

POLICY BRIEF

ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

A global crisis

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PREFACE

Environmental human rights defenders (EHRDs) are individuals and groups who 'strive to protect and promote human rights relating to the environment.'¹ 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.'² 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.³ This policy brief is, in large part, a reflection of their views and suggestions.⁴

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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.⁵ 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.

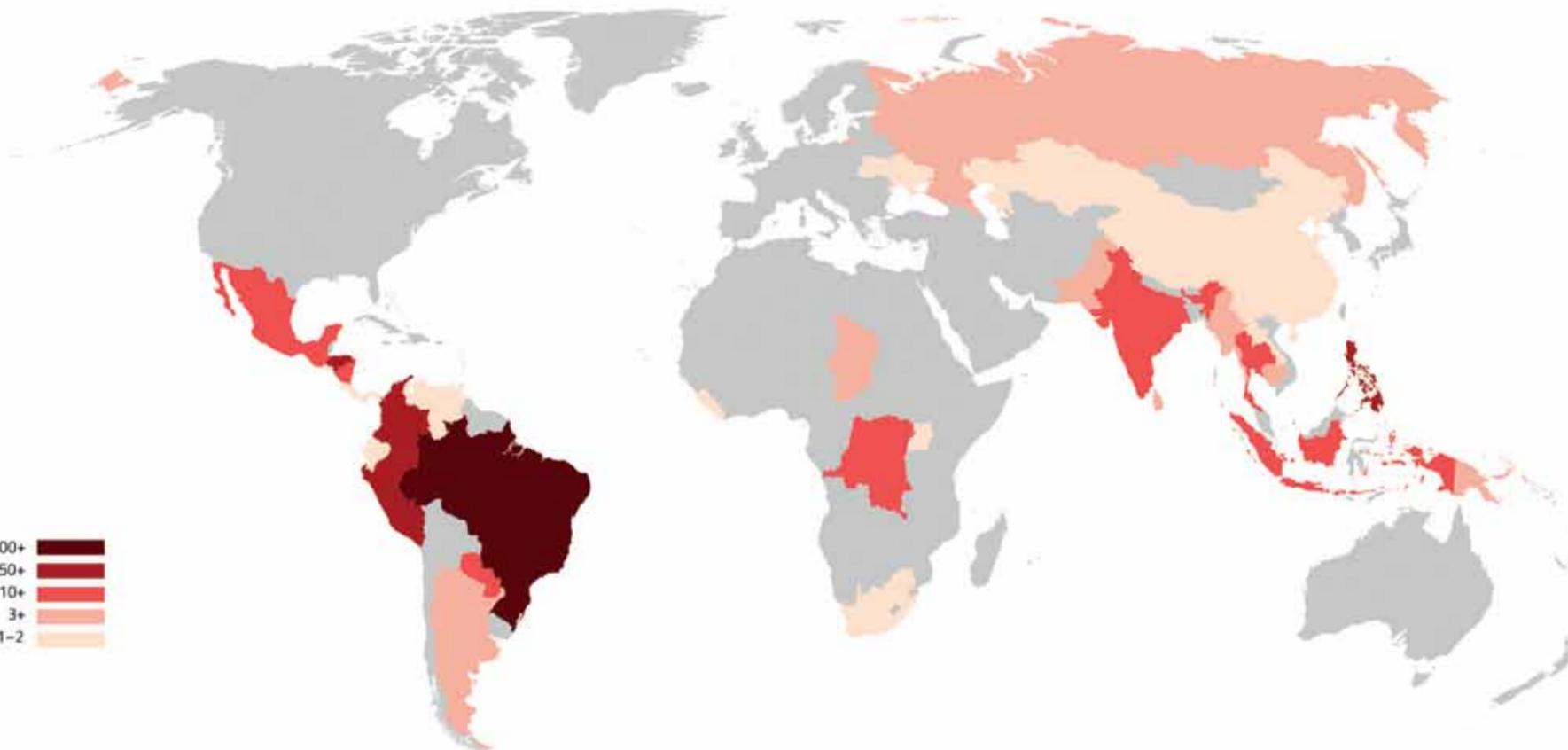
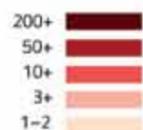
Reporting from the front line of environmental protection around the world, EHRDs have made clear that the threats they face are perilous and increasing. Their reports have been confirmed and supplemented by the work of organisations such as Global Witness, Front Line Defenders and Article 19, and by 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.⁶ 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 understate 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.⁷ As a result, Global Witness concluded that 'there are without

DEADLIEST YEAR ON RECORD

KILLINGS BY COUNTRY 2010-15
THE DEADLIEST YEARS ON RECORD



Global Witness, On Dangerous Ground: 2015's deadly environment: the killing and criminalization of land and environmental defenders worldwide [20 June 2016].

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.'⁸

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 (40), 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.'⁹ While some of this increase may have been due to better

FIGURE 1: KILLINGS OF EHRDS BY COUNTRY IN 2010-2015

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.'¹⁰

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.'¹¹ Based on individual complaints received from the alleged victims of human rights violations, she concluded that those working on land rights and natural resource issues were the second-largest group of defenders at risk of being killed.¹² In 2013, Ms Jilani's successor as Special Rapporteur on human rights defenders, Margaret Sekaggya, stated that the situation of EHRDs appeared to have worsened since 2007.¹³ 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.¹⁴ 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.'¹⁵

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.¹⁶ 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 (15); Honduras (20); Nicaragua (12); and Peru (12) (see figure 2).¹⁷ 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.'¹⁸

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.¹⁹ In 2014, the killing of 116 EHRDs represented almost twice the number of journalists killed in the same year [61].²⁰ And in 2015, the deaths of 185 EHRDs constituted more than two-and-a-half times the number of journalists killed [72].²¹

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.²² In 2016, the global percentage rose to 49% - almost exactly one-half of all killings of human rights defenders.²³

TIP OF THE ICEBERG

Shocking as these numbers may be, they are, 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,²⁴ but for every EHRD murdered, many more, in every region of the world, are subjected to other types of violence or harassment.²⁵ In the words of the Special Rapporteur on the situation of human rights defenders:

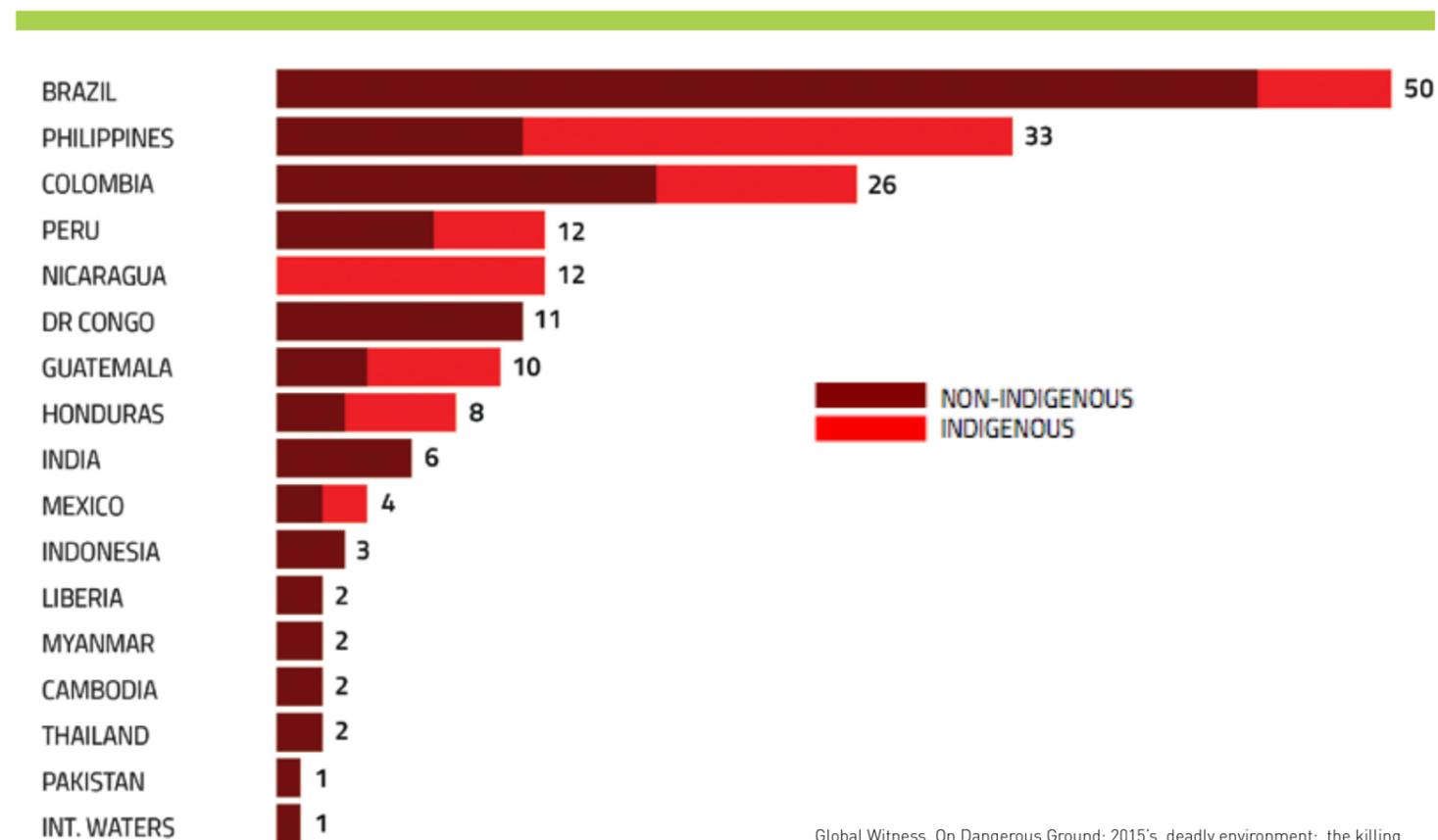
*'The assassination of environmental human rights defenders is only part of the overall violence they face. The submissions received by the Special Rapporteur show that environmental human rights defenders confront numerous threats and violations, including violent attacks and threats to their families, enforced disappearances, illegal surveillance, travel bans, blackmail, sexual harassment, judicial harassment and use of force to dispel peaceful protests.'*²⁶

EHRDs are all too often subjected to threats that are meant to instil fear and prevent activism.²⁷ 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.²⁸

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 physical attacks, as well as non-physical threats or reprisals, 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 surrounded by gunmen, threatened 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.

FIGURE 2: KILLINGS OF EHRDS BY COUNTRY IN 2015



Global Witness, On Dangerous Ground: 2015's deadly environment: the killing and criminalization of land and environmental defenders worldwide (20 June 2016).

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.

In May 2011, **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 Alta-Piranheira sustainable reserve where they had worked for 24 years.²⁹ 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 pastures. 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.³⁰



Maria do Espírito Santo da Silva and José 'Zé Cláudio' Ribeiro da Silva ©Felipe Milanez

Chut Wutty was the founder of the Natural Resource Protection Group, a civil society organisation that monitored and reported on illegal logging in Cambodia. According to those who knew him: 'his life work was to defend the rights of forest communities and speak out against the rampant deforestation that is destroying Cambodia's natural heritage.'³¹ He was killed in April 2012 while escorting two journalists near a protected forest in Koh Kong province. He was shot after refusing to turn over his memory card and camera, allegedly by a military police

officer. The officer was also shot during the incident, apparently by accident by another security guard. The guard was convicted of the officer's killing but served only a few months. No one was charged with killing Chut Wutty.³² Other environmental defenders continue his work. Ouch Leng, for example, continues to investigate and issue reports on illegal logging in Cambodia, despite concerns that his work makes him a target of violence.³³ He received the 2016 Goldman Environmental Prize, an award that honours grassroots environmental defenders from each continent, recognising individuals for 'sustained and significant efforts to protect and enhance the natural environment, often at great personal risk.'³⁴



Chut Wutty ©Not1More and Vanessa de Smet, 2011

In May 2012, **Margarito Cabal** was shot and killed in Northern Mindanao in the Philippines by two men riding on a motorcycle.³⁵ 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.³⁶ He was one of 15 EHRDs killed in the Philippines in 2012 alone.

Prajob Nao-opas exposed the dumping of toxic waste in Chacheongsao 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



Edwin Chota Valero ©Global Witness

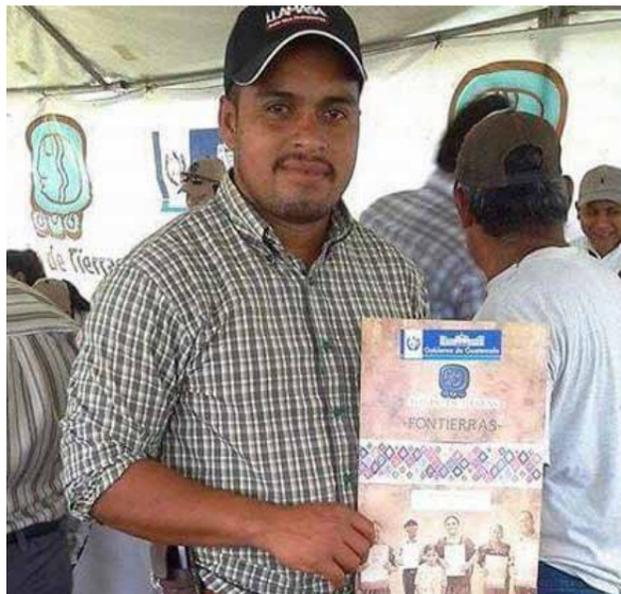
Prajob's activism had made him a target.³⁷ In December the same year, a business owner in the province was convicted and sentenced to death for the murder.³⁸ The conviction of the killer of Prajob Nao-opas is unusual: most such cases fail to result in any arrests or convictions – or international attention.

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 LAST), 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.³⁹ 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.⁴⁰ Two months later, Costa Rican police arrested several individuals for his murder, and four were convicted in May 2016.⁴¹

Adelina Gómez Gaviria was shot and killed in September 2013 because of her opposition to illegal mining in Cauca, a department of Colombia. She worked with the Proceso de Mujeres Maciceñas in the Committee for Macizo-Colombian Integration, and participated in the Mining and Environmental

Forum in Almaguer, which included more than 1,200 local campesinos and indigenous people. One month before her murder, she had received a call from strangers who told her to 'stop messing around with this miners' thing; it's risky and it'll get you killed.' She was 36 years old at the time of her murder, with three children, the oldest of whom, a teenager, was also shot and injured during the attack.⁴²

Edwin Chota Valero was the President of Saweto, an Ashéninka indigenous settlement in the Amazon region of eastern Peru. Over many years he fought against illegal logging in the forests that his people called home. He received many death threats, but continued to denounce the loggers and file reports with the authorities. In late August 2014, inspectors from a Peruvian agency charged with combatting illegal logging visited the community for the first time. Chota accompanied them as they searched the territory and uncovered evidence of illegal logging.⁴³ Two days later, on 1 September, Chota and three other leaders of the Saweto community – Jorge Ríos Pérez, Leoncio Quinticima Melendez and Francisco Pinedo – were shot and killed in the forest. One year later, on the anniversary of their deaths, the Peruvian Government recognised the title of the community to over 80,000 hectares of land.⁴⁴



Rigoberto Lima Choc ©Global Witness

Rigoberto Lima Choc, a 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'.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.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.⁴⁷ 'Loggers hated him because he denounced them,' one of his co-workers said.⁴⁸



Berta Cáceres ©Goldman Environmental Prize

On 3 March 2016, **Berta Cáceres** was shot and killed in her home in Honduras. A Mexican EHRD, 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 Organisations 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.⁴⁹ In the months since her death, assassination attempts have continued to be made against leaders of COPINH.⁵⁰

On 15 January 2017, shortly before finalisation of this report, **Isidro 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.'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.⁵²

Deforestation near Rio Branco, Brazil. 24/02/2017. © Centre for International Forestry Research.



Sierra Madre mountains. 25/10/2006. © Christian Frausto Bernal.

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; they seek to displace and disempower those who live in affected areas; 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 'unpatriotic,' 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 to 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).⁵⁶ Many such disputes involve private security forces working on behalf of mining companies or large landowners.⁵⁷

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.⁵⁸ 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.⁵⁹

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

FIGURE 3: KILLINGS OF EHRDS IN 2015 BY SECTOR.

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.

SECTOR	TOTAL
MINING AND EXTRACTIVES	42
AGRIBUSINESS	20
LOGGING	15
DAMS AND WATER	15
POACHING	13

in some cases more than one sector was a factor in the killing.

Global Witness, On Dangerous Ground: 2015's deadly environment: the killing and criminalization of land and environmental defenders worldwide (20 June 2016).

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 (e.g. rainforests) for subsistence and the maintenance of their traditional culture.⁶¹ 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 Those consequences include, *inter alia*, 'the gradual loss of control over indigenous lands, territories and natural resources;' 'the degradation and destruction of ecosystems ... including the pollution of water and lands, and the depletion of local flora and fauna;' and 'the destruction of places of culture and spiritual significance for indigenous peoples, including sacred sites and archaeological ruins.'⁶⁴

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.'⁶⁵ 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.⁶⁶

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.

COMPLICITY 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).⁶⁷ 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.⁶⁸ 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 10 to the police.⁶⁹

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.⁷⁰



Attack on EHRD Chut Wutty in Cambodia ©Not1More and Vanessa de Smet, 2011

The involvement of government officials in many cases of violence against EHRDs should not obscure the fact that, in other cases, State officials themselves may be harassed or even killed as a result of their work defending the environment. Park rangers are one group at particular risk, as they work to protect wildlife and natural resources from, for example, poachers or illegal loggers. Virunga National Park in the DRC, the home of critically endangered mountain gorillas, is one of the most dangerous places in the world to be employed as an environmental defender: more than 150 park rangers have been killed in the line of duty since 1996.⁷¹ Many of these deaths

have come as a result of armed groups battling for control of the region, which straddles the borders of DRC, Uganda, and Burundi. Higher-level State officials also run risks when they are seen to be actual or potential obstacles to lucrative economic projects. For example, in September 2016, Luiz Alberto Araújo, the Environment Secretary of the City Council of Altamira, in the Brazilian state of Pará, was shot by two gunmen after receiving death threats.⁷²

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 Isolete Wichinieski, the National Coordinator of the Comissão Pastoral da Terra in Brazil: 'What feeds the violence is the impunity.'⁷³ 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.⁷⁴ 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.⁷⁵



Isolete Wichinieski speaking at a Comissão Pastoral da Terra Event in Brazil. 27/09/2016. © Agência Brasil Fotografias.

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.'⁷⁶

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 Maina Kiai, 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.'⁷⁷

Government officials regularly harass EHRDs by arbitrarily detaining them, confiscating their equipment (such as computers, cameras or recorders), and using excessive force against them.⁷⁸ Authorities often break up peaceful protests and arrest their organisers, participants and those reporting on the events.⁷⁹ 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.⁸⁰ 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 Vitishko, 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.⁸¹

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.⁸² 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).⁸³ 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.⁸⁴

Other governments use 'national security' arguments and 'anti-terrorism' laws or programmes to stifle the work of EHRDs.⁸⁵ ⁸⁶ Yet others use the threat of prosecution to intimidate and silence defenders. For example, authorities 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



Green Peace Protest in India. 28/06/2013. ©Sam Wohns.

truth and spreading propaganda against the State.' The charges carry a maximum prison term of 12 years.⁸⁷

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.'⁸⁸ Such suits often claim that criticisms of projects by EHRDs amount to defamation or libel. For example, Nasako 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.⁸⁹

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.⁹⁰ 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,'⁹¹ and where more than 3,000 cases of improper criminalisation of defenders have been documented since 2010, also has the world's highest per capita rate of killings of EHRDs.⁹²

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.'⁹³ 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, the rights to information, participation and access to justice in the field of the environment;

(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...'⁹⁴

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.'⁹⁵

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.⁹⁶



March against mining in Matagalpa, Nicaragua. 10/10/2013. © Alba Sud Fotografía.

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.'⁹⁷ 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.⁹⁸

Many international environmental instruments also support conducting environmental assessments and providing information to the public.⁹⁹ 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.'¹⁰⁰

DUTIES 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.¹⁰¹ 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.¹⁰² The importance of public participation is also reflected in many international environmental instruments.¹⁰³ Principle 10 of the Rio Declaration states: 'Environmental issues are best handled with

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

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.'¹⁰⁴

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.¹⁰⁵ Human rights Treaty Bodies, Special Procedures and regional human rights tribunals have emphasised this duty in connection with environmental harms.¹⁰⁶ 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.'¹⁰⁷ International environmental instruments also provide for effective remedies in relation to specific types of environmental harm.¹⁰⁸ 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,¹⁰⁹ health,¹¹⁰ and water,¹¹¹ among others. The obligation to protect human rights from

environmental harm does not require the cessation of all activities that may cause any environmental degradation.¹¹² But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.¹¹³

In deciding whether a particular balance is reasonable, human rights bodies have employed a number of factors, including whether it accords with national and international health standards,¹¹⁴ and whether it is non-retrogressive.¹¹⁵ Finally, after a State has adopted environmental standards into its law, it must implement and comply with those standards.¹¹⁶

OBLIGATION TO PROTECT AGAINST ENVIRONMENTAL HARM FROM PRIVATE ACTORS

As the then Special Representative of the Secretary-General on business and human rights has explained, 'the State duty to protect against non-State abuses is part of the very foundation of the international human rights regime. The duty requires States to play a key role in regulating and adjudicating abuse by business enterprises, or risk breaching their international obligations.'¹¹⁷ Such abuses include environmental harm that infringes human rights.¹¹⁸

The Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, make clear that States are required, *inter alia*, to 'protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises,' including by 'taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.'¹¹⁹ The Guiding Principles also make clear that States have an obligation to provide for remedies for human rights abuses caused by corporations, and that corporations themselves have a responsibility to respect human rights.¹²⁰

These three pillars of the normative framework all apply to environmental human rights abuses. Many other human rights bodies have explicitly connected States' duty to protect against human rights abuses by non-State actors to abuses caused by pollution or other environmental harm.¹²¹

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,¹²² includes equal protection under environmental law.¹²³ 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,'¹²⁴ which may include indigenous peoples, women, children, the elderly and the extremely poor, among others.¹²⁵

The obligations of States towards indigenous peoples in relation to the environment have been established in detail, including in International Labour Organization (ILO) convention 169, the UN Declaration on the Rights of Indigenous Peoples, and the reports of the Special Rapporteur on the rights of indigenous peoples.¹²⁶ 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

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.' The Council has recognised the important role played by human rights defenders in 'the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment,'¹²⁸ and has recognised that environmental and land defenders are among the human rights defenders most at risk.¹²⁹

As human rights defenders, EHRDs are entitled to the rights set out in the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1998.¹³⁰ 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.
- The right to access and communicate with international bodies, and the right to access funding.
- The right to freedom of assembly, the right to freedom of association, and the right to protest.
- The right to an effective remedy.¹³¹



Chut Wutty with his civil society network ©Not1More and Vanessa de Smet, 2011

THE RIGHT TO DEFEND RIGHTS

Article 1 of the UN Declaration on Human Rights Defenders makes clear that 'everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.' This is the cornerstone of the Declaration.¹³²

THE RIGHT TO BE PROTECTED

The right of human rights defenders to be protected by States, from actions of non-State actors as well as from government authorities, is grounded in fundamental norms of human rights law,¹³³ and is highlighted throughout the Declaration.¹³⁴ As the Committee on Economic, Social and Cultural Rights has recently emphasised, States must 'ensure that human rights defenders are effectively protected against any and all forms of abuse, violence and reprisal which they might experience while carrying out their work'.¹³⁵ As the Committee on Economic, Social and Cultural Rights has recently emphasised, States must 'ensure that human rights defenders are effectively protected against any and all forms of abuse, violence and reprisal which they might experience while carrying out their work'. The Special Rapporteur on human rights defenders has summarised the obligation of States in this respect as follows:

"The obligation of States to protect includes both negative and positive aspects. On the one hand, States must refrain from violating human rights. On the other hand, States should act with due diligence to prevent, investigate and punish any violation of the rights enshrined in the Declaration. In other words, States should prevent violations of the rights of defenders under their jurisdiction by taking legal, judicial, administrative and all other measures to

ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators; and providing defenders with remedies and reparation."¹³⁶

The duty of States to protect human rights defenders undoubtedly includes the protection of EHRDs. The Council itself, in March 2016, has called on States '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.'¹³⁷

Unfortunately, as the first part of this Policy Brief explains, States regularly fail to protect EHRDs. States should recognise that they have obligations of protection both before and after threats, harassment and violence occur.

For example, law enforcement officials must be properly trained to deal with peaceful protests, so that they apply only 'a proportionate use of force and provide protection to peaceful protesters during assemblies.'¹³⁸ More generally, States should put protection measures in place before harassment or violence occurs, so that they can be easily triggered if threats are made against the EHRDs. The Special Rapporteur on human rights defenders has stressed that such protection measures 'need to be designed and implemented in close cooperation with those they are intended to protect, whether they are organised on an ad hoc basis or form part of a broader protection programme.'¹³⁹ In the context of large-scale development projects, in particular, the Special Rapporteur has recommended 'making the protection of those affected by such projects and those acting on their behalf an integral part of an overall strategy, in order to ensure that those affected can effectively participate in the process without fear of retaliation.'

When harassment and violence occur despite these protections, States must properly investigate and prosecute such acts. They must ensure that the investigation is 'ex officio, prompt, serious, impartial and effective,'¹⁴⁰ and that the punishments are appropriate and provide adequate deterrence. Otherwise, States continue to contribute to a climate of impunity that further endangers EHRDs. In the words of the Special Rapporteur on human rights defenders, 'ending impunity is an essential condition for ensuring the protection and safety of defenders.'¹⁴¹

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.¹⁴² 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.¹⁴³ 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 of freedom of opinion and expression of human rights defenders are reinforced by the right of protection described in the preceding section. States have an obligation to protect EHRDs who are seeking to exercise their right to voice their opinion, including their opposition to proposed projects.¹⁵¹ The right to express an opinion is only fully realised if it can be exercised without fear of persecution or harassment, from State or non-State actors. This is equally true whether the expression sought is within regular decision-making procedures or outside them in other forums, such as the media. In any event, States should take the steps necessary to protect those seeking to voice their opinion.¹⁵² Unfortunately, as described above, States often fail to protect EHRDs from harassment and violence for exercising their right to freedom of expression. Indeed, States often arrest and detain EHRDs for criticising development projects, including through the misapplication of defamation, libel and other laws.

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(4) 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.'¹⁵³ 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.¹⁵⁴ 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.'¹⁵⁵

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.'¹⁵⁶ 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



Protest against Chevron Corporation, an American multinational energy corporation responsible for oil spills and contamination in Brazil and Ecuador. 30/05/2012. ©Rainforest Action Network

Article 6 of the Declaration on Human Rights Defenders provides that '[f]or 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 meet or assemble peacefully [and] to form, join and participate 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 peaceful assembly 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 fulfil 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, in this regard, to ensure, where procedures governing the registration of civil society organisations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law.'¹⁶²

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.¹⁶³

In this respect, these restrictions can be 'necessary in a democratic society' only if they are 'proportionate to the pursuance of legitimate aims.'¹⁶⁴ As the Special Rapporteur on the rights to freedom of assembly and association has

explained: 'Thus, a blanket prohibition of protests outside business premises or surrounding the operations of mining, resource and forestry companies would be unjustifiable under the ICCPR. Similarly, broad definitions of 'vital installations' or 'national interests' that encompass business premises engaged in natural resource exploitation, with a view to shielding them from peaceful assemblies, would not meet international human rights law standards.'¹⁶⁵

If violence does occur in an otherwise peaceful assembly or protest, States 'have a duty to distinguish between peaceful and non-peaceful demonstrators, take measures to de-escalate tensions and hold the violent individuals — not the organisers — to account for their actions. The potential for violence is not an excuse to interfere with or disperse otherwise peaceful assemblies.'¹⁶⁶ In this respect and others, States cannot delegate their obligations under human rights law to private actors, including corporations. Many observers have expressed concerns about the repression of legitimate advocacy by private security enterprises. In the words of the Special Rapporteur on the rights to assembly and association, 'the potential for violations of rights, including to peaceful assembly and association rights, is particularly high when law enforcement responsibilities are ceded to private actors, who are accountable to their clients rather than to the public.'¹⁶⁷

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.¹⁶⁸ 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."¹⁶⁹

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.'¹⁷⁰

Governments should also establish national human rights commissions and other institutions with the authority to receive and review complaints, such as ombudspersons.¹⁷¹ 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.'¹⁷² 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.¹⁷³ 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.

PART IV

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.¹⁷⁴ 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.¹⁷⁵
- 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.¹⁷⁶

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 in 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 these rights to other marginalised communities that, like indigenous peoples, depend heavily on the environment for their subsistence and culture, such as Afro-descendent tribal communities in Latin America.

6. States should ensure that large-scale land acquisitions do not violate land rights of indigenous peoples and local communities, in accordance with the Food and Agriculture Organisation of the United Nations (FAO) Voluntary Guidelines on the Governance of Tenure of Land, Forests and Fisheries.

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.¹⁷⁷

RECOMMENDATIONS TO INTERNATIONAL ORGANISATIONS

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.'¹⁷⁸ 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.¹⁷⁹

RECOMMENDATIONS TO BUSINESSES

18. In addition to complying with the Guiding Principles on Business and Human Rights, businesses should follow the Akwé: 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.¹⁸⁰

19. All extractive companies should adhere to the Voluntary Principles on Security and Human Rights.¹⁸¹

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.'¹⁸²

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. Adidas), and speaking out publicly against restrictions or attacks against HRDs (e.g. Tiffany & Co.)¹⁸³

RECOMMENDATIONS TO CIVIL SOCIETY ORGANISATIONS

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.¹⁸⁴

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.¹⁸⁵
- Building the capacity of EHRDs, including their capacity to map threats and vulnerabilities and develop security plans.¹⁸⁶
- Accessing financial support, including emergency grants and, as appropriate, assistance with relocation.¹⁸⁷
- Accessing legal support, including from international law firms and attorneys in the home state of multinational corporations.¹⁸⁸

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:

- 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, NIM 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 interlinked 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.

3 A report of the Geneva meeting is available at: http://www.universal-rights.org/wp-content/uploads/2015/03/URG_EHRD_Meeting_Report.pdf. A report of the Bangkok meeting is at <http://srenvironment.org/consultations/>.

4 Those consultations also informed a project by UNEP and the then Independent Expert on human rights and the environment to identify good practices related to human rights and the environment. The report, UN Doc. A/HRC/28/61 (3 February 2015), is available at: <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/GoodPractices.aspx>.

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

6 Global Witness, Deadly Environment: The Dramatic Rise in Killings of Environmental and Land Defenders (15 April 2014), available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>.

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 (EHAHRDP) has reported that between 4 and 7 Tanzanians were shot and killed by private security officers at an incident in 2011 at the North Mara mine. EHAHRDP, ‘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.

- 11 Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, UN Doc. A/HRC/4/37, para. 40 (24 January 2007).
- 12 Ibid., para. 45. The most vulnerable group were human rights defenders working on labour rights. Ibid para. 51.
- 13 Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/68/262, para. 18 (5 August 2013).
- 14 Ibid., para. 15.
- 15 Front Line Defenders Annual Report 2016, available at: <https://www.frontlinedefenders.org/en/resource-publication/annual-report-human-rights-defenders-risk-2016>
- 16 Global Witness, How Many More? 2014's deadly environment: the killing and intimidation of environmental and land activists, with a spotlight on Honduras, p. 4 (20 April 2015), available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/how-many-more/>; Global Witness, On Dangerous Ground: 2015's deadly environment: the killing and criminalization of land and environmental defenders worldwide, p. 4 (20 June 2016), available at: <https://www.globalwitness.org/en/reports/dangerous-ground/>.
- 17 How Many More?, p. 8; On Dangerous Ground, p. 10.
- 18 On Dangerous Ground, p. 4.
- 19 Deadly Environment, p. 4, citing the work of the Committee to Protect Journalists, available at: <https://www.cpj.org/killed/cpj-database.xls>.
- 20 How Many More?, p. 4.
- 21 On Dangerous Ground, p. 4.
- 22 Front Line Defenders, Annual Report 2016: Stop the Killing of Human Rights Defenders, p. 7 (14 January 2016).
- 23 Front Line Defenders, Annual Report on 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 74% of the total. Ibid. p. 11.
- 24 Deadly Environment, p. 6.
- 25 See, e.g., Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN Doc. A/HRC/19/55 (21 December 2011), paras. 60-92 (describing attacks on land and environmental defenders); 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); Article 19, A Deadly Shade of Green: Threats to Environmental Human Rights Defenders and Journalists in Europe, pp. 14-19 (2014), available at: https://www.article19.org/data/files/medialibrary/37608/Dangerous_green_report_v4.pdf; Article 19, A Deadly Shade of Green: Threats to Environmental Human Rights Defenders in Latin America (2016), pp. 36-53, available at: https://www.article19.org/data/files/Deadly_shade_of_green_A5_72pp_report_hires_PAGES_PDF.pdf.
- 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 2014, which brought together EHRDs from Africa and Europe; the Chico Vive conference held in April 2014 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 2014 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.
- 30 Jonathan Watts, Two convicted of Amazon activists' murders, The Guardian (5 April 2013).
- 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 Muong and Vann Sreynoch, Three years since shooting death, Phnom Penh Post (25 April 2015).
- 33 Mike Ives, Fighting to Save Forests in Cambodia, an Activist Puts Himself at Risk, New York Times (22 April 2016).
- 34 See Goldman Prize, <http://www.goldmanprize.org/about/>.
- 35 Rhodina Villanueva, Environmental activist shot dead in Bukidnon, The Philippine Star (13 May 2012).
- 36 World Organization Against Torture, Philippines: Alleged extrajudicial killing of Mr. Margarito J. Cabal, in Northern Mindanao, available at: <http://www.omct.org/urgent-campaigns/urgent-interventions/philippines/2012/05/d21799/>.
- 37 Kate Hodal, Murder of environmentalist 'highlights Thailand's failure to protect activists', The Guardian (27 February 2013).
- 38 Joseph J. Schatz, Thai environmentalists pay for activism with their lives, Al Jazeera (5 April 2014).
- 39 Lindsay Fendt, Why Jairo Died, The Tico Times (2 September 2013).
- 40 Lindsay Fendt, 4 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).
- 42 Camilo Mejia Giraldo, Heavy toll for green and indigenous activists among Colombian killings, Mongabay (15 July 2016). PASC, Colombia: Killing of human rights defender Ms Adelinda Gómez Gaviria, available at: <http://www.pasc.ca/en/action/colombia-killing-human-rights-defender-ms-adelinda-g%C3%B3mez-gaviria> (3 October 2013).
- 43 Joseph Zárate The Man Who Chose the Forest, and Died For It, International Boulevard (27 February 2015), available at: <http://www.internationalboulevard.com/the-man-who-chose-the-forest-and-died-for-it/>.
- 44 Apoorva Joshi, After years of struggle and bloodshed, Peruvian community wins back its land, Mongabay (9 October 2015).
- 45 Alana Marsili, A New Court in Guatemala Tackles Ecocide, Frontlines (November/December 2015), available at: <https://www.usaid.gov/news-information/frontlines/resilience-2015/new-court-guatemala-tackles-ecocide>.
- 46 Sandra Cuffe, Guatemalan activist murdered after court suspends palm oil company operations, Mongabay (30 September 2015); Front Line Defenders, Asesinato de defensor de derechos humanos Rigoberto Lima Choc (25 September 2015), available at: <https://www.frontlinedefenders.org/en/case/case-history-rigoberto-lima-choc>.
- 47 FIDH, Brazil: Killing of Mr. Raimundo dos Santos Rodrigues (8 September 2015), available at: <https://www.fidh.org/en/region/americas/brazil/brazil-killing-of-mr-raimundo-dos-santos-rodrigues>.
- 48 Michael E. Miller, Why are Brazil's environmentalists being murdered?, Washington Post (27 August 2015).
- 49 Elisabeth Malkinmay, Honduras Arrests 4 Men in Killing of Berta Cáceres, Indigenous Activist, New York Times (2 May 2016); 6th Suspect Arrested in Slaying of Activist in Honduras, Associated Press (9 September 2016).
- 50 Nina Lakhani, Honduran activists survive attacks months after Berta Cáceres murder, The Guardian (11 October 2016).
- 51 Nina Lakhani, Second winner of environmental prize killed months after Berta Cáceres death, The Guardian (18 January 2017).
- 52 Ibid.
- 53 On Dangerous Ground, p. 18. Notably, the International Criminal Court has been urged to investigate land grabbing in Cambodia, and the office of the prosecutor announced in September 2016 that it would give particular consideration to prosecuting crimes against humanity and other crimes within its purview 'crimes that are committed by means of, or that result in, *inter alia*, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land.' John Vidal and Owen Bowcott, ICC widens remit to include environmental destruction cases, The Guardian (15 September 2016).
- 54 Deadly Environment, p. 14.
- 55 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.
- 56 On Dangerous Ground, p. 16.
- 57 How Many More?, p. 8; On Dangerous Ground, p. 10.
- 58 Deadly Environment, pp. 15-16.
- 59 On Dangerous Ground, p. 19.
- 60 Ibid., pp. 16-17.
- 61 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.
- 62 How Many More?, p. 8; 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.
- 63 See, e.g., Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries operating within or near indigenous territories, UN Doc. A/HRC/18/35 (11 July 2011); Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, UN Doc. A/HRC/21/47 (6 July 2012); Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples, UN Doc. A/HRC/24/41 (1 July 2013).
- 64 Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries operating within or near indigenous territories, UN Doc. A/HRC/18/35 (11 July 2011), paras. 30-39.
- 65 2016 Report of the Special Rapporteur on HRDs, para. 53.
- 66 Ibid., paras. 54-55.
- 67 Deadly Environment, p. 16.
- 68 How Many More?, p. 8.

- 69 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*.
- 70 See 2016 Report of the Special Rapporteur on HRDs, paras. 49-52 (linking corruption and impunity).
- 71 Robert Draper, *Inside the Fight to Save One of the World's Most Dangerous Parks*, National Geographic (July 2016).
- 72 Matt Sandy, *Murder of Brazil official marks new low in war on Amazon environmentalists*, The Guardian (24 October 2016).
- 73 *Deadly Environment*, p. 6.
- 74 *Ibid.*, p. 16.
- 75 Observatory for the Protection of Human Rights, 'We are not afraid,' Land rights defenders: attacked for confronting unbridled development, p. 84 (December 2014)
- 76 On *Dangerous Ground*, p. 10.
- 77 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. 33.
- 78 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 Deadly 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. 46-47 (describing examples of the excessive use of force in Argentina, Guatemala and Peru).
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- 80 Sam Levin, *Judge rejects riot charges for journalist Amy Goodman after oil pipeline protest*, The Guardian (17 October 2016).
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are particularly important to EHRDs, but they are not all of the rights set out in the Declaration. For a summary of the Declaration as a whole, see the OHCHR page on the Declaration, available at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

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163 ICCPR arts. 21, 22.

164 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. 29/25 (28 April 2015), para. 22.

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168 Universal Declaration of Human Rights, art. 8. See also ICCPR, art. 2(3).

169 HRD Declaration, art. 9(2). Article 9 also provides that everyone has the right to complain about the policies and actions of officials and governmental bodies with regard to human rights violations, to competent domestic judicial, administrative or legislative authorities, which should render their decision on the complaint without undue delay. Ibid. art. 9(3).

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