



ENOUGH!

**Pledging zero tolerance
to attacks against
environmental and human
rights defenders**

By Francesco Martone

With a foreword by Michel Forst, UN
Special Rapporteur on Human Rights
Defenders.

Front cover images, clockwise from left to right:

Credit: Natalie Behring. A man walks down a muddy path in an area which has recently been deforested in preparation to expand the Duta Palma palm oil plantation, Riau Province, Indonesia.

Credit: Comisión Interamericana de Derechos Humanos. Protest in honour of Berta Caceres, Honduras.

Credit: Forest Peoples Programme. A Baka woman in Djoum-Mintom speaks up at a community training, Cameroon.

Credit: Forest Peoples Programme. Training community members in using mapping technology monitor their forests.

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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 16 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 at: zerotoleranceinitiative.org

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FOREWORD

In May 2018, Luis Arturo Marroquin, a Guatemalan farmer, was shot dead as he was leaving a library. Shot in the back for defending land and indigenous rights. That same year, Benjamin Ramos, a Filipino lawyer, was shot dead by motorcycle-riding gunmen in front of a store. He was representing the victim families of murdered sugarcane farmers. A few weeks later, Kasereka Masumbuko Ezechiel, one of the rangers of the Virunga National Park in the Democratic Republic of Congo (DRC) was murdered by an armed militia. Kasereka was one of those in charge of protecting endangered mountain gorillas from poachers. He had seven children.

Three courageous Human Rights Defenders cowardly assassinated. Three ordinary people whose hopes, dreams and lives were stolen by greed, corruption and impunity. If these three stories seem to follow a similar pattern, it is because there is a common goal behind these killings: an attempt to silence human rights activism, the community of those who dare to speak the truth to power. And behind the hitmen involved in these killings, there is a whole economic and political system that plots against social activism.

Unfortunately, the list of murdered human rights activists could go on. In 2018 alone, at least 164 men and women were killed for defending land and environmental rights, according to Global Witness¹. Husbands, daughters, grandfathers. Active community members or simple citizens. Today, Human Rights Defenders working to protect the environment and those who expose corporate abuse are those who are the most at risk, worldwide.

Since my appointment as United Nations Special Rapporteur for Human Rights Defenders in 2014, I have heard and witnessed how the list of those killed keeps growing. Indigenous peoples and rural communities, in particular, have paid a high price for defending their ancestral lands and traditions. Killings are often the final stage of a cycle in which criminalisation, as well as attacks against individuals and their organisations nourish each other.

However, despite public outcry for some of the most emblematic cases, substantial changes on the ground have not been made, as the root causes of violence have not been properly addressed.

The present research lists dozens of environmental conflicts across the globe, many due to illegal logging, extractive industries and agribusiness. Many conflicts take place in the Global South in a context of an exacerbated race for economic development. In two reports to the United Nations General Assembly (UNGA), I presented my assessment on the situation of those defending land and environment and those working in the field of business and human rights.²

In the majority of cases, these conflicts could have been prevented if meaningful consultation had been carried out with local communities and rights holders. Worse, access to remedy is almost non-existent for victims of human rights abuses in almost all conflicts.

At the international, regional and national levels, initiatives have been developed over the past few years, thanks to the continued and coordinated efforts of civil society organisations and other actors. More and more actors know now it is not possible anymore

¹ Global Witness, 2019. Enemies of the state? How governments and businesses silence land and environmental defenders. Available at: <https://bit.ly/2Cwg7ij>

² All the reports and documents published by the United Nations Special Rapporteur on the Situation of Human Rights Defenders are available at: <https://bit.ly/2qpYcYb>

to turn a blind eye to so many conflicts. Discussions are spreading all over the world, some with very concrete measures; many of them are presented in this analysis. Some companies have come together and paved the way to better engage and support HRDs as well as to establish stronger grievance mechanisms.

But nothing can be achieved without the active participation of those affected and concrete access to justice. Too often, perpetrators know they will get away with murder, thanks to rampant corruption and the absence of rule of law.

In 2018, exactly twenty years after the adoption of the United Nations Declaration on Human Rights Defenders, civil society called upon states to accelerate its implementation.

The in-depth analysis and the call for a Zero Tolerance Pledge put forward in this report remind us it is high time for states, companies and investors to make deeper commitments

and take more far reaching actions to fulfil their obligations and responsibilities to end human rights abuses, and address roots causes of attacks in particular against Human Rights Defenders.

As upcoming decades will be likely marked by the intensification of global warming and the scarcity of natural resources, it is urgent to protect those who will be at the forefront of the fight for our common future. As Gregorio Mirabal, an indigenous activist from the Amazon Basin said: “We’re fighting for soil, land, food, trees, water, birds. We’re fighting for life.” Human Rights Defenders are not enemy of the development nor they are a threat to national stability: they are the voice and face of hundreds of thousands of communities who believe in a future where all of us can live in dignity.

Michel Forst, *UN Special Rapporteur
on Human Rights Defenders*

EXECUTIVE SUMMARY

A silent war is being waged against the indigenous peoples and local communities defending their land and environment against the rapid expansion of agribusiness, the extractive industries, and the development of large-scale infrastructure used to transport materials and products. Recent research has demonstrated that environmental defenders face significant — and growing — risks, experiencing violence, intimidation and criminalisation as a result of their efforts.

This paper surveys the various initiatives, led by states, intergovernmental bodies, the private sector and development finance institutions that seek to protect environmental defenders. In doing so, it highlights some of their limitations, finding that most stated commitments have not been borne out by concrete actions. 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. Crucially, it notes that existing initiatives have tended to give priority to individual defenders

while collective and community-based approaches to prevention and protection have received less attention in state schemes and global policies.

The analysis also highlights that effective measures must include actions by state and international actors to combat the root causes of violence and intimidation against environmental and human defenders on the agribusiness and extractives frontier, where much abuse is concentrated and linked to national and international commodity production, legal and illegal.

In relation to global supply chains and corporate accountability, the analysis outlines why a Zero Tolerance Pledge is needed to not only to ramp up corporate and investor due diligence to prevent harm and uphold the rights of environmental and human rights defenders, but to put defenders themselves at the centre of solutions to the challenges they face. In this, the paper draws on Forest Peoples Programme's extensive experience of supporting indigenous peoples and local communities to exercise self-determination.

ACRONYMS

ACPHR	African Commission on Human and Peoples' Rights
CSOs	Civil Society Organisations
CHRB	Corporate Human Rights Benchmark
DRC	Democratic Republic of Congo
DFIs	Development Finance Institutions
EHRDs	Environmental Human Rights Defenders
EUAPDD	European Union Action Plan on Deforestation and Forest Degradation
EUTRP	European Union Temporary Relocation Platform
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
EITI	Extractive Industry Transparency Initiative
FAO	Food and Agriculture Organisation
FPIC	Free Prior Informed Consent
HRDs	Human Rights Defenders
IACHR	Inter-American Commission on Human Rights
ICAR	International Corporate Accountability Roundtable
ICMM	International Council on Mining and Minerals
ISHR	International Service on Human Rights
MDBs	Multilateral Development Banks
NAPs	National Action Plans
NCPs	National Contact Points
FMO	Netherlands Development Finance Company
NFRD	Non-Financial Reporting Directive
NGOs	non-governmental organisations
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the United Nations High Commissioner for Human Rights
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PBI	Peace Brigades International
REPSA	Reforestadora de Palmas del Petén S.A.
RSPO	Roundtable on Sustainable Palm Oil
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UN-PRI	United Nations Principles for Responsible Investment
UNGA	United Nations General Assembly
WEF	World Economic Forum

A NOTE ON TERMINOLOGY

In this report, we will primarily use the term ‘environmental defender,’ alongside Human Rights Defenders (HRD) and Environmental Human Rights Defenders (EHRD). HRD and EHRD have specific, often legal, applications. A range of other terms exist, which include ‘indigenous human rights defenders,’ ‘environmental rights defenders,’ ‘defenders’ and ‘activists.’ We use ‘environmental defenders’ in an inclusive way, to refer also to these other groups. It should also be noted that in using ‘environmental defenders’ we are not just describing individuals, but rather also communities, movements and organisations. We are not solely focussed on environmental 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 or protection of the land they depend on.

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1. INTRODUCTION

Photo credit: © Natalie Behring. A man walks down a muddy path in an area which has recently been deforested in preparation to expand the Duta Palma palm oil plantation, Riau Province, Indonesia

In a global effort to address the growing attacks against the defenders of indigenous peoples' rights, indigenous leaders and indigenous and local community organisations from all over the world are launching a global initiative to address violence and killings in global supply chains.³

It joins a range of recent global initiatives on Human Rights Defenders (HRDs), including initiatives spearheaded by a recent report by the UN Special Rapporteur on Indigenous Peoples' Rights, Victoria Tauli Corpuz, aim to address key threats and the responsibilities of states and businesses, while strengthening global indigenous peoples' alliances, advocacy and protection skills.⁴

A global coordinated campaign by indigenous peoples represents a major evolution in current approaches to the protection of defenders. It builds on other current initiatives, such as the one that took place in Paris in October 2018 to mark the 20th anniversary of the UN Human Rights Defenders declaration. Hundreds of HRDs and support organisations from all over the world gathered at the World Human Rights Defenders Conference to share experiences and initiatives, as well as formulate recommendations and calls for action to put an end to attacks and killings of people that commit to protect human rights. They also adopted an Action Plan which urged businesses to adopt policies of "zero-tolerance towards acts of violence, threats and intimidation committed against defenders."⁵

1.1 THE SCALE OF THE PROBLEM: ATTACKS AGAINST HRDS

Bold government and business commitments

and actions on HRDs are long overdue, and must be undertaken as a matter of priority, given that more than 1300 attacks against activists working and addressing the impacts of business operations on the environment and human rights have been documented since 2015.⁶ As many as 321 HRDs were killed in 2018, 247 of whom were environmental defenders, a category that in its mainstream definition includes individuals working on indigenous peoples' rights, land and environmental rights.⁷ It is generally accepted that these figures underestimate of the scale of the problem. They also fail to capture the many thousands of HRDs and environmental defenders worldwide subjected to threats, forced displacement, physical attacks, intimidation, smear campaigns and criminalisation.

Non-Governmental Organisations (NGOs) such as Global Witness and Frontline Defenders reported an increase in attacks against defenders working on business-related human rights issues between 2017-2018.⁸ It is important to note that figures per country across these reports differ, highlighting the fact that records of killings are highly dependent on reporting from the field and networks of local activists. Nonetheless, the research shows that confronting the negative environmental and human rights impacts of agribusiness and the extractive industries appears as the most dangerous activity for those community leaders and their allies who work to protect community rights to land and the environment.

More recent data published in July 2019 by Global Witness in the report 'Enemies of the State? How governments and businesses silence land and environmental defenders' shows that most of the killings they recorded of environmental defenders were related to the extractive industries and mining (43), followed by agribusiness (21), water

³ Zero Tolerance Initiative: zerotoleranceinitiative.org

⁴ Julie Mollins, 2019. *UN to Launch Global Campaign Against Criminalization of Indigenous Peoples*. Truthout. Available at: <https://bit.ly/36FSHF8/>

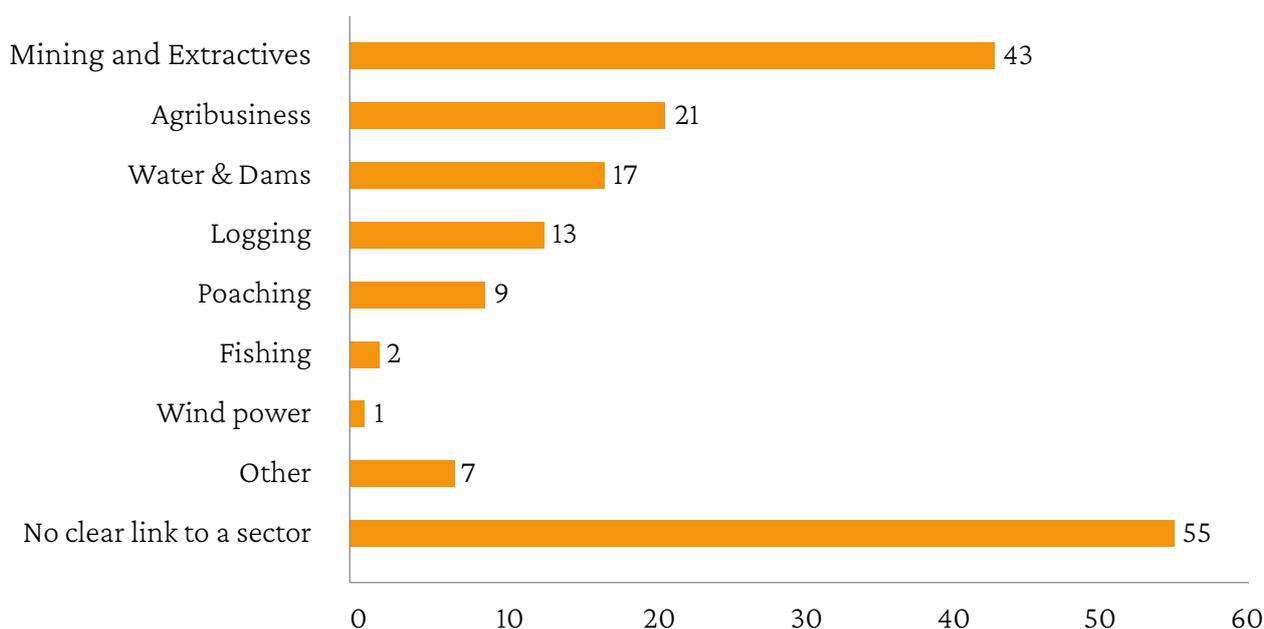
⁵ Human Rights Defenders World Summit, 2018. *Action plan for the protection and promotion of the work of human rights defenders*. Available at: <https://bit.ly/2pN4zVn>

⁶ Business & Human Rights Resource Centre, 2019. *Infographics: Human rights defenders working for corporate accountability*. Available at: <https://bit.ly/32rjkWp>

⁷ Trócaire, 2019. *Global land grab gathers pace*. Available at: <https://bit.ly/2p0Dk9u>

⁸ Front Line Defenders, 2019. *Front Line Defenders Global Analysis 2018*. Available at <https://bit.ly/36HVhuA> ; Global Witness, 2019. *Enemies of the state?* Available at: <https://bit.ly/33qXatf>

FIGURE 1: TOTAL NUMBER OF KILLINGS BY SECTOR IN 2018



Source: Global Witness, 2019

and dams (17).⁹ Global Witness called attention to the fact that in 2018 more than three people were killed every week, most of those recorded by Global Witness were in the Philippines, followed by Colombia, India, Brazil, Guatemala and Mexico.¹⁰

As noted above, according to Front Line Defenders' Global Analysis on the situation of HRDs worldwide, as many as 321 HRDs were killed in 2018, 77% of whom were activists working on land, indigenous peoples' rights or the environment. In Frontline Defender's research, Mexico and Colombia account for 54% of the killings.¹¹ It is important to reiterate that it is very likely that current figures are incomplete and killings and other kinds of threats to communities and individual activists and leaders, especially in remote areas, are not reported. Environmental defenders suffer a range of attacks, ranging from physical assaults (27%), to arrest (27%), threats, intimidation and smear campaigns (22%), legal action (12%) and disappearance (12%).¹²

More recent data compiled by the Coalition against Land Grabbing for the period January-April 2019 show an even more alarming trend: 65 cases of arbitrary detention and judicial harassment; 92 killings of social leaders, lawyers and environmental defenders (mostly in the Philippines, Brazil and Colombia), and 46 cases of threats/beatings against environmental defenders.¹³ Again, here we see differing figures for different countries, reflecting the difficulty of assessing accurate numbers.

Global Witness estimates that the majority of the killings are carried out by non-state actors, such as criminal gangs (32%) and paramilitary forces (13%), while in at least 58% of the cases, the killers and perpetrators of threats and violence against HRDs are unknown. Brazil, Colombia and Mexico are the most dangerous countries in Latin America followed by Peru, Honduras and Nicaragua. The Philippines (Asia) and the

⁹ Global Witness, 2019. *Enemies of the state?* Available at: <https://bit.ly/33qXatf>

¹⁰ *ibid.*

¹¹ Front Line Defenders, 2019. *Front Line Defenders Global Analysis 2018*. Available at <https://bit.ly/36HVhuA>

¹² *ibid.*

¹³ Coalition Against Land Grabbing, 2019. *Defending Commons' Land and ICCAs: January-April 2019*. Available at: <https://bit.ly/2NNbCFG>

DRC (Africa) are the countries with the highest number of murders in their respective regions.¹⁴

Again, it should be stressed that the number of killings and other incidents of threats, intimidation, harassment, or criminalisation of environmental defenders reflected in the across these reports differ, and the reality will be higher than that reported, for various reasons: lack of access to documentation or reporting mechanisms by affected people/communities; impunity at the state level; non-homogeneous categorisation of who is an environmental defender; limited focus on specific types of aggression across a continuum of intimidation; repression and violence against those speaking out against land grabs and illegal and destructive resource use.

A more significant picture of the magnitude of conflicts generated by the expansion of extractive industries and agribusiness worldwide — and the ensuing intimidation of and potential attacks against environmental defenders — can be drawn from data gathered by the Environmental Justice Atlas.¹⁵

1.2 CONTEXT

EXTRACTIVE CAPITALISM

Broadly speaking, environmental defenders are confronted with two converging trends. One is the expansion of the agribusiness and extractive frontiers into pristine lands, conflict-prone regions, or areas inhabited by indigenous peoples and rural communities, highly fragile in

ecological terms but very rich in land and natural resources. It is therefore necessary to see violence against human rights defenders in the context of the current phase of what many scholars call ‘extractive capitalism’ or the ‘necro-politics of extraction’¹⁶ and the related expansion of associated infrastructure (roads, railways, irrigation, ports), which may be facilitated by trade and investment agreements or state and company-led infrastructure programmes for the extraction, production and transport of resources to national and international processing facilities and markets.¹⁷

ASYMMETRIES OF POWER

The other notable trend is the concurrent expansion of repression, criminalisation and shrinking of civic space for activists and environmental defenders worldwide.¹⁸ A few preliminary considerations need to be made here to set the broader conceptual framework of this analysis: the frequently used concept of ‘shrinking space’¹⁹ assimilates into the category of ‘civil society’ actors who are not necessarily part of it. Indigenous peoples, rural communities and other marginalised groups have historically been denied opportunities to engage in the development of public policies and denied access to justice when their rights have been violated. Community leaders and HRDs risk being made invisible, and therefore more vulnerable.

Furthermore, the concept of shrinking space (*strictu sensu*) does not identify the different characteristics of those who are operating in that space, and the agency of those who would otherwise be victimised. Indigenous peoples and rural communities, social and environmental movements, especially those at the

¹⁴ The situation of defenders in the Brazilian Amazon and the challenges posed by organised criminal gangs and lawlessness are well explained in this report by Human Rights Watch published in September 2019: Human Rights Watch, 2019. *Rainforest Mafias: How Violence and Impunity Fuel Deforestation in Brazil’s Amazon*. Available at: <https://bit.ly/2X2bbeV>

¹⁵ Environmental Justice Atlas, 2019. Available at: <https://ejatlas.org>

¹⁶ Dispatches, 2018. *Blackout: The Necropolitics of Extraction*. Available at: <https://bit.ly/33tBL2W>

¹⁷ Sandro Mezzadra and Brett Neilson, 2013. *Extraction, logistics, finance: Global crisis and the politics of operations*. Radical Philosophy. Available at: <https://bit.ly/2p0rxYO>. See also: Macarena Gomez-Barris, 2017. *The Extractive Zone: Social Ecologies and Decolonial Perspectives*. Duke University Press, and Sandro Mezzadra & Brett Neilson, 2019. *The politics of operations. Excavating contemporary capitalism*. Duke University Press.

¹⁸ Inés M. Pousadela and Asmara Klein. *Against all odds: The perils of fighting for natural resource justice*. CIVICUS and Publish What You Pay. Available at: <https://bit.ly/2Cy1Qlv>

¹⁹ For a critical analysis of ‘shrinking space’ see: Transnational Institute, 2017. *On ‘shrinking space’: a framing paper*. Available at: <https://bit.ly/2pQ6kkG>.

grassroots and outside urban areas, typically resist the expropriation of resources and organise collectively to defend their lands, and by so doing contribute to the protection of ecosystems, fragile environments, community livelihood resources and cultural heritage. For this same reason they are often criminalised and threatened by the very same actors responsible for illegal land acquisition, harmful land use change, rights abuse and environmental damage (vexatious lawsuits and legal actions against community leaders and communal protests).²⁰ Hence, asymmetries of power and access to justice need to be clearly spelled out, since many of the existing programs and mechanisms to protect defenders do not take these specificities and power imbalances into account.

SENSITIVITY TO SOCIAL, ECONOMIC, POLITICAL AND CULTURAL CONTEXTS

Furthermore, in order to fully grasp the complexity of factors, drivers and threats faced by defenders, a thorough analysis and consideration of the social, economic and political landscape in which they operate and organise to defend their lands, human rights and livelihoods — as well as the legacies of colonialism — is strongly needed.²¹

The same applies to the global context and the location of lands and territories where defenders are active and their communities live and how these are affected by complex national, regional and global networks of extraction, production, use and consumption alongside related international trade, investment, financial and resource flows that characterise the current dominant global economic and development paradigm.

To add to this picture, it should be stressed that indigenous peoples require a collective/community approach in addition to an individual approach to protection and also that protection needs to be complemented with additional tools to guarantee that indigenous communities can exert their right to self-determination, and advocate for the respect of their rights. Furthermore, existing mechanisms largely go to the root causes of attacks and threats, failing to tackle the key drivers, such as historic marginalisation, racism, impunity, privatisation of violence, expansion of the extractive frontier and corporate capture of the state. In this context, the situation of indigenous women defenders is further aggravated by the fact that they are discriminated against not only as indigenous or as defenders, but also as women. Indigenous women also frequently face gender discrimination within their own communities, thereby exacerbating an already difficult situation.

Rural communities and indigenous peoples are suffering a ‘silent war’ against them because of their commitment to resist, and commitment to protecting their territories and nature. In her report presented to the United Nations General Assembly (UNGA) in August 2018, the UN Special Rapporteur on the Rights of Indigenous Peoples expressed her grave concern at the “drastic increase in attacks and acts of violence against, criminalisation of and threats aimed at indigenous peoples, particularly those arising in the context of large-scale projects, involving extractive industries, agribusiness, infrastructure, dams and logging.”²²

In light of the above, and given the direct correlation between the increasing attacks on environmental defenders²³ and the expansion of the agribusiness and extractive frontier as a key driver of attacks

²⁰ Very often it is large agro-industrial and mining companies, and other large commercial landowners, that enjoy privileged access to powerful and influential lawyers; the judiciary; local and national land administration bodies and local governments (rural and municipal). For this reason local people and HRDs often point out that it is these large companies and powerful families that ‘control’ the regional economy and development agenda and even local politics and elections of local governors and mayors in a sort of local-level corporate capture of the state that is consolidated at the central level.

²¹ Coalition Against Land Grabbing, 2019. *Defending Commons’ Land and ICCAs: January-April 2019*. Available at: <https://bit.ly/2NNbCFG>

²² UN Special Rapporteur on the rights of indigenous peoples, 2018. *Report of the Special Rapporteur on the rights of indigenous peoples*. Available at: <https://bit.ly/2KegNgX>

²³ For more resources and information on environmental defenders, see: environment-rights.org, 2018. *Situation of environmental rights defenders around the world*. Available at: <https://bit.ly/2NrsfHS> and John H. Knox, 2017. *Environmental Human Rights Defenders: A Global Crisis*. Universal Rights Group. Available at: <https://bit.ly/36KGGhG>

“Indigenous leaders and communities seeking to raise their concerns over the negative impacts of projects on their rights, livelihoods and the environment have been targeted and killed, forcibly evicted, threatened and subjected to insidious harassment in the form of criminal charges which are often nebulous, grossly inflated or fictitious. The aim of these attacks, whether violent or legal, is to silence any opposition by indigenous peoples to business interests and to prevent indigenous peoples from exercising their rights.”

VICTORIA TAULI-CORPUZ,
UN SPECIAL RAPPORTEUR ON THE
RIGHTS OF INDIGENOUS PEOPLES²⁴

and killings, more effective action is required. One such step is a clear and determined commitment by States and companies to prevent and sanction against attacks to environmental defenders. Such a commitment must consist of a determined and publicly verifiable commitment of states to introduce legislation on corporate responsibility and on the protection of defenders. At the same time, companies, traders, investors and financial institutions active in these high-risk economic sectors must pledge zero tolerance against attacks and threats by improving their due diligence and risk assessments on human rights, and integrate HRDs-related policies and commitments into their policies, practices, investments, supply chains and business operations.

1.3 ACTION TO PROTECT HRDS ACROSS SECTORS

Despite announcements and public commitments on the integration of human rights and HRD-related criteria in business operations, other than some limited recent exceptions (for example the 2018 Roundtable on Sustainable Palm Oil policy on HRDs and whistleblowers²⁵), action has been limited: robust corporate due diligence and actions to prevent harm to HRDs and environmental defenders is lacking across different sectors.

SURVEYING THE AGRICULTURAL, APPAREL AND EXTRACTIVE SECTORS

In 2018 the Corporate Human Rights Benchmark (CHRB) reviewed the policies of companies in the agricultural, apparel and extractive sectors. In particular, they looked at 38 of the largest companies in the agriculture sector and 41 of the largest extractive industries.

The assessment shows an alarmingly insufficient implementation of the UN Guiding Principles on Business and Human Rights, with human rights due diligence suffering from weak practices and poor performance. That less than 10% of companies have public policy commitments on the protection of HRDs while access to remedy is still very poor are telling findings of this survey.

Of the almost 100 allegations of serious negative human rights impacts reviewed as part of the assessment, only 3% of cases had an adequate remedy been provided to rightsholders and the agricultural products sector has the average lowest score. Only a minority of the companies reviewed scored any points for demonstrating public commitment to neither tolerating nor contributing to the abuse of HRDs.

A closer look at the performance of policy related to land rights and indigenous peoples showed that

²⁴ UN Special Rapporteur on the rights of indigenous peoples, 2018. *Statement of Ms Victoria Tauli-Corpuz Special Rapporteur on the rights of indigenous peoples to the Human Rights Council 39th Session*. OCHCR. Available at: <https://bit.ly/2ruMbRx>

²⁵ Roundtable on Sustainable Palm Oil, 2018. *RSPO Policy on Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons*. Available at: <https://bit.ly/2pONXMQ>

land rights “is one of the worst scoring indicators of the Benchmark, with 80% of Extractive companies and all of the 11 relevant Agricultural companies scoring zero points for their own operations. Only 18% of Agricultural companies could show how land rights during acquisitions extended to the supply chain through relevant codes of conduct requirements or by working with suppliers directly.”

As regards indigenous peoples, CHRB only assessed the extractive sector’s commitment to respect indigenous peoples’ rights and Free Prior Informed Consent (FPIC), and only 22% of the 41 extractive companies reviewed met the criterion.²⁶

AGRICULTURAL SUPPLY CHAINS

The worryingly poor level of implementation of the UN Guiding Principles on Business and Human Rights and of human rights due diligence in the agribusiness sector is further confirmed in a recent assessment on the implementation of the guidance on responsible agricultural supply chains, carried out by the Organisation for Economic Co-operation and Development (OECD) and the Food and Agriculture Organisation (FAO) in late 2018.²⁷ The report points to the fact that in spite of commitments taken at the policy level, few companies in fact translate policy commitments into practical risk assessment and risk mitigation actions, despite repeated calls to do so by UN institutions and by affected community leaders, HRDs and social movements as well as Civil Society Organisations (CSOs) and multi-stakeholder platforms.²⁸

Most of the gaps highlighted by the study relate to the failure to adequately assess risks and impacts, and to consult with rightsholders, stakeholders,

local CSOs and affected communities. One third of companies surveyed indicated that they do not have any commitments in their policies nor any methodologies in place to undertake this work.²⁹ Over 50% of participating companies said they have a formalised grievance procedure that is accessible to both internal and external stakeholders, but over 1/3 recognized that they lacked a formal process to receive and address grievances from external stakeholders.³⁰

A key significant gap between the contents of company policies and the OECD-FAO guidance on specific issues is in relation to tenure rights over and access to natural resources. Companies in the sugar, soy and tobacco supply chains address this more in their policies than companies in the cocoa and palm oil supply chains.

Another important gap to highlight is access to information: less than a third of companies operating in the cocoa and palm oil sectors have policy commitments addressing disclosure of information to stakeholders. Engagement and consultation with stakeholders affected by companies’ operations and with HRDs can support the identification of risks and impacts when they occur. Facilitating communication with potentially impacted communities is crucial, as it can help to prevent environmental conflicts as well as attacks against HRDs.

This is why, in absence of clear policies on human rights and environmental defenders, the shortcomings and delays registered in the OECD-FAO study and in the CHRB review are reason for serious concern. The studies provide further compelling evidence of the pressing need for deeper corporate commitments and immediate urgent action.

²⁶ Corporate Human Rights Benchmark, 2018. *2018 Key Findings: Apparel, Agricultural Products and Extractives Companies*. CHRB. Available at: <https://bit.ly/36ILQuM>. For sector specific analyses: Corporate Human Rights Benchmark, 2019. *Agricultural Products*. Available at: <https://bit.ly/32rRiyN> and Corporate Human Rights Benchmark, 2019. *Extractives*. Available at: <https://bit.ly/2PYtIXQ>

²⁷ OECD guidance has annexes with recommended measures for risk mitigation and prevention across supply-chains and guidance for engaging with IPs to obtain their FPIC: OECD, 2019. *OECD-FAO Guidance for Responsible Agricultural Supply Chains*. Available at: <https://bit.ly/34C6Am3> and OECD/FAO, 2018. *Pilot project on the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains: Baseline Report*. Available at: <https://bit.ly/2K0O8vD>.

²⁸ For a detailed and in-depth analysis of possible rights-based solutions to deforestation, with recommendations for states and business see: Forest Peoples Programme, 2018. *Closing the Gap: Rights-Based Solutions for Tackling Deforestation*. Available at <https://bit.ly/2JXMGtZ>.

²⁹ OECD, 2019. *OECD-FAO Guidance for Responsible Agricultural Supply Chains*. Available at: <https://bit.ly/34C6Am3>

³⁰ *ibid.*

The OECD-FAO report also contains interesting information about the gap between companies' commitments to implement the OECD-FAO guidance and the effective integration of these commitments in the assessment and management of risks. This is the case with access to grievance mechanisms: while 85% of the companies reviewed have included it in their policy commitments, only 52% integrate it in the assessment of risks. With adverse impacts on human rights, the figures are 81% and 62% respectively; for disclosure of information, 78% versus 62%, and for consultation with affected stakeholders, 67% and 56%.

1.4 THE CASE FOR A ZERO TOLERANCE PLEDGE

These figures demonstrate the current major shortcomings in corporate performance in upholding land tenure, human rights standards and related due diligence. However, far from being mere

statistics, these figures bring with them stories of threats, harassment, violations of the rights of peoples and communities, of leaders, women and men, old and young, who have put their lives on the line to protect their lands, the Earth, and the rights of their peoples and communities.

Immediate and effective action is needed, therefore, to ensure that businesses and states meet their obligations and responsibilities to protect human rights, and address the actions of non-state actors, paramilitary groups, criminal gangs and drug traffickers which often result in the abuse of rights and harm to defenders.

Effective mechanisms and initiatives are urgently needed to protect defenders and guarantee their freedom of action, freedom of expression, right to protest, organise and take initiatives in defence of their rights and the environment.

CASE STUDY

ENDING IMPUNITY: RIGHTS-BASED SOLUTIONS TO VIOLENCE AND FOREST DESTRUCTION ON THE AGRIBUSINESS AND EXTRACTIVES FRONTIER IN THE PERUVIAN AMAZON

The state's failure to ensure respect for indigenous peoples and local communities' human rights is a key driver of social and natural resource conflicts across Peru. The vast majority of ancestral indigenous territories in the Peruvian Amazon — at least 20 million hectares — remain untitled. Meanwhile, the state continues to prioritise the expansion of private property rights over the collective property rights claimed by indigenous peoples, which entails the forced incorporation of traditional territories into the capitalist land market and national and global commodity supply chains.

The opportunity to profit from the privatisation of communal territories is driving fierce competition over lands across the Peruvian Amazon, as seen in the case of Santa Clara de Uchunya in Ucayali and Kichwa communities in the Bajo Huallaga, where land-trafficking and deforestation are prevalent. This is accompanied by the expansion of logging, industrial agriculture, mining and hydrocarbons extraction, as well as infrastructure projects and narcotics production and trafficking into customary lands, frequently facilitated by corrupt government officials.

These pressures create an environment marked by harassment and violence, where community leaders and HRDs experience kidnappings, death threats, shootings and even assassinations. Meanwhile, multi-million-dollar land-titling projects have been delayed or paralysed by the mere presence of third-party land encroachers who take advantage of the absence of conflict resolution mechanisms to suspend titling processes as they expropriate and accumulate indigenous lands. This is the case with Santa Rosillo de Yanayacu in

Bajo Huallaga, where land-traffickers have been able to suspend communal titling as they continue logging the community's forests. Ultimately, Government entities, above all the Ministry of Agriculture and its regional agrarian agencies, hold responsibility for causing land conflicts and not acting to resolve them.

Indigenous HRDs commonly meet with discriminatory and defamatory discourse or media smear campaigns led by the state and commercial actors. HRDs are also criminalised to silence their voices and sabotage their struggles, by diverting scarce time, energy and resources away from community struggles to legal defence. The State itself continues to criminalise social protest, including by declaring "states of emergency" to force through unpopular extractive projects which lack community consent and hiring out police as private security to secure business operations.

In the most violent situations, HRDs are being killed for defending their territories and communities against unjust and harmful operations involving different economic sectors and government-led megaprojects. Global Witness found that between 2002 and 2017, at least 79 environmental and land defenders were killed in Peru, with the majority of those killed Indigenous People, while the UN Working Group on business and human rights has recorded 70 deaths resulting from community conflicts with large-scale business operations between 2012-2016.

An ineffective administrative and judicial system is failing to protect HRDs' rights and territories and to resolve their complaints: limited access to justice; cumbersome, expensive and inaccessible judicial processes; a consistent pattern of decisions by government agencies and law enforcement bodies to withhold or delay sanctions against illegal actors; the State's weak logistical capacity to ensure compliance; and the absence of specific mechanisms to guarantee the protection of HRDs all combine to create the architecture of impunity which means that HRDs continue to risk their lives for defending their rights and territories.

¹ In July 2019, the Peruvian Human Rights Ombudsman registered a total of 184 such conflicts, two-thirds of which were defined as socio-environmental disputes.



2. INTERGOVERNMENTAL, GOVERNMENTAL AND LOCAL AUTHORITY INITIATIVES ON HRDS

Photo credit: © Comisión Interamericana de Derechos Humanos. Protest in honour of Berta Cáceres, Honduras.

2.1 ENVIRONMENTAL DEFENDERS IN THE UN SYSTEM

INCREASING AWARENESS OF THE CHALLENGES FACING ENVIRONMENTAL DEFENDERS

Over the years, the roles and responsibilities of states and businesses in protecting environmental HRDs and ensuring they have access to civic space has been highlighted at the UN and in other fora. The initiatives undertaken by the UN Working Group on Business and Human Rights, and the activities of mandate holders (UN Special Rapporteurs on HRDs, Indigenous Peoples and Environment among others), have intensified with the increase in the number of HRDs threatened or killed. Along with their work on business and private sector activities, the Working Group and Mandate holders have increasingly focused on environmental defenders.

In 2011, the then-UN Special Rapporteur on Human Rights Defenders Margaret Sekaggya recognised that environmental defenders are HRDs.³¹ In a report to the Human Rights Council (HRC), Sekaggya noted that “[HRDs] include defenders carrying out a vast range of activities related to land and environmental rights, including those working on issues related to extractive industries, and construction and development projects, those working for the rights of indigenous and minority communities, women [HRDs...]”³²

In 2013, the UN resolution on HRDs recognised the crucial role that they play, and urged states to create a “safe and enabling environment” for them.³³

A subsequent UN report prepared by John Knox, then-UN Special Rapporteur on the Right to Environment, clarifies that “businesses should provide clear guidance to employees, contractors and partners on the rights of Environmental Human Rights Defenders (EHRDs) and communities to express their views, conduct peaceful protests and criticise practices without intimidation or retaliation. They should have clear procedures for receiving complaints of misconduct and responding to them in a timely manner. He went on to note that “beyond adhering to international principles and standards, companies should continue to develop their own initiatives to better protect and support the work of HRDs, including EHRDs. Good examples include the establishment of specific corporate policies on HRDs (e.g. Adidas), and speaking out publicly against restrictions or attacks against HRDs (e.g. Tiffany & Co.)”³⁴

A UN report on the business and human rights impacts of palm oil and sugarcane production on indigenous peoples and local communities was published in 2016.³⁵ It contains a series of initial references to the situation of environmental defenders in connection to those commodities supply chains. It stresses that “affected communities rarely obtain effective access to remedies, judicial remedies are ineffective and unaccountable, while criminalisation of affected community members and [HRDs] mar efforts towards access to justice in the context of widespread intimidation, harassment, and killings of community members and [HRDs] working on land acquisitions.” It then clarifies that it is the state’s duty to protect HRDs, proposing that companies assessing (or wishing to prioritise the assessment of) the particular risks of an operating or sourcing context should, at a minimum, consider the following factors:

³¹ Femke Wijdekop. *Environmental Defenders and their Recognition Under International and Regional Law – An Introduction*. IUCN NL. Available at: <https://bit.ly/2riwkFz>

³² Margaret Sekaggya, 2011. *Report of the Special Rapporteur on the situation of human rights defenders*. Available at: <https://bit.ly/2JZKGkS>

³³ Human Rights Council, 2013. *Protecting human rights defenders*, A/HRC/RES/22/6. Available at: <https://bit.ly/35f6GAp>

³⁴ John H. Knox, 2017. *Environmental Human Rights Defenders: A Global Crisis*. Universal Rights Group. Available at: <https://bit.ly/36KGGhG>

³⁵ Working Group on the issue of human rights and transnational corporations and other business enterprises, 2016. Available at: <https://bit.ly/2JVPCqQ>

- Weak governance and lack of transparency/perceived corruption level;
- Weak land governance and unclear land and tenure rights;
- The presence and scale of land conflicts between communities and companies/authorities;
- The level of democratic space for communities and HRDs to voice concerns;
- The existence of complaints before grievance mechanisms.³⁶

In his report to the UN General Assembly (UNGA) in July 2015, the UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, pointed to the vulnerability of HRDs working to protect land, safeguard the environment, and uphold corporate responsibility.³⁷ The report highlights the connections between state and non-state actors (companies, private security companies or organised crime), and how they work together to thwart the efforts of HRDs. The report furthermore notes companies' — particularly those in the extractive sector — lack of transparency and accountability. Additionally, the failure of states to adopt mechanisms to prosecute companies are identified as key root causes of the ongoing abuse of rights. The situation facing indigenous peoples is further complicated by the lack of legal and institutional frameworks – or the failure to implement these frameworks - recognising their rights.³⁸

The UN Special Rapporteur on the situation of Human Rights Defenders also published two specific reports on the situation of environmental defenders and the role of business in protecting HRDs.

The first one, published in 2016, offers a picture of the global situation of environmental defenders

building on the important body of work carried out by organisations such as Global Witness and FrontLine Defenders.³⁹ Importantly, it notes that “it is the duty of the State to respect the right of everyone to protect the environment and to protect environmental defenders from violations committed by state and non-state actors.” It additionally argues that “international human rights law also makes it clear that business enterprises, media and other non-state actors are obliged to respect HRDs,” going further than the accepted formulation, according to which, companies only have a responsibility to respect human rights and to undertake due diligence.

RECOMMENDATIONS FOR BUSINESSES

According to this 2016 report, most of the recorded violations committed against EHRDs were connected to the extractive industries, followed by disputes on land rights and ancestral land rights, and then by infrastructure projects. It reiterated the key elements required to guarantee a safe and enabling environment for HRDs: “the adoption of a conducive legal and institutional framework; the fight against impunity and access to justice; establishment of a strong national human rights institution; effective protection policies and mechanisms; respect and support by non-state actors of the work of defenders; a robust community of defenders.”

In his report, the Special Rapporteur urged all actors to “urgently and publicly adopt a zero-tolerance approach to the killing of and violent acts against EHRDs, and immediately launch policies and mechanisms to empower and protect them.” Such initiatives can be successful only if and when the causes and contexts in which threats and killings

³⁶ UNGA adopted another resolution on HRDs in December 2015 reaffirming the need to respect, protect, facilitate and promote the work of HRDs including as they relate to environmental and land issues. In March 2016 HRC adopted a resolution on ‘Protecting HRDs: Addressing economic, social and cultural rights’ A/HRC/31/L. 28: Human Rights Council, 2016. *Protecting human rights defenders addressing economic, social and cultural rights*. Available at: <https://bit.ly/2JYzLI8>

³⁷ UN General Assembly, 2015. *Situation of human rights defenders*. Available at: <https://bit.ly/34FVUmA>

³⁸ “Finally, as regards indigenous peoples, numerous defenders in Latin America underscored the lack of a legal and institutional framework recognising the rights of these communities or, when they are recognised, the failure to implement them. The fact that they live in isolated rural areas combined with the existence of certain kinds of claims, such as the defense of lands or attempts to achieve autonomy, expose them to numerous threats and physical assault. This is one of the areas in which the Special Rapporteur intends to conduct a specific study together with the Special Rapporteur for the Rights of Indigenous Peoples.” Ibid.

³⁹ 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>

occur are understood and properly addressed. One limiting factor that needs to be addressed is that while the human rights obligations of states towards HRDs have been clearly articulated, those related to businesses are still weak, and this is one of the factors that determines EHRD vulnerability. Furthermore, National Action Plans (NAPs) “often fail to advise how states should sanction corporations involved in such abuses. Some corporations have developed social responsibility strategies or mechanisms, which either lack teeth to prevent violations or have been used as publicity tools to whitewash the company’s public image.”⁴⁰

The report recommended that businesses adopt and implement international and regional human rights standards, including the Guiding and Voluntary Principles on Security and Human Rights. It also recommended that they ensure rigorous due diligence on human rights - which should include conducting human rights impact assessments - in consultation with affected communities and environmental defenders, and that companies publicly disclose relevant information. It furthermore proposes that grievance mechanisms be established, and that environmental defenders participate in decision making at all stages as a means to prevent threats. States and companies are urged to develop legislation, contracts and human rights impact assessments that contain provisions on the procedural rights of communities and defenders.

INDIGENOUS PEOPLES

In 2018 the UN Special Rapporteur for the Rights of Indigenous Peoples Victoria Tauli-Corpuz produced an unprecedented report on the criminalisation of indigenous peoples defending their rights.⁴¹ In it, she points to the distinctive character of the attacks against and criminalisation of indigenous peoples, focusing in particular on violations in the context of development

projects. The root cause is identified as the intensified competition over natural resources led by private companies, oftentimes aided by the complicit local or national governments.⁴² The report notes that lack of respect for indigenous peoples’ collective land rights fosters tension and conflict over land access and use; the ensuing violence and criminalisation exists in a context of increasing corporate capture of the state.⁴³

Therefore, Tauli-Corpuz argues, “states should recognise publicly the rights of indigenous peoples, and in particular the right to self-determination, including the right to determine priorities for the development or use of their lands and other resources. Protection programs should be culturally appropriate, consider gender aspects, and be developed jointly with communities while support should be granted to community-based protection strategies.”⁴⁴ The proposals directed to companies and businesses reflect those already voiced in other reports with the addition of specific references to indigenous peoples’ rights frameworks, FPIC, and recognition of rights to lands, territories and natural resources.

40TH SESSION OF THE HRC

The most important official decision taken thus far by the UN Human Rights Council with regard to EHRDs was adopted at the 40th Session of the HRC in March 2019 with the sponsorship of the Governments of Norway and the Netherlands.⁴⁵

The Resolution, the first of its kind adopted by consensus, contains a series of important elements related to environmental defenders and indigenous peoples as well as to the responsibilities of states and businesses. However, it falls short of pinpointing some of the key drivers behind the growing attacks against EHRDs, notably the unregulated and often illegal expansion of agribusiness and the extractive industries; neither does it go into detail regarding the

⁴⁰ United Nations General Assembly, 2016. *Situation of human rights defenders*. Available at: <https://bit.ly/2WUwyy1>

⁴¹ Victoria Tauli-Corpuz, 2018. *Report to Human Rights Council: Attacks against and criminalization of indigenous peoples defending their rights*. Available at: <https://bit.ly/34DCD56>

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ ISHR, 2019. *HRC40: Council unanimously recognises vital role of environmental human rights defenders*. Available at: <https://bit.ly/34ICb5G>

responsibilities of investors and banks in contributing to their protection. It does not acknowledge the need to ensure a collective and community approach to protection and guarantee for defenders. However, to a significant extent, the resolution incorporates key concerns and demands voiced by CSOs and non-governmental organisations (NGOs) during the preparation process and in a letter signed by more than 180 groups.⁴⁶ The Resolution expresses concern at the increased number of violations of the rights of EHRDs, their families and communities, while urging actors to address the root causes of such violations “by strengthening democratic institutions, combating impunity and reducing economic inequalities.”⁴⁷

It points to the need to pay particular attention to women HRDs and to the intersectional nature of violations against them, and against indigenous peoples and communities. The resolution urges states to develop holistic protection measures and carry out inquiries and investigations into threats against EHRDs, while pressing businesses to carry out human rights due diligence and engage stakeholders and defenders in effective consultations.

UN AGENCIES

The UN Environment Programme (UNEP) adopted an Environmental Defenders policy in 2018 in order to assist the UN to promote “greater protection for individuals and groups” defending their environmental rights and to “mitigate” abuse of environmental rights.⁴⁸ UNEP states that it will denounce attacks, torture, intimidation and murders of environmental defenders, and advocate for better protection of environmental rights and environmental defenders, and support responsible management of natural resources. In the policy, UNEP also requests governments and companies to be accountable for “events where environmental defenders have been affected or murdered.” The policy also envisages the creation of a ‘Rapid Response Mechanism’ that will denounce attacks on individual HRDs and

offer solutions — including legal support and technical assistance — to governments and other stakeholders.

UNEP has also developed a set of internal accountability mechanisms, including legal assistance, prevention, mitigation, investigation and the commitment to respond to violations of the rights of environmental defenders. UNEP states that it will work with the UN Special Rapporteurs on Human Rights Defenders and the Right to Environment, and with institutions at the regional level — as well as CSOs and indigenous peoples — to support the adoption of regional legally binding agreements to protect environmental rights and defenders.

Lastly, UNEP notes that it has committed to strengthening partnerships with other UN agencies and systems — and international and regional institutions — as well as launching an awareness-raising campaign, the ‘Environmental Rights Initiative.’ However, while this initiative marks a key development in the recognition of environmental defenders in the UN system, there are several shortcomings: for instance, the definition of EHRDs refers mostly to individual HRDs rather than communities or collectives. Furthermore, it is mostly focused on reaction to threats and killings rather than prevention, and does not address the root causes of threats, such as impunity, company-state corruption (for example in the fraudulent acquisition of land through ‘legalisation’ or environmental licensing), and nor does it tackle the responsibilities of non-state actors.

In August 2019, UNEP and the Office of the United Nations High Commissioner for Human Rights (OHCHR) concluded an agreement aimed at assisting states and non-state actors to promote and respect human rights. The agreement envisages cooperation in monitoring threats to defenders of the environment, urges accountability of those that perpetrate violence and threats, seeks to support the strengthening their networks, and aims to ensure the participation of defenders and civil society in environmental decision making.⁴⁹

⁴⁶ ISHR, 2019. *HRC40: States should defend environmental human rights defenders*. Available at: <https://bit.ly/32vaRpO>

⁴⁷ ISHR, 2019. *HRC40: Council unanimously recognises vital role of environmental human rights defenders*. Available at: <https://bit.ly/341Cb5G>

⁴⁸ UN Environment Programme, 2019. *UN Environment’s Defenders Policy*. Available at: <https://bit.ly/2PYW5Fq>

⁴⁹ United Nations Human Rights Office of the High Commissioner, 2019. *UNEP, UN Human Rights Office sign new agreement, stepping up commitment to protect the human right to a healthy environment*. Available at: <https://bit.ly/2CqPzzc>

2.2 AN ANALYSIS OF SELECTED REGIONAL AND INTERGOVERNMENTAL INITIATIVES TO PROTECT HRDs AND ENVIRONMENTAL DEFENDERS

Since the adoption of the UN Declaration on Human Rights Defenders in 1998, states, regional organisations and intergovernmental bodies have progressively tried to introduce policies, practices and tools to contribute to its implementation.⁵⁰

An important development was the adoption by the EU of a set of instruments for the protection of HRDs in 2008; these included a set of guidelines for diplomatic corps and a specific programme called ProtectDefenders.eu that undertakes advocacy, provides funding opportunities and supports the temporary relocation of defenders at risk through the EU Temporary Relocation Platform (EUTRP).⁵¹

EU GUIDELINES ON HUMAN RIGHTS DEFENDERS

The guidelines for the diplomatic representatives of the EU and Member States include a series of suggested actions and approaches that EU and Member State embassies abroad can put into place. These include: monitoring the situation of HRDs and reporting back; supporting and protecting HRDs; promoting the protection of HRDs in third states and international fora; supporting the activities of the Special Rapporteur on Human

Rights Defenders, and identifying instruments to provide financial support to HRDs.⁵²

The following are identified in the guidelines as best practices for EU representatives and embassies:

- Organise meetings and events with HRDs at the EU level in cooperation with NGOs and UN country teams, and undertake field trips;
- Establish human rights focal points in embassies;
- Provide financial and political support to HRDs through local cooperation funds (if available);
- Monitor trials;
- Enhance the visibility of HRDs, by issuing public statements on the protection of HRDs in individual cases;
- Establish specific visa policies in home countries to allow for temporary relocation of HRDs at risk.

In an evaluation of the situation of HRDs 20 years after the adoption of the UN Declaration on Human Rights Defenders, Peace Brigades International (PBI) formulated a series of recommendations to improve the impact of the EU guidelines. In particular, PBI points to the need to ensure that these are known by activists and organisations in third states: lack of access to and awareness of the guidelines is critical. Notably, an assessment on the global situation of HRDs carried out in 2015 by the UN Special Rapporteur on Human Rights Defenders found that only 1/3 of the HRDs involved in all regional consultations were aware of the guidelines.⁵³

EU delegations should also support the fight against impunity, promoting and enabling access to justice for HRDs as well as the safety and protection. PBI notes that it is important to ensure that the “presence of European investments and companies does not promote further abuses and violations of

⁵⁰ United Nations Human Rights Office of the High Commissioner, 2019. *Declaration on Human Rights Defenders*. Available at: <https://bit.ly/2WTVAhc>

⁵¹ European Commission, 2019. *Human rights defenders*. Available at: <https://bit.ly/2NuotO4>

⁵² European Union External Action, 2016. *EU Guidelines on Human Rights Defenders*. Available at: <https://bit.ly/33pqRuV>

⁵³ “It must be said that only one third of the defenders said they were familiar with them. And those that were familiar with them perceived a lack of training and information among the representatives of the member states of the European Union (EU). They also alluded to a lack of clarity of the selection criteria used by the EU to support defenders in certain countries, and to the lack of familiarity with EU procedures on the part of certain embassies, along with the reluctance of some ambassadors to make use of the means at their disposal for protecting defenders, for fear of offending the government of the country to which they have been posted.” United Nations General Assembly, 2015. *Situation of Human Rights Defenders*. Available at: <https://bit.ly/34F646O>

human rights.”⁵⁴ A review of the effectiveness of the EU guidelines carried out in 2008 in Kyrgyzstan, Tunisia and Thailand found that the effectiveness of the guidelines depend on the capacity and willingness of diplomats; in practice, therefore, their application has been largely discretionary. Furthermore, the EU policy on defenders will have to be coherent with human rights policy commitments and economic and policy directives.⁵⁵

The risk of a lack of consistency between EU and Member States’ commercial interests and the obligation to ensure that human rights are respected was also highlighted in a previous PBI report published in 2014 on the implementation of the EU guidelines.⁵⁶ Case studies from Mexico, Honduras, Guatemala and Kenya additionally found that embassies had excessive discretion in applying the guidelines; that there was haphazard follow-up; that there was insufficient capacity to take a position as the EU and little capacity to undertake rapid interventions or preventative action; that there was a lack of awareness of the guidelines, and scarce use of best practices such as public communications and actions.

Following these findings, more active implementation of the guidelines was called for, together with better engagement with HRDs; the organisation of field visits; the use of public communications and monitoring of trials, and the sharing of country strategies with HRDs. Furthermore, greater coherence between the EU’s policies on human rights and commerce should be guaranteed, ensuring that, in case of investment in or affecting indigenous peoples’ lands and territories, FPIC is sought and respected.⁵⁷ Concerns about the effective use and application of the EU guidelines were voiced also by African HRDs in a regional workshop organised by the International Service on Human Rights (ISHR) in 2018; prior to the workshop, most of the defenders were unaware of the guidelines. The participants recommended that diplomats should receive trainings on the use the guidelines and increase the frequency of meetings with HRDs, who in turn should benefit from targeted trainings on the best use of the guidelines.⁵⁸

‘Defending Defenders: An assessment of EU action on Human Rights Defenders,’ published in September 2019 by Amnesty International, analyses the degree of implementation of the EU guidelines in selected countries including Russia, China, Burundi,

⁵⁴ Specific recommended actions include: “Ensure the creation of mechanisms for consultation and free, prior and informed consent with the affected communities and groups. These consultations should fulfil the highest international standards and be culturally appropriate. Additionally, the affected communities and groups must have the necessary resources for their participation to be complete, genuine and fair. Ensure that European companies do not directly or indirectly benefit from land that is appropriated in a violent way. Promote land restitution and redistribution programmes as a necessary measure to address the serious inequality of the world. Make sure that the human rights clauses contained within free trade agreements act as effective monitoring mechanisms for the respect of human rights. Guarantee that the rights to social protest and peaceful assembly are respected in the context of opposition to large-scale economic projects. Condemn any form of restriction and ensure that, in countries with which trade relations are maintained, serious police abuses are not repeated or continued, and laws that restrict or eliminate these rights are not approved or implemented. Urge the European Commission and the European External Action Service to begin, as soon as possible, the process of developing an action plan on Business and Human Rights, with the objective of fully applying the UN Guiding Principles.” Peace Brigades International, 2018. *Analysis of the situation of Human Rights Defenders 20 years after the approval of the UN Declaration on Human Rights Defenders*. Available at: <https://bit.ly/2Cqg05>

⁵⁵ Bennett, Karen, Ingleton, Danna, Nah, Alice M, 2015. *Critical perspectives on the security and protection of human rights defenders*. The International Journal of Human Rights. pp. 883-895. Available at: <https://bit.ly/2qBildC>. Also see Directorate-General for External Policies of the Union, 2013. *Assessing the Implementation of the European Union Guidelines on Human Rights Defenders – The Cases of Kyrgyzstan, Thailand and Tunisia*. Available at: <https://bit.ly/2WS4pbs>

⁵⁶ 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>

⁵⁷ Ibid. Additional analysis of challenges and shortcomings of the EU guidelines can be found in: Susan Villa, 2017. *Human Rights Defenders are facing increasing intimidation – How should Finland’s support for HRDs be developed?* Ministry for Foreign Affairs of Finland. Available at: <https://bit.ly/34IEci4>

⁵⁸ ISHR, 2018. *NGO Forum: The impact of diplomatic initiatives on the protection of human rights defenders*. Available at: <https://bit.ly/34FcbYO>

Honduras and Saudi Arabia.⁵⁹ The assessment concludes that EU efforts to support HRDs lack strategy and consistency, and “risk being perceived as arbitrary at best, and politically motivated at worst.”⁶⁰ Furthermore, EU action appears to be mostly reactive rather than systemic, failing to prevent attacks or threats by addressing their root causes. Amnesty International recommends that, in consideration of the increased risks for specific categories of HRDs such as women, indigenous peoples, and defenders of the environment, the EU guidelines will have to be complemented with other EU policies and instruments. In addition to the recommendations provided in the report, there is also a need to mainstream HRD-related criteria and action with the EU’s trade and investment policies and programmes, or with the EU efforts to curb trade and imports of deforestation-risk commodities (the EU Action Plan on Deforestation and Forest Degradation, EUAPDD) that are frequently also linked to attacks or threats to HRDs.

“Amnesty International found an apparent lack of overall strategy and consistency in EU efforts to support HRDs, insufficient visibility of EU actions and channels of support and the absence of a targeted and impact oriented approach to public action.”

AMNESTY INTERNATIONAL⁵⁹

PROTECTDEFENDERS.EU AND EUTRP

In addition to the guidelines for EU and Member States’ diplomatic missions, the EU also runs the ProtectDefenders.eu initiative, and operates within it the EUTRP.

The purpose of ProtectDefenders.eu — which has recently been reprioritised — is to reach out to all defenders, particularly those living in remote areas. It has a specific focus on the most vulnerable categories of defenders such as women HRDs, social and economic rights defenders, and environmental defenders, to name a few. The mechanism is supported by the European Instrument for Democracy and Human Rights (EIDHR) and has been established with the collaboration of various NGOs working on human rights and defenders.⁶² The EU describes the EIDHR as providing “swift assistance to HRDs at risk to meet their most urgent needs” while also reinforcing their “capacities to do their human rights work in the medium and longer term. Delivering support to HRDs remains one of the EIDHR priorities for the period 2014-2020. Indeed, 20-25% of the total financial envelope for the implementation of the EIDHR for this period has been allocated to the Objective 1: Support to Human Rights and Human Rights Defenders in situations where they are most at risk, corresponding to €200-250 million.”⁶³

The mechanism supports HRDs in urgent need (medical and legal assistance, prison monitoring, urgent relocation and support to families), as well as providing medium (early warning alerts, risk prevention and security, advocacy, advice on legislative frameworks, temporary relocation) and long term support (advocacy to national networks and strategies to address the criminalisation and other restrictions and sanctions against

⁵⁹ Amnesty International, 2019. *Defending Defenders? An Assessment of EU Action on Human Rights Defenders*. Available at: <https://bit.ly/33rSDag>

⁶⁰ *ibid.*

⁶¹ Amnesty International, 2019. *Defending Defenders? An Assessment of EU Action on Human Rights Defenders*. Available at: <https://bit.ly/33rSDag>

⁶² Front Line Defenders, Reporters Without Borders, World Organization Against Torture (OMCT), Worldwide Movement Human Rights (FIDH), Urgent Action Fund, Forum-Asia, Peace Brigades International (PBI), Protection international, Ilga, ESCR-Net, Euro-Mediterranean Foundation of Support to HRD (EMHFRF), East and Horn of Africa HRD Project (EHAHRDP).

⁶³ European Commission, 2019. *Human rights defenders*. Available at: <https://bit.ly/2NuotO4>

HRDs). Small grants of up to €10,000 are also allocated to HRDs needing urgent assistance.⁶⁴

Environmental defenders were among the key possible beneficiaries and recipients of grant-making activities under the mechanism in the past few years. More recently, the mechanism cosponsored a high-level dialogue on EHRDs.⁶⁵ Another key component of this mechanism is the temporary relocation of HRDs, under the EUTRP.⁶⁶ A key goal of the platform is to coordinate the relocation of HRDs, working with CSOs and other temporary relocation initiatives. Its membership includes 36 NGOs, 2 universities, 2 municipalities, and 7 Ministries of Foreign Affairs (including the European Council's (EC) own European External Action Service), and its activities include identifying HRDs at risk and providing temporary housing and shelter within the country of origin, and outside if needed.⁶⁷

MAINSTREAMING HRD PROTECTION IN EU POLICIES AND INITIATIVES

More generally, the EU guidelines, policies and programmes that aim to support HRDs need to be based on effectiveness, and should inform and be mainstreamed in other EU policies such as those related to trade in commodities, including the EC's 2015 Sustainable Trade for All Policy, current EC regulation of supply chains and emerging EC legal initiatives on corporate due diligence led by the Directorate-General for Justice and Consumers. Other relevant policies include the proposed EUAPDD, and the EU Action Plan on Human Rights and Democracy,

as well as the broader work of the EU abroad. The EU Non-Financial Reporting Directive (NFRD) could also be used at the national level to ensure that companies do their due diligence and report on efforts undertaken to protect defenders and apply the UN Guiding Principles on Business and Human Rights.

Still, the results of a recent study on the application of the NFRD in a selected number of cases evidences the need to develop and use an effective human rights due diligence reporting module, for the NFRD to explicitly endorse the UN Guiding Principles on Business and Human Rights reporting framework, and for it to impose sanctions in cases of non-compliance. Furthermore, supply-chain data such as suppliers' lists should be disclosed.⁶⁸ The EU is also developing its Drinking Water Directive: in doing so, it should take into account its commitments to the protection of HRDs.⁶⁹ The EU Business and Human Rights Action Plan proposed in 2018 by a coalition of NGOs and CSOs will provide another opportunity to ensure full implementation of the UN Guiding Principles on Business and Human Rights, as well creating coherence across the various EU activities and initiatives and increasing the focus on environmental defenders.⁷⁰

GUIDELINES ADOPTED BY COUNTRIES (EUROPEAN AND NON-EUROPEAN)

The EU Human Rights Defenders guidelines are considered a 'blueprint' for other guidelines adopted in European and non-European countries, such as Norway, Finland, the UK, Canada and

⁶⁴ Since 2010 and until January 2017, over 330 grants amounting to a total sum of over €3 million have been disbursed, and more than 500 HRDs and organisations in over 50 countries have received this type of direct support. Emergency small-grants support is meant to provide assistance for the coverage of fees for the legal representation of defenders as well as of medical emergency expenses and rehabilitation of victims of torture and inhuman and degrading treatment; the purchase of security material for local organizations; the temporary relocation of HRDs forced to leave their place of residence or their countries for security reasons; temporary support to families of imprisoned or deceased defenders.

⁶⁵ European Development Days, 2019. *The guardians of the territory*. <https://bit.ly/36FtJWF>

⁶⁶ EU Human Rights Defenders Relocation Platform, 2016. *Welcome to the website of the EU Human Rights Defenders Relocation Platform!* Available at: <https://bit.ly/34C6MBI>

⁶⁷ *ibid.*

⁶⁸ European Coalition for Corporate Justice, 2019. *A Human Rights Review of the EU Non-Financial Reporting Directive*. Available at: <https://bit.ly/2NOQ3Ey>

⁶⁹ Emma Achilli, 2018. *Environmental Rights Defenders Critical to Proposed EU Guidelines on Right to Water*. Available at: <https://bit.ly/2qvAHwT>

⁷⁰ European Coalition for Corporate Justice, 2018. *Suggested Elements for an EU Action Plan on Business and Human Rights*. Available at: <https://bit.ly/2K0tGL6>

Switzerland. Some of these guidelines contain specific requirements for or references to indigenous peoples and the role of the private sector.^{71,72}

It should also be noted that the Organisation for Security and Cooperation in Europe (OSCE) and Office for Democratic Institutions and Human Rights (ODIHR) adopted its own HRD guidelines on the basis of the EU guidelines which apply not only to OSCE member states diplomatic missions in the OSCE area, but also internally within member states.⁷³

Interestingly, the Canadian guidelines for the protection of HRDs include a section on Canadian companies abroad, mostly focused on the mining sector, that can be extended to other sectors. The Canadian guidelines include a specific paragraph on “cases involving Canadian entities with particular reference to those advocating for rights related to land and the environment,” noting that “support for these HRDs should be provided...regardless of the nationality of the company in question.”⁷⁴ Reference is also made to Canada’s enhanced CSR strategy to strengthen Canada’s extractive sector abroad.⁷⁵ It should be noted, however, that the related ombudsperson function was established in April 2019, with very limited capacity, no independence and a very narrow mandate to investigate the responsibilities of extractive companies in violations of human rights and attacks on HRDs.⁷⁶ Stronger mandates for national trade and business

ombudsperson functions are required if they are to promote changed behavior by companies and investors operating in different sectors.

The Finnish guidelines on “protecting and supporting Human Rights Defenders” were adopted in 2014, based on international best practice and the EU Human Rights Defenders Guidelines.⁷⁷

These guidelines are directed towards the Finnish diplomatic missions and diplomats to encourage them to play an active role in “promoting an enabling environment and capacity for HRDs.”⁷⁸ Importantly, they explicitly recognise the particular vulnerability of indigenous HRDs. However, an analysis of the Finnish guidelines published in 2017 raises questions about the need to address possible conflict between Finnish private sector and commercial priorities and the country’s stated commitment to supporting HRDs.⁷⁹ In addition to the standard procedures recommended for Swiss diplomatic corps, the Swiss guidelines make explicit reference to the recognition of the work of HRDs, and commitments to support women HRDs, indigenous peoples and land rights activists, while calling for compliance with international law provisions to protect defenders and to implement the UN Declaration on Human Rights Defenders.⁸⁰

Norwegian guidelines also identify categories of HRDs that are particularly at risk, including LGBTQTI activists, women HRDs, indigenous peoples, defenders working in rural areas, and

71 Foreign & Commonwealth Office and Department for International Development, 2019. *UK support for human rights defenders*. Available at: <https://bit.ly/2K42WJX>

72 Some countries have also introduced specific elements related to HRDs in their NAPs (see 3.4).

73 OSCE Office for Democratic Institutions and Human Rights, 2014. *Guidelines on the Protection of Human Rights Defenders*. Available at: <https://bit.ly/2Nx3VVf>

74 Government of Canada, 2019. *Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders*. Available at: <https://bit.ly/2rqoPg1>

75 *ibid.* Under section 4.2, it is noted that “depending on the facts of a given case there may be an impact on the support that the mission offers to the Canadian company in question, including denying or withdrawing trade advocacy support.”

76 KAIROS, 2019. *We’re Still Waiting for an Independent Ombudsperson with Investigatory Powers*. Available at: <https://bit.ly/2QOtS14>. A useful analysis of the Canadian draft guidelines by EarthRights can be found here: EarthRights International, 2019. *Comments by EarthRights International on Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders*. Available at: <https://bit.ly/2K27foO>

77 Ministry for Foreign Affairs of Finland, 2014. *Protecting and Supporting Human Rights Defenders*. Available at: <https://bit.ly/2CsrGqQ>

78 *ibid.*

79 Susan Villa, 2017. *Human Rights Defenders are facing increasing intimidation – How should Finland’s support for HRDs be developed?* Ministry for Foreign Affairs of Finland. Available at: <https://bit.ly/34IEci4>

80 FDFA, 2013. *Swiss Guidelines on the Protection of Human Rights Defenders*. Available at: <https://bit.ly/2WZmCUu>

“individuals and groups engaged in issues involving major economic interests.”⁸¹

Other EU member states have specific programs on HRDs, such as Spain, Ireland, and the Netherlands. More recently the UK has issued a policy paper detailing the UK commitments in support of Human Rights Defenders.⁸² Some countries, such as Italy, have committed to support HRDs in the HRC. Ireland has been one of the countries in the forefront, and also a strong advocate, together with Norway, of HRDs in international fora. Ireland also has a special visa programme for defenders at risk.

RELOCATION INITIATIVES

A Shelter Cities pilot programme is also being developed in Italy by civil society organizations and the municipalities of Padua, Trento and Turin.⁸³ In Spain, relocation initiatives are carried out both at the national, regional and municipal levels of government, such as in Catalonia and the Basque Country or in Barcelona and Madrid.⁸⁴ Most of them are focused on defenders from Latin America and offer a temporary period of stay in case the defender needs to leave the country for protection in the face of major threats or risks or simply to have a rest and respite period.

The most important programme for temporary relocation that involves government, CSOs and local authorities is the Shelter Cities programme in the Netherlands.⁸⁵ Coordinated by Justice and Peace Netherlands, it involves 14 cities worldwide: 11 in the Netherlands, and three international hubs,

one in Tbilisi (Georgia), one in Dar-Es-Salaam (Tanzania) and another in San José (Costa Rica). The requirements to apply for relocation as defined in the yearly call for submissions are very specific: the applicant needs to speak English (only limited opportunities are provided for French and Spanish speaking defenders), the programme is not extended to family members, the applicant must be willing to return home after the 3 month relocation period and must be willing to speak publicly and participate in activities developed together with NGOs and participating authorities.⁸⁶ The programme includes training, advocacy work, and awareness raising.⁸⁷

In general terms, while relocation might be a good option of last resort in particular for urban-based defenders or activists that are well connected to international solidarity networks, some shortcomings need to be highlighted in the case of rural or indigenous peoples. Firstly, many of these programmes are limited in their geographical scope, or not necessarily accessible to all, and the distance from the community or land of origin would make the relocation traumatic for the defender concerned. His or her connections with the community would be temporarily interrupted or severed, and in many instances the defenders may prefer not to leave his or her land and stay to continue the struggle, regardless of risks. Most of the official relocation schemes are quite far from areas of conflict, and the risk of removing or ignoring collective agency and perpetuating an individualistic approach to protection is evident. As regards indigenous and rural people from marginal but conflict-prone areas,

⁸¹ Norwegian Ministry of Foreign Affairs, 2010. *Norway's efforts to support human rights defenders*. Available at: <https://bit.ly/2Nwu6LK>

⁸² Foreign & Commonwealth Office and Department for International Development, 2019. *UK support for human rights defenders*. Available at: <https://bit.ly/2K42WJX>

⁸³ Luca Pianesi, 2018. *Trento è la prima "Città Rifugio" d'Italia. Il Comune approva: verrà offerta protezione a chi difende I diritti umani nel mondo*. Available at: <https://bit.ly/32yLpJg> Maria Illaria De Bonis, 2018. *Padova sarà presto la seconda città-rifugio per i difensori dei diritti umani*. B-Hop Magazine. Available at: <https://bit.ly/33wq8s1>. Consiglio Comunale Città di Torino, 2019. *Oggetto: Torino Shelter City, Città Rifugio Per I Difensori Dei Diritti Umani (Human Rights Defenders)*. Available at: <https://bit.ly/2Q36Whs>

⁸⁴ Comisión de Ayuda al Refugiado en Euskadi, 2019. *Defensoras de Derechos Humanos*. Available at: <https://bit.ly/2Q40HKm>. Comissió Catalana d'Ajuda al Refugiat, 2019. *Comienza el Programa de Protección de Defensores de Derechos Humanos*. Available at: <https://bit.ly/2K4ntxI>. Madrid Protégé, 2018. *Programa de Acogida Temporal a Personas Defensoras de Derechos Humanos*. Available at: <https://bit.ly/2Nup3es>. Metropoli Abierta, 2018. *El Ayuntamiento crea la Escuela de Defensores de Derechos Humanos*. Available at: <https://bit.ly/2O15mKC>

⁸⁵ Shelter City. *Homepage*. Available at: <https://bit.ly/2Nxi7Sb>

⁸⁶ Shelter City, 2019. *Shelter City Netherlands: Call for Temporary Relocation in 2019*. Available at: <https://bit.ly/32xKEHp>

⁸⁷ *ibid.*

internal temporary relocation to a place that is as close as possible to the area of origin is strongly advisable. If needed, it should also be widened to the beneficiary's family that in many cases risks retaliation if not relocated. Relocation needs to be considered as an option when risks are evident, with leaders needing either to leave temporarily or require some rest and respite. For all these reasons, many HRDs in Latin America actively apply the principle of 'staying in the territory' (permanecer en el territorio) with increased state and/or community protection, thus only resorting to relocation outside their territory as a last resort in cases of extreme risk.

Other relevant initiatives at the regional level are those of the Council of Europe,⁸⁸ the Organisation of the American States and the Inter-American Commission on Human Rights (IACHR) and Court⁸⁹ and the African Commission on Human and Peoples' Rights (ACPHR).⁹⁰ The ACPHR established a Working Group on Extractive Industries, Environment and Human Rights Violations in 2009.⁹¹ Discussions were facilitated in the working group between HRDs and corporations through sub-regional consultations.⁹²

In Latin America, the Organisation of American States adopted a resolution on EHRDs in 1999 that set up the Office of the Rapporteur on Human Rights Defenders; the IACHR held thematic workshops on the issue of EHRDs, one of which (held in 2015) focused on the extractive industries. It should

also be noted that the Inter-American Court of Human Rights issued an unprecedented decision on a case involving an environmental defender in Honduras in 2009 in which it condemned the state for not having protected the life and freedom of association of environmental activist Jeannette Kawas-Fernández.⁹³ The Court ordered the state to provide reparations and compensation to family members and to pursue a criminal case, in addition to publicly acknowledging responsibility for not having carried out an adequate investigation.

In October 2017, in consideration of the high level of attacks and killings of HRDs and environmental defenders in Latin American countries, the IACHR launched a joint regional initiative in partnership with the HRC with the purpose of researching the measures implemented in the countries of the region, and to collaborate in the implementation of best practices for HRD protection in Latin America.⁹⁴ This 'joint action mechanism' also anticipates joint field visits and meetings with defenders at risk.⁹⁵

Lastly, CEPAL adopted the Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean in October 2018 (otherwise called the Escazú Agreement).⁹⁶ Signed by 21 countries and ratified by 6 states as of September 2019, it is the first regional agreement that contains a specific article on environmental defenders, and as such it may be an

⁸⁸ Council of Europe. Human Rights Defenders. Available at: <https://bit.ly/2p3GIAt>

The Committee of Ministers of the Council of Europe adopted a declaration in 2008 to strengthen the role of the Council in the protection of HRDs, thereby giving mandate to the Commissioner on Human Rights and calling on Member States to support HRDs in third countries by issuing emergency visas.

⁸⁹ OAS, 2011. *Rapporteur*. Available at: <https://bit.ly/2O8epJN>

⁹⁰ African Commission on Human and Peoples' Rights. *Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa*. Available at: <https://bit.ly/2K6PpkD>

⁹¹ African Commission on Human and Peoples' Rights. *Working Group on Extractive Industries, Environment and Human Rights Violations*. Available at: <https://bit.ly/2NuBc34>

⁹² ISHR, 2015. *Defenders' work key to ensuring accountability of extractive companies in Africa*. Available at: <https://bit.ly/2NUUnUvZ>

⁹³ John H. Knox, 2017. *Environmental Human Rights Defenders: A Global Crisis*. *Universal Rights Group*. Available at: <https://bit.ly/36KGGhG>

⁹⁴ OHCHR, 2017. *UN Human Rights Office, Inter-American Commission launch joint action plan on protection of human rights defenders in the Americas*. Available at: <https://bit.ly/2O3BeOH>

⁹⁵ Ibid.

⁹⁶ Alicia Bárcena, 2019. *CEPAL insta a todos los países de América Latina y el Caribe a firmar y ratificar el Acuerdo de Escazú*. CEPAL. Available at: <https://bit.ly/2pW4sH8>

important potential precedent for the development of similar instruments in other regions.⁹⁷ Article 9 on ‘Human Rights Defenders in environmental matters’ lists the commitments that signatory states have made to ensure that defenders can operate free of “threat, restriction and insecurity.”⁹⁸ Furthermore, they have committed to take actions to recognise, promote and protect the rights of HRDs in environmental matters, and prevent, investigate and punish any attack against environmental defenders.⁹⁹ Lastly, the Agreement anticipates the establishment of an ad hoc working group that will develop an action plan to support the work of environmental defenders, which is to be presented for consideration and adoption at the second meeting of the Regional Agreement’s Conference of the Parties.

2.3 DEVELOPMENT FINANCE INSTITUTIONS AND HRDS

In spite of repeated calls to do so, there are very few cases in which Development Finance Institutions (DFIs) have adopted policies to protect or support HRDs. A recent report from the Coalition for Human Rights in Development, ‘Uncalculated risks: threats and attacks against human rights defenders and the role of development financiers’ provides an overview of 25 cases worldwide involving DFIs and HRDs,

mostly those working on projects in the extractive, infrastructures land and agribusiness sectors.¹⁰⁰

The report finds that DFIs have so far failed to take into account the social and environmental risks associated with the projects they support. This is attributed to a lack of due diligence or thorough assessments of the extent to which communities and defenders can participate in decision-making or work to defend human rights¹⁰¹. Furthermore, DFIs tend to rely exclusively on reporting from clients, and do not do on-the-ground monitoring, ignoring — in most of the cases — the initial signs of potential threat to defenders.¹⁰² Existing DFI mechanisms do not appear to be adequate to prevent attacks or threats, although some independent accountability mechanisms are now in place, aiming to tackle these shortcomings and ensure that claimants and defenders can operate in an enabling environment free of threats and intimidation.¹⁰³

The report makes a series of recommendations to DFIs, including:

- Assess and avoid potential impacts by screening projects for any risk related to defenders and human rights before approval;
- Ensure consistency, when companies are involved, of the UN General Principles on Business and Human Rights;

⁹⁷ <https://www.cepal.org/en/news/signatory-countries-escazu-agreement-will-hold-their-first-work-meeting-october-11-12-costa>

⁹⁸ *ibid.*

⁹⁹ *ibid.* “Article 9: Human rights defenders in environmental matters [Agreed] (1) Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so they are able to act free from threat, restriction and insecurity. (2) 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. (3) Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement. (4) At its first meeting, the Conference of the Parties shall: (D) establish an ad hoc working group, that will prepare a plan of action on creating an enabling environment for the work of environmental defenders, which will be presented at the second meeting of the Conference of the Parties for consideration and adoption.”

¹⁰⁰ The report contains a very useful toolkit for reprisal prevention and response process that can also be readapted for other financing institutions, investors and companies.

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ For a guide on how to address reprisals in complaints management, see: Inter-American Development Bank, 2019. *Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit*. Available at: <https://bit.ly/36QGkpN>

- Exert leverage to prevent attacks, threats and retaliation against defenders;
- Adopt a no-tolerance policy against threats to defenders;
- Stop investments in projects where there are not sufficient guarantees that communities can engage and participate, and human rights are respected.

DFIs should also carry out effective monitoring of reprisal risks and respond to threats and attacks on human rights defenders.

In this context it is worth recalling that the International Financial Corporation (IFC) took a position on retaliation against civil society in 2018 that, according to the Coalition for Rights in Development, represents an important initial step, from which concrete follow up commitments and procedures are needed.¹⁰⁴ The IFC states that it will “not tolerate any action by IFC clients that amounts to retaliation — including threats,

intimidation, harassment or violence — against those who voice their opinion regarding the activities of the IFC or its clients.”¹⁰⁵

Interestingly, the Netherlands Development Finance Company (FMO), after sustained pressure from CSOs and social movements worldwide, responded to the killing of Honduran indigenous leader Berta Caceres. Caceres had, with the Lenca people, resisted the construction of the Agua Zarca dam; FMO eventually withdrew its financial support to the project and then adopted a specific policy on HRDs.¹⁰⁶ This policy clearly states that the FMO will “not tolerate any activity by our clients that amount to the oppression of, violence towards, or any other violation of the human rights of those who voice their opinion in relation to FMO activities and the activities of our clients.” Furthermore, FMO announced its intention to develop an early warning system for risks against HRDs.¹⁰⁷

¹⁰⁴ Rights In Development, 2018. *Defenders in Development Campaign Welcomes IFC Position Statement on Reprisals*. Available at: <https://bit.ly/2Q5nGoj>

¹⁰⁵ Coalition for Human Rights in Development (USA), 2018. *Intl. Finance Corporation’s position statement on reprisals against defenders supported by key civil society coalition*. Business & Human Rights Resource Centre. Available at: <https://bit.ly/361c1ln>

¹⁰⁶ FMO, 2019. *Policies and position statements*. Available at: <https://bit.ly/36N1rcL>. FMO, 2018. *Human Rights: An integral part of our investment approach*. Available at: <https://bit.ly/36KaY4d>. In its Human Rights Progress report the FMO committed to increase pre-investment due diligence to look at risks including those towards human rights defenders. For a commentary from NGOs: Global Witness, 2017. *Dutch development takes step forward on human rights, but must do more to protect defenders*. Available at: <https://bit.ly/2NVZq5u>

¹⁰⁷ *ibid.*



3. CAN BUSINESSES CREATE A SAFE AND ENABLING ENVIRONMENT FOR EHRDS? AN OVERVIEW OF PUBLIC AND PRIVATE SECTOR INITIATIVES

Photo credit: © Waks. Title: Deforestation in Riau Province, Indonesia

3.1 SUGGESTIONS FOR IMPLEMENTING THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

It must be remembered that the UN Guiding Principles on Business and Human Rights recognise the important and valuable role played by HRDs, urging companies to consult HRDs (Principle 18) and to address the risks faced by them (Principle 26).¹⁰⁸ In light of this, companies should adhere to five baseline standards and criteria relating to: human rights due diligence; human rights policy; human rights impact assessments; human rights monitoring and reporting, and community and stakeholder consent, consultation and engagement.¹⁰⁹

In an article, Phil Lynch from the ISHR highlights the fact that companies are legally obliged by the UN Guiding Principles on Business and Human Rights and international law to respect the right to freedom of expression, assembly, association and protest, and to engage and consult defenders and communities in the design, implementation and evaluation of projects.¹¹⁰ He suggests a series of activities that responsible businesses should undertake to protect and guarantee HRDs, including partnering and supporting defenders financially, or encouraging home and host governments to consult, respect and protect defenders and to develop NAPs with references to HRDs.¹¹¹ In parallel to the development of guidance on the application of the UN Guiding Principles on

“The key elements of a safe and enabling environment for human rights defenders, and a conducive investment and operating environment for business, are closely intertwined.”

PHIL LYNCH

DIRECTOR OF THE INTERNATIONAL SERVICE FOR HUMAN RIGHTS¹¹⁰

of the HRC-led open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, the UN Special Rapporteurs and the HRC have stepped up their work on HRDs.¹¹³

In 2017 the Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, presented his report HRDs working in the field of business and human rights.¹¹⁴ In it, he highlighted that “companies belonging to land-consuming industries such as mining, agribusiness, oil, gas and coal and dam construction are the most dangerous for defenders.”¹¹⁵

Furthermore, he denounces the failure of businesses to effectively consult and apply FPIC when it comes to land: “this analysis is particularly true for land and environmental defenders, where the roots of conflict are often found in the exclusion of potentially affected communities from decisions regarding their land and natural resources. Only by guaranteeing the right of such communities to give or withhold their [FPIC], as foreseen in international agreements, can

¹⁰⁸ Michael K. Addo, 2014. *Full implementation of the Guiding Principles means protecting human rights defenders*. ISHR. Available at: <https://bit.ly/2X2RmUv>

¹⁰⁹ ISHR, 2015. *A Human Rights Defender Toolkit For Promoting Business Respect for Human Rights*. Available at: <https://bit.ly/2K6zmDr>. These are the five expectations from business listed in the ISHR toolkit for HRDs engaging the business sector.

¹¹⁰ Phil Lynch, 2015. *Business and HRDs: a safe and operating environment for all*. ISHR. Available at: <https://bit.ly/33z0xyq>

¹¹¹ *ibid.*

¹¹² Phil Lynch, 2015. *Business and HRDs: a safe and operating environment for all*. ISHR. Available at: <https://bit.ly/33z0xyq>

¹¹³ United Nations Human Rights Council, 2019. *Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*. Available at: <https://bit.ly/34Nn0rE>

¹¹⁴ United Nations General Assembly, 2017. *Situation of human rights defenders*. Available at: <https://bit.ly/2NyK8Ew>

¹¹⁵ *ibid.*

these origins of conflict be avoided. Unfortunately, consultations about business projects often take place only once key decisions have already been taken and are used simply to stage ‘approval.’ In addition, false documentation is sometimes used to illegally dispossess defenders of their land, which facilitates the selling of the land to businesses.”¹¹⁶

Forst also draws attention to the lack of existing or sufficient state-level regulatory frameworks that meet international human rights standards.¹¹⁷ In particular, he highlights the need for legislation requiring companies to publicly disclose origins of imported products and their compliance with agreed standards, including human rights norms, in relation to supply chains.¹¹⁸ He then elaborates on the duty of businesses to protect HRDs, clarifying that these responsibilities exist “independently of a state’s abilities and willingness to fulfil its own human rights obligations and over and above compliance with national legislation.”¹¹⁹

Furthermore, he notes that businesses should be responsible not only for avoiding violating the rights of EHRDs, but also for ensuring a safe and enabling environment for them to carry out their activities.¹²⁰ He also delves into the role of investors and Multilateral Development Banks, and suggests the adoption of investment criteria, exclusion lists of countries and companies with extensive track records of threats and attacks against defenders, and contractual requirements for clients to ensure that defenders can safely and publicly make grievances.¹²¹ Existing risk assessment tools such as the World Bank’s Systematic Operations Risk-Rating tool could be used for this purpose.¹²²

Finally, Forst makes a series of recommendations to states, business and investors that are worth recalling here:

- States should adopt legislation to protect HRDs;
- Ensure FPIC and full and effective participation;
- Adopt legislation requiring companies to disclose information;
- Publicly acknowledge the critical role of HRDs.

He recommends that companies:

- Carry out assessments of the situation of HRDs in the countries they operate in or want to operate in;
- Recognise and guarantee the role of HRDs as contributors in the implementation of their human rights-related commitments;
- Establish processes of remediation for adverse impacts on human rights.

The Special Rapporteur also invited the “open-ended working group on the binding treaty to host a dedicated session on the role of HRDs and how to best ensure their protection.”¹²³

UN WORKING GROUP ON BUSINESS AND HUMAN RIGHTS

Also in 2017, the UN Working Group on Business and Human Rights launched a project to develop guidance for HRDs focusing on issues involving businesses through a series of multi-stakeholder consultations.¹²⁴ It assessed the ongoing initiatives in the field, which include: “Individual companies or business organisations joining informal business networks in collaboration

¹¹⁶ *ibid.*

¹¹⁷ *ibid.*

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

¹²¹ *ibid.*

¹²² The World Bank, 2015. *Guidance Note: Systematic Operations Risk-Rating Tool (SORT)*. Available at: <https://bit.ly/2O1GuCu>

¹²³ United Nations General Assembly, 2017. *Situation of human rights defenders*. Available at: <https://bit.ly/2NyK8Ew>

¹²⁴ UN Working Group on Business and Human Rights, 2017. *Scaling up initiatives to protect human rights defenders*. Available at: <https://bit.ly/32xhuYE>

with civil society organizations to explore actions businesses can take to protect civic freedoms and HRDs; Trade association responses to specific cases of reported attacks against HRDs; Company-level policies to respect and protect HRDs; Multi-stakeholder initiatives (MSIs).¹²⁵

The three goals of the working group are:

- “Develop guidance for business on engaging, respecting and supporting human rights defenders in line with the UN Guiding Principles on Business and Human Rights as well as the role of business in preserving civic space;
- Facilitate multi-stakeholder dialogue among stakeholders with an interest in the issue, so as to develop coordinated efforts;
- Help identify and support new opportunities for collective action.”¹²⁶

An informal background note published by the UN Working Group on Business and Human Rights, ‘Human Rights Defenders and civic space: the business and human rights dimension’ noted that “while the UN Guiding Principles recognise a role for [HRDs] in corporate human rights due diligence, there is yet less practical guidance oriented toward companies, although there is movement in the right direction.”¹²⁷ It therefore suggests that “the annual UN Forum on Business and Human Rights could be used as a platform to achieve statements of commitment and support from both states and businesses.”¹²⁸

UN Working Group on Business and Human Rights has recently held two workshops on HRDs. The first, ‘HRD and civic space: the business and human

rights dimension’ took place in May 2017 and was followed by a call for written inputs by September 2017. It was attended by 40 representatives from business, CSOs, companies, the UN, and HRDs.¹²⁹

The workshop drew attention to the fact that most of the threats to EHRDs defending communities’ rights (note that EHRDs are referred to here as individuals rather than collectives) are connected to a lack of consultation in extractive or development projects.¹³⁰ Participants stressed that companies are not aware of or do not fulfil the procedures for consultations with communities, and that in some cases they use social impact assessments to identify potential troublemakers. The workshop concluded that prevention should, therefore, be prioritised; HRDs and their allies should be engaged from the very beginning of company’s operations.¹³¹

Participants also highlighted the need to ‘unpack’ and analyse issues related to EHRDs and business in relation to sectors, countries and supply chains. Furthermore, it was pointed out that HRDs “do not constitute a homogenous category, as risks and challenges vary for different groups across different contexts and situations.”¹³² HRDs suffer different types of risks and threats along a continuum of intimidation, abuse and violence, and these need to be taken into account by considering the different categories HRDs fall into, including collective and individual; women HRDs; rural HRDs; leaders of collective representative organisations; indigenous communities, and individuals who work to defend local HRDs and communities (lawyers, journalists and NGO activists).¹³³ Workshop participants suggested that “application in sector contexts should take into account

¹²⁵ *ibid.*

¹²⁶ UN Working Group on Business and Human Rights, 2017. *Human rights defenders and civic space – the business & human rights dimension*. Available at: <https://bit.ly/2roewje>

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ UN Working Group on Business and Human Rights, 2017. *Informal summary of workshop convened by the UN Working Group on Business and Human Rights*. Available at: <https://bit.ly/34LL1PU>

¹³⁰ *ibid.*

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ *ibid.*

existing tools and multi-stakeholder initiatives. Instead of reinventing the wheel, it may be more fruitful to use and harness existing initiatives and apply the lens of the human rights defenders issue on them.”¹³⁴ They also warned that challenges vary according to the sectors, and hence there is a need to engage with HRDs, since “global responses may not work for all contexts.”¹³⁵

The second workshop, ‘Scaling up initiatives to protect human rights defenders,’ was held in November 2017 alongside a discussion facilitated by several NGOs.^{136, 137} It examined the current models used to protect HRDs in the context of business operations and investments; how to address key challenges, and how to amplify existing efforts.¹³⁸ Following the workshop, a draft discussion paper, ‘Proposed elements for guidance: the role of business in relation to HRDs, in line with the UN Guiding Principles on Business and Human Rights’ was disseminated for comments by January 2018.¹³⁹ The paper identifies the key elements that will drive, going forward, their work to clarify and unpack the UN Guiding Principles on Business and Human Rights: the responsibility of states to take action to protect human rights in the context of business activities; how states and NAPs can provide guidance and enforce laws on how businesses can respect defenders’ human rights, and which actions can be taken to prevent adverse impacts.¹⁴⁰ Additionally, the discussion paper raises the question of how states, as economic actors, can use trade and financial support to encourage the respect of HRDs,

and whether states should — when providing advice or assistance — consider what impacts businesses may have on HRDs.¹⁴¹ Input was also sought to identify what adverse effects business activities can have on defenders, and in particular how business can identify, prevent, and mitigate the abuses against defenders by engaging in human rights due diligence.¹⁴² In this context, the leverage that businesses can exert, and how businesses can engage meaningfully with and consult HRDs as part of their due diligence must be considered. Finally, with respect to access to remedy, the discussion paper concludes that the guidance developed to further assist with implementing the UN Guiding Principles on Business and Human Rights should specify how states and businesses should react to defenders facing retaliation (if a defender is the subject of a criminal proceeding, or other retaliation for exercising legal rights to accessing remedy) and how businesses can engage to prevent further harm.¹⁴³

Feedback and comments were sought by January 2018, with the guidance initially intended to be made available in June 2019.¹⁴⁴ It is expected the guidance will be very general and high level, not delving into the needs of particular sectors; no specific guidance is expected on agribusiness, for instance. This potential shortcoming gives some reason for concern and should be addressed with urgency given the role of agribusiness expansion in threatening ERHDs and their access to civic space — especially considering that, as pointed out before — few agribusiness companies

¹³⁴ *ibid.*

¹³⁵ *ibid.*

¹³⁶ UN Working Group on Business and Human Rights, 2017. *Scaling Up Initiatives to Protect Human Rights Defenders*. Available at: <https://bit.ly/2WWWcTr>

¹³⁷ OHCHR, 2017. *Remedying, redressing and preventing attacks against human rights defenders working on business and human rights*. Available at: <https://bit.ly/2NU9tbc>

¹³⁸ UN Working Group on Business and Human Rights, 2017. *Scaling Up Initiatives to Protect Human Rights Defenders*. Available at: <https://bit.ly/2WWWcTr>

¹³⁹ UN Working Group on Business and Human Rights, 2017. *Draft discussion paper: Proposed elements for guidance - The role of business in relation to human rights defenders in line with the un guiding principles on business and human rights*. Available at: <https://bit.ly/2Cv9dKt>

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ Publication of guidance is still pending at time of publication.

researched in 2018 have adequate policies, guidance or due diligence methodologies for HRDs or EHRDs.¹⁴⁵

3.2 DUE DILIGENCE FOR PROTECTING THE RIGHTS OF INDIGENOUS PEOPLE

The Danish Institute for Human Rights has published a toolkit that “seeks to provide companies with operational guidance on how to ensure due diligence when operating in areas where projects may affect indigenous peoples.”¹⁴⁶ The toolkit sets out how an appropriate due diligence process involves screening; impact assessments; consultation and the full implementation and close monitoring of the process, which should be based on international standards for human rights and indigenous peoples’ rights.¹⁴⁷

3.3 DEVELOPING THE BINDING TREATY ON BUSINESS AND HUMAN RIGHTS

Concerningly, the initial zero draft of June 2018 of the Binding Treaty on Business and Human Rights did not contain any reference to human rights defenders.¹⁴⁸ Only Article 6.11 referred to the victims of abuse and violations, stating that victims, their representatives, families and witnesses should be

protected from “unlawful interference with their privacy and from intimidation and retaliation before, during and after any proceedings have been instituted.”¹⁴⁹ As has been pointed by some NGOs, this was a serious omission, one that was also reflected in the lack of reference made to the need to consult with civil society as part of the National Implementation Mechanisms envisaged in the Draft Optional Protocol to the Zero Draft.¹⁵⁰ A most recent draft makes reference to the possibility of consulting civil society in a few cases:

“Cooperate with other national institutions, foreign National Implementation Mechanisms and civil society organizations, as appropriate, to raise awareness on the implementation of the [legally binding instrument], including by:

- *Responding to enquiries by victims, business [enterprises] and the general public, as appropriate;*
- *Submitting recommendations to relevant national authorities for improving the implementation of the [legally binding instrument] and the prevention of human rights [violations] in the context of any business activities of a transnational character.”¹⁵¹*

The most recent draft of the Treaty has included references to the role of HRDs in its preambular section but not in the operative ones, containing the following: “emphasising that civil society actors, including [HRDs], have an important and legitimate role in promoting the respect of human rights by business enterprises and in preventing, mitigating and seeking effective remedy for the adverse human

¹⁴⁵ Corporate Human Rights Benchmark, 2018. 2018 *Key Findings: Apparel, Agricultural Products and Extractives Companies*. CHR. Available at: <https://bit.ly/36ILQuM>

¹⁴⁶ Birgitte Feiring, Francesca Thornberry, 2019. *Respecting the Rights of Indigenous Peoples: A Due Diligence Checklist for Companies*. The Danish Institute for Human Rights. Available at: <https://bit.ly/2Q2DRD1>

¹⁴⁷ The Danish Institute for Human Rights, 2019. *New publication provides operational guidance for companies on due diligence for projects affecting indigenous peoples*. Available at: <https://bit.ly/32zpwQS>

¹⁴⁸ OHCHR, 2018. *Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*. Available at: <https://bit.ly/2K8if4m>

¹⁴⁹ *ibid.*

¹⁵⁰ Business & Human Rights Resource Centre, 2018. *Compilation of Commentaries on the “Zero Draft.”* Available at: <https://bit.ly/36Ny7mh>

¹⁵¹ OHCHR. *Draft optional protocol to the legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*. Available at: <https://bit.ly/2X0y1lS>

rights impact of business enterprises.”¹⁵² However, this is still insufficient to align the draft to the UN Declaration on Human Rights Defenders and to the most recent resolution adopted by the HRC.

3.4 NAPS AND HRDS: AN OVERVIEW AND CRITICAL ASSESSMENT

NAPs are one of the instruments that states can use to apply, disseminate and implement the UN Guiding Principles on Business and Human Rights, and to provide a framework for action on business and human rights. These can also offer an opportunity to integrate criteria and guidance related to HRDs; however, an review of the 18 existing NAPs shows considerable variation, of which some key points are highlighted in Table 1.¹⁵³

It is worth noting here that some commentators have suggested that the NAPs might end up having limited influence and potentially even have negative impacts on domestic regulations on business and human rights, and could potentially be a deterrent for the conclusion of the negotiations for a UN Binding Treaty on Transnational Corporations and Human Rights.¹⁵⁴

The latter is due to the fact that the process of developing the NAPs has apparently been faster than the Treaty negotiations, thereby reducing the pressure to engage in a binding treaty negotiation (not incidentally most of the NAPs completed thus far are in EU countries, the staunchest opponents to the binding treaty). In addition, NAPs do not contain stringent requirements to ensure compliance through the adoption of related legislation on corporate

social responsibility or the accountability of the public sector. Rather, the NAPs propose reinforcing the OECD National Contact Points. It should be pointed out that “states have avoided fulfilling their obligations to regulate and adopt legislative measures through the adoption of NAPs...Without legal reform NAPs will potentially be ineffective to generate actual change in business conduct and have effects limited to public administration in the lack of appropriate legal frameworks.”¹⁵⁵

3.5 OECD NATIONAL CONTACT POINTS AND HUMAN RIGHTS DEFENDERS

However, NAPs could — if all the considerations above are taken into account, and legal and binding policy frameworks are adopted — offer an opportunity to develop guidance on protecting HRDs for the private sector. In order to be effective, this option will have to be made conditional on an increased commitment by those states that have not included HRDs in their NAPs to do so, and to recommend much more stringent criteria and mechanisms to ensure corporate compliance.¹⁵⁶

Other existing corporate accountability mechanisms, such as the OECD National Contact Points (NCPs) on Multinational Companies, could also be activated to call on companies to respect their obligations and responsibilities towards HRDs. A recent factsheet published by the Business and Human Rights Resource Centre and OECD Watch reports interesting figures on the percentage of complaints involving reprisals against communities: they note that at least 25% of complaints filed by NGOs or

¹⁵² OEIGWG, 2019. *Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*. Available at: <https://bit.ly/32y1w0H>

¹⁵³ All NAPs are available at: <https://globalnaps.org/>

¹⁵⁴ 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>

¹⁵⁵ Ibid.

¹⁵⁶ For more details, see: ISHR and ISHR, 2016. *Human Rights Defenders in National Action Plans on Business and Human Rights: A thematic supplement to National Action Plans on business and human rights - A toolkit for the development, implementation and review of state commitments to business human rights framework*. Available at: <https://bit.ly/2NzUUL6>

TABLE 1: REVIEW OF EXISTING NATIONAL ACTION PLANS

Belgium ⁱ	<ul style="list-style-type: none"> Briefly references HRDs
Colombia ⁱⁱ	<ul style="list-style-type: none"> Refers to business and human rights in relation to the work of the National Committee for HRDs, Social and Community Leaders Specifies that the Ministry of the Interior would organise all initiatives aimed at guaranteeing the necessary conditions so that leaders working on business and human rights can carry out their activities safely
Denmark ⁱⁱⁱ	<ul style="list-style-type: none"> Acknowledges the Danish government's interest in HRDs
Italy ^{iv}	<ul style="list-style-type: none"> Contains more general references to HRDs
Finland ^v	<ul style="list-style-type: none"> Contains more general references to HRDs
Germany ^{vi}	<ul style="list-style-type: none"> Makes reference to the need to step up commitments to the protection of HRDs when applying the UN Guiding Principles on Business and Human Rights
Ireland ^{vii}	<ul style="list-style-type: none"> Makes reference to the need to encourage Irish companies operating abroad to effectively consult with HRDs and civil society in local communities
Luxemburg ^{viii}	<ul style="list-style-type: none"> Refers to the Ministers of the Council of Europe's measures to encourage businesses to respect human rights, including HRDs^{ix}
Norway ^x	<ul style="list-style-type: none"> Makes reference to the possible necessity for companies to conduct a dialogue as part of due diligence with stakeholders, which may need to include HRDs
Spain ^{xi}	<ul style="list-style-type: none"> Makes reference to temporary relocation programmes
Switzerland ^{xii}	<ul style="list-style-type: none"> Recognises the need to ensure coherence between various policies, strategies and action plans, and makes reference to Swiss guidelines on the protection of HRDs
United Kingdom ^{xiii}	<ul style="list-style-type: none"> Makes various references to HRDs, particularly on the role that the government can play in supporting HRDs Includes advice to ensure access to remedy is available to those who feel they are victims of business-related human rights abuses, as well as stating plans to continue work with embassies, to inform companies of risks and encourage UK companies to support HRDs

i Commission Interdépartementale pour le Développement Durable. Plan d'action national. Entreprises et droits de l'homme. Available at: <https://bit.ly/36NIqXJ>

ii Colombia Avanza. Action plan on human rights and business. Available at: <https://bit.ly/2WZuV2t>

iii The Danish Government, 2014. Danish National Action Plan – implementation of the UN Guiding Principles on Business and Human Rights. Available at: <https://bit.ly/2K5OZLE>

iv Government of Italy. Italian National Action Plan on Business and Human Rights 2016-2021. Available at: <https://bit.ly/36OmStY>

v Finnish Ministry of Employment and the Economy, 2014. National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights. Available at: <https://bit.ly/33BMPLc>

vi German Federal Foreign Office, 2016. National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights 2016-2020. Available at: <https://bit.ly/36Qaeuv>

vii Irish Department of Foreign Affairs and Trade. National Plan on Business and Human Rights 2017-2020. Available at: <https://bit.ly/2qH9ib6>

viii Luxembourg Ministry of Foreign and European Affairs. National Action Plan of Luxembourg for the implementation of the United Nations Guiding Principles on Business and Human Rights. Available at: <https://bit.ly/2Q8AxWP>

ix Recently in its statement on World Environment Day the Council of Europe also made a call to respect and support the work of environmental defenders: Dunja Mijatović, 2019. Living in a clean environment: a neglected human rights concern for all of us. Council of Europe. Available at: <https://bit.ly/32B80vy>

x Norwegian Ministry of Foreign Affairs. Business and Human Rights: National Action Plan for the implementation of the UN Guiding Principles. Available at: <https://bit.ly/33y7pMw>

xi Government of Spain. National Action Plan on Business and Human Rights. Available at: <https://bit.ly/2CyeNvI>

xii Government of Switzerland. Report on the Swiss strategy for the implementation of the UN Guiding Principles on Business and Human Rights. Available at: <https://bit.ly/36RcVwO>

xiii United Kingdom Foreign and Commonwealth Office, 2013. Good Business: Implementing the UN Guiding Principles on Business and Human Rights. Available at: <https://bit.ly/36Rdqps>

communities involve reprisals.¹⁵⁷ Twenty NCPs have dealt with these cases, 65% of which are related to land-intensive extractive and agribusiness sectors.¹⁵⁸ 55% of victims were members of rural communities or indigenous groups, echoing the overall figures registered in various NGO reports on HRD.

Given these figures, it is therefore advisable that the OECD assesses the capacity of NCPs to handle and anticipate threats and reprisals to complainants or defenders, develop mitigation measures, and engage stakeholders in the development of related guidance. States and NCPs, in their turn, should — alongside other actions — “issue public guidelines on HRDs and the role of NCPs, raise awareness with Multinational Companies, ensure access to complaint mechanisms for defenders and affected communities, make human rights due diligence mandatory, ensure compliance with international human rights obligations and standards.”¹⁵⁹

In addition, it should be recalled that the OECD-FAO guidance on responsible agribusiness contains references to steps for improving companies’ compliance on business and human rights standards, and accountability towards HRDs.¹⁶⁰ However, as evidenced in the results of the first pilot assessment, these are still far from being fully implemented, and no explicit reference is made to HRDs. Including threats to HRDs in the ‘red flag’ sections of the guidance could provide a useful contribution, on the condition that the

guidance is accompanied by legislative measures by states to make them binding on companies.¹⁶¹

It is also worth noting that the OECD’s ‘Due diligence guidance for responsible business conduct,’ adopted in 2018, makes explicit reference to HRDs. It stresses that HRDs and community-based organisations may be important stakeholders to engage with, particularly when it is impossible to consult directly with rightsholders. Among other adverse impacts, the guidance also lists “involvement in reprisals against civil society and [HRDs] who speak out about, or otherwise raise potential and actual human rights impacts associated with projects.”¹⁶²

3.6 PRIVATE SECTOR INITIATIVES IN SUPPORT OF HRDS: FOCUS ON AGRIBUSINESS AND THE EXTRACTIVE INDUSTRIES

WORLD ECONOMIC FORUM

With the publishing of the World Economic Forum (WEF) Global Risks Report at Davos in 2017, the private sector made its first notable contribution on the issue of HRDs and civic space, though some transnational companies had already made commitments.^{163 164} The report acknowledges that

¹⁵⁷ OECD Watch and BHRRRC, 2019. *Use with caution: The role of the OECD National Contact Points in protecting human rights defenders*. Available at: <https://bit.ly/2qEynUb>

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ OECD-FAO, 2016. *OECD-FAO Guidance for Responsible Agricultural Supply Chains*. Available at: <https://bit.ly/2Nz2IMP>

¹⁶¹ Global Witness, 2018. *At what cost? Irresponsible business and the murder of land and environmental defenders in 2017*. Available at: <https://bit.ly/2X1qjPI>

¹⁶² OECD, 2018. *OECD Due Diligence Guidance for Responsible Business Conduct*. Available at: <https://bit.ly/2pQcOjE>

¹⁶³ World Economic Forum, 2017. *The Global Risks Report 2017*. Available at: <https://bit.ly/2NxxIT1>

¹⁶⁴ adidas, for instance, has a long-standing policy of non-interference with HRDs, and expect business partners to do the same. The company supports constructive engagement with HRDs, and protection of workers’ rights in the supply chain. It also commits to petition government when there are credible threats to HRDs and to direct action where there is clear evidence that a business partner has breached the rights of HRDs. A Third Party Complaint Mechanism is accessible to HRDs. See: adidas Group, 2016. *The adidas Group and Human Rights Defenders*. Available at: <https://bit.ly/34MRiLh>. Also see: Marks and Spencer, 2016. *Human Rights Policy*. Available at: <https://bit.ly/32Cbk9M>. And: CocaCola, 2018. *Human Rights Defenders and The Coca-Cola Company*. Available at: <https://bit.ly/2q1lgMN>

the closing of civic space and the attacks against HRDs can be detrimental to business. It also stresses that, nevertheless, there is not “much awareness among business, decision-makers and a good part of societal actors about this worrisome pattern and the ensuing risks. More investment should be put to further study this phenomenon and quantify it in terms of lost economic and social opportunities.”¹⁶⁵

In 2018, the WEF again addressed HRDs and the “shrinking space for civil society” with the publication of an article that elaborated on the concept of shared space, making a compelling case for the need for businesses to take action to defend civic space and HRDs.¹⁶⁶ The authors argue that securing a shared space “will help companies in managing operational and reputational risks, while overcoming mistrust and gaining social license to operate. By doing so companies would gain a competitive advantage.”¹⁶⁷

CRITICALLY ENGAGING WITH THE CONCEPT OF SHARED SPACE

A recent report from ISHR and the Business and Human Rights Resource Centre further elaborates on the concept of shared space. The report posits that businesses and civil society operate within, benefit from and depend upon a shared space of accountable governance. However, this approach — while potentially a useful and strategic framework for engaging with businesses — risks overlooking the asymmetries and potential unequal power relations within that space, as noted in the introduction to this report. While NGOs have traditionally been interacting with businesses in multi-stakeholder platforms (which can also be considered shared space), historically marginalised groups, communities and indigenous peoples have

find it difficult to consider sharing a space with businesses, or even participating in civic spaces that have been historically denied, especially in cases where businesses and states are responsible for the violation of rights and a high level of mutual mistrust exists between the parties.¹⁶⁸

Nevertheless, highlighting the potential convergence of interests and concerns of companies and civil society could facilitate engagement with the private sector by suggesting that HRDs can contribute towards efforts to ensure that companies do their business well. However, the report appears to limit the possible conflicts arising from corporate activities to “mistrust between elements of civil society and business especially between multinational corporations in certain industries and local communities in Global South.”¹⁶⁹ Rather, in many cases — particularly when indigenous peoples, communities or organisations are involved — the key issue is the conflict between state and business interests and the right to self-determination, rather than simple mistrust.

The report also analyses specific sectors, such as agribusiness and extractives, stressing that “the variety and severity of the threats to the shared civil society space related to the extractive industries – and at the same time the history and legacy of mistrust between companies and civil society – is approached only by the agriculture sector.”¹⁷⁰ The challenges for the extractive industries and civil society are listed as the following:

- “Security forces in conflict zones or in proximity to local communities;
- Indigenous communities’ rights to land and water resources

¹⁶⁵ World Economic Forum, 2017. *The Global Risks Report 2017*. Available at: <https://bit.ly/34Lb1Lo>

¹⁶⁶ Bennett Freeman, Mauricio Lazala and Michael Ineichen, 2019. *Why businesses are nothing without strong human rights*. World Economic Forum. Available at: <https://bit.ly/2NWqeCB>

¹⁶⁷ Ibid.

¹⁶⁸ For a very useful analysis of shrinking spaces for environmental defenders connected to resource extraction and use see: Heinrich Böll Stiftung, 2017. *Natural Resource Struggles: Shrinking spaces for civil society*. Available at: <https://bit.ly/32yk157>

¹⁶⁹ Bennett Freeman with Sif Thorgeirsson, Adele Barzelay and Brooks Reed, 2018. *New guidance for companies encourages action to support civic freedoms & human rights defenders & explores opportunities for engagement*. Business and Human Rights Resource Centre. Available at: <https://bit.ly/2CshRtf>

¹⁷⁰ Ibid.

- Environmental issues related to the degradation and depletion of water and other resources;
- Inadequate transparency and accountability of revenue and expenditure to curb corruption;
- Impunity for attacks on community leaders.”¹⁷¹

The report highlights land rights and labour rights as the key issues for agribusiness. The authors suggest that these issues are being addressed constructively through recently adopted “company policies rejecting land seizures by the Interlaken Group bringing together companies, CSOs, governments and international institutions to secure community land rights and in turn avoid conflict and violence.”¹⁷² Not discussed, however, are other key issues such as water rights and wider livelihood and food security rights.

The reframing of the concept of civic space and shared space was also at the basis of an important statement by the B-Team, an international non-profit entity that brings together CEOs, leaders and civil society organizations.¹⁷³ Its website refers to the commitment to ensure collaboration among stakeholders, and the organisation has recently published on ‘The business case for protecting civic rights.’¹⁷⁴ Business should acknowledge that limits to civic freedoms can also lead to negative results and put human rights at risk: the importance of civic rights for economic growth, therefore, should be better recognised. Businesses should take action when rights are threatened and undertake a review of freedoms of expression, assembly and association when conducting human rights due diligence. The B-Team is also among the coordinators of the Business Network on Civic

Freedoms and HRDs together with the Business and Human Rights Resource Centre and ISHR.

PUBLIC STATEMENTS FROM COMPANIES AND INVESTORS

In addition to these initiatives, eight companies and investors (Anglo-American, Unilever, adidas, ABN-Amro, Investors Alliance for Human Rights, Leber Jeweler Inc, Domini, Primark) issued a joint statement in 2018 on ‘Supporting civic freedoms, [HRDs], and the rule of law.’ This statement stresses that the obligation to respect human rights and HRDs lies within the responsibilities of states, businesses and investors alike. The signatories recognise the role of defenders in assisting companies in identifying risks, encouraging due diligence and offering remedy, and announced their intention to look into ways to strengthen their policies and practices to ensure that they respect and do not intrude upon the activities of civil society and HRDs.

In June 2019, leading global business association Amfori (formerly Foreign Trade Association) also made a public statement in support of human rights defenders.^{175, 176} Other companies engaged in the extractive sector — such as Vattenfall and Barrick Gold — have made statements on HRDs.¹⁷⁷

INITIATIVES FROM INDUSTRY BODIES

At its 2019 Annual Meeting the International Corporate Accountability Roundtable (ICAR) discussed the situation of environmental defenders,

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ The B Team. *Website homepage*. Available at: <https://bteam.org/>

¹⁷⁴ Annabel Lee Hogg and Robin Hodess, 2018. *The Business Case For Protecting Civil Rights*. The B Team. Available at: <https://bit.ly/2KSUs56>

¹⁷⁵ “As the leading global business association for open and sustainable trade, we bring together over 2,000 retailers, importers, brands and associations from more than 40 countries. Our membership contains organisations of all sizes and all sectors with a combined turnover of more than one trillion euros.” amfori, *Website homepage*. Available at: <https://www.amfori.org>. See also: amfori. *amfori BSCI Code of Conduct*. Available at: <https://bit.ly/2NArmGk>

¹⁷⁶ amfori, 2019. *Leading global business association amfori releases statement in support of human rights defenders*. BHRRC. Available at: <https://bit.ly/2K67LCm>

¹⁷⁷ Barrick Gold. *Human Rights Policy*. Available at: <https://bit.ly/34MyonH>. Vattenfall, 2017. *A Human Rights Risk Assessment in Colombia: Vattenfall's efforts on coal supply chain responsibility*. Available at: <https://bit.ly/33BQHMH>. For a list of policy statements on Human Rights Defenders and related resources, see: BHRRC. *Policies & statements on Human Rights Defenders & civic freedoms by companies & investors*. Available at: <https://bit.ly/2K82fPI>

focussing in particular on the palm oil sector, corporate due diligence, emerging legislative and regulatory measures, and mandatory due diligence proposals.¹⁷⁸ Participants highlighted that the use of the EU non-financial reporting directive at the national level had worked well for conflict minerals, and that engagements with investors would have to be stepped up.¹⁷⁹ ICAR members pointed out that protection of defenders should be a top priority, starting with those affected by agribusiness operations, including palm oil development.¹⁸⁰ The priorities for action identified range from corporate engagement to help improve host country laws to ensuring that corporate due diligence methods and practices to identify threats improve.¹⁸¹ Additionally, home trade and investment regulations and investor policies for investments in palm oil sector should be considered.

Previously, ICAR and the Due Process of Law Foundation had developed specific guidance on the extractive industries and human rights.¹⁸² The guidance is aimed at states and stakeholders with the purpose of evaluating the impacts of extractive projects within the framework of NAPs.¹⁸³ Two tools are proposed: an ‘extractive and NAPs checklist’ to assess the incorporation of human rights issues and protections relevant to the extractive industries,

and an ‘extractive and NAPs baseline assessment template,’ to assess human rights protections in relation to extractive projects and priorities for action.¹⁸⁴ The guidance acknowledges the need to ensure that HRDs are consulted in the NAP process, that they can operate in an environment free of risk or threats and that the results of the consultation are taken into due account.¹⁸⁵ It suggests that third party verification of risks may reduce threats to defenders and communities.¹⁸⁶

The International Council on Mining and Minerals (ICMM) has also begun to engage in the debate on how defenders can be acknowledged and protected. In an article from 2018, ICMM’s Director of Environmental Stewardship and Social Progress Nicky Black stated that organisation is calling “on the relevant government authorities to take necessary action to protect the life and dignity of human rights leaders and defenders as part of a state’s duty to protect human rights. This includes cases where [HRDs] oppose projects of direct interest to our members. Responsible mining companies reject harassment, threats and attacks against those who promote and protect human rights. They also recognise that restricting the legitimate right of defenders to express their concerns runs counter to creating long term value,

¹⁷⁸ ICAR, 2019. *ICAR 2019 Annual Meeting Report Summary*. Available at: <https://bit.ly/2CtuW5q>

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² ICAR and DPLF, 2017. *Extractives and National Action Plans on Business and Human Rights. A thematic supplement to ‘National Action Plans on Business and Human Rights Toolkit: 2017 Edition.’* Available at: <https://bit.ly/36Qz65b>

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid. See: “HRDs often face significant risks to their lives and livelihoods; they often work under threats of abductions, surveillance, intimidation, destruction of sources of livelihood, violence, enforced disappearance, and death as a result of their efforts to defend human rights in the face of harmful business activities. The recent global downturn in mineral prices may serve to exacerbate this situation even further, as States become even more desperate to push projects forward to increase foreign direct investment and the creation of revenues and reduce perceived obstacles, such as social and environmental regulations. As such, not only is it crucial to ensure that human rights defenders are consulted throughout the NAP process, but that their participation is facilitated in a way that enables them to engage in a manner that does not put their lives or safety at risk and ensures that the results of consultation are genuinely taken into account by all parties. Third party observation of consultations may help to reduce the risk for defenders and communities.”

enabling ethical conduct, fostering inclusive economic growth and supporting the rule of law.”¹⁸⁷

Nevertheless, HRD-related criteria and commitments still need to be mainstreamed in ICMM instruments and guidance for members. For instance, membership of ICMM requires a commitment to ten principles, including one on human rights. According to this principle, member companies are — amongst other things — expected to adopt policy commitments on human rights, undertake human rights due diligence, ensure access to remedy, respect the rights, culture and livelihoods of indigenous peoples and ensure FPIC is sought.¹⁸⁸ No explicit reference is made to HRDs, but this gap could be filled as part of the ongoing elaboration and implementation of guidance to help members in the validation of performance expectations. A pilot phase will be carried out in the second half of 2019. Reference to HRDs can be found in an ICMM publication from March 2019 but are only included as “reasonable alternatives” to be considered where direct consultation with communities is not possible.¹⁸⁹

The Extractive Industry Transparency Initiative (EITI) has started to discuss the importance of ensuring the civic space for civil society and preventing restrictions on and harms to fundamental rights.¹⁹⁰ Accordingly, the EITI has adopted a Civil Society Protocol and Guidance on Civil Society Engagement in the EITI with a relevant validation process.^{191 192} Furthermore, the EITI Global Standard for the Good Governance of Oil, Gas and Mineral Resources has been revised, and was published in June 2019.¹⁹³ While it deals mostly with transparency on tax evasion, corruption and illicit financial flows, in a section on civil society engagement it recalls the Civil Society Protocol, which mandates that “the fundamental rights of civil society substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, must be respected.”¹⁹⁴ Additionally, it notes that “the government must refrain from actions which result in narrowing or restricting public debate in relation to implementation of the EITI” and that “stakeholders must be able to operate freely and express opinions about the EITI without restraint, coercion or reprisal.”¹⁹⁵

¹⁸⁷ Nicky Black, 2018. *Space for civil society is critical for business: Human Rights Defenders must be protected*. ICMM. Available at: <https://bit.ly/32A2KZg>

¹⁸⁸ “Principle 3: Respect human rights and the interests, cultures, customs and values of employees and communities affected by our activities - Support the UN Guiding Principles on Business and Human Rights by developing a policy commitment to respect human rights, undertaking human rights due diligence and providing for or cooperating in processes to enable the remediation of adverse human rights impacts that members have caused or contributed to...Respect the rights, interests, aspirations, culture and natural resource- based livelihoods of Indigenous Peoples in project design, development and operation; apply the mitigation hierarchy to address adverse impacts and; deliver sustainable benefits for Indigenous Peoples. Work to obtain the free, prior and informed consent of Indigenous Peoples where significant adverse impacts are likely to occur, as a result of relocation, disturbance of lands and territories or of critical cultural heritage, and capture the outcomes of engagement and consent processes in agreements.” ICMM, 2018. *Performance expectations*. Available at: <https://bit.ly/2K9Rg8i>. For an analysis of risks to women human rights defenders and human rights obligations for extractive sector, see: Inmaculada Barcia, 2017. *Women Human Rights Defenders Confronting Extractive Industries: An Overview of Critical Risks and Human Rights Obligations*. AWID and Women Human Rights Defenders International Coalition. Available at: <https://bit.ly/2CxZOSp>

¹⁸⁹ ICMM, 2012. *Human rights in the mining and metals industry: Integrating human rights due diligence into corporate risk management processes*. Available at: <https://bit.ly/34MKVrq>. It is also worth pointing out that a group of NGOs addressed the London Metal Exchange in July 2019 to advocate for adoption of stringent human rights due diligence and criteria on HRDs in its responsible sourcing roadmap; for more information, see: Global Witness, 2019. *Global Witness statement on London Metal Exchange consultation on responsible sourcing roadmap*. Available at: <https://bit.ly/2NXUgWz>

¹⁹⁰ EITI, 2019. *Tricky but crucial – Assessing civic space in extractives*. Available at: <https://bit.ly/2Cy2wHz>

¹⁹¹ EITI, 2015. *EITI Protocol: Participation of civil society*. Available at: <https://bit.ly/34P127P>

¹⁹² Ibid.

¹⁹³ EITI, 2019. *EITI Standard 2019*. Available at: <https://bit.ly/2K86ESK>

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

EITI standards for transparent mineral supply chains complement the OECD Standards for Responsible Supply Chains of minerals from conflict-affected and high-risk areas.¹⁹⁶ While the latter does not include specific reference to HRDs and human rights due diligence, it is worth recalling that the OECD is in the process of developing a Portal for Supply Chain Risk Information, expected to be made available online in 2019, that will contain information on 38 different mineral supply chains and various risks, including those connected to human rights abuses.¹⁹⁷ If it draws on reliable and validated information, this tool might prove to be helpful in informing investors of the situation on the ground and on related risks. It is advisable that the portal includes a section on risks specific to the agribusiness sector (in accordance with the OECD-FAO guidance on responsible agribusiness) as well as information on risks for human rights and environmental defenders.

INITIATIVES ON AGRIBUSINESS

In 2018, the Roundtable on Sustainable Palm Oil (RSPO) adopted a policy on HRDs.¹⁹⁸ The policy only describes HRDs as individuals, groups or associations; there is no direct recognition of the collective nature of communities as defenders of the environment. The text puts much emphasis on instruments to ensure that complaints about RSPO activities can be lodged safely, reaffirming a zero-tolerance policy against threats, intimidation and reprisals against HRDs. RSPO members are required to have a policy in place to prevent reprisals against and protect HRDs that file complaints and are also asked to carry out Human

Rights Risk and Impact Assessments. In addition, it is recommended that members adopt formalised standard operating procedures to ensure that attacks are prevented; that HRDs are protected; and that HRDs have access to remedy and grievance mechanisms. Members are furthermore asked to develop stand-alone policies to protect HRDs, and ensure that these policies include “a safe and independent grievance mechanism.”¹⁹⁹ Additionally, the RSPO Secretariat’s Investigation and Monitoring Unit can investigate claims of threats and harassment made against HRDs in the context of RSPO members’ activities.²⁰⁰

In an unprecedented move, 56 investors joined a call to support RSPO sustainable palm oil policy within the UN Principles for Responsible Investment (UN-PRI) framework.²⁰¹ The pledge, developed by the PRI Investors Working Group on Sustainable Palm Oil, centres around the commitment to ensuring that palm oil production involves “no deforestation, no peat, [and] no exploitation.”²⁰² Given the increasing concern voiced by investors on the impacts of retaliation and shrinking of civic space, it would be advisable to expand the policy to also include a commitment to no retaliation.

Within the agribusiness sector, Cargill and Unilever are — at least on paper — leading the way on policies and practices to ensure respect of HRDs.

Cargill’s Human Rights Commitment includes provisions to respect and support communities, implement FPIC and the FAO Voluntary Guidelines on Responsible Tenure of Land, Fisheries and

¹⁹⁶ OECD, 2018. *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals From Conflict-Affected and High-Risk Areas*. Available at: <https://bit.ly/2NRWF4U>

¹⁹⁷ OECD. *OECD Portal for Supply Chain Risk Information*. Available at: <https://bit.ly/34P1pPL>

¹⁹⁸ RSPO, 2018. *RSPO Policy on Human Rights Defenders, Whistleblowers, Complainants and Community Spokespersons*. Available at: <https://bit.ly/2X1Bjfy>

¹⁹⁹ Ibid.

²⁰⁰ In March 2019 RSPO established the RSPO Human Rights Defenders hotline where complaints can be lodged by at-risk individuals: <https://rspo.org/about/contact/hrd-hotline-eng>

²⁰¹ UN-PRI, 2019. *Fifty-six investors sign statement on sustainable palm oil*. Available at: <https://bit.ly/2CwoRFp>

²⁰² Ibid.

Forests.^{203, 204} In a statement, Cargill affirmed that it will “not tolerate any form of retaliation towards internal or external stakeholders such as employees, local communities and activists, including retaliation resulting from decisions undertaken by Cargill through our grievance procedure. Actions of such nature will lead to the termination of contracts.”²⁰⁵

This statement was made after a complaint filed by a group of international and Guatemalan NGOs denounced the violation of Cargill’s sustainable palm oil policy by Guatemalan palm oil company Reforestadora de Palmas del Petén, S.A (REPSA). After REPSA failed to show meaningful progress in its implementation of the recommendations delivered after the complaint, Cargill finally decided to suspend the supply contract with the company.²⁰⁶

As mentioned above, the other notable agribusiness company that has developed policies and procedures to support HRDs is Unilever. In its human rights policy, Unilever recognises that HRDs are under increasing attack, and states that it will adopt a no tolerance policy towards attacks and threats made against defenders in the context of their activities and operations.²⁰⁷ Furthermore, Unilever has adopted a Responsible Sourcing Policy (which

applies to suppliers) and a Responsible Business Partner Policy, which are implemented together with the company’s Sustainable Agriculture Code and Sustainable Palm Oil Sourcing Policy.

According to Unilever, in 2018 as many as 20,000 suppliers of high-risk commodities were registered; as of 2019, the company will source only from suppliers compliant with the requirements set out in the Responsible Sourcing Policy. It should be noted that in the policy, Unilever includes the protection and promotion of land rights; it states that the “land rights of communities, including indigenous peoples, will be protected and promoted” and that “the rights and title to property and land of the individual, indigenous people and local communities are respected. All negotiations with regard to their property or land, including the use of and transfers of it, adhere to the principles of [FPIC], contract transparency and disclosure.^{208, 209} However, the policy only makes some reference to retaliation and does not explicitly refer to HRDs and Unilever’s commitments to them, as outlined in their human rights policy.

Suppliers and business partners are expected to complete a self-assessment questionnaire and report on their compliance with Unilever’s human rights

203 Cargill, 2019. *Cargill Commitment on Human Rights*. Available at: <https://bit.ly/34N3KdZ>

204 The Interlaken group guidance on the application of the FAO VGGT could also be extended to HRDs in particular to help prevent threats to EHRDS; see: Global Witness, 2018. *At what cost? Irresponsible business and the murder of land and environmental defenders in 2017*. Available at: <https://bit.ly/2X1qJPI>

205 Stephen Daniells, 2018. Cargill suspends business with Guatemalan palm oil supplier. Food Navigator. Available at: <https://bit.ly/2CxLfd>. See also: Friends of the Earth United States, 2017. Analysis of Grievance Log Posted in July 2017 by Reforestadora de Palma, A.C. (REPSA). Available at: <https://bit.ly/2Cyslay>

206 Friends of the Earth, 2017. *Agribusiness Giant Cargill Suspends Contract With Controversial Guatemalan Palm Oil Producer Over Environmental and Human Rights Violations*. Available at: <https://bit.ly/2qj556j>

207 “Supporting human rights defenders. A wide range of individuals and organisations are engaged in the global effort to advance human rights. We recognise that there is increasing pressure and insecurity for human rights defenders, including trade unionists. We’re committed to supporting them. Human rights defenders. We do not tolerate threats, intimidation, physical or legal attacks against human rights defenders in relation to our operations.” Unilever. *Working with others on human rights*. Available at: <https://bit.ly/2X0fqHL>

208 “Implementation of Mandatory Requirements: A zero land grabbing policy is implemented. Where applicable, due diligence is undertaken to uphold individual or indigenous peoples’ established rights to property and land. Where applicable, periodic training on FPIC is provided to all relevant staff members. There is zero tolerance of land grabbing within the supply chain and this is stated in the suppliers’ code of conduct (or equivalent). Land rights of communities, including indigenous peoples, will be protected and promoted. Achieving and maintaining best practice. Impact assessments are conducted with full participation of affected communities and published in a format and language accessible to those affected communities. The assessment data is disaggregated by gender, national origin, tribe or caste. A public commitment is made to actively support responsible agricultural investments, the UN Voluntary Guidelines on the Responsible Governance of Tenure and full traceability.” Unilever, 2017. *Unilever Responsible Sourcing Policy: Working in Partnership With Our Suppliers*. Available at: <https://bit.ly/32xjxHB>

209 Ibid.

and sustainable sourcing policies. This presents major challenges: there is a pressing need for Unilever to adopt mechanisms to ensure that risk assessments are robustly validated and reference ground truth data.

3.7 THE ROLE OF INVESTORS IN PROTECTING HRDS

Investors and the financial sector are lagging behind in incorporating due diligence into their operations and risk assessment procedures, as was evidenced by the last meeting of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (held during the Seventh UN Forum on Business and Human Rights in November 2018). Participants discussed the extent to which due diligence is embedded into management systems and the quality of human rights assessments.²¹⁰ They stressed that a high percentage of impact assessments are carried out without the engagement of affected parties and are effectively a superficial ‘tick box’ exercise.²¹¹

One reason for the slow progress of investors — and development financiers — in implementing the UN Guiding Principles on Business and Human Rights is that there is a disconnect between the information provided by companies and that coming from the ground; there are few ‘platforms’ to ensure exchange between investors, HRDs, community organisations, local civil society and international human rights organisations. In many cases, affected rightsholders,

local organisations and NGOs hold vital information on land and resource conflicts, rights abuses, state corruption, illegal resource use, violence, intimidation and environmental damage linked to companies. Regrettably, much of this information is not accessed by, or is treated with scepticism by, corporate due diligence teams or the consultants contracted to ensure supplier compliance. This disconnect needs to be closed as soon as possible if companies and investors are to meet their public commitments on human rights and environmental defenders.

It is, however, positive that some investor groups have made public statements on the need to ensure human rights due diligence and respect for HRDs. For instance:

The Investors Alliance for Human Rights (which is promoted by the Interfaith Center for Corporate Responsibility, and groups together 101 institutional investors representing USD\$2 trillion in assets) suggests that “investors and financial institutions should withhold approval for investment where impact assessments reveal serious threats to civic freedoms and defenders, and develop guidelines that clearly communicate that reprisals against defenders will not be tolerated.”²¹² The Alliance issued a strong statement in support of leaders and defenders — including Victoria Tauli Corpuz, UN Special Rapporteur on the Rights of Indigenous Peoples, Joan Carling and Joanna Cariño — who were placed on a ‘red list’ by Rodrigo Duterte’s administration for their supposed links with guerrilla groups.²¹³

²¹⁰ UNGA, 2018. *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/73/163*. Available at: <https://bit.ly/34SS61d>

²¹¹ Ibid.

²¹² Investor Alliance for Human Rights. *Human Rights Defenders*. Available at: <https://bit.ly/2p589d3>

²¹³ The statement on HRDs contains a series of useful recommendations for companies and investors: “Companies should: assess the situation of civic freedoms and human rights defenders in the countries in which they operate, identifying gaps between international standards and national laws and practice; ensure that their policy commitments on human rights reflect the critical role that defenders play in bringing human rights issues to their attention and address the risks they face in doing so; actively engage with defenders and grass-roots civil society organizations in the elaboration of their human rights policies; establish and implement processes for the remediation of adverse human rights impacts arising in any area of operations. Financial institutions should: include in ex ante impact assessments and analysis of the state of civic freedoms in the country of investment as well as the lender’s track record of engaging with defenders; withhold approval for investment where impact assessments reveal serious threats to civic freedoms and defenders at the country or local level; develop guidelines that clearly communicate that criticism of activities financed by the institution is an important part of improving the impacts of development efforts and that reprisals against defenders will not be tolerated; disclose all end users of financial intermediary loans and ensure that they bring their projects into line with safeguard requirements and human rights, whichever sets the higher standard, or stop lending to high-risk clients.” Investor Alliance for Human Rights. *Investor Statement of Concern on the Increasing Harassment and Attacks on Human Rights Defenders*. Available at: <https://bit.ly/2NXdqf7>

Platform Living Wage Financials is a coalition of 11 financial institutions, based in the Netherlands, and organises meetings to facilitate dialogue with HRDs.²¹⁴

As part of CHRB’s 2018 report, investor members, together with 85 asset owners and managers overseeing a total USD\$5.3 trillion in assets under management, published a statement in support of the UN Guiding Principles on Reporting Framework.²¹⁵ After having written to all the

companies screened in the report, they expressed concern at what they “believe is insufficient progress towards implementing international human rights norms, as well as managing and mitigating human rights-related risk.”²¹⁶ They noted that investors expect companies to demonstrate respect for human rights in their activities and those that do not “may face legal, operational, and reputational risks which can negatively affect the performance of our portfolio holdings.”²¹⁷

²¹⁴ Platform Living Wage Financials, *Website*. Available at: <https://bit.ly/32DsRhL>

²¹⁵ UN Guiding Principles Reporting Framework. *Website homepage*. Available at: <https://www.ungpreporting.org/>

²¹⁶ CHRB, 2018. *Corporate Human Rights Benchmark 2018 Key Findings: Apparel, Agricultural Products and Extractives Companies*. Available at: <https://bit.ly/34Np9nh>

²¹⁷ The note then lists the CHBR investors’ expectations on human rights. Companies are expected to: “acknowledge publicly their responsibility to respect human rights and formally incorporate this into publicly available statements of policy. Include oversight of human rights-related risks as part of the Board’s responsibility. Embed human rights policy commitments in management systems, business operations and stakeholder engagements. Implement due diligence processes to assess and address human rights risks. Provide remedy in addressing actual adverse impacts on human rights. Ensure that appropriate processes are in place so that grievances may be addressed early and remediated directly where appropriate. Maintain management systems to respond to severe and substantiated allegations. Take appropriate action to address impacts under the UN Guiding Principles where a Company identifies that they have caused or contributed to adverse human rights impacts. Assess and report on how human rights risk is material to their own operations and across their business operations and value chain. Consult with stakeholders and seek third-party expertise on human rights issues and risks. Report on human rights policy commitments and due diligence processes and specific issues, considering the UN Guiding Principles Reporting Framework as well as CHRB criteria on a sector-specific basis.” For more information, see: CHRB, 2018. *Corporate Human Rights Benchmark 2018 Key Findings: Apparel, Agricultural Products and Extractives Companies*. Available at: <https://bit.ly/34Np9nh>

CASE STUDY

INTIMIDATION AND VIOLENCE AGAINST HUMAN RIGHTS AND ENVIRONMENTAL DEFENDERS IN COLOMBIA

In 2019 Colombia has been declared the third most dangerous country in the world for women defenders of agricultural, territorial and environmental rights.¹ In fact, in 2019, there has been a notable increase in violence. For example, in only the first quarter of the year attacks against women defenders increased by 97%, compared to the same period in 2018 (a year in which there were 24 homicides² and other crimes against women land and environmental defenders).³ There has also been an increase in violence against human rights defenders: between the 1st of January and the 30 of October 2019, 186 human rights defenders were killed,⁴ the highest number in 10 years.⁵ Killings are the worst manifestation of the very intricate web of violence and intimidation used against defenders, both men and women. In 2018, Somos Defensores recorded 4 forced disappearances, 4 detentions, 19 unjust prosecutions trying to “criminalise” defenders, 34 attacks, 6 cases of information theft, and 583 threats against human rights defenders. The various forms of intimidation include: abuse on social media and false accusations of collaboration with illegal armed groups, theft of information, interception of communications, stalking by vehicles without a registration plate, and written or digital threats directed at defenders or their relatives - which include declaring them as “military

targets”. There are also written threats directed at entire communities, where every single household receives threatening pamphlets under their doors (e.g. communities in Montes de María, Bolívar in 2019).

All these acts constitute widespread or systematic attacks, mainly directed against those who publicly denounce companies or armed groups - legal or illegal - involved in unjust, illegal or criminal trade and activities. These activities include land trafficking, land grabbing, illegal deforestation, environmental damage, forced eviction, trafficking of drugs, people and/or contraband. Similarly, community and civil society leaders who oppose mega infrastructure projects (dams, highways) are subject to intimidation, criminalisation, and violent repression by the state and companies (e.g. El Quimbo and Hidroituango dams).

As a result, land claimants figure among the most affected groups, including indigenous and Afro-descendant leaders who opposed the agro-industrial, mining or forestry companies - legal or illegal - in defence of their rights and collective territories. President Iván Duque has been in power for only one year and two months. During this short time, 125 indigenous people have been killed,⁶ which represents 50.6% of the defenders murdered during this period (247 victims), in a country where indigenous peoples make up just 4.4% of the population. For these reasons, groups like the National Indigenous Organisation of Colombia (ONIC, or Organización Nacional Indígena de Colombia) state that Colombia is currently

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- 1 OXFAM, 2019. Women defenders of agricultural, territorial and environmental rights in Colombia. Risking their lives for peace. Available at: <https://bit.ly/2phL2fB>
 - 2 Global Witness, 2019. Enemies of the State? How governments and business silence land and environmental defenders. Available at: <https://bit.ly/2NLLPDN>
 - 3 OXFAM, 2019. Women defenders of agricultural, territorial and environmental rights in Colombia. Risking their lives for peace. Available at: <https://bit.ly/2phL2fB>
 - 4 INDEPAZ, 2019. Mapa de homicidios de defensores y defensoras de DDHH.
 - 5 PROGRAMA SOMOS DEFENSORES, 2019. Clockwork Orange. Available at: <https://bit.ly/2NMv0UI>
 - 6 ONIC, 2019. Que pare el genocidio indígena en Colombia YA. Available at: <https://bit.ly/33L3fkv>. RCN, 2019. En el gobierno de Iván Duque, han asesinado a 83 indígenas: INDEPAZ. Available at: <https://bit.ly/2KyKLwj>

suffering a genocide.¹

A direct relation between violence against defenders and land and socio-environmental conflicts is evident in Colombia. During 2019, 129 environmental conflicts are active,² with many being related to the violation of land rights and free, prior and informed consent rights in ethnic territories, as well as conflicts related to water pollution and loss of community access to water.³ Many conflicts are associated with the reported presence of paramilitary and armed groups, with communities claiming that these groups “control the economy and the political system at a regional level” (campesino leader from the Bajo Atrato, 2019). Conflicts are concentrated in areas where the agricultural and extractive frontier is expanding, often enabled by public policies promoting the cultivation of oil palm (throughout the country), sugar cane (in Cauca) and other monocultures (banana, yucca and pineapple) in Chocó and elsewhere, along with large-scale tree plantations (teak, eucalyptus, pine etc.), for example in Bolívar, Santander and Caldas. Other conflicts are associated with the legal and illegal extraction of oil, gold, emeralds, nickel and coal.⁴

The underlying causes of violent environmental and social conflicts in the country are often root-

ed in: 1) extremely slow and ineffective judicial and administrative mechanisms to resolve land conflicts; 2) the imposition and overlapping of mining titles and large oil and gas concessions on territories of indigenous peoples and Afro-descendants, and the lands of campesinos;⁵ 3) defective laws to ensure just and speedy restitution of lands; 4) the absence of the rule of law in isolated rural areas where deforestation, cattle ranching, monoculture and illicit crops are advancing; 5) corruption in state agencies responsible for law enforcement and land administration; 6) abuse of judicial processes allowing the criminalisation of social leaders restrictions on their access to justice;⁶ 7) the collusion between state entities and private businesses, as well as criminal and paramilitary groups, which leaves crimes against defenders unpunished; 8) public policies which exacerbate historical land conflicts instead of seeking conflict resolution;⁷ 9) stigmatisation of social leaders and land defenders as subversive actors, “opponents of national development” and anti-poor;⁸ and 10) flawed implementation mechanisms for the 2016 Peace Accords that exacerbate territorial conflicts and drive the expansion of the illegal economy in rural and urban areas.⁹

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- 1 ONIC & CNMH, 2019. Tiempos de vida y muerte. Memorias y luchas de los pueblos indígenas en Colombia. Available at: <https://bit.ly/2rHyYVL>
 - 2 Environmental Justice Atlas. Available at: <https://ejatlas.org/country>
 - 3 Camila Taborda, 2019. Colombia es el país con más conflictos ambientales del mundo: Gloria Amparo Rodríguez. El Espectador. Available at: <https://bit.ly/2rjiKeP>
 - 4 OXFAM, 2019. Women defenders of agricultural, territorial and environmental rights in Colombia. Risking their lives for peace. Available at: <https://bit.ly/2phL2fB>
 - 5 See: José Alvear Restrepo Lawyers Collective and the Observatory for the Protection of Human Rights Defenders FIDH-OMCT, 2017. Defending the land and the environment where extractive companies are engaged. Available at: <https://bit.ly/2CH3JML>
 - 6 See: Mariá Hernández Cárcamo, 2019. Defender la tierra, otra de las causas por las que asesinan a líderes sociales. El Espectador. Available at: <https://bit.ly/2QfX3gt>
 - 7 Resumen Latinoamericano, 2017. Colombia. Cuatro causas que tienen en alto riesgo a defensores de DDHH. Available at: <https://bit.ly/2XaE0FK>
 - 8 See: Colombia en Transición, 2019. Estigmatización y ausencia del Estado, causas de los asesinatos contra líderes. El Espectador. Available at: <https://bit.ly/32GMA09>
 - 9 See: Carrillo Flórez F et al, 2018. ¿Cuáles son los patrones? Asesinatos de Líderes Sociales en el Post Acuerdo, Universidad Nacional de Colombia, CINEP/PPP, ASCAMCATI, IEPRI, Comisión Colombiana de Juristas, Confederación Acción Comuna, Coordinación Colombia Estados Unidos, Programa por la Paz, Programa Somos Defensores, Movimiento Ríos Vivos, Bogotá. Available at: <https://bit.ly/2QdlZFv>

A Baka woman in a yellow and red patterned dress is speaking at a community training in Cameroon. She is looking upwards and to the right, with her right hand extended. In the background, several other people are seated, including a man in a light blue shirt and a woman in a green shirt. The setting appears to be an indoor space with wooden walls and a ceiling with recessed lighting.

4. THE WAY FORWARD: “WE ARE PROTECTORS NOT PROTESTORS”

Photo credit: © Forest Peoples Programme. A Baka woman in Djoum-Mintom speaks up at a community training, Cameroon.

People attending the indigenous peoples' camp at Standing Rock against the development of the Dakota Access Pipeline saw "we are protectors not protestors" written across various signs and banners.

The statement is a good starting point for reconsidering the protection of HRDs and environmental defenders. Current mainstream approaches are centred around achieving the recognition of key human rights, such as the freedom of expression and association. However, while this approach may be appropriate when supporting individual activists or leaders, evidence suggests that something has to change to tackle the growing threats to communities and peoples. Groups living in resource-rich and highly ecologically sensitive areas have often faced conflicts, historical and current.

The expansion of the extractive frontier (the UN reports that since 1970 the extraction of materials has increased three-fold, with subsequent major loss of biodiversity and increase in greenhouse gas emissions) and the concurrent shrinking of civic space for civil society and communities alike requires a bold step forward in strategies and tactics to end the 'silent war' against peoples and communities, in particular in the Global South, where the consequences for speaking out are more severe, the social and ecological impacts more catastrophic and the number of lives lost is increasing.^{218, 219}

A first step would be to acknowledge that the growth in the scale of repression, threats and criminalisation is not only due to the expansion of agribusiness and the extractive industries (in the context of government inaction or impunity) but also to the growing engagement of communities and peoples in defending their land and, in turn, the cultural, economic and biological diversity of the Earth as a whole. In conjunction with the defence of fragile ecosystems and fundamental human

rights, defenders are seeking to protect their (often distinct) ways of life, their local economies and their collective identities that are rooted in their land.

It is highly contradictory that indigenous peoples are now officially recognised by the UN system (under the Convention on Biological Diversity and the UN Framework Convention on Climate Change) for their key roles maintaining biodiversity and adapting to and mitigating climate change, yet increasingly today they end up by being criminalised, harassed and killed due to their commitment to protecting their lands, territories, forests, waters and other natural resources. Again, there is a stark gap between the international norms and agreements on the rights and roles of indigenous peoples and local communities, and the realities of abuse and injustice they face.

We must move away from the representation of defenders as 'victims' or 'heroes' and recognise, rather, that they are the expression of communal efforts (of many community members and often many likeminded communities) and collective determination and actions to defend local community lands and livelihoods and ensure the respect of human rights, both individual and collective.

Making states accountable and companies responsible for upholding international human rights standards and obligations will require effective, people-based policies and interventions. These should be based on a holistic, multidimensional approach including key concepts, such as 'security,' 'protection,' 'self-protection,' 'Human Rights Defender,' 'community-based prevention' and 'access to justice.'²²⁰ Mainstreaming sensitivity to the particular challenges faced by women HRDs will also be crucial.

In a global overview of current initiatives on HRDs published in 2016, UN Special Rapporteur on Human Rights Defenders Michel Forst called on the

²¹⁸ UNEP, 2017. *With resource use expected to double by 2050, better natural resource use essential for a pollution-free planet*. Available at: <https://bit.ly/2pPUnEY>

²¹⁹ Inés M. Pousadela and Asmara Klein. *Against all odds: The perils of fighting for natural resource justice*. CIVICUS and Publish What You Pay. Available at: <https://bit.ly/2Cy1Qlv>

²²⁰ "Protection practices should focus on strengthening the security of defenders in a holistic manner. Security should not be defined as physical security alone, but should be understood as encompassing multiple dimensions, including economic security, political security, environmental security, digital security and psychosocial well-being." UN Special Rapporteur on the situation of human rights defenders, 2016. *Report on the situation of human rights defenders*. Available at: <https://bit.ly/2NydHQ>

international community to take a zero-tolerance approach to the killings and violence faced by environmental defenders.²²¹ He identified areas of improvement for supporting and protecting defenders, and recommended the following:²²²

Strengthen the resources and capacities of defenders by ensuring a holistic approach to preventing harm, improving risk assessments and security, and developing the skills, knowledge and abilities of HRDs (collectively and individually), including through building their networks and those of their supporters; States: adopt legislation, policies and dedicated mechanisms to protect defenders in order to ensure an enabling environment; Regional and international organisations: develop policies and resources for the protection of defenders, support monitoring and response mechanisms, and provide resources for their potential relocation.²²³

Various scholars have been trying to identify the current challenges facing efforts to ensure that the rights of defenders, communities and those who fight for their protection are respected.²²⁴ These include the uncertainty around how HRDs are defined (some indigenous peoples and rural movements do not identify themselves as such); the (at times limited) effectiveness of protection mechanisms; and the relationships between repression, risk and activism.

Surveying current efforts, there seems to be a “gap between what defenders do, and how transnational actors understand and support them.”²²⁵

While policies on HRDs have thus far mostly focused on individual protection, physical security and emergency response, little has been done to strengthen “community organisation and safety while confronting the root causes of violence and inequality.”²²⁶ It will, therefore, be necessary to increase the capacity of defenders and their communities (either physical, social, economic or political) to develop community-based, collective prevention and protection schemes, including increased capacity to assess risk as well creating cross-sectoral alliances and community self-care capacities in the local context of unequal power relations, security threats and, in countries like Colombia, the presence of illegal armed groups and professional assassins linked to repression and illegal land grabbing.²²⁷

Some grassroots organizations have started to redefine security and protection of defenders on the basis of experience on the ground and the challenges that communities and people are confronted with. Examples include:

²²¹ UN-HRC. *Annual Reports by the Special Rapporteur and the Special Representative to the UN Human Rights Council and the Commission on Human Rights*. Available at: <https://bit.ly/2pPQbff>

²²² Ibid.

²²³ Ibid.

²²⁴ Jaboury Ghazoul and Fritz Kleinschroth, 2018. *A global perspective is needed to protect environmental defenders*. *Nature Ecology & Evolution*. Available at: <https://go.nature.com/34PDsI9>

²²⁵ Karen Bennett, Danna Ingleton, Alice M. Nah & James Savage, 2015. *Critical perspectives on the security and protection of human rights defenders*. *The International Journal of Human Rights*, Volume 19, Number 7. Available at: <https://bit.ly/2X2ghrf>. “Additional challenge is represented by the unintentional misalignment between global strategies and precarious realities of local organizations and communities. For instance raising the public profile of a defender can expose him/her and increase vulnerability and/or create tensions in the community.” For more information, see: JASS and Fund For Global Human Rights, *Power and protection: Defending rights in hostile contexts*. Available at: <https://bit.ly/33yjHVa>

²²⁶ Padre Melo, *New threats against human rights defenders require new kinds of protection*. OpenGlobalRights. Available at: <https://bit.ly/36NQOXj>

“Normative advances at international, regional and national levels are important as well as hard security measures, Nevertheless, there is still insufficient investment in long-term approaches that strengthen community organization and safety while confronting the root causes of violence.”

²²⁷ Marianne Mollmann, 2019. *A culture of care: helping activists and allies look after themselves*. OpenDemocracy. Available at: <https://bit.ly/2CuyOD4>

- Congo Basin: organisations from Cameroon, the Central African Republic, Gabon and the DRC have set up an observatory, Verdir;²²⁸
- Colombia: Somos Defensores carries out community-based risk assessments and provides support for temporary relocation;
- Guatemala: Unidad de Protección a Defensoras y Defensores de Derechos Humanos supports threatened HRDs;
- Mexico: Consorcio Oaxaca, a feminist community CSO, provides legal support to women HRDs.²²⁹

International organizations, such as Protection International, now implement a community-based collective approach in their activities.²³⁰ Crucially, indigenous peoples and local communities are organising collectively to defend their rights. In

Colombia, for example, indigenous peoples and Afro-descendant communities have established their own (unarmed) territorial rangers or ‘guardia’ to protect community leaders and challenge incursions by illegal armed groups and paramilitaries.²³¹

More local and global initiatives led by defenders and their allies have developed in the last years, such as the recently announced global indigenous-led campaign to stop criminalisation of indigenous defenders mentioned earlier in this report. These initiatives are challenging the mainstream HRD discourse which, thus far, has emphasised the agency of states and companies to respect rights, fulfil due diligence and protect defenders, and has failed to cast defenders and community organisations as powerful political, social and environmental actors.

²²⁸ Centre pour l’Environnement et le Développement. *Verdir : le respect des droits d l’Homme dans le Basin du Congo*. Available at: <https://bit.ly/2Ka1HJf>

²²⁹ Inés M. Pousadela and Asmara Klein. *Against all odds: The perils of fighting for natural resource justice*. CIVICUS and Publish What You Pay. Available at: <https://bit.ly/2Cy1Qlv>

²³⁰ Sara Pastor Alonso. *Collective Protection of Human Rights Defenders: A collective approach to the right to defend human rights*. Protection International. Available at: <https://bit.ly/2X3urZu>

²³¹ Nevertheless, the new policy on defenders that is supposed to implement the relevant provisions of the peace agreement between the Colombian Government and the FARC does not acknowledge these traditional institutions. For more information, see: Consejo Regional Indígena del Cauca, 2018. *Indígenas y Afros, Excluidos del Nuevo Programa de Protección para Comunidades*. Available at: <https://bit.ly/32Cwtke>

5. CONCLUSIONS AND RECOMMENDATIONS FOR ACTION: THE CASE FOR A ZERO TOLERANCE PLEDGE

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

This review and analysis of the gaps in current policy and practice on HRDs shows that the stated commitments of states and companies have not been borne out by concrete actions. With a few exceptions, the data about the performance of the agribusiness sector and the extractive industries suggests that companies have failed to incorporate their commitments into their risk analysis and corporate behaviour. Similarly, efforts by and states regional initiatives too often collide with the primacy of promoting and ensuring the commercial and economic interests of the private sector.

States and companies must be held accountable to their obligations, though communities and activists see voluntary attempts to do so as contradictory and futile, given that in many cases they are the same states and companies that are co-responsible for attacks and threats directly or by omission.²³² High levels of corruption and impunity in state institutions — including the justice and protection systems — result in a severe lack of trust in state authorities. The bloody conflict in Colombia demonstrates these complexities: while mainstream commentators praised the new-found peace, the plight of many communities and peoples worsened to an alarming extent.²³³ Individual protection measures did not seem to work, in context of widespread impunity and violence carried out by non-state actors, illegal resource users and criminal groups active on the frontiers of agribusiness and the extractive industries. These measures are even less effective in situations where communities and defenders suffer cumulative threats from armed conflicts, and criminal and illegal trade in illicit gold and drugs.

Recognising agency, therefore, means going beyond a top-down protection approach designed by others,

and rather recognising that no protection will be effective if it does not take into account culture; the social, economic and political environment in which communities and leaders operate; community-based strategies to prevent attacks and threats; and the collective aspects of these community-based approaches and systems for early warning of risks, prevention and protection.²³⁴

The international community has an obligation to ensure that defenders, peoples and communities can act, live and defend their rights and lands without coercion, retaliation or threats. Urgent national and global efforts are needed, therefore, to address the drivers of abuse, death threats and violence. Below, two key principles for action are outlined, followed by a series of recommendations for states; the private sector; investors; inter-governmental bodies; and regional bodies.

KEY PRINCIPLES FOR ACTION

Communities' agency must be strengthened. It is essential that communities gain the capacity to create alliances and networks, enact community-based protection systems, and collect ground-truthed data to feed into advocacy and litigation.²³⁵ Focus must be shifted from not only protecting individuals, but also ensuring that communities' collective rights are met.

KEY RECOMMENDATIONS FOR STATES

States must recognise the collective rights, including land rights, of indigenous peoples and other communities with collective tenure, providing legal recognition and protection through issuing appropriate titles and other means

²³² James Savage, Lisa VeneKlasen, 2018. *Power and safety: rethinking protection for human rights defenders*. OpenGlobalRights. Available here: <https://bit.ly/36RMOVq>

²³³ See, for example: Joe Parkin Daniels, 2019. *Peace is war as armed groups roil Colombia's lawless border region*. The Guardian. Available at: <https://bit.ly/2Nv5sLf>

²³⁴ "Principle 5: [Protection measures] should acknowledge that defenders are interconnected. They should not focus on the rights and security of individual defenders alone, but also include the groups, organizations, communities and family members who share their risks." UN Special Rapporteur on the situation of human rights defenders, 2016. *Report of the Special Rapporteur on the situation of human rights defenders*. Available at: <https://bit.ly/33xYeeV>

²³⁵ See also: JASS & Fund for Global Human Rights. *Power and protection: Defending rights in hostile contexts*. Available at: <https://bit.ly/34PqzOP>. And: JASS & Fund for Global Human Rights, 2017. *Security and Protection of Human Rights Defenders in the face of Non-State Actors: Initial Reflection and Questions*. Available at: <https://bit.ly/2Xlw2P7>

Public policy must be developed to tackle the root causes of key drivers of attacks on defenders. In the case of EHRDs, this will likely include addressing shrinking civic space; systemic and institutional corruption; illegal resource use and the trade of illicit products associated with the agribusiness and extractive sectors; land trafficking; and land expropriated through the collusion of local and state governments and flawed judicial and legal frameworks that permit the criminalisation of environmental defenders. Producing and consuming countries should introduce binding legislation requiring companies to implement due diligence effectively. Lessons on non-compliance with corporate due diligence laws need to be learnt and sanctions applied to send strong signals to the businesses, investors, traders and other actors in global supply chains.²³⁶ States should implement a Zero Tolerance Pledge that includes monitorable and verifiable commitments to introduce legislation on corporate responsibility; the protection of defenders; and the recognition of land rights and FPIC.

KEY RECOMMENDATIONS FOR THE PRIVATE SECTOR

Much more robust corporate systems are desperately needed. Much has already been said, proposed, adopted on paper but rarely put into practice.²³⁷ Companies should put policy on due diligence into practice at the upper management level and incorporate it into risk assessment and mitigation activities. Risk assessments must, however, be verified through integration of ground-truthed data, and the use of civil society and independent information sources. Companies should adopt grievance mechanisms, ensuring that HRDs, their allies and indigenous peoples are able to participate fully and effectively.

Companies should introduce internal instruments to ensure that companies both down and upstream are compliant, particularly in cases where the direct impact on communities and land is higher. Rules should be introduced to strengthen internal due diligence and facilitate the withdrawal or suspension of contracts when necessary. Companies should introduce guidance on HRDs with particular focus on rural communities and indigenous peoples.

KEY RECOMMENDATIONS FOR INVESTORS

Investors should endorse and support a Zero Tolerance Pledge against attacks on defenders, with a particular focus on the sectors — agribusiness and extractives — that are lagging behind in turning their commitments on human rights into concrete changes in business practices. Investors should mainstream the Zero Tolerance Pledge by integrating risk assessment and mitigation tools as well as early warning systems to anticipate threats and attacks to defenders. Risk assessments must be verified through integration of ground-truthed data, and the use of civil society and independent information sources. Investors should pro-actively engage with companies they support to ensure compliance, and consider withdrawing support where necessary.

KEY RECOMMENDATIONS FOR INTER-GOVERNMENTAL BODIES

The OECD Portal for Supply Chain Risk Information and the OECD-FAO guidance on responsible agribusiness should include criteria on HRDs. In the OECD-FAO guidance, threats to HRDs should be included in the situations listed as ‘redflags.’ The UN Working Group on Business and Human Rights should develop protocols for the agribusiness

²³⁶ On the failure of French companies to meet legal requirements on human rights due diligence, see, for example: Sherpa and CCFD-Terre Solidaire, 2019. *Companies subject to the duty of vigilance under the radar of NGOs*. Available at: <https://bit.ly/36P4Ize>

²³⁷ For an 11-point Global Action Agenda to protect environmental defenders and more see: Christina Hill, 2018. *Fighting Back: A Global Protection Strategy for Earth Rights Defenders*. EarthRights International. Available at: <https://bit.ly/2NZmWyf>. Environmental Rights International proposes to: strengthen defenders’ capacities to protect themselves, use national, local and international litigation to defend individual defenders, push IFIs to adopt defenders policies while strengthening corporate accountability, end ties between companies and paramilitary forces, fight against extractive projects, strengthen FPIC, fight against restrictive legislation and corruption, implement monitoring and promote transparency along supply-chains, strengthen global legal protection and accountability mechanisms.

sector and the extractive industries on protecting HRDs, and environmental defenders in particular. The Open-ended Working Group on the Binding Treaty on Transnational Corporations should establish a workstream or dedicated working group on human rights and environmental defenders to facilitate engagement with producing country governments. The UNPRI Working Group on Sustainable Palm Oil should include a Zero Tolerance Pledge on attacks against defenders in its Sustainable Palm Oil Declaration.

KEY RECOMMENDATIONS FOR REGIONAL BODIES

The African Court of Human and Peoples' Rights should issue guidance or a protocol for environmental defenders, agribusiness and extractive industries as a first step towards developing an African initiative on environmental defenders and the private sector. Similar initiatives should be promoted in Asia. ProtectDefenders.eu should consolidate its synergies with the European Instrument for Democracy and

Human Rights, identifying specific criteria and programmes for environmental defenders. The programme could consider expanding its scope by developing a dedicated fund for community-based prevention and protection systems in third countries. Criteria and a specific protocol on environmental defenders should be developed and adopted within the framework of the EUAPDD.

A standard protocol on HRDs should be developed and applied in trade and investment agreements. The European Commission should develop a Human Rights Action Plan that includes a section on HRDs with particular focus on EHRDs and trade in, production of and investment in risk-commodities supply-chains. Where local defenders and indigenous peoples agree, Latin American and Caribbean countries should sign and ratify the Escazù protocol on environmental defenders.



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