

ENOUGH!

PLEDGING ZERO TOLERANCE

TO ATTACKS AGAINST

ENVIRONMENTAL AND HUMAN

RIGHTS DEFENDERS

BY FRANCESCO MARTONE AND CLAIRE BRACEGIRDLE

A silent war is being waged against the indigenous peoples and local communities who are defending their lands against the expansion of industry. Recent research has demonstrated that environmental and human rights defenders face significant — and growing — risks, experiencing violence, intimidation and criminalisation as a result of their efforts. This briefing critically assesses the various initiatives, led by states, intergovernmental bodies, the private sector and development finance institutions that seek to protect environmental and human rights defenders. It presents an overview of some of the key limitations of these initiatives and argues that most stated commitments have not been borne out by concrete actions.

ABOUT THE ZERO TOLERANCE INITIATIVE

The Zero Tolerance Initiative seeks to address increasing violence, intimidation and killings of indigenous people and other human rights defenders in global supply chains. Bringing together organisations, individuals and communities from across the globe, the Initiative has supported representatives from 14 countries in issuing a call for Zero Tolerance for killings and violence linked to commodity production and trade.

Find out more about the Zero Tolerance Initiative here: zerotoleranceinitiative.org

Furthermore, it finds that the knowledge, experiences and priorities of the defenders themselves have not been adequately included in the design of protection mechanisms and approaches.

This briefing sets out why a Zero Tolerance Pledge is needed not only to set new standards and expectations for honouring the rights of environmental and human rights defenders, but to put defenders themselves at the centre of the development of solutions to the challenges they face. In doing so, it draws on research conducted to support the development of a Zero Tolerance Pledge and on Forest Peoples Programme's extensive experience of supporting indigenous peoples and local communities to exercise self-determination.

THE SCALE OF THE PROBLEM

Global Witness documented 164 killings of environmental defenders in 2018.¹ More recently, the Coalition Against Land Grabbing recorded 65 cases of arbitrary detention and judicial harassment; 92 killings; and 46 cases of threats or beatings between January and April 2019.² Given the contexts that many environmental and human rights defenders operate in — places where conflict and corruption is commonplace, rule of law is weak, and the press is constrained — figures like these are very likely to underestimate the scale of the problem. Furthermore, a singular focus on killings fails to capture the more wide-ranging impacts of silencing and oppression. Environmental and human rights defenders worldwide are subjected to threats, forced displacement, intimidation, smear campaigns and criminalisation. Measuring these impacts is challenging, not only because states and civil society groups often lack the capacity to do so, but also because the ways in which violence and harassment affects communities' lives and wellbeing is multifaceted.

A NOTE ON TERMINOLOGY

In this briefing, we primarily use the term 'environmental and human rights defender.' Environmental and human rights defenders are, commonly, understood to be individuals working on indigenous peoples' rights, land rights and environmental rights. It should also be noted that in using 'environmental and human rights defenders' we are not just describing individuals, but rather also communities, movements and organisations. We are not solely focussed on environmental and individual human rights, recognising that in many cases indigenous and communities' engagement on protection of the environment cannot be separated from their collective struggle for self-determination and protection of the land they depend on.

Since the 1998 adoption of the United Nations Declaration on human rights defenders, the number and intensity of threats, attacks and killings of environmental and human rights defenders has increased.³ Sadly, this increase has happened despite the increased engagement of international actors and civil society in attempting to protect defenders and identify ways to support their work.

WHAT IS DRIVING THIS INCREASE?

Environmental and human rights defenders working to protect land and environment from the impacts of agribusiness and the extractive industries are most at risk. In research published in 2019, Global Witness noted that agribusiness had the highest number of associated killings of environmental and human rights defenders (46), closely followed by mining and oil (40), poaching (23) and logging (23).

¹ Global Witness, 2019. Enemies of the state? Available at: <https://bit.ly/33qXatf>

² Coalition Against Land Grabbing, 2019. Defending Commons' Land and ICCAs: January-April 2019. Available at: <https://bit.ly/2NNbCFG>

³ Front Line Defenders, 2019. Front Line Defenders Global Analysis 2018. Available at <https://bit.ly/36HVhuA> and Global Witness, 2019. Enemies of the state? Available at: <https://bit.ly/33qXatf>

These sectors are expanding. Resources are now being extracted from the earth three times faster than in 1970, and the amount of materials consumed globally is increasing by 3.2% each year.⁴ And as the agribusiness sector and the extractive industries expand, the risks facing environmental and human rights defenders likewise increase.

Furthermore, environmental and human rights defenders are operating within contexts that are increasingly hostile to activists and civil society mobilisations. In many countries, the harassment and criminalisation of civil society actors is increasing, demonstrations are more heavily policed, and independent media organisations are put under pressure.⁵

OPPRESSION AND MARGINALISATION

Indigenous peoples and local communities, however, are not only faced with this concerning increase in hostility, but with the long-standing impacts of colonialism. Indigenous peoples and local communities have historically been marginalised; many governments in the Global South continue to operate in ways that exclude them and fail to recognise their rights. This — coupled with the fact that the extractive frontier is mostly expanding in places occupied by indigenous peoples and local communities — creates additional vulnerabilities.

Understanding the problems faced by environmental and human rights defenders, therefore, must be contextualised with an appreciation of the intersectional nature of the oppression they experience. Mechanisms and approaches to protect environmental and

“If we are going to save the planet, we have to stop killing and criminalising the people who protect it.”

VICTORIA TAULI-CORPUZ,
UN SPECIAL RAPPOREUR ON THE
RIGHTS OF INDIGENOUS PEOPLES

human rights defenders must be designed with these vulnerabilities in mind. Depending on context, environmental and human rights defenders may lack access to justice; imbalances in power may limit their voice and agency.

HOW HAVE THE CHALLENGES FACING ENVIRONMENTAL AND HUMAN RIGHTS DEFENDERS BEEN ADDRESSED THUS FAR?

UNITED NATIONS

Awareness of the particular challenges faced by environmental and human rights defenders has been growing in the United Nations system. The Working Group on Business and Human Rights and Special Mandate holders (the Special Rapporteurs on the situation of human rights defenders, Indigenous Peoples, human rights and the environment, among others) have, in recent years, increasingly focussed on the protection of environmental and human rights defenders.

⁴ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 2019. Report of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services on the work of its seventh session. Available at: <https://bit.ly/36Vs5jF>

⁵ Antoine Buyse, 2018. Squeezing civic space: restrictions on civil society organizations and the linkages with human rights. The International Journal of Human Rights, Volume 22, Issue 8. Available at: <https://bit.ly/2O021eF>

Important milestones have included:

- The 2013 United Nations Resolution on Human Rights Defenders, which recognised the crucial role that they play, and urged states to create a “safe and enabling environment” for them;⁶
- Publication of two reports focussing on environmental and human rights defenders by the UN Special Rapporteur on the situation of human rights defenders, highlighting the severity of the problem and the need for urgent action on the part of states, companies and investors;⁷
- The 2018 report by the UN Special Rapporteur on the rights of Indigenous Peoples, drawing attention to the notable increase in attacks against and criminalisation of indigenous peoples defending their rights when threatened by the expansion of industry;⁸
- The adoption by the Human Rights Council, in 2019, of a resolution recognising the importance of environmental human rights defenders.⁹

These and other initiatives are putting the spotlight on the challenges faced by environmental and human rights defenders. There is often, however, a disjunct between the responsibilities and expectations they place on states, companies and investors and the realities faced by environmental and human rights defenders on the ground.

NATIONAL GOVERNMENTS AND REGIONAL BODIES

Following the 1998 adoption of the United Nations Declaration on human rights defenders, states, regional bodies and other intergovernmental

organisations have introduced policies, practices and tools to achieve its implementation.

EU Guidelines on Human Rights Defenders

One of the most important is the European Union (EU) Guidelines on Human Rights Defenders, adopted in 2004 and revised in 2008, which outlines ways in which EU and Member States can politically support defenders via their embassies and diplomatic work. EU and embassy representatives are encouraged to advocate for defenders; conduct field trips; monitor trials; convene meetings; and, in some instances, provide financial support.

While the Guidelines have played an important role in garnering support for environmental and human rights defenders and in providing a blueprint for various other countries to follow, research into their impacts has highlighted two key shortcomings. Firstly, a study by Peace Brigades International — based on field research in several countries — found that diplomats exercised a considerable amount of discretion in applying them.¹⁰ This latitude is problematic given that the protection of environmental and human rights defenders is yet to be fully mainstreamed in EU trade or investment policies; conflicts may arise between the commercial interests of the EU and Member States and their responsibility to protect environmental and human rights defenders.

Secondly, the Guidelines appear to have limited reach. A 2015 assessment by the UN Special Rapporteur on the situation of human rights defenders found that only a third of human rights defenders involved in regional consultations were aware of the Guidelines; those who were aware of the Guidelines

⁶ Human Rights Council, 2013. Protecting human rights defenders, A/HRC/RES/22/6. Available at: <https://bit.ly/35f6GAp>

⁷ United Nations Human Rights. Office of the High Commissioner, 2016. Violence against environmental defenders – New UN major report urges zero-tolerance. Available at: <https://bit.ly/33rkEyD> and UN General Assembly, 2015. Situation of human rights defenders. Available at: <https://bit.ly/34FVUmA>

⁸ Victoria Tauli-Corpus, 2018. Report to Human Rights Council: Attacks against and criminalization of indigenous peoples defending their rights. Available at: <https://bit.ly/34DCD56>

⁹ ISHR, 2019. HRC40: Council unanimously recognises vital role of environmental human rights defenders. Available at: <https://bit.ly/34ICb5G>

¹⁰ Peace Brigades International, 2014. Ten years of the EU guidelines on Human Rights Defenders: An assessment from the field. PBI. Available at: <https://bit.ly/2K2OSAm>

found diplomatic staff inadequately trained or informed.¹¹ African human rights defenders raised similar concerns in a workshop organised by the International Service on Human Rights: prior to the workshop, most participants were unaware of the Guidelines.¹² Clearly, the Guidelines are only useful in so far as they are accessible to environmental and human rights defenders and diplomatic staff alike.

Relocation programmes

Another approach to assisting environmental and human rights defenders is facilitating their temporary relocation, as done, for example, by the EU Temporary Relocation Platform and the Shelter Cities programmes in operation in several countries. These initiatives can and do provide lifelines to environmental and human rights defenders under threat; however, they are primarily useful for activists based in urban areas with existing links to international solidarity networks. Many programmes require fluency in specific languages and only focus on specific locations; most require the beneficiary travelling some distance, away from their community and the site of struggle. Here, the risks of narrowing protection to individual environmental and human rights defenders is evident: family and community members left behind may face retaliation. Existing relocation programmes, therefore, have largely not been designed to adequately meet the needs of environmental and human rights defenders.

National action plans on business and human rights

States are encouraged to develop national action plans as part of their efforts to implement the UN Guiding Principles on Business and Human Rights. Reviewing the existing plans, however, demonstrates that there is significant variation between them: some make general references to human rights defenders, while others note companies' specific responsibilities, or the need for greater policy coherence.¹³ More prob-

lematic, though, is the fact that the plans themselves do not demand — through regulation — corporate accountability or responsibility. As Humberto Cantù Rivera highlighted in *Business and Human Rights Journal*, by creating national action plans states have “avoided fulfilling their obligations to regulate and adopt legislative measures.”¹⁴ Rivera notes that, without the power to effect changes in law, national action plans “will potentially be ineffective to generate actual change in business conduct.”¹⁵

Addressing the root causes of violence against environmental and human rights defenders also requires states to take more robust actions to confront violent and oppressive non-state actors, including paramilitary groups, criminal gangs and drug traffickers which often result in the abuse of rights and harm to defenders.

None of the initiatives described above — the the EU Guidelines on Human Rights Defenders; relocation programmes; and national action plans — address the root causes of attacks and threats against environmental and human rights defenders. States and regional bodies hold responsibilities to environmental and human rights defenders while also seeking to advance their own commercial interests; insufficient attention has been paid thus far to this potential conflict of interest. Furthermore, and as analysis of existing relocation mechanisms highlights, many of these initiatives are not grounded in awareness of environmental and human rights defenders' needs and priorities.

Development finance institutions

So far, development finance institutions have been slow to introduce policies to protect or support environmental and human rights defenders. Research by the Coalition for Human Rights in Development has additionally found that development finance institu-

¹¹ United Nations General Assembly, 2015. Situation of Human Rights Defenders. Available at: <https://bit.ly/34F6460>

¹² ISHR, 2018. NGO Forum: The impact of diplomatic initiatives on the protection of human rights defenders. Available at: <https://bit.ly/34FcbYO>

¹³ All national action plans are available at: <https://globalnaps.org/>

¹⁴ Humberto Cantù Rivera, 2019. National Action Plans on Business and HRs: Progress or Mirage? *Business and Human Rights Journal* Volume 4 Issue 2, Cambridge University Press. Available at: <https://bit.ly/2NAIAtZ>

¹⁵ Humberto Cantù Rivera, 2019. National Action Plans on Business and HRs: Progress or Mirage? *Business and Human Rights Journal* Volume 4 Issue 2, Cambridge University Press. Available at: <https://bit.ly/2NAIAtZ>

tions have failed to fully take into account the social and environmental risks associated with the projects they support.¹⁶ They argue that development finance institutions have insufficient due diligence procedures; do not enable environmental and human rights defenders to participate in decision-making; and rely on reporting from clients rather than information collected on the ground.¹⁷ Without robust mechanisms to make the process of development participatory and accountable to affected communities, development finance institutions put environmental and human rights defenders at risk.

Private sector

As awareness of the challenges faced by environmental and human rights defenders has increased, companies and investors have been compelled to take steps to prevent further harm. So far, however, it appears that efforts have been insufficient: the 2018 Corporate and Human Rights Benchmark found that less than 10% of companies surveyed have public policy commitments on the protection of human rights defenders.¹⁸ Furthermore, in the 100 allegations of serious negative impacts on human rights analysed, remedy was only satisfactory to rightsholders in 3% of cases.¹⁹

The 2018 Corporate and Human Rights Benchmark indicates that implementation of the UN Guiding Principles on business and human rights has been alarmingly insufficient. As noted above, the agribusiness sector and the extractive industries are the most dangerous for environmental and human rights defenders to engage with; it is concerning, therefore, that the Benchmark found that 80% of extractive companies and all of the relevant agricultural companies surveyed failed to outline how they identify and engage with land tenure rights holders.²⁰

While some companies and investors have issued public statements on environmental and human rights defenders or have created policies to protect them, it should be noted that companies have thus far largely failed to incorporate sensitivity to environmental and human rights defenders into their risk assessments. It is critical that they do so: it must be the responsibility of companies to prevent harm from being done in the first instance.

Finally, it should be noted that many corporate accountability mechanisms are based on the assumption that the private sector and civil society operate within a ‘shared space.’ In this model, companies are made accountable by civil society demanding the recognition of their rights. However, historically marginalised groups — which environmental and human rights defenders often are — may face difficulties in sharing space with the private sector.²¹ Again, support to environmental and human rights defenders must be designed with awareness of power imbalances, marginalisation and oppression in mind.

WHY IS A ZERO TOLERANCE PLEDGE NEEDED?

Surveying the initiatives described above, it is clear that more is needed to support and protect environmental and human rights defenders. That little progress has been made — Global Witness reported that three land and environmental defenders were murdered every week in 2018 — is due to the fact that existing approaches do not tackle the root causes of attacks and threats.²² In order to protect environmental and human rights

¹⁶ Coalition for Human Rights in Development, 2019. “Uncalculated Risks” exposes threats and attacks against defenders in development. Available at: <https://bit.ly/2qyki13>.

¹⁷ Coalition for Human Rights in Development, 2019. “Uncalculated Risks” exposes threats and attacks against defenders in development. Available at: <https://bit.ly/2qyki13>.

¹⁸ Institute for Human Rights and Business, 2018. Corporate Human Rights Benchmark. Available at: <https://bit.ly/354zsDw>

¹⁹ Institute for Human Rights and Business, 2018. Corporate Human Rights Benchmark. Available at: <https://bit.ly/354zsDw>

²⁰ Institute for Human Rights and Business, 2018. Corporate Human Rights Benchmark. Available at: <https://bit.ly/354zsDw>

²¹ Heinrich Böll Stiftung, 2017. Natural Resource Struggles: Shrinking spaces for civil society. Available at: <https://bit.ly/32yk157>

²² Global Witness, 2019. Enemies of the state? Available at: <https://bit.ly/33qXatf>



EXAMPLES OF COMMUNITY-BASED APPROACHES TO PROTECTION

- Congo Basin: organisations from Cameroon, the Central African Republic, Gabon and the DRC have set up an observatory, *Verdir*
- Colombia: *Somos Defensores* carries out community-based risk assessments and support for temporary relocation
- Guatemala: *Unidad de Protección a Defensoras y Defensores de Derechos Humanos* supports threatened HRDs
- Mexico: *Consortio Oaxaca*, a feminist community civil society organisation, provides legal support to women human rights defenders

Photo credit: © Resguardo Cañamomo y Lomapieta. A member of the indigenous Guardia who patrol and monitor the territory of the Resguardo Cañamomo y Lomapieta.

defenders, the drivers of violence must be addressed: the expansion of the extractive frontier and the corporate capture of the state. And in addressing these drivers, approaches and mechanisms must consider the roles played by historical marginalisation; racism; and impunity. **A Zero Tolerance Pledge is needed to focus attention on these deep-rooted, systemic issues.**

Furthermore, our analysis demonstrates that despite the commitments made by companies, states and investors to protect environmental and human rights defenders, they have been insufficiently protected by existing policies. **A Zero Tolerance Pledge is needed to ensure that companies instil much more robust systems to meet their responsibilities to protect environmental and human rights defenders.**

A change in perspective is needed, however: it is not just the actions of states, companies and investors that will prevent environmental and human rights defenders from harm. **A Zero Tolerance Pledge is needed to recognise the agency of environmental and human rights defenders, and to highlight the importance of community-based mechanisms and approaches to protection.** Across a range of different

contexts, environmental and human rights defenders are redefining security and protection to meet their needs and priorities; these efforts should be supported. Furthermore, environmental and human rights defenders need to be at the centre of identifying solutions. As highlighted by this briefing, approaches to supporting environmental and human rights defenders often fall short because they have not sufficiently taken their needs and priorities into consideration. **A Zero Tolerance Pledge is needed because the knowledge and experiences of environmental and human rights defenders must be the basis for understanding the nature of the problem and developing solutions.**

A further perspective shift is needed to move away from focussing solely on individual environmental and human rights defenders. Rather, the collective efforts of communities or groups of communities must be recognised; **a Zero Tolerance Pledge is needed to ensure that approaches to protection consider that communities, as well as individuals, may be at risk.** Additionally, and particularly in relation to indigenous peoples, collectively held rights must be understood and respected.

RECOMMENDATIONS

STATES

- Respect the land rights, and other collectively held rights, of indigenous peoples and local communities;
- Enact legislation to tackle the drivers of attacks on environmental and human rights defenders, with particular attention to regulating the expanding extractive frontier and opening up civic space;
- Address conflicts of interest between commercial interests and responsibilities to environmental and human rights defenders

PRIVATE SECTOR

- Due diligence on human rights must be mandatory, and sensitivity to the activities of environmental and human rights defenders should be incorporated into risk assessments or other corporate processes;
- Rights must be respected throughout the supply chain.

INTERNATIONAL POLICY MAKERS

- Base decisions and approaches to supporting environmental and human rights defenders on information from the ground;
- Ensure that environmental and human rights defenders are listened to and heard;
- Recognise the agency of environmental and human rights defenders: support community-based protection mechanisms;
- Strengthen the capacity of communities to build alliances and networks, and to collect information to feed into advocacy and litigation;
- Re-balance the focus of response away from predominately individual environmental and human rights defenders, and promote recognition of collective action, and the importance of collectively-held rights.

“Our community leaders are putting their lives at risk to defend our world.”

GEOVALDIS GONZÁLEZ JIMÉNEZ,
COMMUNITY DEFENDER, COLOMBIA

CONCLUSION

The role played by indigenous peoples and local communities in protecting biodiversity and mitigating climate change is increasingly being recognised, including by the UN Convention on Biodiversity and the UN Framework Convention on Climate Change. However, it is deeply ironic that this shift — towards recognising the environmental knowledge and land management skills of indigenous peoples and local communities — is happening at the same time as they face increasing threats for defending biodiversity, the environment and land against the inexorable expanse in industry.

As this briefing has noted, the increase in threats against environmental and human rights defenders is due in part to the agribusiness sector and the extractive industries, in particular, reaching further into previously un-industrialised areas without effective state regulation. This growth in threats is also due to the growing engagement of communities and peoples, worldwide, on issues of environmental and ecological justice.

These efforts must be respected, not repressed. A Zero Tolerance Pledge is needed as a step towards recognising the agency, knowledge, perspectives and experiences of environmental and human rights defenders, and as a step towards significantly more proactive action on the part of states, intergovernmental bodies, companies, investors and civil society groups to protect environmental and human rights defenders from harm.



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