POLICY BRIEF

ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

A global crisis

John H. Knox
Environmental human rights defenders (EHrDs) are individuals and groups who strive to protect and promote human rights relating to the environment. They come from many different backgrounds and work in different ways. Some are lawyers or journalists, but many are ordinary people living in remote villages, forests or mountains, who may not even be aware that they are acting as environmental human rights defenders. In many cases, they are representatives of indigenous peoples and traditional communities whose lands and ways of life are threatened by large projects such as dams, logging, mining or oil extraction.

What they all have in common is that they work to protect the environment on which a vast range of human rights depend. We cannot fully enjoy our rights, including the rights to life, health, food, water, and housing, in a degraded or unhealthy environment. Ideally, all EHrDs should be able to exercise their human rights to freedom of expression and association, to information, to participation in decision-making, and to effective remedies in order to help to protect the environment - and the rights that depend upon it - from unsustainable exploitation. In this way, the relationship between human rights and the environment should be a virtuous circle: the exercise of human rights helps to protect the environment, and a healthy environment helps to ensure the full enjoyment of human rights.

The reality too often falls far short of this ideal. In many countries, EHrDs face a high risk of violence and even death. On average, every week more than three EHrDs are killed somewhere in the world. Countless more are threatened and harassed. The sheer scale of this problem demands notice. Unfortunately, while EHrDs face many of the same challenges - and should enjoy the same rights - as other human rights defenders, they have tended to receive far less attention. Because the rights they seek to protect are less well understood in international and domestic law, their defence of those rights may sometimes seem to fall between categories.

In the past, human rights organisations may have seen environmental advocates as primarily focused on issues that fall outside their mandate; and environmental organisations, while often cognisant of the threats faced by EHrDs, have historically been less aware of the relevance of human rights law and institutions. In recent years, a number of civil society organisations and UN experts have taken steps to reverse this neglect and shine an increasingly bright light on the situation of EHrDs. Global Witness and other NGOs, together with the UN Special Rapporteur on the situation of human rights defenders, have begun to map and describe this global crisis. In this report, we draw on and supplement their work, with the aim of further increasing attention to the problem and identifying possible solutions. Part I of the report describes the scope of the problem: the size of the crisis and the factors contributing to it. Part II sets out the obligations of States under international human rights law to protect the environment in general and to protect EHrDs in particular. Part III makes a series of recommendations to all relevant parts of the international system.

The report is based on primary and secondary research, and benefits from the input of a range of EHrDs from around the world. In particular, in 2014-2015 the Universal Rights Group (URG) and the United Nations Environment Program (UNEP), together with UN Special Rapporteurs, organised two regional consultations, in Geneva and Bangkok, at which EHrDs from the African, Asian, and European regions came together to provide testimonies and to explain the nature of EHrDs’ work and the challenges they face. This policy brief is, in large part, a reflection of their views and suggestions.

John H. Knox*

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PART I
RISKING THEIR TODAY FOR OUR TOMORROW

In March 2012, the Human Rights Council (Council) decided to create, for the first time, a mandate on human rights and the environment. A few months later, it appointed the author of this report as the first Independent Expert on the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and asked him to clarify those obligations and to identify good practices in their use. To that end, the Independent Expert held a series of regional consultations, each of which focused on a particular set of obligations: procedural duties, substantive duties, duties relating to people in vulnerable situations, and so forth. To his initial surprise, at every consultation, irrespective of the meeting’s nominal focus, participants repeatedly spoke of the high levels of harassment and violence faced by environmental defenders in their region. It quickly became clear that while many aspects of the relationship between human rights and the environment are important, none is more urgent than the need to protect EHrDs. Without these dedicated individuals, the protection of the environment and of the rights that depend upon it would be impossible.

Reporting from the front line of environmental protection around the world, EHrDs have made clear that the threats they face are perilous and increasing. Their reports have been confirmed and supplemented by the work of organisations such as Global Witness, Front Line Defenders and Article 19, and by experts such as the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples. The following sections first describe the size of the global crisis, and then the factors contributing to it.

THE SCALE OF THE CRISIS

Less than three years ago, Global Witness conducted the first comprehensive review of the number of killings of EHrDs around the world. Going back to the beginning of 2002, and covering cases through to the end of 2013, it found that at least 908 people had been killed as a result of protecting their rights to land and the environment. Global Witness emphasised that this figure must necessarily underestimate the actual number of deaths, because it only includes cases that meet rigorous criteria, including credible, reported information that clearly connected the murder to an environment or land use issue. As a result, Global Witness concluded that ‘there are without doubt more cases than we have been able to verify,’ because in places with under-reported conflicts, ‘information is almost impossible to gain without detailed field investigations.’

More than 90% of the killings listed in the Global Witness report occurred in nine countries. The largest number of deaths was reported in Brazil, which experienced 448 (nearly half of the total). The second largest was in Honduras, with 109. Other countries with more than ten included Cambodia (13), Colombia (52), Guatemala (21), Mexico (48), Peru (58), the Philippines (67), and Thailand (16). Although most cases were from Latin America and Southeast Asia, the report made clear the global extent of the problem. Murders occurred in 26 other countries, including Chad (5), China (4), the Democratic Republic of Congo (5), India (6), Pakistan (4), and the Russian Federation (5) (see figure 1).

Moreover, the crisis appears to be rapidly growing. Global Witness reported that ‘three times as many people were killed in 2012 than 10 years previously, with the death rate rising in the past four years to an average of two activists a week.’ While some of this increase may have been due to better reporting, it seems likely that the problem is worsening in large part because ‘competition for access to natural resources is intensifying against a backdrop of extreme global inequality,’ while ‘more and more ordinary people are finding themselves on the frontline of the battle to defend their environment from corporate or State abuse, and from unsustainable exploitation.’

Other sources have also described the increasing threats to EHrDs. In 2007, the then-Special Representative of the Secretary-General on human rights defenders, Hina Jilani, reported that: ‘defenders working on land rights, natural resources or environmental issues seem to be particularly vulnerable to attacks and violations of their rights under the Declaration on Human Rights Defenders in countries of Latin America and in parts of Asia.’ Based on individual complaints received from the alleged victims of human rights violations, she concluded that those working on land rights and natural resources issues were the second-largest group of defenders at risk of being killed. In 2013, Ms Jilani’s successor as Special Rapporteur on human rights defenders, Margaret Sekagyya, stated that the situation of EHrDs appeared to have worsened since 2007. In her final report, she described the extraordinary risks, including threats, harassment and physical violence, faced by those defending the rights of local communities in opposition to projects that have a direct impact on natural resources, the land or the environment. In 2016, the NGO Front Line Defenders reported that 49% of the 281 HRDs it had recorded as being killed over the course of the year (across 25 countries), were working to defend land, indigenous and environmental rights.

Other recent reports have confirmed the rising number of killings of EHrDs. In 2014, Global Witness found 116 killings of environment and land defenders, and in 2015 it documented a huge jump to 185 - an average of more than three a week. The country with the most deaths continued to be Brazil, with 29 in 2014 and 50 in 2015. The next deadliest were Colombia, with a total of 51 killings over two years; and the Philippines, with 48. Other States where more than 10 EHrDs were killed in the period 2014-2015 were: the Democratic Republic of the Congo (11), Guatemala (10); Honduras (20); Nicaragua (12); and Peru (12) (see figure 2). Again, Global Witness emphasised that these figures undoubtedly under-report the scale of the crisis. Many of the murders we know about occurred in remote villages or deep within rainforests - it’s likely the true death toll is far higher. For every killing we are able to document, others cannot be verified, or go unreported.

To put this increase into perspective, Global Witness compared the killings of EHrDs to those of journalists, another highly at-risk group. Its initial assessment of 908 murders between 2002 and 2013 was almost exactly the same level as the 913 journalists killed over the same period. In 2014, the killing of 116 EHrDs represented almost twice the number of journalists killed in the same year [61]. And in 2015, the deaths of 185 EHrDs constituted more than two-and-a-half times the number of journalists killed [72].

Another way of putting the killings of EHrDs into perspective is by comparing them to the total number of killings of human rights defenders. When Front Line Defenders reviewed the killings of all human rights defenders in 2015, it found that 45% of the killings were related to the defence of environmental, land and indigenous rights. In Latin America and Asia, 41% and 67%, respectively, of the killings were in this category. In 2016, the global percentage rose to 49% - almost exactly one-half of all killings of human rights defenders.

**TIP OF THE ICEBERG**

Shocking as these numbers may be, they, in themselves, an inadequate means of conveying the scale and nature of the challenges and risks faced by EHrDs.

For one thing, data on the number of killings tells us nothing about the myriad of other human rights violations suffered by EHrDs. Killings may be ‘the most acute and measurable end of a range of threats’ to EHrDs, but for every EHRD murdered, many more, in every region of the world, are subjected to other types of violence or harassment. In the words of the Special Rapporteur on the situation of human rights defenders:

**The assassination of environmental human rights defenders is only part of the overall violence they face. The submissions received by the Special Rapporteur show that environmental human rights defenders confront numerous threats and violations, including violent attacks and threats to their families, enforced disappearances, illegal surveillance, travel bans, blackmail, sexual harassment, judicial harassment and use of force to disperse peaceful protests.**

EHrDs are all too often subjected to threats that are meant to instill fear and prevent activism. In many cases, intimidation can quickly escalate into violence. While recognising that the experience of, and the nature of the human rights violations suffered by, each EHRD is unique, it is nonetheless possible to discern, from the regional consultations and from a review of individual complaints submitted to Special Procedures, a number of common characteristics.

Those who testified during the regional consultations described receiving threats and/or suffering reprisals against themselves and, in many cases, against family members or communities. These included physical threats or reprisals, such as assault, death threats, sexual assault, and kidnapping, and other types of violence or harassment, such as defamation and stigmatisation. Most EHrDs attributed the extreme nature of these threats and reprisals to the strong economic interests at stake coupled with a high level of corruption and lack of rule of law.

EHrDs offered a number of concrete examples to illustrate their points. For example, one explained how police had sought to disperse a peaceful protest against the destruction of a forest by opening fire with live bullets, killing three people and injuring many others. Afterwards, the leaders of the protest were arrested, despite the fact that they had obtained official permission for the demonstration. In another instance, after delivering a television interview criticising a project, a female EHRD was wounded by gunfire and told to stop her campaign. Another EHRD described how his children had been ‘visited’ at school and questioned about their father’s activities, and how his wife had been sexually assaulted.

**THE PEOPLE BEHIND THE NUMBERS**

Most importantly, behind the above-mentioned statistics, behind each of those numbers, is a face - a person killed merely for trying to assert their rights and protect their environment, and a person whose loss continues to be felt by their family, their community and their cause.

This report cannot tell the stories of all of those individuals, but it will offer, below, the stories of 12 defenders who lost their lives protecting the environment. It does so in order to offer a sense, however brief, of the particular situation of EHrDs, of the threats they face, and of the opportunities that exist to better support and protect them in the future. It also does so in order to remember and pay tribute, however inadequately, to these inspiring people and their invaluable work. While reading their stories, it is important to recall that for each of these 12 people, at least 100 other EHrDs have been killed since 2002.

**FIGURE 2: KILLINGS OF EHrDS BY COUNTRY IN 2015**


![Figure 2: Killings of EHrDs by Country in 2015](image-url)
In May 2012, Margarito Cabal was shot and killed in Northern Mindanao in the Philippines by two men riding on a motorcycle. Cabal was known for his opposition to a new hydroelectric dam project on the Pulangi River, which was expected to cause the displacement of a number of villages along the river in the provinces of Bukidnon and Cotabato. Cabal was a member of a coalition resisting the project called the Save Pulangi Alliance. Cabal had previously informed his colleagues that he suspected that a police car was ‘tailing’ him. No arrests have been made in connection with the case. He was one of 15 EHrDs killed in the Philippines in 2012 alone.

Prajob Nao-opas exposed the dumping of toxic waste in Chachoengsao province, east of Bangkok, Thailand, by industrial operations in the region. He was shot (with a semi-automatic weapon) in February 2013 while waiting at a garage for his truck to be repaired. Prajob had received death threats in the preceding months. Local police said that the murder appeared to have been committed by a professional assassin, and that Prajob’s activism had made him a target. In December the same year, a business owner in the province was convicted and sentenced to death for the murder. The conviction of the killer of Prajob Nao-opas is unusual: most such cases fail to result in any arrests or convictions – or international attention.

In May 2013, Jairo Mora Sandoval, was killed on Moín beach near the city of Limón, on the Atlantic coast of Costa Rica. He was 26 years old. Mora was working with Widecast (now called LASTI), an environmental organisation dedicated to protecting sea turtle nests from illegal poaching. The poachers had become progressively more aggressive over the course of 2013, threatening Mora and other members of his organisation with violence if they continued to protect the turtles. Although police regularly patrolled the beach, Mora and others had received numerous death threats and said that they needed more police protection. On the night of his death, Mora escorted four female foreign volunteers to the beach to try to see a leatherback sea turtle. On their return to the rescue centre where they worked, their car was stopped by a group of men who beat Mora and killed him. They took the women to an abandoned house and sexually assaulted at least one of them. Two months later, Costa Rican police arrested several individuals for his murder, and four were convicted in May 2016.

Edwin Chota Valero ©Global Witness

In May 2013, José ‘Zé Cláudio’ Ribeiro da Silva and Maria do Espírito Santo da Silva were shot to death in Nova Ipixuna, in the state of Pará in northeast Brazil, near the Praia do Piranheira sustainable reserve where they had worked for 24 years. The married couple were members of the National Council of Extractive Populations, a civil society organisation dedicated to the preservation of forests in the Amazon. They were carrying on the work of Chico Mendes, the famous Brazilian rubber tapper, who had founded the organisation before his own assassination in December 1988. They campaigned against illegal deforestation and the eviction of families by a landowner who intended to convert primary forest in the reserve to cattle pasture. They had received death threats for months, but were not placed under police protection. Pará is one of the most dangerous areas in the world for EHrDs. The Brazilian Pastoral Land Commission reports that between 1996 and 2010, 231 people were killed there and 809 received death threats. In the da Silva case, prosecutors sought convictions against the two gunmen and a landowner accused of ordering the murder, but in 2013 a court convicted the gunmen only, acquitting the landowner due to lack of evidence.

Chica Sábio (aka Maria do Espírito Santo da Silva) and José ‘Zé Cláudio’ Ribeiro da Silva ©Felipe Milanez

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Edwin Chota Valero ©Global Witness
Rigoberto Lima Choc, 28-year-old school teacher in Champerico, in the municipality of Sayaxché in Guatemala, worked with other local residents in the summer of 2015 to draw attention to a massive fish kill along a 100-mile stretch of La Pasion River. It was apparently caused by overflows of organic matter from effluent ponds attached to a palm oil mill owned by Reforestadora de Palmas del Petén, S.A. (REPSA), which is part of Guatemala’s largest palm oil producer, the Grupo Olmeca conglomerate. On 17 September 2015, a criminal court judge ordered REPSA to suspend operations. The order was the first from a new Guatemalan court created to hear complaints of crimes against the environment or ‘ecocide.’\textsuperscript{45} The day after the decision, REPSA employees took over a government building in San Benito Petén and held 100 people captive there. Rigoberto Lima Choc went to seek help from the authorities in Sayaxché, where he was shot dead outside the courthouse. Two suspects fled on a motorcycle.\textsuperscript{46} No arrests have been made.

In August 2015, Raimundo dos Santos Rodrigues and Maria da Conceição Chaves Lima, a married couple, were attacked by two gunmen as they rode their motorbike to their home in Bom Jardim, in the state of Maranhão, Brazil. Santos Rodrigues was shot multiple times and died at the scene. His wife was also injured but survived. The couple were members of the Advisory Council of the Biological Reserve of Gurupi, and Santos Rodrigues was also an advisor to the Chico Mendes Institute for Biodiversity Conservation. He had opposed environmental crimes committed by landowners and loggers such as illegal logging in the Pindaré Valley in Maranhão. He had received numerous death threats and, together with other members of the advisory council, was reportedly on a death list compiled by loggers.\textsuperscript{47} ‘Loggers hated him because he denounced them,’ one of his co-workers said.\textsuperscript{48}

On 3 March 2016, Berta Cáceres was shot and killed in her home in Honduras. A Mexican EHRR, Gustavo Castro Soto, who was a guest at her house, was also shot and seriously wounded. Cáceres was a leader of the indigenous Lenca people, and a founder of the Council of Popular and Indigenous Organizations of Honduras (COPINH). Despite receiving many death threats, she led the opposition to the efforts of Desarrollos Energéticos S.A. (DESA) to build four dams along the Gualcarque River in territory inhabited by the Lenca. She was the 2015 Goldman Prize recipient for Latin America. Hundreds of civil society organisations demanded justice for her murder. Her family and supporters, including UN Special Rapporteurs, urged the Government of Honduras to allow an independent investigation by the Inter-American Human Rights Commission. The Government refused. In May, the Government arrested four men and charged them with the murder, and since then it has arrested two more. At least two of the suspects have ties to DESA, and others have ties to the Honduran military. The family and others continue to question whether the investigation will ultimately lead to the conviction of those who planned and ordered the murder.\textsuperscript{49} In the months since her death, assassination attempts have continued to be made against leaders of COPINH.\textsuperscript{50}

On 15 January 2017, shortly before finalisation of this report, Índio Baldenegro López was shot and killed at a relative’s house in the state of Chihuahua, Mexico. Baldenegro was a leader of the Tarahumara indigenous people in the Sierra Madre mountains. As a young boy, he had witnessed the murder of his father for opposing logging that threatened the forests in which the Tarahumara live. Despite this, Baldenegro dedicated his life to peacefully opposing the deforestation of his people’s traditional lands, including by founding an NGO (1993) and by organising a series of blockades and marches (e.g. in 2002). But his efforts ‘angered the powerful network of state officials, landowners and criminal bosses involved in logging, and in 2003 he was imprisoned for 15 months on false charges of arms and drugs possession.’\textsuperscript{51} After international protests against his detention, he was released in 2004, and received the Goldman Prize in 2005. He had only recently returned to his community of Coloradas de la Virgen, after a long period of exile because of threats against him and his family.\textsuperscript{52}
PART II
UNDERSTANDING THE SITUATION OF EHRDS

In recent years, there has been a growing movement to recognise and describe the situation of EHRDs. There has been less work done, however, to understand why these individuals are in such vulnerable situations and, in particular, to understand why EHRDs appear to be at increasing risk.

Based on the regional consultations held in preparation for this policy brief, as well as other studies, there appear to be three contributory factors behind the acute and growing vulnerability of EHRDs:

1. Growing demand for the extraction and exploitation of natural resources;
2. The lack of political power and legal recognition of the groups that are often most affected by this increasing demand; and
3. Weak or corrupt legal institutions that create a culture of impunity.

THE DEMAND FOR NATURAL RESOURCES

As the global population increases and economies develop, the demand for natural resources grows as well. Governments and businesses seek to exploit timber, minerals and fossil fuels; they build dams to improve irrigation and produce hydroelectric power; and they clear forests for farms and plantations. In many cases, these natural resources are exploited in order to be exported to the global North.

Countries have the right to use their natural resources in order to pursue economic and social development, as long as they do so in accordance with international and domestic laws. Unfortunately, the incentive to pursue short-term material gain too often leads governments and private actors to violate the relevant legal norms and to try to silence those who oppose them. As natural resources become more valuable, governments, business enterprises and other private actors often seek to avoid or violate legal constraints on their exploitation. They engage in the illegal removal of resources; they seek to corrupt those officials who should be monitoring and regulating behaviour; and they try to silence any voices raised in opposition.

Moreover, even the legitimate pursuit of economic growth can contribute to a culture in which those seen to be standing against ‘development’ projects are characterised as ‘enemies of the State.’ As a country pursues socio-economic advancement, protests about the unsustainable nature of growth and/or resource exploitation are often portrayed by vested interests as a public nuisance or, worse, as a threat to the ‘national interest.’ As well as portraying EHRDs as ‘anti-development’ or somehow ‘un patriotic,’ these powerful interests are often willing to use or condone violence against them. In many instances, violence or intimidation are used as tools to wrestle ownership and control of land away from the people who have traditionally lived there.

In 2015 alone, Global Witness identified 20 killings linked to land grabs designed to feed expansion of rubber or palm oil plantations.53

Mining projects are another source of deadly conflict. Between 2002 and 2013, at least 150 killings were linked to the extractive industry. In these cases, EHRDs were often targeted during or after public protests.54 The acute risks involved in opposing extractive projects have been highlighted by the UN Special Rapporteur on human rights defenders. Of the situations brought to the mandate-holder’s attention between June 2011 and June 2016, 54 involved disputes over mining.55 Meanwhile, according to Global Witness, in 2015 the killings of 42 EHRDs (in 10 countries) were linked to disputes over extraction (see figure 3).14 Many such disputes involve private security forces working on behalf of mining companies or large landowners.56

Deforestation and illegal logging are another major cause of conflict between EHRDs and powerful economic interests. Global Witness has pointed out that these EHRDs can find themselves at particular risk because ‘the logging trade operates in remote areas with weak law enforcement,’ while illegal logging often has links to organised criminal syndicates.57 For similar reasons, EHRDs involved in the fight against the illegal wildlife trade are also at risk. For example, 11 rangers and soldiers were killed in the Democratic Republic of Congo (DRC) in 2015 as a result of their attempts to stop poaching.58

Finally, an increasing number of conflicts involving EHRDs concern hydroelectric dams. Global Witness reports that 15 EHRDs were killed in 2015 because of their opposition to hydroelectric projects, including in Guatemala and Honduras (see figure 3).60

Conflicts over the control of land and natural resources were an underlying factor in all killings of defenders in 2015. The following sectors were identified as specific drivers in a number of cases.

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<th>SECTOR</th>
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<td>MINING AND EXTRACTIVES</td>
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<td>AGRIBUSINESS</td>
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<td>LOGGING</td>
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<td>DAMS AND WATER</td>
<td>15</td>
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<tr>
<td>POACHING</td>
<td>13</td>
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Moreover, in some cases more than one sector was a factor in the killing.61

FIGURE 3: KILLINGS OF EHRDS IN 2015 BY SECTOR.


MARGINALISATION

Another contributing factor to the high rates of violence and harassment directed against EHRDs is that they tend to belong to groups that are already marginalised or in situations of relative ‘powerlessness’ within their country or society.

This is particularly true in the case of indigenous peoples or other minority communities dependent on their natural environment for survival and the maintenance of their traditional culture. According to Global Witness, in 2014, at least 47 of the 116 EHRDs killed were indigenous people, and in 2015, the number increased to 67 out of 185.62

Indigenous peoples are particularly at risk from the activities of illegal logging groups and the extractive industry. For example, the UN Special Rapporteur on the rights of indigenous peoples has noted that ‘indigenous peoples around the world have suffered negative, even devastating, consequences as a result of extractive industries.’63 These consequences include, inter alia, ‘the gradual loss of control over indigenous lands, territories and natural resources; the degradation and destruction of ecosystems … the pollution of water and lands; and the depletion of local flora and fauna.’

Indigenous peoples and other marginalised or ‘remote’ communities, are especially vulnerable for two main reasons. First, the close connection between indigenous people and their natural environment means that they are especially vulnerable to environmental degradation and over-exploitation. In many cases, members of these communities feel that they have no choice but to defend the ecosystem upon which they depend. To such individuals, illegal logging is not an economic crime, but rather a direct and immediate threat to their way of life or even to the very existence of their community.

Second, indigenous peoples and other communities in similar situations, such as peasant farmers and remote fishing communities, often live in isolated locations, away from urban centres. EHRDs in such communities usually lack any formal training in environmental law, human rights law or advocacy. Especially at the initial stage of their work, they are unlikely to even see themselves as ‘human rights defenders.’ Their isolation can also make it difficult for them to access external support (e.g. from relevant national authorities, lawyers or NGOs).

Isolation also helps to create severe power imbalances. Power inequality permeates all decision-making processes, from the upstream phases such as the determination of the advisability of a project to the design of the project, and onward to its implementation. Where the economic activity in question is illegal, these inequalities are further amplified. Those involved can threaten, intimidate and even kill EHRDs with impunity, safe in the knowledge that ‘no one is watching.’ Imbalances are even more pronounced for EHRDs who also face other forms of (concurrent) discrimination. For example, women EHRDs regularly face gender-based violence and/or exclusion from male-dominated decision-making processes.64

In addition to their geographic isolation and political marginalisation, indigenous peoples often face important additional challenges, linked with the failure of governments to recognise ownership rights vis-à-vis ancestral lands. Resulting legal ambiguities in turn encourage illegal logging or mining activities and land-grabs. When indigenous peoples resist, they are portrayed as criminals.

LACK OF EFFECTIVE RULE OF LAW

The final factor contributing to the vulnerable situation of EHRDs is the failure of many governments to comply with the rule of law themselves or to enforce it against others. This failure tends to take at least three forms:

• The direct involvement by State officials or representatives in violence against EHRDs.
• The failure of governments to investigate and punish harassment and violence directed against EHRDs.
• The adoption and implementation of laws that restrict space...
for EHrDs to speak, protest, organise and take other actions, in violation of the EHrDs’ rights to freedom of expression and association.

**COMPILICY ON THE PART OF THE STATE**

Of the 908 killings documented by Global Witness between 2002 and 2013, it was able to find information about the alleged perpetrators in only 294 cases. Of those, 52 killings were reported to be by military or police units usually either in the context of suppressing peaceful protests or acting on behalf of private entities or persons.62 In 2014, again, most perpetrators were never identified. In cases where they were identified, ten deaths were caused by paramilitary groups, eight by the police, and three by the military.63 Of the 185 killings in 2015, Global Witness was able to find information on suspected perpetrators in 97 cases, of which 16 were attributed to paramilitary groups, 13 to the army, and 18 to the police.64

The involvement of representatives of the State in such killings clearly violates the core duty of governments to protect the human rights of those within their jurisdiction. Officials who are directly involved in abuses or who turn a blind eye to harassment and violence against EHrDs often do so because they stand to profit from the exploitation of the resources that the EHrDs are seeking to defend, or because they are being directed by superiors who are themselves in a position to profit. In this respect, the dangers faced by EHrDs are usually intimately linked with State-sponsored corruption.65

**IMPUNITY**

Perhaps the most important actions governments can take to protect EHrDs are to investigate, prosecute and punish human rights violations against them. In the words of Isolato Wichineski, the National Coordinator of the Commissao Pastoral da Terra in Brazil: ‘What feeds the violence is the impunity.’66 Unfortunately, governments often fail to address violations. In 2014, Global Witness reported that of the 908 killings it had recorded between 2002 and 2013, only 34 perpetrators faced any charges, and only 10 were tried and convicted.67 Similarly, the Observatory for the Protection of Human Rights Defenders found that of 106 situations affecting 282 land rights defenders and 19 civil society organisations reported to the Observatory between January 2011 and August 2014, more than 95% remained unpunished.68

Although these numbers may be, in part, a result of the difficulties involved in finding information about cases, they nevertheless indicate a widespread failure on the part of governments to adequately deter violence against EHrDs. Moreover, when cases are brought, they are often pursued only against those ‘pulling the trigger’, not against those who paid and directed the killers. It is clear that in many cases authorities ‘either turn a blind eye or actively impede investigations into these killings due to collusion between corporate and State interests’.69

**USE OF THE LAW AGAINST EHrDs**

Not only do many governments fail to properly apply the law to protect EHrDs and their rights, they also often use national laws to persecute defenders and restrict their work. The abuse of the law in this way can take many forms, ranging from arbitrary detention to criminal prosecution. As Manna Kai, UN Special Rapporteur on the rights to peaceful assembly and association, has pointed out: in contrast to the relatively small number of prosecutions secured against those violating the rights of EHrDs to freedom of assembly and freedom of association, ‘the number of arrests [of EHrDs] and prosecutions for alleged offences committed in the course of the legitimate exercise of their rights to freedom of peaceful assembly and of association continues to rise.’

Government officials regularly harass EHrDs by arbitrarily detaining them, confiscating their equipment (such as computers, cameras or recorders), and using excessive force against them.70 Authorities often break up peaceful protests and arrest their organisers, participants and those reporting on the events.71 For example, in the US, Amy Goodman, a journalist reporting on the Standing Rock protests in 2016 against an oil pipeline, was arrested and charged with participating in a ‘riot’, although a judge later rejected the attempt to prosecute her. EHrDs are also regularly accused of damaging property, trespassing or other ‘minor’ offences, which may have the effect of intimidating them and removing them from the public eye. For example, in 2012 Russian authorities charged Yevgeny Vletskoi, a scientist who had published critical reports of the environmental effects of preparation for the Sochi Olympics, with spray-painting graffiti on a fence. He was given a three-year prison sentence, which began shortly before the Olympics.72

Governments also regularly enact laws that make it difficult for EHrDs to mobilise support, for example by placing undue restrictions on the establishment of associations, or by making it difficult for NGOs to access foreign funding and organise meetings.73 For example, in 2014 the Indian Government decided that Greenpeace India should not be allowed to receive foreign funding (a domestic court later reversed the decision).74 In Russia, the ‘Foreign Agents’ law, adopted in 2012, requires organisations receiving foreign funding to register as ‘foreign agents,’ and imposes onerous requirements for reporting and auditing.75

Other governments use ‘national security’ arguments and ‘anti-terrorism’ laws or programmes to stifle the work of EHrDs.76 Yet others use the threat of prosecution to intimidate and silence defenders. For example, in Vietnam recently arrested Nguyen Ngoc Nhu Quynh, a popular blogger, after she drew attention to the discharge of toxic chemicals into watercourses - pollution that had devastated marine life and local fishing communities. She was charged with ‘distorting the truth and spreading propaganda against the State.’ The charges carry a maximum prison term of 12 years.77

It is not only governments that actively use the law against EHrDs - businesses and private individuals often do so too, with chilling effects on the work of already-vulnerable individuals. Private suits seeking injunctions and damages have the dual effect of placing restrictions on civil society activities and burdening activists with litigation costs and damages they may be unable to pay.78 Such suits often claim that criticisms of projects by EHrDs amount to defamation or libel. For example, Nasake Besingi, the director of SEFE, an NGO in Cameroon, tried to draw attention to the likely adverse consequences of a palm oil cultivation project planned by Herakles Capital, a US venture capital firm. In November 2015, Besingi was convicted of defamation and propagation of false news about the company, and was sentenced to pay a fine of US$2,400 or face up to three years in prison. In January 2016, he was also convicted for organising unlawful assemblies.79

Using criminal and other laws against EHrDs intimidates them and interferes with their work. As already noted, EHrDs are often stigmatised as ‘anti-development’, as ‘unpatriotic’ or simply as criminals. Prosecution by government authorities reinforces such messaging.80 This can in turn lead to more attacks. For example, it is no coincidence that Honduras, where EHrDs have been branded as ‘members of the resistance, guerrillas, terrorists, political opponents or criminals’, and where more than 3,800 cases of improper criminalisation of defenders have been documented since 2010, also has the world’s highest per capita rate of killings of EHrDs.81
**PART III
THE SITUATION OF EHRDS IN INTERNATIONAL LAW**

States have obligations to protect against environmental harm that interferes with the enjoyment of human rights. Those obligations extend to everyone, including EHRDs. In addition, because EHRDs also work to protect the rights of others, they fall within the scope of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the UN Declaration on Human Rights Defenders). Among other rights, EHRDs have the right to protection from States so that they can carry out their work.

Part III of the Policy Brief will briefly describe the human rights obligations relating to environmental protection generally, before looking at the particular obligations of States to EHRDs as human rights defenders.

**ENVIRONMENTAL HUMAN RIGHTS OBLIGATIONS**

It is no longer in serious doubt that environmental harm can and does interfere with the enjoyment of a vast range of human rights, including the right to life, the right to the enjoyment of the highest attainable standard of physical and mental health, and the right to an adequate standard of living and its components (including the rights to food, water and housing). As a result, States have obligations to protect the enjoyment of rights from harm through environmental degradation.

The Council has urged States to comply with their human rights obligations when developing and implementing their environmental policies. Specifically, it has called upon States: (a) To respect, protect and fulfil human rights, including in actions relating to environmental challenges; (b) To adopt and implement laws ensuring, among other things, that individuals working on human rights and environmental issues, can operate free from threats, hindrance and insecurity; (c) To facilitate public awareness and participation in environmental decision-making, including of civil society, women, youth and indigenous peoples, by protecting all human rights, including the rights to freedom of expression and to freedom of peaceful assembly and association;

(d) To implement fully their obligations to respect and ensure human rights without distinction of any kind, including in the application of environmental laws and policies; (e) To promote a safe and enabling environment in which individuals, groups and organs of society, including those working on human rights and environmental issues, can operate free from threats, hindrance and insecurity; and (f) To provide for effective remedies for human rights violations and abuses, including those relating to the enjoyment of a safe, clean, healthy and sustainable environment, in accordance with their international obligations and commitments. 74

The Council has also reaffirmed ‘the duty of States to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises, as provided for in the Guiding Principles on Business and Human Rights,’ and ‘the importance of non-discrimination in the application of environmental laws, but also of paying due attention to the members of groups particularly vulnerable to environmental harm, bearing in mind that environmental damage is felt most acutely by those segments of the population already in vulnerable situations.’ 75

The human rights obligations of States relating to the environment fall into three principal categories: procedural obligations, substantive obligations and obligations relating to those in vulnerable situations. 76

**PROCEDURAL OBLIGATIONS**

The procedural obligations of States in relation to environmental protection include duties: (a) to assess environmental impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to remedies for harm. These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights at risk from environmental harm.

**DUTIES TO ASSESS ENVIRONMENTAL IMPACTS AND MAKE INFORMATION PUBLIC**

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) each state that the right to freedom of expression includes the freedom ‘to seek, receive and impart information.’ 77 The right to information is also critical to the exercise of other rights, including rights of participation. Human rights treaty bodies and regional tribunals have stated that to protect human rights from infringement through environmental harm, States should provide access to environmental information and provide for the assessment of environmental impacts that may interfere with the enjoyment of human rights. 78

Many international environmental instruments also support conducting environmental assessments and providing information to the public. 79 For example, Principle 10 of the Rio Declaration states: At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities; and Principle 17 provides that an ‘environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.’ 80

**DUTY TO FACILITATE PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING**

The baseline rights of everyone to take part in the government of their country and in the conduct of public affairs are recognised in the Universal Declaration and the ICCPR. 81 Again, human rights bodies have built on this baseline in the environmental context, elaborating a duty to facilitate public participation in environmental decision-making in order to safeguard a wide spectrum of rights from environmental harm. 82 The importance of public participation is also reflected in many international environmental instruments. 83 Principle 10 of the Rio Declaration states: Environmental issues are best handled with

Marx against mining in Matagalpa, Nicaragua. 10/7/2013. © Abba Sud Fotografo.

[the] participation of all concerned citizens, at the relevant level [...]. Each individual shall have the opportunity to participate in decision-making processes.” 84

As the Special Rapporteur on human rights defenders has emphasised: Participation goes beyond mere consultation; it implies active involvement and empowerment of defenders and building their capacity to interact effectively with other stakeholders [...]. Information conveyed about the project must be in the language or languages of the affected communities, and participation should be facilitated to allow the views of the affected communities to be effectively communicated, in a manner that takes into consideration the level of literacy and is culturally sensitive. 85

The rights of freedom of expression and association are of special importance in relation to public participation in environmental decision-making. States have obligations not only to refrain from violating the rights of free expression and association directly, but also to protect the life, liberty and security of individuals exercising those rights. There can be no doubt that these obligations apply to those exercising their rights in connection with environmental concerns. Because of the particular relevance of these obligations to EHRDs, they are described in the second section of this part of the Policy Brief, which sets out the obligations States owe to EHRDs.

**DUTY TO PROVIDE ACCESS TO LEGAL REMEDIES**

From the Universal Declaration onwards, human rights agreements have recognised that States have an obligation to provide ‘effective remedy’ for violations of rights. 86 Human rights Treaty Bodies, Special Procedures and regional human rights tribunals have emphasised this duty in connection with environmental harms. 87 For example, the European Court of Human Rights has stated that individuals must be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process. 88 International environmental instruments also provide for effective remedies in relation to specific types of environmental harm. 89 More generally, Principle 10 of the Rio Declaration simply states: ‘Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.’

**SUBSTANTIVE OBLIGATIONS**

States have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that interferes with the enjoyment of human rights. These obligations have been derived from a number of human rights, including the rights to life, 90 health, 91 and water, 92 among others. The obligation to protect human rights from

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environmental harm does not require the cessation of all activities that may cause any environmental degradation.12 But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.112

In deciding whether a particular balance is reasonable, human rights bodies have employed a number of factors, including whether it is consistent with international standards, and whether it is non-retrogressive.113 Finally, after a State has adopted international standards into its law, it must implement and comply with those standards.114

**OBLIGATIONS OWED TO ENVIRONMENTAL HUMAN RIGHTS DEFENDERS**

Because environmental harm interferes with the enjoyment of human rights, those who work to guard against such harm are working to promote and protect human rights as well, whether or not they initially see themselves as ‘human rights defenders.’120 The obligation of States to protect against human rights abuses by non-state actors to abuses caused by corporations, and that corporations themselves have a responsibility to respect human rights.121

As human rights defenders, EHRODs are entitled to the rights set out in the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1998.122 Those rights include:

- The right to promote and to strive for the protection of human rights (the right to defend rights);
- The right to be protected;
- The right to freedom of opinion, the right to freedom of expression, and the right to develop and discuss new human rights ideas.

**OBLIGATIONS RELATING TO THOSE IN VULNERABLE SITUATIONS**

Human rights obligations relating to the environment include a general obligation of non-discrimination in their application. In particular, the right to equal protection under the law, which is protected by the Universal Declaration and the ICCPR, among other human rights agreements,123 includes equal protection under environmental law.124 States have additional obligations with respect to those particularly vulnerable to environmental harm. The Council and other institutions have recognised that ‘environmental damage is felt most acutely by those segments of the population already in vulnerable situations,’125 which may include indigenous peoples, women, children, the elderly and the extremely poor, among others.126

The obligations of States towards indigenous peoples in relation to the environment have been established in detail, including in the UN Declaration on the Rights of Indigenous Peoples, and the reports of the Special Rapporteur on the rights of indigenous peoples.127 Those obligations include a duty to recognise the rights of indigenous peoples with respect to the territory that they have traditionally occupied, including the natural resources on which they rely, and a duty not to allow extractive activities or other activities that would affect the enjoyment of their rights without their free, prior and informed consent, subject only to narrowly defined exceptions.127

**THE RIGHTS TO FREEDOM OF OPINION AND EXPRESSION, AND TO DEVELOP AND DISCUSS NEW HUMAN RIGHTS IDEAS**

The rights to freedom of opinion and expression are recognised in the Universal Declaration and the ICCPR.128 Under the ICCPR, no restrictions on the right to hold opinions are permitted, and restrictions on the right of freedom of expression are only permitted if they are provided by law and necessary either for
respect of the rights or reputations of others, or for the protection of national security, public order, public health or morals.141

Article 6 of the Declaration on Human Rights Defenders sets out three aspects of these rights:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.144

The first of these rights complements the obligation of States to provide information on environmental matters, by clarifying that EHRDs have the right to receive information on their rights, which could include their rights to participate in domestic procedures such as environmental impact assessments. In these respects, it is important to recognise that the process of requesting access to information can be very complex, and that both local communities and those working to defend their rights might have difficulties in obtaining such information if they lack the technical knowledge about the issues at stake.145 As a result, the Special Rapporteur has emphasised that States and other actors involved should do their utmost to assist stakeholders in obtaining such information. [...] Capacity-building for defenders and those affected by development projects is therefore a crucial aspect of every project and should be provided for when planning and implementing such projects and when monitoring their impact.146

The second and third rights listed in Article 6 of the Declaration highlight the important role that EHRDs can play in helping to interpret and explain information to their communities. As the Special Rapporteur has noted, they can also help to conduct human rights impact assessments, and participate in oversight, mediation or grievance mechanisms, among other roles.147 For EHRDs to play such roles, however, ‘state and non-State actors responsible for large-scale development projects need to engage with stakeholders, including affected communities and those defending their human rights, in good faith. A human rights-based approach to development requires this; if stakeholders are not engaged in good faith, the process remains a formality and an opportunity will be lost in terms of improving relations and defusing tensions among stakeholders and ensuring sustainable and people-centred development, as well as in terms of the sustainability of the project itself.’148

One specific protection for freedom of opinion and expression in the Declaration is set out in Article 7, which states that: ‘Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.’149 This right elaborates on the rights to freedom of opinion and expression, and is also informed by the rights of freedom of assembly and association.150 This right is particularly important in the context of environmental rights, which are still in the process of developing and maturing. EHRDs often take the lead in advocating for these rights and applying them to new situations.

THE RIGHTS TO ACCESS AND COMMUNICATE WITH INTERNATIONAL BODIES, AND TO ACCESS FUNDING

The right to access and communicate with international bodies is closely related to the rights to freedom of opinion and expression. Article 5(c) of the Declaration on Human Rights Defenders provides that: ‘For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels – to communicate with non-governmental or intergovernmental organizations.’ Article 9(a) furthermore states that everyone has the right, individually and in association with others, ‘to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.’

Article 13 of the Declaration provides that: ‘Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.’151 This right, which has been identified by the Special Rapporteur on human rights defenders as an inherent element of the right to freedom of association, includes the right to seek, receive and use resources from foreign as well as domestic sources.152 The obligation of States to permit the exercise of this right requires them to adopt measures “to facilitate or, at a minimum, not to hinder the effective exercise of the right.”153

As the Special Rapporteur on human rights defenders has stated, ‘accessing and communicating with international bodies are essential for human rights defenders to carry out their work and to alert the international community to human rights problems and bring key cases to the attention of regional and international human rights mechanisms.’154 As noted earlier, EHRDs are often ‘accidental’ human rights defenders, who may be relatively isolated from avenues of information and advocacy. It is particularly important, therefore, for them to be able to contact and receive assistance from international bodies. Indeed, some small environmental organisations may rely on access to domestic or foreign funding to carry out their work. Again, States often interfere with these rights in ways that directly contradict the Declaration, including by criminalising or stigmatising environmental associations for receiving foreign assistance.

THE RIGHTS TO FREEDOM OF ASSEMBLY AND ASSOCIATION, AND THE RIGHT TO PROTEST

States violate their obligation to respect and protect these rights in many ways in the context of EHRDs. As described above, they often impose over-restrictive legal constraints on the rights of assembly and protest, employ excessive force against EHRDs trying to exercise their rights, and arrest and detain them. They also violate the right to freedom of association by imposing undue restrictions on the registration and funding of environmental groups. Limitations on these rights are permissible only if they are properly enacted into law and they are ‘necessary in a democratic society’ for specified purposes, including the interests of national security or public safety, or the protection of the rights and freedoms of others.155

In this respect, these restrictions can be ‘necessary in a democratic society’ only if they are proportionate to the pursuance of legitimate aims.156 As the Special Rapporteur on human rights defenders has observed, the right to freedom of association is ‘inextricably linked to participation in non-governmental organizations, associations or groups.’ The rights to freedom of assembly and association are recognised in the Universal Declaration and the ICCPR.157 The right to protest takes into account those rights as well as the rights of freedom of opinion and expression.

The right to assemble includes a wide range of meetings, from meetings in private homes, to marches and demonstrations, as long as the assembly is peaceful. As the Special Rapporteur on human rights defenders has said, the right to assemble under the Declaration is essential for human rights defenders, without the guarantee of this right and the protection against its violation by State officials and non-State entities, the ability of defenders to fulfill their role in the protection and promotion of human rights and fundamental freedoms is severely restricted.158 The right to associate is similarly fundamental to the work of EHRDs, and the right to protest, likewise, is instrumental to participation in a democratic society.159

Like the other rights protected in the Declaration, States are obligated to protect the exercise of the rights of assembly, association and protest, including against businesses and other non-State actors.160 The Council has called upon States ‘to ensure that human rights defenders can perform their important role in the context of peaceful protests’ and ‘in this regard, to ensure that no one is subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts.’161 The Council has also called upon States ‘to respect, protect and ensure the right to freedom of association of human rights defenders, and to respect, protect and ensure the right to protest, likewise, is instrumental to participation in a democratic society’ only if they are ‘proportionate to the pursuance of legitimate aims.’162 As the special rapporteur on human rights defenders has noted, these are ‘the most essential and important human rights, fundamental freedoms and democratic values.’163
Governments should also establish national human rights commissions and other institutions with the authority to receive and review complaints, such as ombudspersons. In particular, the Special Rapporteur on human rights defenders has recommended that national institutions have a designated focal point for human rights defenders with responsibility to monitor their situation, including risks to their security, and legal and other impediments to a safe and conducive environment for defenders. Such focal points should ensure that they include EHrDs within their purview.

In the leading decision by a regional human rights tribunal on the obligations of States in relation to EHrDs, the Inter-American Court of Human Rights held in 2009 that Honduras had violated the American Convention on Human Rights by failing to protect the rights to life and to freedom of association, among other rights, of Jeannette Kawas-Fernández, an environmentalist working to preserve a natural area on the Atlantic coast of Honduras. She was murdered with the apparent complicity of local officials, and the authorities did not conduct an adequate investigation of her death. The Court ordered comprehensive reparations, including that the State pay compensation to her surviving family members, carry out the required criminal proceedings, make a public acknowledgement of responsibility, and undertake a national campaign to raise awareness of the important role of EHrDs. The Government of Honduras also memorialised Jeannette Kawas-Fernández by giving her name to the national park that she fought to protect, and the Court ordered Honduras to build a monument to her there. Of course, not every case will result in such a wide array of remedial measures. But the list is an important reminder of how harm to EHrDs cascades outward, affecting not only their family, friends and associations, but also all of us who benefit from their efforts to protect this beautiful planet.

Reparations are a fundamental element of this right. In addition to compensation, reparations can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

THE RIGHT TO AN EFFECTIVE REMEDY

As noted above, the right to an effective remedy for acts violating fundamental rights has been recognised from the time of the Universal Declaration of Human Rights onward. Article 9 of the Declaration on Human Rights Defenders elaborates on the right, stating that everyone has the right to benefit from an effective remedy and that, to that end:

“Everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person’s rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.”

Partial 4

Conclusions and Recommendations

This Policy Brief reveals a growing awareness and understanding of the vital work of EHrDs and of their particularly vulnerable situation. Many human rights bodies and organisations have issued useful recommendations as to how stakeholders might better protect and support the work of EHrDs. This Policy Brief will not repeat all of those recommendations. Instead, it offers a non-exhaustive set of ideas, some of them based on input received directly from EHrDs during the regional consultations, as to how the international community might look to strengthen its engagement with, and support of, these inspiring individuals — people operating, often at great personal risk, at the interface of environmental conservation and human rights protection.

One consistent message from EHrDs has been that international engagement can and often does make a crucial difference. For example, during the Geneva consultation, a number of EHrDs explained how:

- Support from a well-known international human rights NGO had been a critical factor in keeping an EHrD safe and in helping to ensure the success of her advocacy campaign.
- Activists had been freed from detention due to a strong international campaign of pressure from UN independent experts and NGOs.
- An environmental assessment by UNEP had helped validate the claims of a local community — a community that had previously been accused of being ‘anti-development.’

The following recommendations are therefore made with the aim of strengthening such international engagement and support.

Recommendations to States

1. The Special Rapporteurs on human rights defenders have repeatedly emphasised the core requirements that States must meet to establish a safe and enabling environment for human rights defenders, including EHrDs:

- States must adopt and implement laws that protect human rights defenders in accordance with international human rights law, including by ensuring that their laws do not criminalise or otherwise prevent the exercise of their rights to freedom of expression, assembly and association, among others. In that regard, States should refer to the Model National Law on Human Rights Defenders, developed by the International Service for Human Rights (ISHR) and 28 leading experts in the field, including current and former UN Special Rapporteurs on human rights defenders.
- States must ensure prompt and independent investigation of all violations of the rights of human rights defenders, the prosecution of alleged perpetrators, and the provision of effective remedies.
- States must establish and support strong national human rights institutions.
- States should set up specific protection programmes for human rights defenders, which include an early warning system to trigger the launch of protective measures, address risks to defenders’ family members, and provide appropriate training to security and law enforcement officials. The programmes should take into account the different situations faced by different types of human rights defenders. The programmes should be developed in consultation with human rights defenders themselves.
- Government officials, at a high-level, should publicly recognise the valuable role of human rights defenders, and fight back against suggestions that defenders are working against the interests of the country.

2. States that have not yet done so should consider adopting a right to a healthy environment at the constitutional level. Among other benefits, doing so would forestall claims that environmental defenders are not really defending human rights. During the regional consultations, EHrDs argued that recognition of the right to a healthy environment also helps provide a stronger backbone to their domestic advocacy.
3. States should also comply with the human rights obligations relating to the environment, including in particular by:

- Providing for assessment of the environmental impacts of all proposed projects and policies that may affect the enjoyment of human rights.
- Providing in the law for public access to information on environmental matters, including on environmental assessments, and ensuring that relevant information is provided to communities affected by proposed projects in a language that they understand.
- Providing for and facilitating informed public participation on environmental decision-making, including decision-making relating to proposed development projects that may have environmental effects.
- Providing for access to effective remedies for environmental harms.
- Establishing legal and institutional frameworks for environmental protection that regulate environmental harm from private actors as well as government agencies, and that adopt and implement substantive environmental standards that accord wherever possible with international health standards, are non-retrogressive and non-discriminatory, and take into account the situations of those who are particularly vulnerable to environmental harm.
- Effectively implementing international environmental standards.

4. States should comply with their obligations relating to the rights of indigenous peoples, including in particular by:

- Recognising the rights of indigenous peoples with respect to the territory that they have traditionally occupied, including the natural resources on which they rely.
- Facilitating the participation of indigenous peoples in decisions that concern them, and ensuring that those extractive activities and other activities that adversely affect their rights do not take place without their free, prior and informed consent.
- Ensuring that any indigenous community affected by extractive or other activities within their territory receives a reasonable benefit from any such development.

5. States should also accord those rights to other marginalised communities that, like indigenous peoples, depend heavily on the environment for their subsistence and culture, such as Afro-descendant tribal communities in Latin America.


7. States should reduce barriers to standing in environmental cases and consider instituting environmental courts, and they should facilitate training of judges on the relationship of human rights and the environment.

8. Latin American and Caribbean States negotiating a new regional agreement on environmental rights should include strong protections for EHrDs, including with respect to rights to freedom of association and expression. In addition to requiring national protections, the agreement should establish an independent international mechanism through which complaints from EHrDs can be received and investigated.

9. States eligible to join the Aarhus Convention should do so.

10. States in other regions, including in particular the Association of South East Asian Nations (ASEAN), should consider the elaboration of new regional agreements on the rights of access to information, participation and remedy, and should incorporate provisions on protection for EHrDs.

11. States should strengthen and build on initiatives such as the Extractive Industries Transparency Initiative and the Open Government Partnership.

12. The ‘home’ States of multinational corporations should prohibit human rights abuses by those corporations in other countries and provide effective mechanisms of redress that enable foreign victims to pursue remedies in the home States.

13. The Inter-Governmental Working Group established to develop a treaty to prevent and address corporate human rights violations should address the role of corporations in environmental human rights abuses and, in particular, in relation to violations of the rights of EHrDs.¹⁷¹

14. The UN Environment Programme (UNEP) and the UN Development Programme (UNDP) should strengthen their efforts to build the capacity of governments to understand and comply with their human rights obligations relating to the environment.

15. The Office of the United Nations Commissioner for Human Rights (OHCHR) and the Global Alliance of National Human Rights Institutions (GANHRI) should convene a conference of NHRIs to share experiences on environmental issues and on EHrDs in particular, to build their capacity to receive and consider claims of violations.

16. The Special Rapporteur on human rights defenders has stated that the number of reprisals against EHrDs for protesting against environmental harm caused by projects funded by international financial institutions is ‘disquieting,’ and has called attention to the ‘large gaps between professed commitments to participation and accountability and the situation on the ground, pointing to an overwhelming failure by those institutions to assess risks and respond to reprisals effectively.’¹⁷² International financial institutions must address these gaps and take steps to protect EHrDs who protest against projects that they fund. The institutions should not provide assistance to projects, and they should withdraw their support once given, if the projects fail to meet human rights standards, including, for example, projects that lack adequate safeguards for EHrDs, or that do not receive the free, prior and informed consent of the affected indigenous or traditional community.

17. Regional human rights institutions in Africa and ASEAN should establish protective mechanisms, like those of the Inter-American human rights system, to provide emergency protection (‘precautionary measures’) to EHrDs.¹⁷³

18. In addition to complying with the Guiding Principles on Business and Human Rights, businesses should follow the Awké: Kon voluntary guidelines for the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities, which were adopted by the Conference of the Parties to the Convention on Biological Diversity.¹⁷⁴

19. All extractive companies should adhere to the Voluntary Principles on Security and Human Rights.¹⁷⁵

20. Businesses should provide clear guidance to employees, contractors and partners on the rights of 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.¹⁷⁶

21. 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. Addax), and speaking out publicly against restrictions or attacks against HRDs (e.g. Tiffany & Co.).¹⁷⁷

22. Civil society organisations working on human rights and environmental issues provide assistance to EHrDs in many ways. They should continue to network with one another and with EHrDs to pool their resources, develop new strategies, support those at risk, and share lessons learnt. These networks should bring together environmental organisations and human rights organisations and, as appropriate, other constituencies involved in particular types of cases, such as indigenous peoples.¹⁷⁸

23. Areas in which EHrDs need continued assistance include:

- Increasing the visibility of EHrDs through alliances with other civil society organisations, communications to UN and regional human rights institutions, and the use of the media.¹⁷⁹
- Building the capacity of EHrDs, including their capacity to map threats and vulnerabilities and develop security plans.¹⁸⁰
- Accessing financial support, including emergency grants and, as appropriate, assistance with relocation.¹⁸¹
- Accessing legal support, including from international law firms and attorneys in the home state of multinational corporations.¹⁸²

24. During the Geneva consultation, EHrDs from Africa and Europe offered a number of ideas as to how international civil society could help strengthen support and protection, including:

RECOMMENDATIONS TO INTERNATIONAL ORGANISATIONS

- Ensuring that any indigenous community affected by extractive or other activities within their territory receives a reasonable benefit from any such development.

RECOMMENDATIONS TO BUSINESS

- Accessing financial support, including emergency grants and, as appropriate, assistance with relocation.
- Accessing legal support, including from international law firms and attorneys in the home state of multinational corporations.
• Help to create safe and collaborative platforms where EHrDs from different regions can meet, share information and strategies, and work together to jointly build capacity.

• Provide technical and capacity-building support to help EHrDs engage with, and seek help from, the UN human rights protection system - for example by facilitating access to the UN communications/petition systems.

• Help to create a platform where EHrDs can access and share case studies to show the impact of their work. As well as allowing exchanges of information about good practices, such case studies would also help counter the claim that EHrDs are ‘anti-development’. For example, some case studies could address situations where local consultations and wide participation in decision-making led to better and more sustainable projects.

• Providing easy access to useful information and contacts such as: lists of organisations and initiatives that can help EHrDs; legal resources, including access to networks of lawyers with relevant expertise; document templates such as sample legal documents or petitions to UN Special Procedures; contact information for other EHrDs and relevant associations in each region; contact information for relevant parts of the UN and regional human rights organisations; relevant UN conventions, declarations, reports and resolutions; scientific networks and data; and tips and practical advice.

To capture all of these ideas, it was suggested that international civil society, together with relevant parts of the UN, including the UN Special Rapporteur on human rights and the environment, and UNEP, should come together to develop a single one-stop-shop web portal that would provide all of the above - i.e. information, resources, contacts and advice.

Pursuant to that suggestion, URG, Global Witness, N1M and other NGOs, in collaboration with the UN Special Rapporteur on human rights and environment, have come together to begin the development of such a portal. When completed, this new resource will be available at the following web address: www.environment-rights.org.

NOTES

1 Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/71/281, para. 7 (3 August 2016). As Michel Forst, the Special Rapporteur on the situation of human rights defenders, explains, ‘land and environmental rights are intertwined and are often inseparable. As a result, the two broad categories of defenders advocating for the environment are often characterized as ‘land and environmental rights defenders,’ ‘environmental rights defenders,’ or just ‘environmental activists.’ Like him, we use the term ‘environmental human rights defenders’ to include all such defenders.

2 Ibid., para. 8.


5 Human Rights Council resolution 19/10 (22 March 2012).


7 Ibid., p. 8. Specifically, the criteria included: ‘a credible, published and currently publicly available online source of information’; ‘that the victim was named, that the type of act and method of violence was specified, and that the exact date and precise location of the killing was documented’; ‘further biological information about the victim, such as their occupation, organizational and political affiliations’; and ‘that there was a clear, proximate and documented connection to an environment or land issue’.

8 Ibid., p. 6. These gaps in reporting were particularly likely in countries with ongoing conflicts and/or a relative lack of space for civil society to operate. Global Witness included several examples of reports of killings which did not meet the particular evidential standard for this report but warrant further investigation, including reports of: between 10 and 150 killings in Ethiopia in a dispute over water rights; 107 alleged killings during the construction and operation of an oil pipeline in Myanmar; and over 200 alleged killings in Venezuela of campesino organisers over the last decade. Ibid., p. 23. Many other civil society organisations have also reported violence against EHrDs in specific regions. For example, the East and Horn of Africa Human Rights Defenders Project (EHAHREDP) has reported that between 6 and 7 Tanzanians were shot and killed by private security officers at an incident in 2011 at the North Mara mine. EHAHREDP, ‘Only the Brave Talk About Oil’. Human Rights Defenders and the Resource Extraction Industries in Uganda and Tanzania, p. 4 (December 2012), available at: https://www.defenddefenders.org/only-the-brave-talk-about-oil/.

9 Deadly Environment, p. 4.

10 Ibid.
12 Ibid., para. 45. The most vulnerable group were human rights defenders working on labour rights. Ibid. para. 51.
14 Ibid., para. 15.
18 How Many More?, p. 8; On Dangerous Ground, p. 10.
19 On Dangerous Ground, p. 4.
20 Deadly Environment, p. 4.
21 On Dangerous Ground, p. 4.
23 Front Line Defenders, Annual Report 2016: Human Rights Defenders at Risk in 2016, p. 6 (3 January 2017). In some countries, the toll was much higher: in Brazil, for example, such deaths constituted 76% of the total. Ibid. p. 11.
24 Deadly Environment, p. 6.
26 2016 Report of the Special Rapporteur on HRDs, para. 30.
27 See, e.g., We defend the environment, pp. 15-16.
28 The consultations include: the conference hosted by Universal Rights Group in Geneva in March 2016, which brought together EHrDs from Africa and Europe; the Chico Vasquez conference held in April 2016 in Washington, D.C., which focused on EHrDs in the Americas; the consultation by the then-Independent Expert on human rights and the environment in May 2016 in Bangkok, which brought together EHrDs from Asia; and the consultation by the Special Rapporteur on human rights defenders in July 2016 in Florence, Italy, which examined the problems EHrDs face more generally.
29 Deadly Environment, p. 19.
31 John Vidal, Cambodia bans film about murdered rainforest activist, The Guardian (21 April 2016) (quoting Fran Lambrick, the co-director of a documentary film about Chut Wutty).
32 Will Jackson, Vandy Mung and Vann Sreyouth, Three years since shooting death, Phnom Penh Post (25 April 2015).
33 Mike Ives, Fighting to Save Forests in Cambodia, an Activist Kills Himself at Risk, New York Times (22 April 2016).
34 See Goldman Prize, http://www.goldmanprize.org/about/.
38 Joseph J. Schatz, Thai environmentalists pay for activism with their lives, Al Jazeera (5 April 2014).
40 Lindsay fendt, 6 convicted, 3 acquitted in Jairo Mora murder trial, The Tico Times (29 March 2016).
41 Ibid., Darryl Fears, A rare conviction for the slaying of a Latin American environmentalist, Washington Post (5 April 2016).
44 Aposoa Joshi, After years of struggle and bloodshed, Peruvian community wins back its land, Mongabay (19 October 2016).
46 Deadly Environment, p. 4.
47 2016 Report of the Special Rapporteur on HRDs, para. 37. Another 37 communications concerned land rights, and 27 concerned construction projects, including dams and pipelines.
48 On Dangerous Ground, p. 16.
49 How Many More?, p. 8; On Dangerous Ground, p. 10.
50 Deadly Environment, pp. 15-16.
51 On Dangerous Ground, p. 19.
52 Ibid., pp. 16-17.
53 See We defend the environment, p. 21. For a recent description of environmental and land conflicts concerning indigenous people in Latin America, see A Deadly Shade of Green, pp. 19-28.
54 How Many More?, p. 9; On Dangerous Ground, p. 12. Global Witness states that the actual numbers may be higher, ‘as a victim’s indigenous identity is likely to be under-reported and cases related to indigenous people often occur in remote areas’. How Many More?, p. 8.
57 2016 Report of the Special Rapporteur on HRDs, para. 53.
58 Ibid., paras. 54-55.
59 Deadly Environment, p. 16.
On Dangerous Ground, p. 10. The killings by the paramilitary and the army are primarily in Colombia and Philippines, ‘where internal armed conflicts are used as a pretext for land-grabbing by business interests with military support’. Ibid.

See 2014 Report of the Special Rapporteur on HRDs, paras. 69-72 (linking corruption and impunity).

Robert Draper, Inside the Fight to Save One of the World’s Most Dangerous Ground, p. 10. The killings by the paramilitary and the army are primarily in Colombia and Philippines, ‘where internal armed conflicts are used as a pretext for land-grabbing by business interests with military support’. Ibid.


Deadly Environment, p. 6.

Ibid., p. 16.

‘No Observatory for the Protection of Human Rights. We are not afraid, Land rights defenders: attacked for confronting unbridled development,’ p. 86 (December 2014).

On Dangerous Ground, p. 10.


See, e.g., Only the Brave Talk About Oil, pp. 6-7, 11-13 (describing examples of detentions and confiscations in Tanzania and Uganda in 2010-2012). A Dangerous Shade of Green, pp. 33-34 (describing examples of the excessive use of force during peaceful demonstrations, including in Romania and Turkey); A Deadly Shade of Green, pp. 44-47 (describing examples of the excessive use of force in Argentina, Guatemala and Peru).


A Dangerous Shade of Green, p. 39.

See, e.g., We are not afraid, pp. 81-83; A Deadly Shade of Green, pp. 52-53.

See, e.g., Glazoe and Mitchell, pp. 281-287; A Dangerous Shade of Green, pp. 29-30 (giving examples from Denmark, Italy, and Russia); A Deadly Shade of Green, pp. 42-43 (examples from Chile, El Salvador, and Peru); Inter-American Court of Human Rights, Case of Norín Catrimán et al. v. Chile, Judgment of May 29, 2014 (holding that Chile had violated the human rights of indigenous leaders by improperly applying anti-terrorism legislation to them).


On Dangerous Ground, p. 21.

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/29/25 (28 April 2015), para. 43 (it is particularly reprehensible when the vilification and stigmatization comes from the highest government authorities, as this sends a clear message to other officials that it is acceptable to perpetuate the intimidation and harassment of activists and defenders’).


Human Rights Council res. 31/8, para. 4 (23 March 2016).

Human Rights Council res. 25/2, paras. 5-6 (28 March 2016).


Universal Declaration of Human Rights, art. 19. ICCPR, art. 19.


See, e.g., Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, art. 15; Stockholm Convention on Persistent Organic Pollutants, art. 10; United Nations Framework Convention on Climate Change, art. 6(a); Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, arts. 4, 5.

See also United Nations Environment Programme, Bali Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters (2010).

Universal Declaration of Human Rights, art. 21; ICCPR, art. 25.


See, e.g., Stockholm Convention on Persistent Organic Pollutants, art. 10; Convention on Biological Diversity, art. 14(1); United Nations Convention to Combat Desertification, arts. 3, 5; United Nations Framework Convention on Climate Change, art. 6(a); Aarhus Convention, arts. 6-8.


Tatkin v. Turkey, para. 119.

See, e.g., Council of European Court of Human Rights, Önerüydüz v. Turkey, No. 48939/09 (30 November 2016); Budayeva and others v. Russia, No. 15339/02 (20 March 2008).

See, e.g., Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), paras. 4, 15, 36.


See, e.g., Origenland case, para. 56; European Court of Human Rights, Hatton and others v. United Kingdom, No. 34032/97 (8 July 2003), para. 98.

See, e.g., Origenland case, para. 56; European Court of Human Rights, López Dotra v. Spain, No. 16798/90 (9 December 1994); Tatar v. Romania, No. 47021/01 (27 January 2009).


See, e.g., Committee on Economic, Social and Cultural Rights, General Comment No. 16, para. 32; General Comment No. 15, para. 19.


120 Ibid., principles 11, 25.


122 Universal Declaration of Human Rights, art. 7; ICCPR, art. 26.


126 See Mapping Report, para. 77 n.73 (listing sources).


130 General Assembly res. 53/164 (9 December 1998).


132 Human Rights Defenders Declaration, art. 1.

133 See, e.g., Human Rights Committee, General Comment no. 31 (2004), para. 8.

134 E.g., Human Rights Defenders Declaration, arts. 9(1), 12(2).


137 Human Rights Council res. 31/19 (23 March 2016), para. 45(b) (emphasis added).


139 Ibid.

140 Kawas-Fernández v. Honduras, para. 75.


142 Universal Declaration of Human Rights, art. 19; ICCPR, art. 19.

143 Ibid., See Human Rights Committee, General Comment no. 10 (1989).

144 HRD Declaration, art. 6.


146 Ibid.

147 Ibid., para. 78.

148 Ibid., para. 79.

149 HRD Declaration, art. 7.


153 Ibid., art. 13. Article 3 states that “Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which actions referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.”


155 Ibid., para. 68.


157 Universal Declaration of Human Rights, art. 20; ICCPR, arts. 21, 22.


159 Ibid., para. 53.

160 See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/29/25 (28 April 2013), para. 14. (“States are obligated to protect and facilitate the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation, including by ensuring that business interests do not violate these rights”); see also Kawas-Fernández, para. 64 (quoting Human rights Committee, general Comment no. 31, para. 22).


165 Ibid., para. 8. In the same resolution, the Council also called upon States to ensure that their measures to combat terrorism and preserve national security are in compliance with their obligations under human rights law and do not hinder the work and safety of human rights defenders. Ibid para. 10.

166 ICCPR arts. 21, 22.
and Journalists in Europe (2014); Article 19, A Deadly Shade of Green: Threats to Environmental Human Rights Defenders in Latin America (2014); Friends of the Earth International, We defend the environment, we defend human rights: Denouncing violence against environmental defenders from the experience of Friends of the Earth International (June 2014); Global Witness, Deadly Environment: The Dramatic Rise in Killings of Environmental and Land Defenders (15 April 2014); Global Witness, How Many More? 2014’s deadly environment: the killing and intimidation of environmental and land activists, with a spotlight on Honduras (20 April 2015); Global Witness, On Dangerous Ground: 2015’s deadly environment: the killing and criminalization of land and environmental defenders worldwide (20 June 2016).


177 On Dangerous Ground, p. 6.


184 Ibid., para. 63.

185 Friends of the Earth International, We defend the environment, we defend human rights: Denouncing violence against environmental defenders from the experience of Friends of the Earth International (June 2014), p. 30.


187 We defend the environment, p. 33; 2016 Report of the Special Rapporteur on human rights defenders, para. 65.

188 Ibid., para. 62.


176 these recommendations draw in particular on the report of the special rapporteur on the situation of human rights defenders, margaret sekaggya, un doc. a/hrc/25/55, paras. 54-133 (23 december 2013), which set out elements of a safe and enabling environment for human rights defenders.

177 on dangerous ground, p. 6.


179 how many more?, p. 6.


181 report of the special rapporteur on the rights of indigenous peoples, james anaya: extractive industries and indigenous peoples, un doc. a/hrc/24/61 (1 july 2013), para. 23.

182 2016 report of the special rapporteur on human rights defenders, para. 76.


184 Ibid., para. 63.

185 Friends of the Earth International, We defend the environment, we defend human rights: Denouncing violence against environmental defenders from the experience of Friends of the Earth International (June 2014), p. 30.


187 We defend the environment, p. 33; 2016 Report of the Special Rapporteur on human rights defenders, para. 65.

188 Ibid., para. 62.


177 On Dangerous Ground, p. 6.


184 Ibid., para. 63.

185 Friends of the Earth International, We defend the environment, we defend human rights: Denouncing violence against environmental defenders from the experience of Friends of the Earth International (June 2014), p. 30.


187 We defend the environment, p. 33; 2016 Report of the Special Rapporteur on human rights defenders, para. 65.
working together to protect universal human rights