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LEVERAGING LAW AND LIFE

Criminalization of Agrarian Movements and the Escazú Agreement

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The Crisis of Criminalization

In July 2017, at the Seventh International Conference of La Via Campesina (LVC) in Spain's Basque Country, agrarian leaders gathered to strategize their transnational grassroots coalition, which spans tens of millions of *campesinos*—peasants, indigenous people, landless farmers, fishers, and rural communities across the world. They foregrounded the growing wave of violence against agrarian justice activists, calling it “the criminalization of our movements,” with community leaders “being assassinated, jailed, tortured, and threatened.” They denounced the 2016 murder of internationally renowned river-protector Berta Cáceras in Honduras, as well as the 2012 Curuguaty Massacre in Paraguay (FIAN and LVC, 2014), the imprisonment of Union of Agricultural Workers Committee leaders in Palestine, the arrest of prominent fisher rights advocates in Pakistan, and the murder of Argentine activists by agribusiness police forces (Motta, 2017). They also condemned the criminalization of social movements in Brazil (Canofre, 2017; Sauer and Mészáros, 2017), particularly those of Afro-Brazilians rural land activists, and the disproportionate policing of Standing Rock indigenous resistance in the USA to pipeline infrastructure in the Dakotas. LVC has issued repeated public demands for rigorous investigations into the hundreds of murders of indigenous and *campesino* activists and movement leaders across continents. In their words:

We call for no crime to go unpunished, because impunity is one of the main reasons why leaders have been murdered...We call for an end to the repression and criminalisation of those who defend life in Brazil and the rest of the world.

(LVC, 2018b, no page)

This chapter presents an analysis from the frontline communities themselves, who argue that, in order to understand and counter the surge of violence against land defenders, it is important to investigate the processes of criminalization that aid and abet, justify, and hide the violence. It traces how criminalization occurs when and where land defenders have mobilized to assert their rights to protect water and defend land. Often, land defenders and water protectors use the language of *dignity*, *freedom*, *justice*, or *sovereignty* rather than, or in conjunction with, a language of *human* or *environmental rights*.

International bodies, such as the United Nations (UN), as well as prominent and grassroots civil society organizations have classified these victims of violence and criminalization as environmental human rights activists. Frontline mobilizations are also increasingly striving to articulate their struggles to international forum audiences. This work is done through and within the terrain of law, policy, and state-governance, and against, for instance, transnational mega-dam or agribusiness corporations. In backlash, mega-extractor companies have deployed their considerable political-economic power in these same terrains of law, policy, and state-governance. Not only does this inflict great harm on the low-resource frontline communities, from bankruptcy to social fissures, from slander all the way to murder, but it also co-opts and commandeers the realm of law and governance itself.

Legal justice system resources are observed to be used both to help land defenders to protect their lands and themselves and to mobilize against them. When the legal system is tied up with the criminalization of those on the frontline of extraction and displacement, it directs attention away from the environmental crimes of mass extraction and displacement. This maintains a colonial orientation of legal and governance systems that protects those with capital from those who might disrupt cycles of further capital accumulation. Moreover, it maintains the racialized and gendered exclusion and expropriation of this colonialist orientation.

To address these harm-laden developments, grassroots agrarian organizations and movements are forging wider and deeper coalitions and communications strategies. This entails, among other tactics, reasserting and reclaiming the terrain of law, policy, and state-governance with even more transnational force and leverage. A key example of this is the 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica (the Escazú Agreement). This is the first international agreement to address, denounce, and strive to prevent the criminalization of environmental and human rights defenders.

Research is needed on the negotiations that are currently underway to advance signing, ratification, and implementation of this treaty. As an initial contribution, the chapter makes three interrelated theoretical arguments. First, criminalization is observed as a backlash against agrarian and indigenous land defenders' reclamation of legal realms. It shows how powerful and contested the realms of law and its legitimacy are, even as it proves how threatening land defenders' use of the law is to agro-extractors. Second, the Escazú Agreement is recognized as a powerful counterweight to this backlash. It has the potential to strengthen land defenders'

resources, protections, capacities, and alliances, as they work to reclaim the contested terrain of law to defend themselves and their lands—as they in turn criminalize the extraction itself and concurrent violence associated with it. Finally, the chapter locates the current struggle over law and legitimacy, over land and life, as an agricultural contestation. Land defenders are essentially defending their agrarian ways of land-based life: foodways, foraging, agroforestry, fishing, community nourishment and food sovereignty. Conversely, extractors are often agribusinesses, large-scale planters, and their paid enforcers and deputies. Accordingly, the chapter ends arguing that the follow-up to the Escazú Agreement needs to focus even more on the extractive and violent nature of agroindustrial production policies and paradigms.

Say Their Names: Violence Against Land and Water Defenders

On March 2, 2016 renowned Honduran activist **Berta Cáceres** was brutally murdered in her home. A mother of four from the Lenca indigenous community, she was targeted and killed owing to her bold, public, and increasingly effective opposition to the Agua Zarca hydropower dam on her people's ancestral lands and the Gualcarque River, which holds crucial food, ecological, and spiritual significance for them. She and **Lesbia Yaneth Urquía**, from the same organization, COPINH, were two of 14 prominent land defenders killed in Honduras in 2016 alone. In the previous year, the dam company that Cáceres opposed brought false charges against her for “usurpation, coercion and continued damage” (Global Witness, 2017, p. 16) of its property. It also called on the Honduran government to “act with all resources at its disposal to persecute, punish and neutralise” (Global Witness, 2017, p. 16). After a year-long probe, the investigative panel International Advisory Group of Experts found that Honduran government officials and senior executives of the dam company had colluded in the “planning, execution, and cover-up” of Cáceres' assassination (International Advisory Group of Experts, 2017, p. 46).

In September 2009 the Morona Santiago indigenous communities of Ecuador protested against the government for ecological and hydrological destruction from mining projects and for the murder of indigenous leader **Bosco Wisuma** (LADB Staff, 2009). In 2010 **José (Pepe) Acacho González**, president of the Shuar Federation, and six other Ecuadorian indigenous leaders were officially classified as perpetrators of terrorism and, in 2013, were sentenced to 12 years in prison (Human Rights Watch, 2018). In 2012 **Andrés Francisco Miguel** from Barillas, a leader of the Maya Peoples' Council, was murdered in Huehuetenango in the Guatemalan highlands (Geglia, 2012), while community leaders **Esteban Bernabé** and **Pablo Antonio Pablo** were also seriously injured during a peaceful demonstration against mining and agroindustry expansions. Later, a Guatemalan court brought a bevy of charges, including terrorism, against Esteban and Pablo despite a lack of evidence (Guatemala Human Rights Commission, n.d.). In January 2016 **Nilce “Ncinha” de Souza Magalhães** was declared missing. A prominent

leader of the longstanding Movement of People Affected by Dams, she publicly denounced the human and environmental violations of the Sustainable Energy of Brazil consortium in their construction of the Usina Hidrelétrica in Porto Velho. Six months later, her body surfaced in the river next to the dam site; her arms and feet had been tied with rope and weighted with rocks. According to the Brazilian Human Rights NGO Comitê Brasileiro, de Souza was one of 66 environmental activists murdered in 2016 in Brazil alone (HRD Memorial, n.d.; Front Line Defenders, 2016). In January 2018 **Márcio Matos**, leader of the Brazilian Landless Workers Movement was shot to death outside his home in Bahia (Friends of the MST, 2018). In northwest Mexico in 2019 indigenous Tarahumara elder **Otilia Martinez Cruz** and her 20-year-old son, **Gregorio Chaparro Cruz**, were shot dead at their home in El Chapote for their leadership fighting illegal deforestation in their ancestral Sierra Madre lands (Global Witness, 2020).

Overall, Global Witness recorded over 200 assassinations of land defenders worldwide in 2017—more than any previous year (Global Witness, 2018). That year also tallied the most massacres (with seven cases of more than four people murdered at the same time), and agrobusiness overtook mining as the industrial sector most responsible for such violence and murder (Global Witness, 2018). In 2018 Global Witness documented another 164 killings of land and environmental defenders, with many more attacked and imprisoned; over half of the murders took place in Latin America (Global Witness, 2019). Global Witness's 2019 report counted a record 212 murders of land defenders, outpacing 2017 records (Global Witness, 2020). Despite the seemingly high numbers, it is also important to note that national level observations by academics and the media demonstrate them to be vast underestimations of the number of land defenders targeted for assassination. Furthermore, between 2017 and 2019 Colombia went from being third to first in the list of countries plagued by this violence (after a brief decline between 2016 and 2017 following the signing of the Peace Accords in 2016) (Global Witness, 2018; Global Witness, 2019; Global Witness, 2020). Additional reports by international organizations, such as Amnesty International, indicate that threats and assassinations of human rights and land defenders have increased during the COVID-19 pandemic quarantine measures (Estupiñán, 2020).

Naming the victims is a hallmark of the resistance effort, helping to put human faces to the violence and ensure that the victims are not forgotten. Echoing the commitment of the Black Lives Matter movement against police murders of Black Americans, the LVC press releases and manifestos (as well as communiqués from other frontline grassroots organizations and coalitions) emphasize the stories of those murdered and the importance of continuing to *say their names*. Criminalization works to “disappear” the social mobilization's messages, even as the concurrent violence literally shoves them into carceral invisibility, abduction, or death itself. The oppositional politics of memory renders visible what criminalization aims to hide: the humanity of those under threat.

Calling It Criminalization

The journalists covering this phenomenon increasingly follow the lead of the activists themselves by focusing not only on the violence but also on the insidious parallel phenomenon of criminalization. Beginning with the 2018 report, Global Witness has begun to track, investigate, and record instances of criminalization as well as violence—and to note how ubiquitous the parallel phenomenon has become (Global Witness, 2019).

What is the purpose of calling state-sanctioned justifications for the violence against indigenous and agrarian movement leaders “criminalization”? Focusing on criminalization at the instigation of the victims partakes of the same processes and dynamics noted by Martinez-Alier *et al.* (2014), wherein political ecology scholars learn and analyze as informed by terms and concepts coined by activist environmental justice organizations: As they write, this “activist-led and co-produced social sustainability science” advances both academic scholarship and activism (Martinez-Alier *et al.*, 2014, p. 19).

Francisco Morales, of the Maya Poptí settlement in western Huehuetenango, Guatemala, is from the Maya People’s Council, an indigenous political movement. He chronicles that after a half millennia of fighting colonization and violent extraction, Mayan communities have developed clarity around how to organize and defend themselves:

The State’s response to this democratic and legitimate participation of the people has been violence, the criminalization of the exercise of rights. This also shows the colonial structure of the State, because when we indigenous people claim rights, the State consider us delinquents, terrorists.

(LVC, 2017, no page)

LVC has put forth its own analysis of why focusing on criminalization is so important to understanding the broader processes of violence and dispossession and imposed trajectories and conceptions of “development.”

In many places, the people who defend themselves against and resist this “development” model face being demonized and criminalized, which in turn leads to prosecutions, imprisonment, violence at the hands of state or private security forces, and even murders. These are not random “incidents”, they are occurrences reported by almost every organization. In this respect, States are not only failing in their duty to protect the people from these outrages but are in fact important actors in advancing this model. (LVC, 2020, no page).

Within a few months, LVC sharpened its analysis, stating that the criminalization of “the peasant movements and social struggles” leads to widespread violence against them. Such dynamics are:

part of a violent and repressive policy, which aims to contain the movement for an agrarian and popular reform that can put agriculture at the service of the

people instead of turning it into a tool to generate profits for a handful of corporations.

(LVC, 2018a, no page)

Other frontline groups are articulating sharp *in situ* political analysis. The Honduran National Front of Popular Resistance issues communiques which locate the Honduran oligarchy as a driver of such violent criminalization under the post-coup dictatorship. The armed forces and state-backed repressions serve as tools while oligarchic control over media seals the situation. Cacerás herself led workshops in order to clarify the messy webs of graft among landed elite, corrupt government, military and controlled media—the very colluding forces that would ultimately kill her (Méndez, 2018). The Brazilian Landless Workers Movement (MST) issues regular communiques, as well, and asserts that the struggle for land is an exercise in citizenship (Carter, 2010; Housing & Land Rights Network, 2016). MST was categorized as criminal for the first time in Law No. 12,850/2013, which defines criminal organizations. In response the organization stated:

Framing the MST as a criminal organization is the most inconsequential way to combat social movements. There is already extensive jurisprudence of the Supreme Court of Justice, the Federal Supreme Court and Courts of Justice stating that the struggle of the landless is an exercise of citizenship and therefore is not to be confused with crime.

(Housing & Land Rights Network, 2016, no page)

Another famous example of criminalization of indigenous protest is Standing Rock. By 2016, the Standing Rock camp had become the largest gathering of Native Americans and indigenous communities in more than 100 years. In February 2017, after a year of police surveillance and harassment, the National Guard and police officers arrived heavily armed with military equipment and riot gear and evicted protesters from the camp. A leak of over 100 documents to news website *The Intercept* (from an employee of the private security firm contracted by Energy Transfer Partners) evidenced “intrusive military-style surveillance and a counterintelligence campaign” against the Standing Rock Water protesters and their allies, whom they branded “jihadists” (Juhasz, 2017, no page). Following the Standing Rock protests, at least 18 of the 50 U.S. states have proposed criminalizing protests (Cagle, 2019). In addition, in 2017, the Trump Administration reinstated the controversial “Presidential Executive Order on Restoring State, Tribal, and Local Law Enforcement’s Access to Life-Saving Equipment and Resources” program that transfers surplus military equipment and weapons of war to police departments across the country to use against “rioters,” as in protestors and land defenders (International Center for Not-for-Profit Law, 2020).

Meanwhile, in January 2019 the Royal Canadian Mounted Police threatened to deploy police forces on behalf of TransCanada mining to forcibly remove Wet’suwet’en from their indigenous lands—sovereign, unceded territory in British Columbia. A year later, talks between Wet’suwet’en leaders and Canadian officials

collapsed, the former now fearing police repression and violent backlash from the latter (McIntosh, 2020). In short, the processes of criminalization within the context of hyper-extraction and violence continue to unfold across both the Global North and the Global South (Amnesty International, 2018; Global Witness, 2019; Global Witness, 2020).

Focusing on and calling out the criminalization of agrarian protest recalibrates the view of these instances as isolated conflicts to seeing them as a part of broader state-sanctioned, industry-oriented modes of repression, vilification, and violence against agrarian movements. It foregrounds how industry and state collusion operates, on-the-ground and on the bodies of the most marginalized frontline communities and the most committed frontline natural resource defenders. It draws attention to the juridical, political, and political-economic aspects of policing and police brutality, even as it foregrounds the racialized tactics and tendencies embedded within the psychosocial aspects of criminalization.

Temporally and spatially, criminalizing social movements works to quash movements by hiding them. Hence the tactic, particularly common in Latin America, of “disappearing” victims, of creating off-site torture and imprisonment centers, hiding indigenous victims’ bodies, expunging records, and controlling media and journalist investigations. Writing in a deliberately academic venue, LVC leader F. Torrez (2011) contended:

This criminalization and repression of the struggle for agrarian reform, involving the police, the army, and the private security of corporations, translates into assassinations, judicial persecution. There is a high level of impunity because nothing is investigated nor are the responsible parties punished despite evidence. (p. 54)

In this context, the criminalization of agrarian activists is an attempt to hide the violence of policing—hide it logistically, legally, physically, politically, and ideologically. It switches the focus. It secures impunity in the name of security. It frames the offenses of state-oppression as defensive. And it frames the defending of land, water, and local communities as inimical to the public good.

The clarifying power of the “criminalization” lens also helps disclose racialization in this policing. It elucidates the racialized and class-based privilege of *not* experiencing this violence—and the luxury of not seeing it. Violence has long been ubiquitous within the political economies of colonialism, and now within agro-industrialization and ongoing coloniality (Graddy-Lovelace, 2017). Yet criminalization works to legitimate it, as well as to tuck it away as a legal issue to be resolved between the beneficent state and the individualized criminal.

Calling It Agrarian

Recognizing the iterative criminalization of agrarian movements helps illuminate the *longue durée* of this industry-state collusion in police repression and brutality. In

the context of the Americas, for instance, it conjures the land-based resistance to colonialist assault, imperialist capture, and neoliberal extraction and appropriation—all of which have deep agro-industrial roots. The violence is as ancient as the earliest colonization, with its genocidal attempts to expunge and extract—to capture and control indigenous people. Criminalization tactics were used throughout agrarian revolutions, the land occupations, the Dirty Wars, and now continue through a resurgence in agrarian resistance to extractivism. As Grandia (2019) explains, “a surprising number of ‘contemporary’ environmental justice conflicts are actually recurrent threats to indigenous peoples and their territories from decades past” (p. 7); he and others in LVC member groups track “how many places in corporate crosshairs today were previous targets of state repression during the Guatemalan civil war” (p. 10).

The *longue durée* lens helps to trace the colonial roots of this violence. It shows how the current wave of extractivism is a logical extension of colonialist modes of thinking and doing, and that agrarian resistance has long received the brunt of its strong-armed apparatus of dispossession-by-vilification. It also shows the fault lines and the inherent dysfunctions of agro-industrial extractive production. The 2017 Global Witness Report grimly tallied the number of people murdered in 2017 while protesting against large-scale agriculture had more than doubled compared to the previous year: “Ultimately, attacks against land and environmental defenders stem from our voracious appetite for agricultural goods like palm oil and coffee, and for fossil fuels, minerals and timber” (Global Witness, 2018, p. 7). The 2018 report tallied the agribusiness sector as second only to mining and extraction in violence perpetration; the 2019 report documented 34 killings linked directly to large-scale agriculture, an increase of more than 60 percent in one year (Global Witness, 2020).

A *longue durée* agrarian lens, thus, clarifies how violence against land and water defenders undermines their agricultural livelihoods even as it enables agro-industrial extraction. Moreover, it recalls how such agricultural dispossession has long fallen along race, gender, and class lines, so that the agrarian realm has been demeaned and made illegitimate. Accordingly, LVC has long prioritized a historical, anti-colonial framework in its protests against contemporary agroindustrial extraction.

The Terrain of Law: Negotiating Legality and Legitimacy

Criminalization attempts to deploy the law against communities defending natural resources. It depends upon impunity, extra-judicial imprisonment, and executions even as it nominally defers to and upholds legality and public good. This disjuncture, however, reveals a potential crack in the logic that shows a grasping at legitimacy. Agrarian movements are growing around the world, and they are increasingly and proactively working through legal and political channels—for instance, to seek justice and punishment of guilty parties at the UN level and in Truth and Reconciliation reports. They are leveraging it to call out the real criminality at work in agro-industrial extraction and violence against agrarian movements and communities.

Extractors collude with the state to occupy and wield the terrain of law's legitimacy. Glazebrook and Opoku (2018) describe how this unfolds in Central America:

Given the embeddedness of capital in Honduran governance, it seems that the fate of the dam and of accountability in Cáceres' murder is a negotiation (i.e. a transactional hedging of bets) within capital based on public relations, cost-benefit analyses, and hollow corporate responsibility commitments. (p. 88)

Ultimately, "Governments seem to be at best the tool of capital, at worst, its weapon" (p. 90).

Here, an analysis of criminalization divulges the bitter battle of the very terrain of law and legal juridical systems themselves. On one side, frontline groups work assiduously, against historic odds, to make the legal system work for them in their fight for survival. For example, López Rodríguez and Excell (2017) document how the *Ríos Vivos Antioquia* movement in Colombia worked closely with the *Corporación Jurídica Libertad* (a lawyer collective) to research and file a claim before the Council of State to petition that they revoke the environmental license for the Hidroituango dam. The movement has built an extensive multi-sector coalition to work with the Ministry of Interior to develop a protection plan for land and river defenders in this struggle to maintain control over these legal terrains and their legitimizing force. For example, in May 2017, the "ruralista front" representing Brazilian agribusiness and large-scale landholders reinitiated a Commission of Parliamentary Inquiry investigating possible fraud and abuse in the demarcation process by indigenous and Afro-Brazilian groups. They listed more than a hundred people—from federal attorneys to social scientists to indigenous leaders to activists—to be prosecuted for land fraud. Such broad criminalization attempts to stop the demarcation process of returning indigenous and Afro-Brazilians to traditional lands (Da Cunha *et al.*, 2017). All the while, the recent rise in criminalization of rural and agrarian justice movements, such as the Landless Workers Movement, denies the extensive jurisprudence and constitutional reforms in Brazil, which legitimize the struggle for land reform as a key exercise of citizenship—not a crime. Bolsonaro's election has raised the lethal stakes of this battle for constitutional leverage even higher.

Civil society organizations are learning from each other how to co-ordinate consultations, prepare lawsuits, study legal history, and wield juridical openings for support; they are launching louder challenges to hyper-extraction in their lands using legal avenues. However, their successes fuel retaliation and more aggressive persecution—through and beyond legal channels. UN Special Rapporteurs and other transnational human rights organizations have found rampant misuse of criminal law with judges accepting false testimony and misinterpretations of the law to incriminate indigenous defenders (Comisión Interamericana de Derechos Humanos, 2015). Scholarly findings concur. As Rasch writes, "Trust in political institutions and democracy is further hampered by using penal law

and anti-terrorist legislation to obstruct social mobilization, and by declaring a state of emergency to justify the detention of activists” (Rasch 2017, p. 134).

The Escazú Agreement: Reclaiming the Legal Terrain via Treaty

Amidst this convoluted contestation for the terrain of law—and thus land-based life itself—a watershed moment occurred in 2018. On March 4, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) was adopted by regional leaders in Escazú, Costa Rica and opened for signature at the UN in September 2018. By mid-2020 a total of 22 of 33 countries had signed, eight had ratified, and only 11 more were needed for the Agreement to go into force.

The Escazú Agreement situates itself as the logical next step from prior international environmental governance, namely the Rio Declaration’s Principle 10 (on access rights) and the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). The Agreement asserts the principles of “equality” and “non-discrimination” followed by “intergenerational equity” and “*pro persona*.” In a November 2018 interview, Roberto Avendaño, the Costa Rican diplomat who led the negotiation and drafting of the Agreement, emphasized the groundbreaking assertion of these foundational principles. Article 4 (entitled “General provisions” but actually meaning “obligations” according to both Avendaño and Maritza Chan, the other lead diplomat in implementing the Agreement, also interviewed in November 2018) goes even further: “Each Party shall guarantee an enabling environment for the work of persons, associations, organizations, or groups that promote environmental protection, by recognizing and protecting them.” The interview with Chan and Avendaño, conducted at the Costa Rican embassy in Washington, DC, delved into the Agreement’s promotion of public participation in environmental decision-making processes, as well as “free technical and legal assistance” (5). This entailed supplying translators and interpreters of dozens of indigenous languages and, as Chan stressed, more culturally grounded, multimedia translation services than have ever been employed in multilateral agreement negotiations and implementations—far beyond the standard, major colonial tongues.

Yet it is Article 9, “Human rights defenders in environmental matters,” that addresses the crisis of criminalization head-on:

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

(United Nations ECLAC, 2018, p. 29)

Even more explicitly, it demands that: “Each Party shall also take appropriate, effective, and timely measures to prevent, investigate and punish attacks, threats or intimidation that human rights defenders in environmental matters might suffer while exercising the rights set out in the present Agreement” (p. 3). This final self-reference serves to solidify the Agreement’s potency in countering criminalization and violence mechanisms. Avendaño explained that Costa Rican negotiators proposed this key article in Argentina in August 2017. Intersessional meetings spent hours, days, weeks, and months packing their most pressing concerns into Article 9.3, before a December 2017 meeting in Chile. Once consensus was reached that the Agreement must include this demand, more virtual meetings with civil society organizations had to be called in advance of the March 2018 meeting to come to consensus on phrasing.

Article 10, “Capacity-building,” continues with reclaiming legal and governance terrains to defend land and land defenders. Each Party needs to “develop and strengthen environmental law and access rights awareness-raising and capacity-building” for “the public, judicial and administrative officials, national human rights institutions and jurists” (United Nations ECLAC, 2018, pp. 29–30). Sriskandarajah (2018) notes the significance: “In times when civic space and opportunities for citizens to participate seem to be shrinking, Escazú [Agreement] sets an important example on the importance of *reimagining democracy* to face the environmental challenges of our world” (no page).

There were precursors, such as the European Union’s 1998 Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters Convention, supplemented by the 2005 Almaty Guidelines. The Escazú Agreement calls for the election of Representatives of the Public, people with “integrity” to coordinate the input of diverse publics. In reflecting on the Aarhus Convention’s attempt to incorporate key civil society organizations and coalitions, the Escazú Agreement learned that two key and elusive capacities are needed for effective civil society collaboration in negotiations: Coordination and expertise. This aligns with calls by López Rodríguez and Excell (2017) in Colombia for “providing legal support for judicial processes and technical support to make scientific studies,” (p. 3) as well as communication strategies to counter defamation, cross-community coordination and learning. Along these lines, in 2015, the Paris Conference of the Parties (COP) launched the Local Communities and Indigenous Peoples Platform (LCIPP) as a forum for integrating traditional, Indigenous, and local knowledge systems into the United Nations Framework Convention on Climate Change (UNFCCC) processes (Reidel and Bodle, 2018); in 2018 at COP 24, the Parties established the LCIPP Working Group composed of State and indigenous representatives, allowing them to negotiate at equal levels (United Nations Framework Convention on Climate Change, n.d.).

Another precedent was the UN Environment Programme’s (UNEP) “Promoting Greater Protection for Environmental Defenders” Policy, which aimed to reclaim and “Promote the critical role of the rule of law in environmental matters” (n.d.) by establishing an “internal accountability mechanism” through an email hotline. The

UNEP launched a new Law Division to develop a communications template to guide its public responses to violence against land and water defenders, and now it aims to expand and strengthen its legal assistance team with an Environmental Rights Initiative and Campaign (UN Environment Programme, 2018). Meanwhile, expanding on a precedent in Cambodia (Embree, 2015), the International Criminal Court expanded its remit in September 2016 to include politicians and businesspeople, who can now be charged and indicted under international law for crimes such as land grabbing and environmental destruction. “International law has, however, very little bite to hold accountable the actual criminals who embezzle, profit off resource theft, and commit murder and other atrocities against defenders” (Glazebrook and Opoku, 2018, p. 93); nonetheless, civil society organizations have not given up hope that this terrain might do more.

Principle 10 of the 1992 Rio Declaration states famously that environmental decisions should require full participation of those concerned and affected. While the Aarhus Convention strives to implement this in Europe, the Escazú Agreement goes further by articulating and implementing the conditions under which such participation can happen—particularly with the majority of impacted communities being indigenous, remote, and illiterate in official languages. As a “bespoke Principle 10 for Latin America and the Caribbean,” the Escazú Agreement “allows for different legal cultures to elaborate on core values of international environmental law” (Barritt, 2019, p. 1).

The regional scale of governance carries risks. In last-minute negotiations on the Agreement’s final text, powerful negotiators from large countries changed the definition of “public” to “one or more natural or legal persons and the associations, organizations or groups established by those persons, that are nationals or that are subject to the national jurisdiction of the State Party” (Stec and Jendroska, 2019, p. 544). Citizenship risks trumping personhood here, with clear political loss for migrants, undocumented people, and indigenous communities at odds with their respective states. Likewise, the preliminary text of the Escazú Agreement Preamble recognized that: “Everyone has the right to a healthy environment in harmony with nature, which is essential for the full development of human beings and for the achievement of sustainable development, poverty eradication, equality, and the preservation and stewardship of the environment for the benefit of present and future generations.” Guerra and Parola (2019) document how concluding debates deleted this bold vision, making it a goal and not a right. Nonetheless, the Escazú Agreement solidifies an emphasis on indigenous rights, historical violence and extractivism, and the importance of traditional knowledge whilst drawing on the deep and long histories of agrarian and indigenous resistance in South and Central America and the Caribbean.

In June 2018, Amnesty International and the Access Initiative created a “Campaign Strategy for the Signing and Ratification of the Escazú Agreement” to ensure coherence between the goals outlined and their implementation. Civil society networks now leverage the success of the Agreement for further gender, racial, ability, class, age, and ontological diversity and equity. Other international

governance realms are taking notice. The Escazú Agreement was highlighted at two events at UNFCCC COP 24 meeting in Poland in December 2018 (CEPAL, 2018a); at a United Nations Economic Commission for Latin America and the Caribbean (ECLAC) briefing on promoting public participation in climate policies (CIEL, 2018); and a side event the Office of the UN High Commissioner for Human Rights, led with many co-organizations. This side event focused on the urgency of including vulnerable frontline communities in climate negotiations and governance to uphold human rights (CEPAL, 2018b). In May 2020 the ECLAC issued a press release centering the Escazú Agreement as core to climate change survival in the Americas (CEPAL, 2020).

Following the Lead of Indigenous and Agrarian Defenders

Under neoliberalism, extractivism has spread like cancer across the Americas and worldwide, and now it festers under contemporary neo-authoritarianism, indicating a new iteration of a well-established dynamic. This chapter has built upon recent activism and scholarship on extractivism to focus on two aspects of its perpetual violence: the mechanism of criminalization, and the context of agriculture and agrarianism. Activists and scholars show how deep extractive modes go, beyond literal mining and plantations into new realms of extraction of data, logistics, finance, and biocapital, moving from the “Washington consensus” to the “commodities consensus” (Mezzadra and Neilson, 2017, p. 186).

Agribusiness looms large in these nodes of power, and in the sprawling sector of data accumulation and surveillance, which serves as a powerful and elusive site of dispossession-by-vilification. The genetic resources of plants for food and agriculture are often framed as a commons, but extractivism scholars point to allegedly “open access” commons-discourse as a slippery trope, a means to unbundle value for capture (Dahlin and Fredriksson, 2017). Violence against land defenders grabs (some) headlines, but a quieter domination ensues as extractive industries deploy exclusion-inclusion modalities and extraction-based subject formation. Frederiksen and Himley (2020) lay out three steps to this process: consolidating exclusion (extracting), compounding exclusion (criminalizing those who protest, through discursive exclusion overlaid upon material exclusion), and counteracting exclusion (constructing the “beneficiary” by employing some of the affected community in the actual extraction). Within the realm of agriculture, this entails hiring dispossessed indigenous and agrarian communities as farmworkers in new palm oil or soybean plantations.

This chapter has shown that the process of criminalization works in iterative layers. Indigenous and *campesino* agrarian defenders seek redress through the law; agro-extractors counter with criminalization tactics; agrarian defenders work with lawyers and international political forums to try to protect their rights further; extractive industries collude with (and help elect) authoritarian rulers to repress agrarian defenders even more. Dunlap (2019), for example, demonstrates the “whole-of-government” counterinsurgency apparatus at work in Peru and elsewhere.

Meanwhile, Chile embodies the pivotal potential—and paradoxes—of the Escazú Agreement and its need to address agroindustry extractivism more directly. The country has grappled with criminalization of agrarian and indigenous defenders for generations, particularly after the 1973 U.S.-backed coup toppling President Salvador Allende. All the while, a wide and strong coalition has worked to counter this phenomenon (Figueroa Hernandez and Herrera, 1998). Thereafter, Chile became a poster child for export-oriented agribusiness and neoliberal agro-developmentalism, with hydro-extractivism, high-input-productivism, and displacement of indigenous lands and foodways (Panez *et al.*, 2020).

Francisca Linconao, a renowned Mapuche elder and traditional healer, was arrested and labelled a terrorist for her alleged role in protests against Chilean corporate elite, largely from the agribusiness sector. Indefinite pre-trial detention ensued, along with a hunger strike and public outrage. She was found not guilty in 2017. According to Bernauer *et al.* (2018), her “case is not unique, but rather the latest in a long history of Chile’s use of its criminal justice system to repress Mapuche resistance to the dispossession of Wallmapu, the Mapuche homeland” (p. 34). The seeds for the Escazú Agreement were sown in 2012 in Chile, with coalitions of indigenous and civil society leaders and scholar activists thinking expansively about how to prevent criminalization, control corruption, ensure transparency, and advance land and human rights such as food and land sovereignty. Though the Agreement’s instigation and leadership of “an unprecedented example of ‘deliberative democracy’, which allowed all concerned to contribute to the process using their knowledge and experiences in open sessions” (Valencia and Nagalech, 2019, no page) began in Chile alongside Costa Rica, Chile has not yet signed much less ratified, the Agreement. Nonetheless, the Strategy for Civil Society Engagement in the Escazú Agreement proposed the registration of a nonprofit dedicated solely to implementation, to be headquartered in Chile and Jamaica, with a dedicated Secretariat.

In short, widening the lens beyond the site of overt violence expands the realm of culpability. Suddenly, seemingly benign developmentalism becomes implicated in extractivism and its apparatus of criminalization. Andreucci and Kallis (2017) challenge scholars to “to explain how the tension between resource-based development and the violence that sustains it is recomposed through a discursive ‘othering’, targeting those who oppose extraction” (p. 95). Focusing on Peru, they show how discourses of “idle lands” and commodity crop productivism enable neoliberal dispossession-by-vilification, wherein agrarian and indigenous defenders suffer charges of “crimes against the public order”, rebellion, sedition, conspiracy against state and constitution.

What would counter such powerful forces? The 2019 UN State of the World’s Indigenous Peoples calls for “solidarity and support for indigenous rights defenders and for coordinated, high-level prevention and defense mechanisms to guarantee their safety and security and the freedom to lawfully defend indigenous rights” (United Nations, 2019b, p. 57). Yet, activists and scholars warn of simplistic, romanticized compartmentalization of peasant or indigenous difference. The “radical difference of these [indigenous] ontologies cannot serve as the endpoint of

analysis,” advise Neale and Vincent (2017, p. 432). Indigenous communities have suffered extreme physical and ontological violence and appropriation for centuries, as their articulations of opposition have been vilified on one hand, and demeaned as quaint on the other.

Conclusion

At least four people working to defend land and water and agrarian dignity are murdered each week. The latest 2019 Global Witness report points out that land defenders have been on the front line of defense against climate crisis causes and impacts for years. Journalists, scholars, and UN policymakers have recognized that land defenders are not merely worth defending—but worth lauding and following. “If we want to end climate breakdown, then it is in the footsteps of land and environmental defenders we must follow. We must listen to their demands and amplify them” (Global Witness, 2020, p. 8). In particular, this entails following and learning from indigenous and Afro-Diaspora women agrarian justice leaders who, like Angelica Ortiz and Francia Marquez, are facing regular death threats as they defend ancestral lands in Colombia.

Yet, they act with impunity. The hitmen are rarely charged, while the high-level agents and broader structure remain unpunished. The LVC and other front-line agrarian organizations and coalitions around the world are mobilizing their grief at the murder of their community leaders into a deeper analysis of the role of criminalization in the violence at hand. Following this *in situ* lead, journalists are investigating in order to count the murdered and help to bring injustice to account. Scholars follow suit, working across fields and disciplines to contextualize the *longue durée* of the tactic of racialized criminalization within the broader colonialist strategy of dispossession. These journalistic and scholarly analyses work to connect seemingly isolated instances into a broader understanding of the systemic nature of criminalization, and how it arises as a backlash against mobilizations to defend land and protect water and life—mobilizations that are themselves aiming to work in and through the terrains of law, policy, and state-governance.

The backlash merely engenders more mobilization: amidst heightened repression and criminalization, “we also see solidarity and internationalism as a potent strategy of peoples’ resistance against extractive capital” (LVC, 2017, no page). This transnational solidarity increasingly works to wield legal and juridical means for defending land and land defenders. All the while, these processes of protests, then criminalization, then more resistance “shape new subject positions” (Rasch, 2017, p. 131). As more call out and recall the names of those killed defending water and land for their communities, mobilizations grow and multiply. Criminalization aims to depoliticize; calling out criminalization roundly re-politicizes. Grant and Le Billon (2019) document the layered psychological and political impact of these processes: “Rather than simply repressing and disciplining forest dwelling populations, violence against defenders shapes their subjectivity and re-politicizes their lives” (p. 768).

As we have seen in this chapter, the Escazú Agreement stands as the culmination of unprecedented civil society engagement and leadership in international negotiations. Though as-of-yet waiting to come into force, it carries considerable potential to re-leverage law and scales of reference and reckoning. Who gets to call whom a criminal? And who brings whom to justice and how? The Escazú Agreement—both as product and process—serves as a key reclamation of the terrain of law and formal governance.

This discussion of criminalization and counter-criminalization leaves many questions unanswered. In particular, can a formal treaty address and redress deep political grievances against the colonial roots and legacies underlying current conflicts? After all, defending the defenders might necessitate a:

radical transition from patriarchal capital, i.e. from patriarchy as inherent in international and national governance, and from capital as an economic system that values human existence as the individual accumulation of private wealth, to non-gender-privileging governance aimed at the flourishing of life.

(Glazebrook and Opoku, 2018, pp. 102–103)

It remains to be seen whether civil society engagement parameters will allow for decolonial plurality of ecological and agrarian ontologies, and whether a formal UN Agreement mechanism can encompass such transformative directions.

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