; consequently, the right protected by Article 16 has a special scope and nature, and this illustrates the two dimensions of freedom of association.<sup>109</sup>

As such, a State’s failure to guarantee a citizen’s ability to exercise his or her individual association right leads to a second violation of the protected right when the initial violation intimidates others from exercising their freedom to associate:

In view of the foregoing, the Court considers that, in this case, the legitimate exercise that Pedro Huilca Tecse made of the right to freedom of association, (in trade union matters), resulted in a lethal reprisal, which, in turn, constituted a violation of Article 16 of the American Convention. The Court also considers that the execution of Pedro Huilca Tecse had an intimidating effect on the workers of the Peruvian trade union movement and thereby reduced the freedom of a specific group to exercise this right.<sup>110</sup>

The *Kawas Fernández* decision confirms that a State’s violation of the right to freedom of association of an environmental defender often undermines the freedom of association of others who are working to protect the environment. As the Court indicated, this

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<sup>109</sup> Inter-American Court of Human Rights, *Case of Huilca-Tecse v. Peru. Merits, Reparations and Costs*. Judgment of 3 March 2005. Series C No. 121, para. 69.

<sup>110</sup> *Id.* at para. 78.

intimidating effect is particularly pronounced in cases where there is impunity for the underlying abuse:

As found in other cases, it is undeniable that these circumstances have also had an intimidating effect on other people who are engaged in the defense of the environment in Honduras or that are related to this type of causes. This intimidating effect is reinforced and exacerbated by the fact that the crime remains unpunished.<sup>111</sup>

The same is true in this case. As described elsewhere, Rodolfo Montiel and Teodoro Cabrera were exercising their rights to freedom of expression, to participate in government, and to associate with others seeking to influence government action on the environment. The State of Mexico failed to ensure their ability to exercise these rights: they were illegally arrested, tortured to the point of confession, and then wrongfully incarcerated. Thereafter, the State of Mexico failed to investigate, prosecute, and convict those who had abused the ecologists' rights. These abuses have created a further round of human rights violations because those who share their goals and wish to exercise the same rights that they sought to exercise are intimidated from doing so due to the mistreatment of Montiel and Cabrera.

Another parallel to the *Kawas Fernández* case involves the continued pattern of human rights violations perpetrated against other Mexican environmental defenders, including murders and wrongful prosecutions of members of OCESP, in the years since Montiel and Cabrera were first persecuted.<sup>112</sup> The legacy of abuse and impunity that has plagued Mexico in general and Guerrero in particular forced Montiel and Cabrera to abandon their communities and seek refuge in the United States of America and elsewhere in Mexico, respectively, which contributed to the declining role and influence of OCESP.

In sum, the State of Mexico's abuses of the human rights of Montiel and Cabrera, as well as its reprisals against other OCESP members, were designed to force them to abandon their individual and organizational anti-logging activities. Unfortunately for the communities of Guerrero and the forests on which they rely, the efforts to silence OCESP met with a measure of success. The gravity of these abuses demands meaningful reparation by the State of Mexico which should be designed to restore the ability of community members to exercise their right to associate with one another in defense of the environment.

3. Mexico's failure to protect the right to freedom of association contributed to violations of other environmental due process rights

The right to freedom of association must also be protected because without it, various other human rights cannot be fully exercised. The Declaration on Human Rights

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<sup>111</sup> *Case of Kawas Fernández, op. cit.*, para. 153.

<sup>112</sup> *Id.* at para. 154; *supra* Brief Summary of the Facts and Section II.

Defenders speaks throughout in terms of rights to be exercised “individually and in association with others.” The Mexican government’s violation of Montiel and Cabrera’s right to freedom of association is inextricably tied to its violations of their other enabling rights.

This case perfectly illustrates how the right to freedom of association is necessary to the enjoyment of the right to freedom of expression and the right to petition and participate in government. As discussed in the following section, this Court has described the right to freedom of expression as having a dual aspect (that of both receiving and imparting information).<sup>113</sup> These aspects cannot be preserved in the absence of the exercise of the right to freedom of association, and vice versa. The activities of OCESP and other environmental organizations, and indeed their very effectiveness, depended on the ability of their members to communicate information to each other, and to communicate their members’ concerns collectively to the government. By deterring OCESP’s members from exercising their rights to freedom of association, the government hoped to stop those members from expressing their ideas, and from petitioning and participating in government.<sup>114</sup>

### **B. Mexico Violated the Right to Freedom of Expression Guaranteed by Article 13 of the American Convention**

The abuses perpetrated by the State of Mexico against Rodolfo Montiel and Teodoro Cabrera violated their individual right to freedom of expression as well as the collective aspect of the right guaranteed to members of their community. Mexico attempted to silence the legitimate and legally-protected expression of the ecologists, and the numerous human rights violations committed against them did exactly that.

Under Article 13 of the American Convention:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

[...]

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<sup>113</sup> See *infra* Section IV.B.

<sup>114</sup> The Commission, in its 1997 Report on Ecuador, recommended that states “implement the measures to ensure that all persons have the right to participate, *individually and jointly*, in the formulation of decisions which directly concern their environment” (emphasis added). Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, Chapter VIII. The 1982 World Charter for Nature states that persons ought to “have the opportunity to participate, *individually or with others*, in the formulation of decisions of direct concern to their environment...” (emphasis added). U.N.G.A. RES 37/7, U.N. Doc. A/RES/37/51, 22 I.L.M. 455, at Principle 23.

Three aspects of the right to freedom of expression are of particular relevance to this case because of the political nature of the expression that took place in this case. First, the Special Rapporteur for Freedom of Expression has commented on the critical role that the right of freedom of expression plays in a democratic society, particularly in regard to political expression:

Principle 1

Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.

[. . .]

[F]reedom of expression is a cornerstone upon which the very existence of a democratic society rests. . . . It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free. Freedom of expression, therefore, is not just the right of individuals, but of society as a whole.”<sup>115</sup>

The second important aspect of the right to freedom of expression is that it is a collective right, or as stated above, it is “not just the right of individuals, but of society as a whole.” This Honorable Court has acknowledged that the right has both an individual aspect and a social (collective) aspect:

... [T]hose who are protected by the Convention have not only the right and freedom to express their thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all kinds. Consequently, freedom of expression has an individual dimension and a social dimension:

‘It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others.’

[. . .]

Regarding the second dimension of the right to freedom of expression, the social element, it is necessary to indicate that freedom of expression is a

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<sup>115</sup> OAS Special Rapporteur for Freedom of Expression, Background and Interpretation of the Declaration of Principles, October 2000, Principle 1 and para. 7, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=132&IID=1>.

way of exchanging ideas and information between persons; it includes the right to try to communicate one's point of view to others, but it also implies everyone's right to receive other people's opinions, information and news. For the ordinary citizen, awareness of other people's opinions and information is as important as the right to impart their own.

This Court has stated that both dimensions are of equal importance and should be guaranteed simultaneously in order to give full effect to the right to freedom of expression in the terms of Article 13 of the Convention.<sup>116</sup>

Finally, the Inter-American Commission on Human Rights has commented on the "chilling effect" on all of society when a human rights defender faces reprisals for exercising freedom of expression:

The third issue involves a different type of concern, namely the steady increase in threats and attacks perpetrated against members of organizations involved in the promotion and protection of the rights of the populace. This type of persecution is worrying not only insofar as it places individuals at serious risk, but also as it has a broader effect of sowing fear and 'chilling' the freedom of expression and action of such groups.<sup>117</sup>

Although the right to freedom of expression is certainly broad enough to protect Montiel and Cabrera's activities in expressing their views in opposition to destructive logging practices, proposed human rights instruments would expressly protect speech relating to environmental issues:

All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.<sup>118</sup>

In this case, the dangers warned of by the Commission in relation to violations of the right to freedom of expression- diminution of the critical role that the right of freedom of expression plays in a democratic society, particularly in regard to political expression; harm to both the individual and collective aspects of the right; and the "chilling effect" on all of society when an individual's right to freedom of expression is violated- are present due to Mexico's failure to safeguard the rights of Montiel and Cabrera and the State's lack of investigation and prosecution of those who violated their rights.

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<sup>116</sup> Inter-American Court of Human Rights, *Case of Herrera-Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 2 July 2004, paras. 108-111; see also Inter-American Court of Human Rights, Advisory Opinion OC-5/85 of 13 November 1985, *Compulsory Membership in an Association prescribed by law for the practice of Journalism (Arts. 13 and 29, American Convention on Human Rights)* Series A No. 5; OAS Special Rapporteur for Freedom Expression, 1998 Annual Report, available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=134&IID=1>.

<sup>117</sup> Inter-American Commission on Human Rights, *Fifth Report On the Situation of Human Rights in Guatemala*, 6 April 2001, OEA/Ser.L/V/II.111, doc. 21, Chapter VI, para. 5.

<sup>118</sup> Draft Declaration Principles on Human Rights and the Environment, *op. cit.*, para. 16.

Montiel and Cabrera were singled out by the State of Mexico due to the role they played as leading advocates for environmental protection.<sup>119</sup> The human rights violations and subsequent impunity for their commission not only silenced Montiel and Cabrera (who were isolated from their community for over two years and then unable to return to Guerrero due to continuing fears for their safety) but also had a chilling effect on others who expressed or who might express similar views (many of whom suffered further reprisals, silencing many OCESP members and reducing the organization's environmental activism). Furthermore, the abuses violated both of the dual rights of freedom of expression, that of Montiel and Cabrera to express themselves and that of members of their community to receive the information they expressed. In sum, the violation of the right to freedom of expression went far beyond the two ecologists themselves, and thus was particularly egregious.

### **C. Mexico Violated the Right to Participate in Government Guaranteed by Article 23 of the American Convention**

The American Convention and other international instruments incorporated therein guarantee the rights of Rodolfo Montiel and Teodoro Cabrera to participate in government by petitioning their government and otherwise seeking changes in environmental policy through democratic means. The State of Mexico violated this right by targeting Montiel and Cabrera for participating in government, by unjustly imprisoning them to restrict their participation, and by failing to take effective measures to ensure that they could resume their participatory activities after being freed.

Under Article 23 of the American Convention:

1. Every citizen shall enjoy the following rights and opportunities:
  - a. to take part in the conduct of public affairs, directly or through freely chosen representatives.

[...]

The Inter-American Commission on Human Rights has commented on the importance of ensuring that individuals and communities affected by resource development projects are permitted to participate in decisions which concern the environment. According to the Commission, Article 23 requires States to allow its citizens to participate in decision-making regarding processes which affect them, a right which involves both the ability to receive information and provide input into the decision.<sup>120</sup> The Commission has noted that the right to participate may be exercised individually or jointly.<sup>121</sup>

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<sup>119</sup> *Supra* Brief Summary of the Facts. See also ESAP; Application of the Commission.

<sup>120</sup> Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Ecuador*, op. cit., Chapters VIII and IX.

Other international instruments help delineate the full extent of these participatory rights. Pursuant to Article 29 of the American Convention this Honorable Court should consider the clear evolution of the law regarding these rights. First, Article XXIV of the American Declaration of the Rights and Duties of Man demands that individuals have the right to petition the government and to obtain a prompt decision for any reason, including environmental concerns:

Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

Additionally, the U.N. Rapporteur for Human Rights and the Environment has described the critical nature of public participation in the decision-making process regarding environmental issues:

217. The right of popular participation in its various forms ranks high in importance for promoting and protecting human rights and the environment. The basic right to popular participation is provided for in article 21 of the Universal Declaration of Human Rights and a number of international instruments. The United Nations system has long recognized the importance of popular participation in the protection of the environment, especially evident in the 1972 Stockholm Declaration, the 1975 United Nations work on popular participation in development, See *Popular Participation in Decision Making for Development*, United Nations publication, Sales No. E.75.IV.10 (1975), the 1992 Rio Declaration and Agenda 21, and 1993 Vienna Declaration and Programme of Action.

[...]

221. Although many people are prevented from participating in decisions, there is a growing national and international trend, including at the international funding institutions, to allow the participation of individuals and groups in all stages of activities involving the environment...<sup>122</sup>

Furthermore, the 1982 World Charter for Nature was one of the first major international environmental documents to make public participation a central objective of environmental decision-making:

All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation

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<sup>121</sup> *Id.*

<sup>122</sup> Human Rights and the Environment: Final Report prepared by Mrs. Fatma Ksentini, Special Rapporteur, *op. cit.*, paras. 217, 221.

of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.<sup>123</sup>

Most recent international environmental instruments uniformly mandate that affected persons be included in the planning process.<sup>124</sup> For example, the historic 1992 Rio Declaration recognizes a right to participation:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including...the opportunity to participate in decision-making processes.<sup>125</sup>

Paragraph 18 of the 1994 “Draft Declaration of Principles on Human Rights and the Environment” similarly provides:

All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development...<sup>126</sup>

Similarly, Chapter 8 of Agenda 21, a comprehensive and detailed blueprint for the future implementation of sustainable development, is largely devoted to ways to ensure participation by affected individuals in development projects.<sup>127</sup> The Beijing Declaration,<sup>128</sup> Articles 2(6) and 3(8) of the 1991 ECE Convention on Environmental Impact Assessment<sup>129</sup>; the 1992 Convention on Biological Diversity<sup>130</sup>; the 1993 Council of Europe Convention on Damage Resulting from Activities Dangerous to the

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<sup>123</sup> World Charter for Nature, *op. cit.*, Principle 23.

<sup>124</sup> See Dinah Shelton, *Human Rights and Environmental Issues in Multilateral Treaties Adopted between 1991 and 2001*, Background Paper No. 1, Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, 14-16 January 2002 (Geneva), available at: <http://www2.ohchr.org/english/issues/environment/environ/bp1.htm>.

<sup>125</sup> Rio Declaration on Environment and Development, U.N. Conference on Environment and Development, Rio de Janeiro, 13 June 1992, U.N. Doc. A/CONF. 151/26, Principle 10.

<sup>126</sup> Draft Declaration Principles on Human Rights and the Environment, *op. cit.*, para. 18.

<sup>127</sup> See U.N. Conference on Environment and Development, Rio de Janeiro, June 13, 1992 at Principle 10, U.N. Doc. A/Conf. 151/26.

<sup>128</sup> A/Conf.177/L.5/Add.15, 14 September 1995.

<sup>129</sup> 30 I.L.M. 802 (1991).

<sup>130</sup> 31 I.L.M. 818 (1992), Article 14.



Environment<sup>131</sup>; the 1994 Desertification Convention/United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa<sup>132</sup>; and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (UNECE Convention)<sup>133</sup>, all reflect the same goals of facilitating participation in the decision-making process by affected persons.<sup>134</sup>

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<sup>131</sup> 150 European Treaty Series (1993).

<sup>132</sup> UN G.A.D. A/AC.241/15/Rev.7, 33 I.L.M. 1328 (1994), Article 5.

<sup>133</sup> UN Doc. ECE/CEP/43 (21 April 1998)

<sup>134</sup> International instruments dealing with the right to development have also recognized the critical role of citizen participation. For example, Article 1 of the 1986 United Nations General Assembly "Declaration on the Right to Development," which defines the "right to development," recognizes universal public participation as essential for the expression of the right:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

G.A. Res. 41/128, Dec. 4, 1986, reprinted in *Human Rights: A Compilation of International Instruments*, Vol. I (Second Part), Universal Instruments, United Nations, New York, Geneva, 1994 at 548.

Similarly, the preamble to the Declaration states:

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom ...

The role of public participation as a necessary means for achieving sustainable development was first clearly identified the following year by the World Commission on Environment and Development in *Our Common Future*, also known as the Brundtland Commission Report. It found that:

In the specific context of the development and environment crisis of the 1980s, which current national and international political and economic institutions have not and perhaps cannot overcome, the pursuit of sustainable development requires...a political system that secures effective citizen participation in decision making.

The World Commission on Environment and Development, Oxford University Press, Oxford, New York, 1987 at 65.

The Brundtland Commission identified "effective participation" as a necessity for achieving sustainable development. It referred particularly to the significance of participation in promoting sustainable development by specific groups of the public, including NGOs. *Id.* at 12, and at 328 ("In many countries, governments need to recognize and extend NGOs' right to know and have access to information on the environment and natural resources; their right to be consulted and to participate in decision making on activities likely to have a significant effect on their environment; and their right to legal remedies and redress when their health or environment has or may be seriously affected.").

The most recent international human rights instrument specifically dealing with human rights defenders also protects the right to participate in public affairs and to petition the government:

#### Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels [...]

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

[...]

#### Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.<sup>135</sup>

In this case, the rights of Rodolfo Montiel and Teodoro Cabrera to participate in environmental decision-making and to petition their government concerning the exploitation of natural resources in the area in which they lived were violated by the State of Mexico. As described elsewhere, OCESP filed numerous complaints with the government in an attempt to halt destructive logging practices. These complaints decried the damage caused to the campesinos' land by the logging companies with the acquiescence of state authorities, and sought direct government action to halt the logging. In these ways, Montiel and Cabrera were exercising their guaranteed rights to participate directly in public affairs and to petition their government.

Not only did the State of Mexico's abuse of the ecologists' human rights violate their right to participate in government, but the subsequent impunity for the abuses effectively prevented them from returning to their communities to participate in further environmental decision-making and petitioning of their government. Making matters

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<sup>135</sup> Declaration on Human Rights Defenders, *op. cit.*, Arts 5, 8.

worse, the abuses perpetrated against Montiel and Cabrera directly impacted the ability of OCESP to carry out similar initiatives, thus undermining the participation rights of the other members of a legitimate environmental protection organization and the broader forest defense movement within the region.

In conclusion, the State of Mexico's flagrant violations of the individual and collective rights of association, expression and participation have had devastating effects on Rodolfo Montiel, Teodoro Cabrera and other environmental defenders in the region. As such, this Honorable Court should order Mexico to undertake measures that help restore the situation that existed before the violations occurred, remedy the community harm and moral damage caused by the abuses, and ensure that such violations are not repeated.

### **PETITUM**

In the hope and belief that this contribution will assist the Court to reach a just decision for the parties involved in this case, EDLC respectfully requests that this Honorable Court:

- 1) admit the Environmental Defender Law Center as *Amicus Curiae* for this case;
- 2) attach this brief to the case file; and,
- 3) adopt the views set forth in this brief.

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**Date**