

**The role of businesses and States in violations
against human rights defenders of the rights to land,
territory and the environment**

Civil society organisations joint report - October 2015



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Report to the Inter-American Commission on Human Rights 156th period of sessions

The role of businesses and States in violations against human rights defenders of the rights to land, territory and the environment

This report provides complements and deepens the analysis provided orally at the public hearing entitled, 'The human rights situation of defenders of land and the environment in the context of extractive industries in the Americas', during the 156th session of the IACHR. The hearing was requested and this report produced by the civil society organisations listed below.

This report provides an analysis of the situation in the Americas, drawing on documentation from Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and Venezuela.

- Asociación Interamericana para la Defensa del Ambiente (AIDA)
- Amazon Watch
- La Asamblea de los Pueblos del Sur
- Asociación Pro Derechos Humanos (APRODEH)
- Asamblea de los Pueblos Indígenas del Istmo de Tehuantepec en Defensa de la Tierra y el Territorio (APIITDTT)
- Association for Women's Rights in Development (AWID)
- Colectivo de Abogados José Alvear Restrepo (CAJAR)
- Centro de Derechos Humanos de la Montaña 'Tlachinollan'
- Centro de Derechos Humanos de las Mujeres Chihuahua
- Centro Mexicano del Derecho Ambiental (CEMDA)
- Centro Nicaraguense de Derechos Humanos (CENIDH)
- Comisión Ecueménica de Derechos Humanos (CEDHU)
- Comisión Mexicana para la Defensa y la Promoción de los Derechos Humanos (CMDPDH)
- Comité de Familiares de Detenidos y Desaparecidos en Honduras (COFADEH)
- Comunidad de Derechos Humanos Bolivia
- Conectas Direitos Humanos
- Comisión Colombiana de Juristas Derecho
- Ambiente y Recursos Naturales (DAR)
- Due Process of Law Foundation (DPLF)
- Federación Internacional de Derechos Humanos (FIDH)
- Fondo de Acción Urgente de América Latina y el Caribe (FAU-AL)
- Forum Suape
- Global Witness
- Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos
- International Service for Human Rights (ISHR)
- JASS por Asociadas por lo Justo (JASS)
- Justiça Global
- Justiça nos Trilhos
- Laboratorio de Paz
- Movilización de Mujeres Afrodescendientes del Norte del Cauca por el Cuidado de la Vida en los Territorios Ancestrales
- Peace Brigades International (PBI)
- Plataforma Internacional Contra la Impunidad
- Proceso de Comunidades Negras en Colombia PCN
- Proyecto de Derechos Económicos Sociales y Culturales (ProDESC)
- Robert F. Kennedy Human Rights
- Terra Mater
- La Unidad de Protección a Defensores y Defensoras Guatemala (UDEFEQUA)
- Unión Nacional de Instituciones para el Trabajo de Acción Social (UNITAS)

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I. EXECUTIVE SUMMARY

Defenders of the rights to land, territory and the environment are the people and groups who work to promote and protect human rights related to these issues. In many cases, these defenders are members and/or leaders of communities affected by State and business activities in their territories and include indigenous people and communities of African descent. They might also include members of human rights movements or social networks.

This document elaborates on issues that will be discussed in the public hearing titled, 'Situation of environmental defenders in the context of extractive industries in the Americas' during the 156th period of sessions of the Inter-American Commission on Human Rights (IACHR or 'Commission'). The report covers the conditions faced by defenders of the rights to land, territory and the environment who work throughout the continent on issues regarding the impact of large-scale economic projects by public and private, national and international companies. The varied experiences of all the organisations in this delegation have made it possible to identify common patterns and developments, independent of the country in which each carries out its human rights defence work.

Before discussing specific patterns, this report analyses the vulnerable context in which these defenders operate. These existing conditions impinge upon their rights, including their very livelihood, as well as the impunity of attacks against them. It also discusses the duties and obligations of the State and the business involved to protect this group.

Throughout the region, a wide variety of human rights violations have been documented in the context of development projects and large-scale extractive projects. These violations have forced groups to organise themselves to defend their rights, which puts them at an increased risk: their actions challenge the interests of those who hold great economic and political power.

This group of defenders not only faces those risks inherent to the defence of human rights in the region in general, but they are also more vulnerable to acts that put their life at risk. They are the targets of constant defamation and de-legitimation, and they suffer from the undue use of criminal law against them. The second and third chapters of this report contain an analysis of the patterns of violations against this group and the specific effects that some groups - like women human rights defenders - face.

The State has the primary responsibility to generate a safe and enabling environment for the defence of human rights. Importantly, in the context of investment projects and related business behaviour, the State should design and put in place legal and institutional framework that guarantees that human rights defenders can carry out their work, and that business (public and/or private, national or multinational) respect the right to defend human rights. Businesses must also play a proactive role in this sense, as reflected in multiple initiatives by the United Nations (UN) in recent years.

However, this report gives evidence of how both actors - States and business - do not comply with their duties. Businesses not only fail to protect human rights within the context of the projects they develop, but often they act directly against human rights defenders in order to silence them; either through defamation in the media (such as in the case of La Sierrita in **Mexico**), by filing unfounded legal cases against them (the case of Maxima Acuña in **Peru**), or through the use of private security agents which carry out physical aggressions and intimidations against them (Portuario de Suape Industrial Complex, **Brazil**).

At the same time, States in the region do not comply with their duty to guarantee the rights of human rights defenders; they fail to supervise, prosecute, or sanction businesses as a result of the violence and intimidation which they – or other actors with the same goals - carry out. Cases like that of Berta Cáceres in **Honduras** show the complicity of the State in violations against human rights defenders and in the denial of space for them to carry out their work. This is also seen through legislative reforms and vague provisions in criminal codes that criminalise defenders'

legitimate and peaceful activities against mega-projects that affect territories and the environment. Some examples of this are the constant arbitrary application of the Law for Public Order in **Guatemala**, the creation of the new Mining and Metallurgical Law in **Bolivia**, and the classification of the crime of 'violating security zones' in **Venezuela**. An extreme example is when human rights organisations are shut down, which is what took place with the Pachamama organisation in **Ecuador**.

The criminalisation of human rights defenders in the region exacerbates levels of impunity as the criminal process can be swift when the case involves a human rights defender and the burden of proof can be weakened in these cases. Meanwhile, the few cases of investigation and sanction of those responsible for crimes *against* human rights defenders are frequently long and tortuous.

The cases documented in this report show that there is frequently a relationship between the different actors – both State and non-State - who defend economic and business interests ahead of protecting the communities and human rights defenders affected by economic activities in these territories. Similarly, direct action by non-State agents (like private security contracted by the businesses) or organised crime (and other illegal armed actors), violent repression of social protest, and the militarisation of territory are other concerning patterns seen throughout the continent. Chapter 4 gives more information about the different perpetrators of aggressions against defenders of the rights to land, territory and the environment.

Currently, powerful State and non-State parties interpret the defence of the rights to land, territory and the environment as an obstacle to business interests and development and, as a result, consider it illegitimate. The coalition of organisations co-authoring this report make an urgent call to States and business for a change in culture and attitude regarding how they develop their activities in the region, as well as a call to respect the legitimacy of human rights defence.

Finally, the report presents recommendations to the IACHR, businesses and States, as well as to other relevant international actors.

II. ABOUT THIS REPORT

Throughout the last decade, there has been a great expansion of large-scale economic projects in the Americas, including hydroelectric, extractive, agro-industrial, and logging projects and wind farms¹. These projects have led to social conflicts related to the defence of territories and natural resources and a failure to respect human rights. Defenders of the rights to land, territory, and the environment demand States observe due diligence in regard to the regulation of business activities, and that businesses seek consent from the communities affected by their projects. As a result defenders are attacked and threatened with frequency.

In January 2015, the International Service for Human Rights (ISHR) carried out regional consultations with 73 human rights defenders from 21 countries in the Americas. In these consultations, they confirmed the hardships and exceptional levels of risk faced by people who defend the land, territory, and the environment. They also found the need for a regional reaction to the circumstances and an analysis that takes into account the role businesses play regarding the situation faced by human rights defenders.

A coalition of 32 local, national, regional, and international organisations with experience in analysis and documentation of the current situation was created. The goal was to request a regionally focused thematic hearing with the Inter-American Commission on Human Rights (IACHR) and to generate a platform presenting demands to parties with influence on this situation. As a result, on 19 October 2015, a hearing will take place at the IACHR titled, 'Situation of defenders of the environment in the context of extractive industries in the Americas.' The hearing will take place at the headquarters of the Organisation of American States (OAS) in Washington, D.C.

This report presents a joint analysis of the situation. It contains information provided by the members of the coalition and a series of recommendations that require urgent implementation in all member States of the OAS. Even though this report was prepared for the hearing at the IACHR, it also can be used as a tool for anyone who wants to understand the conditions defenders of the rights to land, territory and the environment in the region face, along with a strategy to protect defenders and give them a voice.

The goal of this report is the same as the hearing: to present information about the risks faced by human rights defenders of the rights to land, territory and the environment and those who work on issues related to the impact of public, private, national, or foreign businesses in the Americas. This report will illustrate the pattern of threats and the risk factors for this group of defenders—factors common in diverse countries and throughout the region. It will also detail the States' failure to prevent human rights violations and effectively protect human rights defenders, the complicity of the States in some cases, and the role of businesses implementing the respective projects.

Specifically, it addresses the question of businesses' responsibilities as non-State actors with respect to the work of human rights defenders and the role of the State in regulating, controlling, and—when necessary—sanctioning these actors. Finally, the report will make concrete recommendations to the IACHR, the member States of the OAS, businesses and other actors so they can take a close look at standards for protecting human rights defenders in order to guarantee a safe and enabling environment for their work.

¹ The numbers indicate that in Brazil, between 2001 and 2011, the extraction of minerals increased 550%. [Conflictos mineros en América Latina: extracción, saqueo y agresión](#). [Mining conflicts in Latin America: extraction, looting and attacks] State of the situation in 2014. Observatory of Mining Conflicts in Latin America. 2015.

1. WHO ARE THE DEFENDERS OF THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT?

The United Nations Declaration on Human Rights Defenders (also, ‘the Declaration’) defines a defender as any person who works to promote and protect human rights in a peaceful way.² Similarly, the Inter-American Court of Human Rights has emphasised the importance of the work of human rights defenders and believes that it is ‘fundamental for strengthening democracy and Rule of Law.’³ In addition, the OAS has stated that member States should recognise the ‘important contribution [of defenders] in the promotion, protection, and respect for human rights and fundamental freedoms [...]’⁴

Similarly, the Inter-American Court considers that the quality of a human rights defender lies in the work that they carry out, whether the person is an individual or a public official.⁵ It has highlighted that the defence of human rights does not only cover civil and political rights, but it should also cover economic, social, and cultural rights, according to the principles of universality, indivisibility, and interdependence.⁶ The IACHR has stated that, ‘every person who in any way promotes or seeks the realisation of human rights and fundamental freedoms, nationally or internationally, must be considered a human rights defender.’⁷ The Declaration establishes these activities should be carried out in a peaceful way—violent acts or acts that propagate violence are not included in this definition.⁸ Activities to promote and protect human rights can be carried out intermittently or occasionally. Being a human rights defender is not necessarily a lifelong commitment,⁹ nor is it necessary to receive payment for your work defending rights or to belong to a civil society organisation.¹⁰

In this context, defenders are those who work to protect civil, political, economic, social, and cultural rights related to the land, territory, and environment. On many occasions, these defenders are also members and/or leaders of communities affected by the activities of businesses, including indigenous communities and communities of African descent. They can also be members of human rights movements or social networks. This group includes individuals working on issues related to toxic residues and their impact on the environment; the rights of indigenous and/or tribal people to their territory; the right to water, discrimination, forced displacement; and other topics. Generally, these defenders demand respect for the right to land and natural resources of communities affected by projects, as well as the right to free, prior, and informed consent for the use and exploitation of their territory.

2 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144).

3 *Valle Jaramillo et al. V. Colombia. Merits, Reparations and Costs*. Judgement of November 27, 2008. Series C. 192, paragraph 87, and *Castillo Gonzalez. Merits*. Judgement November 27, 2012. Series C No. 256, paragraph 124.

4 *Cfr. organisation of American States, “Human rights defenders in the Americas”: Support for the individuals, groups, and organisations of civil society working to promote and protect human rights in the Americas*, AG/Res. 1671 (XXIX-O/99) June 7, 1999, available at: <http://www.oas.org/juridico/english/ga-res99/eres1671.htm> ; AG/Res. 1711 (XXX-O/00), June 5, 2000, available at: http://www.oas.org/juridico/english/agres_1711_xxxo00.htm and AG/Res. 2412 (XXXVIII-O/08), June 3, 2008, available at: https://www.oas.org/dil/esp/AGRES_2412.doc.

5 *Cfr. Case Luna López V. Honduras. Merits, Reparations and Costs*. Judgement of October 10, 2013. Series C No. 269, paragraph. 122.

6 *Cfr. Case Kawas Fernández V. Honduras, supra*, paragraph. 147.

7 Inter-American Commission on Human Rights (IACHR), *Report on the Situation of Human Rights Defenders in the Americas*, paragraph. 13.

8 Inter-American Court of Human Rights, *Case Human Rights Defender et. al. v. Guatemala. Preliminary Exceptions, Merits, Reparations and Costs*. Judgement on August 28, 2014. Series C No. 283, paragraph. 129.

9 In her report, Hina Jilani stated that “the condition of a human rights defenders is not permanent. In some cases it is because there are non-governmental organisations that only dedicate themselves to this activity, at the national or international level. However, we cannot deny this condition to those who acted in the moment to promote human rights.” See also, High Commissioner for Human Rights, *The Defence of Human Rights: Protection of the Right to Defend Human Rights*, Fact Sheet No. 29, p. 8-9: “[M]any professional activities do not involve human rights work all of the time but can have occasional links with human rights.” When these activities are carried out in such a way that provides concrete support to human rights, one can say that the people act as human rights defenders and “Many people act as human rights defenders outside any professional or employment context.” The important thing is to consider how these people act to support human rights and in some cases, to determine if they make a “special effort” to promote or protect human rights.

10 See IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas* (2012), paragraph 12.

2. DEFENDERS OF THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT ARE AMONG THE MOST VULNERABLE GROUPS

Those who fight for the respect for human rights in regard to the behaviour of businesses become the target of attacks, aggressions, threats, and restrictions in their work. Between 2002 and 2013, the documented deaths of people who defend the land, territory, and environment tripled compared to the previous decade. According to information collected by Global Witness, Latin America is the region with the majority of these cases.¹¹ Increased competition for land and resources is the main reason for this escalation. For example, the World Bank states investments in farmland have quadrupled from 2001 to 2009.¹² Similarly, the extractive industry has increased its sphere of operation to even more remote regions, with direct consequences on the traditional socio-economic way of life in the communities which are well documented. The rise of conflict in Latin America is directly related to environmental degradation. In addition, particularly in this region, the general violation of basic human rights converges with the violation of the collective rights of indigenous people, given their particular connection to traditional territory and resources—an issue recognised by the international community.¹³

In this context, violations against environmental rights defenders have increased. In 2011, the Committee for Economic, Social and Cultural Rights of the United Nations (also, 'DESC Committee') stated their concern for 'instances in which security forces and agents, both public and private, resorted to reprisals and disproportionate use of force against persons participating in activities in defence of economic, social, and cultural rights, in particular in the context of land disputes.'¹⁴

As the IACHR has highlighted, attacks of this nature are serious obstacles for carrying out work to promote and protect human rights. In addition to the irreparable damage that takes place on victim's lives, the attacks generate a frightening effect for those tied to this cause.¹⁵ In particular, the situation for those who work to defend the land, territory, and environment is particularly serious, given that their work often puts them against economic interests of national and transnational companies. As previously explained, this population includes indigenous communities, communities of African descent, peasant farmers, environmental activists, and others.

According to official sources from international mechanisms and local and international organisations, in recent years attacks to defenders of the rights to land, territory and the environment have increased, along with actions against indigenous people directly affected by mega-projects in the region.¹⁶ Last year, the UN Special Rapporteur on the situation of human rights defenders identified three of the five groups of defenders in the most vulnerable situation: defenders that work on economic, social, and cultural rights and the rights of minorities; defenders of the environment; and those working on issues related to businesses and human rights. He recommended the States pay particular attention to these groups.¹⁷ At the same time, the IACHR identified union leaders, peasant leaders and community leaders, indigenous and people of

11 Global Witness, *Deadly Environment*, 2014, p. 6.

12 Deininger, K. and Byerlee, D., *Rising global interest in farmland: can it yield sustainable and equitable benefits?*, World Bank, 2011.

13 United National Declaration on the Rights of Indigenous People, Preamble; ILO Convention 169, and others.

14 Committee of Economic, Social and Cultural Rights, Economic and Social Council, E/C.12/ARG/CO/3., paragraph. 13.

15 IACHR, Second Report on the Situation of Human Rights Defenders in the Americas (2012), paragraphs 25-27.

16 As an example see: General Assembly, Report by Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, A/68/262, August 5, 2013. Available at: http://www.ishr.ch/sites/default/files/article/files/a-68-262_situation_of_human_rights_defenders.pdf.

17 [Report of the Special Rapporteur on the Situation of Human Rights Defenders](#), A/HRC/28/63, párr. 54, 2014.

African descent, and defenders of the environment as four of the seven groups that are at particular risk.¹⁸

This group of defenders not only faces inherent risks while defending human rights in the region, but they are also the most vulnerable to acts that threaten their life and integrity: death threats, physical aggression, assassinations or extrajudicial executions, and forced disappearance. Evidence of this increased vulnerability is widely documented. The organisation Global Witness documented the assassination of 760 defenders of the land and environment in Latin America from 2002 to 2013.¹⁹ **Brazil, Honduras, Peru, and Colombia** had the greatest number of assassinations documented in this period.

Assassination of people that defend the land and the environment 2002-2013
Global Witness (Deadly Environment)

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | TOTAL |
|--------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|------------|------------|-----------|------------|
| Argentina | | | | | | | 1 | | 2 | 1 | 3 | | 7 |
| Brazil | 43 | 73 | 39 | 39 | 39 | 29 | 28 | 27 | 34 | 28 | 36 | 33 | 448 |
| Chile | 1 | | | | | | | | | | | | 1 |
| Colombia | | | | 1 | | | | | 1 | 27 | 8 | 15 | 52 |
| Costa Rica | | | | | | | | | | | | 1 | 1 |
| Ecuador | | 1 | | | | | | | 1 | | | | 2 |
| El Salvador | | | | | | | | 3 | | 1 | | | 4 |
| Guatemala | | 3 | | 1 | | | | | 5 | | 6 | 6 | 21 |
| Honduras | | 2 | | | 2 | 1 | 3 | 1 | 26 | 36 | 28 | 10 | 109 |
| Mexico | | 2 | | 2 | 2 | 2 | 1 | 7 | 7 | 4 | 10 | 3 | 40 |
| Nicaragua | | | | | | | | | | 2 | | 1 | 3 |
| Panama | | | | | | | | | | 1 | | 1 | 2 |
| Paraguay | | | | | | | | | | | 10 | | 10 |
| Peru | 1 | 1 | 2 | 1 | 3 | 1 | 5 | 9 | 3 | 11 | 15 | 6 | 58 |
| Venezuela | | 1 | | | | | | | | | | 1 | 2 |
| TOTAL | 44 | 83 | 41 | 44 | 46 | 33 | 38 | 47 | 79 | 111 | 115 | 77 | 760 |

In 2014, Global Witness documented 88 assassinations against defenders of the land and the environment in the region: 29 in **Brazil**, 25 in **Colombia**, 12 in **Honduras**, 5 in **Guatemala**, 3 in **Paraguay**, 3 in **Mexico**, 1 in **Costa Rica**, and 1 in **Ecuador**.²⁰ More than three-fourths of the worldwide deaths of these defenders took place in Latin America in 2014.

Complementary information:

- Amnesty International highlighted that in 2013 and 2014, the greatest number of Urgent Actions in the **Americas** was on behalf of those who defend human rights related to the land, territory, and natural resources; they also stated that indigenous people, communities of African descent, and the rural and peasant population continue to be hit hard; their leaders and defenders are persecuted and attacked.²¹
- According to the Mesoamerican Initiative of Human Rights Defenders, 7 female human rights defenders of the land rights and natural resources were killed in the **Mesoamerican Region** (Mexico and Central America) between 2012 and 2014.²²
- According to data collected by the **Mesoamerican** Registry of Attacks to Human Rights Defenders,²³ defenders of the land rights, territory, and natural resources were the group attacked with the most frequency between 2012 and 2014. They suffered from 525 attacks,

18 IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#) (2012).

19 [Deadly environment](#). Report on the increase of the number of deaths of defenders of the land and the environment, Global Witness, 2014. The report also shows that, although this is a global tendency, Latin America is the region with the greatest number of deaths that have been documented of defenders of the land, territory and the environment.

20 "[How many more? 2014's deadly environment: the killing and intimidation of environmental land activists, with a spotlight on Honduras.](#)" Global Witness, 2015.

21 [Defending human rights in the Americas: necessary, legitimate and dangerous](#), Amnesty International, 2014.

22 [Violencia contra defensoras de derechos humanos en Mesoamérica](#), [Violence against human rights defenders in Mesoamerica] Diagnosis 2012. Mesoamerican Initiative of Women Human Rights Defenders, 2012.

23 Registry of Attacks to Human Rights Defenders, The Mesoamerican Initiative of Human Rights Defenders collects information about attacks to human rights defenders in El Salvador, Guatemala, Honduras and Mexico.

- which is 31 percent of a total of 1,688 attacks to defenders.²⁴ Of these 525 attacks, 54 percent (284 attacks) were part of a series of attacks. In other words, these are part of a systematic pattern of attacks and are not isolated events. A total of 14 percent (76 attacks) of the attacks against defenders of the land, territory, and natural resources were gender specific.²⁵
- The Coordinator for Human Rights in Paraguay (CODEHUPY) produced documentation of the killing or disappearance of 115 leaders of peasant organisations between 1989 and 2013 in **Paraguay**, with the highest annual number (14) in 2012.²⁶
 - In 2014, the Unit for Human Rights Defenders in **Guatemala** (UDEFEGUA) documented that the greatest number of attacks to human rights defenders at the national level was focused on those who work to defend the land, territory, consultation, and the environment: 664 attacks were against this group, constituting 82 percent of the attacks committed that year in the country.²⁷
 - In **Mexico**, CEMDA documented 82 attacks to environmental rights defenders from January 2013 to April 2014. According to information collected yearly, there is an increase in attacks directed towards environmental rights defenders. In only four months in 2014 (from January to April) there were twice as many cases as in 2011. CEMDA counted a total of 120 incidents in 320 days in 2012.²⁸ The attacks in these cases include harassment, threats, and physical attacks. The organisation demonstrated that community defenders suffer from a higher risk of physical aggression than other defenders.²⁹ Similarly the Red TdT documented 104 cases of attacks against defenders (for a total of 171 affected defenders); 31 are linked to the demands for the rights of indigenous or native people.³⁰
 - In the first semester of 2015, 23 people were killed in conflicts related to land and territory in **Brazil** according to information from the Pastoral Land Commission. Of this number, only one death did not take place in the Amazon region.³¹ The Amazon is a dangerous region for human rights defenders due to its rich natural resources that are often illegally exploited. In addition, it is the location of many economic projects—the expanded Vale mining project and the construction of hydroelectric power stations like Belo Monte and São Luiz do Tapajós are examples.³²
 - Similarly, in **Colombia** between 2001 and 2011 there were many cases of individual and massive detentions of human rights defenders exercising their legitimate right to free association and peaceful protest. Of these cases, 274 were associated with the extraction of oil, gold, and carbon.³³ Reported human rights violations include: the repression of social protest; the use of a legal framework that criminalises social protest;³⁴ extrajudicial executions

24 Information from the Registry of Attacks to Human Rights Defenders from the Mesoamerican Initiative of Human Rights Defenders. This information corresponds to defenders from El Salvador, Guatemala, Honduras and Nicaragua.

25 From the conceptual framework of the Registry of Attacks by the Mesoamerican Initiative of Human Rights Defenders, attacks with a “gender component” make reference to those attacks in which discrimination and violence against human rights defenders are expressed as a function of gender including: machista insults or references to sexuality, physical, sexual, family obstetric or economic violence based on gender; stigmatization and defamation based on gender stereotypes (those that question sexual morality or blame women for breaking up families or communities because they do not take on their role as protectors and stay within the private space socially assigned to women); less value placed on their contribution to social change for not being considered equal to men, etc.

26 “Informe Chokokue 1989-2013”. [Chokokue Report] The systemic plan of executions in the fight for peasant territory, Coordinator for Human Rights in Paraguay (CODEHUPY), 2014.

27 “Soy defensora, soy defensor. Promuevo derechos humanos”. [I am a defender, I am a defender. I promote human rights] Report on the situation of Human Rights Defenders. January to December 2014. Unit for Human Rights Defenders in Guatemala UDEFEGUA. 2014.

28 [Protocolo para la atención de defensoras y defensores comunitarios de Oaxaca](#). [Protocol for the attention to community defenders in Oaxaca] Services for Alternative Education EDUCA. Mexico. 2013.

29 [Informe sobre ataques a personas defensoras ambientales](#): [Report on attacks to environmental rights defenders] CEMDA, 2014.

30 [El derecho a defender los derechos humanos en México](#): [The right to defend human rights in Mexico] Report on the situation of human rights defenders 2011-2013. National Network of Civil Human Rights organisations “All Rights for All” 2014.

31 Pastoral Commission, [CPT registra 23 muertes en el campo en el primer semestre del 2015](#). [CPT registers 23 deaths in the field in the first semester of 2015]

32 Information provided by Global Justice.

33 CINEP/PPP, Special Report – Social Protest in Colombia 2013, April 2014. We are Defenders Program, Department of Defence, 2014, OHCHR, Annual Report on Colombia, March 2014.

34 Report on Colombia “[2013: The year of social protest and repression in Colombia \(Pt 1\)](#)” 2013; <http://wrm.org.uy/articles-from-the-wrm-bulletin/section1/the-criminalization-of-social-protest-against-mining/>.

of leaders opposed to mining projects;³⁵ serious abuses against protesters at the hands of security forces;³⁶ and accusations of slander against protest organisers.³⁷

CASE: Assassinations, threats and attacks against the leaders from the Curbaradó and Jiguamiandó river basins, Chocó, Colombia

Between 1996 and 1997, the Bajo Atrato communities were victims of military and paramilitary operations that led to the massive displacement of more than 70 percent of the population³⁸, in addition to assassinations, torture, and disappearances³⁹. After the displacement, banana companies and African palm companies⁴⁰ began to move into the land. Many of these companies are currently being tried for their responsibility in looting the land; some have already been condemned for forced displacement and for invading land with special ecological importance.⁴¹

However, the community's right to territory, even though the Colombian Constitutional Court recognises it, has not been taken into account. Even though the Court has ordered the companies to leave the region for being 'occupants of bad faith,' and has identified them as such by the Colombian Institute for Rural Development (Incoder)⁴² in 2012, they remain in the collective territory. Still, authorities have effectively not been able to remove them. It is surprising that the eviction of these companies, which should have taken place in November 2014 against these 'occupants of bad faith,' has been suspended without a new replacement date. Meanwhile, the communities continue to report that these people remain in their territory and have been threatening them.⁴³

In addition, to this day, community leaders and members of the Interecclesial Commission for Justice and Peace (CIJP) who aid the process of return and resistance in the territory continue to be the object of threats, aggressions, defamations, and intimidation by neo-paramilitary groups in the region.⁴⁴ They have reported an alleged complicity between these groups and the armed forces present in the region.⁴⁵

Currently, the situation for Yomaira Mendoza and Enrique Cabezas is especially worrying. Both are land restitution leaders in Curbarado, and between January and July 2014 they suffered from around 80 security incidents including surveillance, monitoring, death threats, and attempted

35 *Ibid.*

36 Observation Mission: "[Agresiones de la Fuerza Pública contra la población civil en el marco del paro agrario y popular](#)". [Attacks by Public Forces against the civilian population in the context of agricultural unemployment and popular unemployment] 2013.

37 "[Derechos Humanos y la Protesta social en Colombia](#)", Inter-American Commission on Human Rights. October 2013. [Defending human rights in the Americas: necessary, legitimate and dangerous](#), Amnesty International, 2014.

38 ColombiaLand.org: [Justicia Evasiva. La lucha por la tierra y la vida en Curbaradó y Jiguamiandó](#), [Evasive Justice, The struggle for land and life in Curbarado and Jiguamiando] June 2013.

39 Cijp/Hands of the Land Alliance: Banacol, empresa implicada en paramilitarismo y acaparamiento de tierras en Curbaradó y Jiguamiandó, [Banacol, a business implicated in paramilitarism and seizure of land in Curbarado and Jiguamiando] Mayo 2012.

40 *Ibid.*

41 Cijp: [Condenan a dos empresarios por alianza con paramilitares en negocio de palma](#), [Two businessmen are condemned for alliance with the paramilitary in palm business] July 30, 2013; Verdad Abierta: [A la cárcel 16 empresarios de palma del Chocó](#), [16 people in the palm business go to jail in Choco] December 8, 2014.

42 Cijp: Informe técnico de Incoder sobre caracterización y saneamiento, [Technical report by Incoder on characterization and sanitation] December 20, 2012.

43 Cijp: [Protegen a despojadores](#), [Looters are protected], November 21, 2014.

44 Cijp: [Nueva amenaza a reclamante de tierras Enrique Petro](#), [New threat to Enrique Petro], July 3, 2014; CIJP: Planean asesinato de Emilio Cabezas, [Plans for the death of Emilio Cabezas] August 3, 2014; Cijp: [Cuatro líderes de restitución amenazados de muerte](#), [Four restitution leaders receive death threats] August 18, 2014.

45 Cijp, [Abusos de la brigada 17, complicidad con el tráfico de drogas, palma en Curbaradó, Jiguamiandó y Santa Rosa del Limón](#), [Abuse by the 17th brigade, complicity with the traffic of drugs, palm in Curbarado, Jiguamiando and Santa Rosa del Limon] February 23, 2012.

attacks.⁴⁶ The aggression began after they testified before the Prosecutor about the involvement of several businessmen in the region in the illegal appropriation of land, along with other human rights violations.⁴⁷ On 13 August 2014, the IACHR requested precautionary measures on their behalf.⁴⁸

As previously stated, defenders working on these issues are particularly vulnerable to violations and attacks from non-State actors. The previous United Nations Special Rapporteur on the situation of Human Rights Defenders highlighted in one of her reports that she 'is aware of the particular risks that these defenders face, often at the hands of non-State actors or unknown individuals acting in collusion with them' and that 'she has received, and continues to receive, allegations indicating that security guards employed by oil and mining companies allegedly use death threats, acts of intimidation and attacks against defenders who denounce the perceived negative impact of the companies' activities on the enjoyment of human rights by local communities.'⁴⁹

The weak institutional context and vulnerable conditions under which defenders of the rights to land, territory and the environment carry out their work prevents an effective defence of these rights.

Finally, lack of recognition for human rights defenders of the rights to land, territory and the environment, or their own lack of self-recognition, puts them at a disadvantage when it comes to looking for the help and protection that they need when they are victims of violations.

3. THE DUTY OF THE STATE TO GUARANTEE A SAFE AND ENABLING ENVIRONMENT FOR THE DEFENCE OF THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT

The duty of the State to protect human rights defenders

The duty of the State to protect human rights defenders and to guarantee them a safe and enabling environment for their work is a key principle recognised and articulated in international and regional instruments⁵⁰ and is emphasised over and over again by representatives and experts from the UN.⁵¹ The States have the duty to protect human rights defenders from threats and violence by State and non-State actors; to investigate and guarantee accountability for any threat or attack against defenders, victims, and communities regarding their work on business and human rights; and to provide legal and non-legal reparations that are accessible, affordable, quick and effective and guarantee no repetition.

The key elements to guarantee a safe and enabling environment for defenders were identified by the UN Special Rapporteur on the Situation of Human Rights Defenders as: adoption of an adequate legal and institutional framework; fight against impunity; establishment of solid national

46 CIJP: [Una expresión de la guerra psicológica](#), [An expression of the psychological war] September 10, 2014.

47 Amnesty International: [Yomaira Mendoza, community leader, repeatedly threatened](#), March 16, 2014.

48 IACHR, Resolution 22/2014. Available (in Spanish) at: <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC140-14-ES.pdf>.

49 A/HRC/19/55, paragraph 63.

50 See: The Declaration on Human Rights Defenders A/Res/53/144.

51 For example, by the General Secretary, the current and former United Nations High Commissioner for Human Rights and special procedures.

human rights institutions; effective protection mechanisms and public support of the work to defend human rights; and others.⁵²

The States have committed to taking steps to implement their obligations towards protection of human rights defenders. One example was the adoption of Resolution A/HRC/ 25/18 by the Human Rights Council that ‘kindly asks all States to adopt concrete measures to create, in law and in practice, a safe and enabling environment so that human rights defenders can act free from obstacles and insecurity.’⁵³ Similarly, Resolution A/Res/68/181 called on States to prevent abuses against defenders committed by non-State actors.⁵⁴

On the regional level, the General Assembly of the OAS committed to ‘recognise and support the work carried out by Human Rights Defenders and their valuable contribution to the promotion, observance, and protection of fundamental rights and freedoms in the Americas,’ and urged the member States to ‘persist in their efforts to provide Human Rights Defenders with the necessary guarantees and facilities to continue freely carrying out their work of promoting and protecting human rights, at the national and regional levels, in accordance with internationally recognised principles and agreements.’⁵⁵ Two years later, through Resolution 1818, the General Assembly urged States to ‘to step up their efforts to adopt the necessary measures, [...] to guarantee the life, personal safety, and freedom of expression of human rights defenders.’⁵⁶

The importance of defenders’ work is also recognised by the Inter-American Court of Human Rights, which stated that according to the principle of indivisibility and interdependence of human rights, the defence of human rights ‘not only encompasses civil and political rights, but also reporting, monitoring and education on economic, social and cultural rights.’⁵⁷

The protection needs for defenders of the rights to land, territory and the environment were also recognised by previous president of the UN Work Group on Businesses and Human Rights Michael Addo, who said, ‘(t)he mandate of the Special Rapporteur on human rights defenders has developed the concept of a ‘safe and enabling environment’ in which defenders can carry out their work free from hindrance and insecurity. This is also the benchmark guiding the work of Working Group on Business and Human Rights on defenders, as we strive to ensure States and businesses alike implement their human rights obligations and responsibilities.’⁵⁸

This makes it clear that according to international law and jurisprudence, it is not only the State’s obligation to protect human rights defenders, but it is also necessary for it to fulfil its other obligations regarding the protection of human rights. When human rights defenders are faced with threats and obstacles, it undermines the promotion and protection of all rights. The DESC Committee recognises that obstruction of the work of human rights defenders constitutes a serious obstacle towards promotion and protection of economic, social, and cultural rights.⁵⁹

52 [A/HRC/25/55](#), December 23, 2013.

53 [A/Res/ 25/18](#), April 11, 2014.

54 [A/Res/68/181](#), January 30, 2014.

55 [AG/RES.1671](#), June 7, 1999.

56 [AG/RES.1818](#), June 5, 2001.

57 Inter-American Court of Human Rights, Case *Kawas Fernández V. Honduras*. Merits, Reparation and Costs. Judgement of April 3, 2009. Series C No. 196, paragraph. 147; Case *Nogueira de Carvalho et. al V. Brazil*. Judgement of 28, 2006. Series C No. 161, parr. 77

58 [Full implementation of the Guiding Principles means protecting human rights defenders](#) International Service for Human Rights (ISHR), 2014.

59 See the final recommendations by the Committee to Cambodia (2009), Argentina (2009), Angola (2009) and New Guinea (2012), in addition to General Comments 12, 15, 18 y 19. All of this jurisprudence is summarized in [The Situación of Human Rights Defenders in Honduras: Briefing paper for the Committee on Economic, Social and Cultural Rights](#). Global Initiative for Economic Social and Cultural Rights, ISHR, International Platform against Impunity, 2015.

The duty of the State to protect human rights defenders in the context of business activities

With the expansion of businesses and their impact on human rights, an international legal framework regarding the duties of States' involvement with human rights and human rights defenders has been strengthened.

The ILO Declaration on the Principles and Fundamental Rights at Work (ILO Declaration 1998) obligates all member States to protect and promote the fundamental principles and rights in the workplace, including the right to defend human rights, the right to free association, and the right to collective bargaining.

The United Nations Guiding Principles on Business and Human Rights state that it is the State's duty to protect people within its jurisdiction from adverse events, including those related to businesses. Similarly, it states that it is the State's responsibility to ensure legitimate activities of human rights defenders are not obstructed.⁶⁰ It is clear that the States should protect human rights defenders from violations against them, independent of the perpetrators' identity.⁶¹

The UN Human Rights Council has recognised that 'civil society actors have an important and legitimate role in promoting corporate social responsibility, and in preventing, mitigating and seeking remedy for the adverse human rights impact of transnational corporations and other business enterprises.'⁶² It has created the UN Working Group to address the issue of human rights in connection with transnational corporations and other business enterprises, composed of five independent experts promoting the effective and complete application of the Guiding Principles.

The obligation of the State to ensure businesses contribute to a safe and enabling environment for the defence of human rights

Jurisprudence from the Inter-American Court of Human Rights establishes that it is the State's responsibility to oversee the behaviour of private businesses operating within its territory, based on principles and duties of due diligence, the responsibility of individuals, State obligations, and the rights of indigenous people.⁶³

Along with other documents, the Guiding Principles detail the State's responsibility to ensure respect for human rights in the face of potential violators, including corporations. The State's responsibility extends to victims and potential victims of violations.

Therefore, it is crucial that States take effective measures to guarantee that businesses, both domestic and foreign, do not threaten the creation of a safe and enabling environment for the defence of human rights, but instead contribute to its creation and protection. States have the duty to ensure that businesses - in addition to their affiliates and subcontractors - understand the meaning of a safe and enabling environment for the defence of human rights and how they can contribute to safeguarding it. Similarly, States can create and oversee the application of laws guaranteeing free, prior and informed consent of the communities affected by a project or an activity. In addition, they should ensure that traditional decision-making processes are respected in the consultation process.

Regarding extraterritoriality, there is an important body of international jurisprudence that reiterates the duty of the State to protect human rights outside its territorial limits, which includes the protection of human rights defenders in countries where they carry out their activities. The United Nations Committee on the Rights of the Child, for example, in its General Comment number

60 [Full implementation of the Guiding Principles means protecting human rights defenders](#) International Service for Human Rights (ISHR), November 25, 2014.

61 See also the UN Global Compact (Global Compact, 2000), the organisation for Economic Cooperation and Guidelines for the Development of Multinational Enterprises 2011 (OECD Guidelines, 2011).

62 [A/HRC/Res/26/9](#), July 14, 2014.

63 A very complete source for understanding the jurisprudence of the Inter-American Human Rights System on the responsibility of the State in the face of violence by private individuals is found in "The Obligation of States to Prevent International Law Violations by Private Actors," María Clara Galvis, [Aportes DPLF](#), 2011.

16, says that States should allow access to effective resources for victims of human rights violations committed by businesses abroad, ‘when there is a reasonable link between the State and the conduct in question.’ The Committee has recommended States adapt their legislative framework to ensure the legal responsibility of businesses and their affiliates with respect to human rights violations abroad.⁶⁴

Initiatives like the European Union's Guidelines on the Protection of Human Rights Defenders illustrate how States can take actions to protect human rights defenders in another country and this can—and should—be applied when these defenders work on issues related to businesses.

According to civil society, the National Action Plans (PAN, acronym in Spanish) on Businesses and Human Rights are important initiatives, States should take to monitor the implementation of the Guiding Principles and other frameworks on businesses and human rights. In particular, States should define how they aim to guarantee the consultation, consent, and protection of those who defend human rights within the context of business activities.⁶⁵ The PAN should regulate the actions of businesses both within the national territory as well as in another State. Currently in the Americas, only seven countries have begun the process to develop a PAN.⁶⁶

4. THE OBLIGATIONS OF BUSINESSES TO RESPECT HUMAN RIGHTS

Businesses have the responsibility to respect human rights recognised in international instruments, including the rights of defenders. The second pillar of the Guiding Principles highlights the responsibility of businesses to respect human rights, including acting with due diligence to avoid infringing on the rights of others and addressing the adverse impacts on their businesses on human rights. Similarly, the Guiding Principles indicate that businesses should commit to consultations with groups that are potentially affected and with other interest groups in order to identify the impact of their work on human rights. Principle 18 urges businesses to consult human rights defenders as an important specialised resource and highlights their important role as monitors, promoters, and facilitators of these rights.⁶⁷

The responsibilities of businesses include making a commitment with human rights defenders, especially in evaluating the impact on human rights; developing strategies and programs to decrease risk; and abstaining from interference in defender’s work and contributing to the creation of a safe and enabling environment for their work. Businesses have the duty to protect defenders proactively when the State's conduct is insufficient and in the event that an omission would provoke irreparable damage.

The UN is currently holding an inter-governmental discussion working towards a binding treaty on businesses and human rights, with one session completed. Human rights defenders will have to play a fundamental role in order to determine if the treaty will respond to their demands.⁶⁸

64 [Fertile ground for corporate accountability advocates: CRC General Comment on business and children's rights](#), ISHR, 2014.

65 [The role of National Action Plans on Business and Human Rights in protecting human rights defenders](#), ISHR, 2014; [Ireland: Consult and protect human rights defenders through National Action Plan on Business and Human Rights](#), ISHR, 2015.

66 Argentina, Chile, Colombia, Guatemala, Mexico and the United States. [State national action plans](#), OHCHR, 2015.

67 [Guiding Principles on Business and Human Rights](#), OHCHR. Guiding Principle Number 18.

68 <http://www.ishr.ch/news/first-meeting-igwg-binding-treaty-business-and-human-rights-closes-geneva>

III. GENERAL CONTEXT: WORK CARRIED OUT IN ISOLATION, MARGINALISATION, AND THE DEFENCE OF LIFE

The context in which human rights defenders of the rights to land, territory and the environment carry out their work is very particular: this group is opposed to powerful actors, conflict can frequently occur where their communities are located and they live with their families, and in most of the cases the defence of territory is equivalent to the defence of their own life and sustenance.

1. DISPARITY IN ECONOMIC, SOCIAL AND POLITICAL RESOURCES

The **disparity in economic, social, and political resources** available to different actors involved in conflicts generated by exploitation of land and natural resources is clear. In many cases, those most affected by the large-scale exploration of land and governmental development projects are already in the most vulnerable communities: indigenous communities, communities where women are the head of the family, or those with few resources. These people live in a context in which the State fails to uphold economic, social, and cultural rights, as well as deep inequalities leading to and resulting in discrimination and failure to respect civil and political rights.

In contrast to the absence of the State, there is a strong presence of businesses that develop their projects without proper State supervision, generating an environment where human rights violations can occur. As a result, the affected communities—which are already marginalised and have limited access to justice and communication—lack the capacity and necessary resources to protect and defend their rights, making their work as defenders more difficult and dangerous.⁶⁹

2. HUMAN RIGHTS DEFENDERS ARE LOCATED IN THE HEART OF THE CONFLICT

Human rights defenders usually **live in the heart of the conflict**, leaving them in direct opposition with and more easily exposed to their attackers. As the Observatory for Mining Conflicts in America (OCMAL)⁷⁰ has pointed out, 'extractive projects imply the control of large extensions of land, water

69 [We are not afraid](#). Land rights defenders: attacked for confronting unbridled development. Observatory for the Protection of Human Rights Defenders (FIDH-OMCT). Annual Report 2014. It is also important to consider the absence of tools and methods to communicate with entities that can provide protection. The Observatory for the Protection of Human Rights Defenders confirmed that in several countries in the continent, these groups turn to international and regional mechanisms for the protection of human rights defenders with less frequency.

70 [Conflictos mineros en América Latina: extracción, saqueo y agresión](#). (in Spanish) [Mining conflicts in Latin America: extraction, looting, and aggression] State of the situation in 2014. Observatory of Mining Conflicts in Latin America. 2015

and other natural resources, which prior to the arrival of the company were in the hands of the local population who are now threatened by this activity.⁷¹

In addition, it is common for businesses and state agencies to use strategies aimed at weakening the fabric of society and disintegrating social movements—not only with threats, stigmatisation, and criminalisation during the construction phase, but also during the initial phase of the project. They take advantage of poverty in the communities and incite tensions between the groups in favour of and against the project (for example, by buying land at more favourable prices or offering employment or other enticements). Through observing documentation by organisations in the region, it is clear how levels of social conflict increase in places with large-scale projects, such as mining extraction. The Observatory has also highlighted that lack of clarity and specific and coherent regulation regarding the ownership of land contributes to increasing social conflicts around this issue.

3. THE DEFENCE OF RIGHTS REPRESENTS THE DEFENCE OF LIFE ITSELF

Development projects and the exploration of natural resources often affect peoples' way of life and their means of subsistence. **The defence of these rights represents**, for many people, **the defence of life itself**; and the implications on a person's life, both in defending of human rights as well as in the obstacles that they face, have a particular impact on this population.

For the majority of these defenders, human rights defence work is not an activity they do for pay. In general, they and their families live off their own land for sustenance. Frequently they do not have knowledge that allows them to work in another place in the event their communities are displaced. Given this situation, the main tool they have to defend their rights in the event of forced eviction is peaceful social protest. As a result, they are more subject to physical repression by private or State security agents. States in the region use violence and militarisation more frequently to repress social protest and to inhibit the defence of rights.

The effect of these projects should not be seen solely from a perspective of economic or social conflict. In the case of indigenous people, for example, these projects affect the way they create their community life and the close ties they have to the land—an integral part of their worldview and their connection with their ancestors. According to defender Lorena Cabnal,⁷² 'when one of the ways that we relate to life is broken, the fabric and integrity of life is broken. We need to see the serious implications of a massive displacement of people from their traditional territory, [...] what they eat, their way of life, how they live is all disrupted.'

4. IMPUNITY THAT ACCOMPANIES ATTACKS COMMITTED AGAINST HUMAN RIGHTS DEFENDERS

⁷¹ *Ibid.*

⁷² Testimony by Guatemalan defender Lorena Cabnal, in an interview with Peace Brigades International. The complete interview can be found (in Spanish) at:

http://www.pbi-ee.org/fileadmin/user_files/groups/spain/1305Entrevista_a_Lorena_Cabnal_completa.pdf.

The impunity that accompanies attacks committed against human rights defenders is an issue the United Nations Special Rapporteur on the situation of human rights defenders and his predecessors have highlighted many times in their reports, including ones on defenders working on issues related to the land and the environment.⁷³ The Rapporteur has stated that, ‘complaints by defenders about alleged violations of their rights are not investigated or are dismissed without justification’ and ‘ending impunity is an essential condition for ensuring the protection and safety of defenders.’⁷⁴

- In **Brazil**, harassment against defenders persists, and authorities fail to investigate complaints. They failed to comply with precautionary measures by the IACHR that ordered the suspension the Belo Monte project construction. There have been cases of illegal detentions and killings of defenders in Colombia (below), as well as in **Chile**⁷⁵, **Honduras**⁷⁶, and **Mexico**⁷⁷

Of all the attacks reported in **Colombia** in 2013, half were directed at community leaders, peasants, and indigenous people.⁷⁸ For example, 6.6 million hectares of land were taken from their legitimate owners.⁷⁹ The most serious information about this situation comes from Human Rights Watch, which states there are 520 people who have made a claim for their land in Colombia. These people have reported threats; the prosecutor has not brought charges against anyone for this crime.⁸⁰

5. THE LACK OF RECOGNITION OF THE RIGHT TO FREE DETERMINATION AND FREE, PRIOR AND INFORMED CONSENT

The risks faced by people who defend the rights to land, territory and the environment in the context of economic projects stem from the lack of free, prior, and informed community consent before projects are initiated. This omission generates conflict and creates risk.

The UN Declaration recognises the ‘valuable work of individuals, groups and institutions’ in the elimination of human rights violations, including those derived from a ‘failure to recognise the right of the people to free determination and the right of all the people to exercise full sovereignty of their wealth and natural resources.’

Failure to recognise these rights, including the right to free, prior, and informed consent, creates a context in which future threats to communities and defenders can take place. This lack of respect

73 A/HRC/19/55, December 21, 2011.

74 A/HRC/25/55, December 23, 2013.

75 IACHR, Press Release, July 19, 2013. Available at: www.cidh.org. In Chile 48 land owners were detained in November 2013 for being in opposition to the Pascua Lama project.

76 IACHR, Press Release, July 19, 2013. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2013/052.asp In Honduras Tomas Garcia, indigenous leader and human rights defender who protested against a hydroelectric project in Agua Zarca on the Galcarque River was killed.

77 Integral System of Human Rights. Another human rights defender is criminalized, now in Zapotillo. See: http://centroprodh.org.mx/sididh_2_0_alfa/?p=16010r See also: http://www.ecoportel.net/Eco-Noticias/Pese_a_la_criminalizacion_de_la_protesta_sigue_firme_la_resistencia_para_frenar_la_represa_El_Zapotillo In Mexico a total of 54 attacks to environmental defenders have been reported between January 2009 and December 2012, of which 23 of them were killed and disappeared. In addition, the environmental protests against the investment projects were criminalized.

78 Semana.com. 2013, record year of attacks to human rights defenders. See: <http://www.semana.com/nacion/multimedia/2013-ano-record-en-ataques-contra-defensores-de-derechos-humanos-colombia/378040-3>

79 PBI. Focos de Interés April to June 2013. Risk to leaders for the restitution of land. Bogota, July 3, 2013. Page. 2.

80 [The risk of returning home](#), Human Rights Watch (HRW) September 2013.

for the right to free, prior, and informed consent is often established in the national legislation, which restricts this right.

Communities face at least two great obstacles to the guarantee of their right to consent: the lack of laws regulating it and procedures that are unclear or are not adapted to the local reality in the few cases where consultations are carried out. The Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) states, 'The business structures implicated in large-scale contracts is often opaque, bringing together unknown actors from various countries, and diluting in consequence the clear line of responsibilities.'⁸¹

In **Bolivia**, for example, the mining legislation (Mining and Metallurgical Law from 2014) contains articles that restrict the exercise of the right to free, prior, and informed consent. This law states there will not be a consultation during the prospecting and exploration stages. However, the law allows for quite the opposite—consultations are allowed during the exploitation phase and it is restricted to three public hearings. The final decision will be left to the State.⁸²

Beyond legislative restrictions, communities face other obstacles to guaranteeing their right to consultation. On the one hand, there is a lack of laws regulating consultation and the procedures are not very clear or not adapted to the local reality in the few cases in which consultations are carried out. Moreover, there is a lack of transparency with regard to the identity of the business owners.

In **Guatemala**, indigenous representatives express their concern about a series of regional development projects that did not significantly consult the local communities. These projects present excessive benefits for businesses, government officials, and their associates and also represent risks for the land and indigenous cultures. According to the Ministry of Mines and Energy, there are currently 342 permits for exploitation and mining production (with another 552 in the processing stage), 58 hydroelectric projects, and 4 contracts for oil production.⁸³

In other cases, permits are granted and contracts are signed prior to obtaining consent such as in the El Espinal and Juchitan, municipalities in **Mexico**. In January 2015, in the middle of developing a consultation for the construction of a wind farm by the Eolica del Sur Company, the Secretary of Energy granted the permit to the company. Generation of wind energy in the region of the Isthmus of Tehuantepec has greatly increased since 2005. For the Zapotec indigenous communities in the Isthmus of Tehuantepec, the increase in the region's wind farms has meant an increase in human rights violations, including of their right to free, prior, and informed consent.⁸⁴

CASE: Highway through Indigenous Territory and Isiboro Secure National Park (TIPNIS). Bolivia.

81 [We are not afraid](#). Land rights defenders: attacked for confronting unbridled development. Observatory for the Protection of Human Rights Defenders (FIDH-OMCT). Annual Report 2014.

82 [Conflictos mineros en América Latina: extracción, saqueo y agresión](#). (in Spanish) [Mining conflicts in Latin America: extraction, looting, and aggression] State of the situation in 2014. Observatory of Mining Conflicts in Latin America. 2015

83 Ministry of Energy and Mines, 2015, "Estadísticas Mineras," [Mining Statistics] viewed August 11, 2015: (in Spanish) <http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/estadisticas-mineras/> ; Ministries of Energy and Mines, 2014, "Informe de Estadísticas Energéticas Subsector Eléctrico 2014," [Report on Energetic Statistics of the Electrical Subsector] viewed August 11, 2015: (in Spanish) <http://www.mem.gob.gt/viceministerio-del-area-energetica-2/direccion-general-del-area-energetica/estadisticas/> . Ministry of Energy and Mines, "Estadísticas: Petróleo Crudo Nacional", [Statistics: National Crude Oil] viewed August 11, 2015: (in Spanish) <http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/direccion-general-de-hidrocarburos/estadisticas/petroleo-crudo-nacional/>

84 More information available in documentation by the Observation Mission (by three Mexican organisations) about the consultation process in Juchitan See: <http://www.prodesc.org.mx/?p=3410>

In 2009, Bolivia and Brasil signed the Funding Protocol for the construction of a highway that would stretch from VillaTunari to San Ignacio de Moxos through the Indigenous Territory and the Isiboro Secure National Park (TIPNIS). The decision to construct this highway affects the lives of 64 indigenous communities. Agreements among the governments of both countries, the Brazilian bank, and the construction company to allow the project to move forward were made despite the TIPNIS people's opposition to the project. They expressed their disagreement in 2004 and on several other occasions by the indigenous organisations in the TIPNIS.

In 2011, the Bolivian government signed a contract to finance the project with the National Bank for Economic and Social Development of Brazil (BNDES) and the Brazilian construction company Constructora OAS Ltda., which had been hired in 2009 to carry out initial studies and then to begin construction of the project. After construction of the highway began (which was authorised in June 2011), indigenous communities of the TIPNIS together with civil society organisations from Bolivia began a long protest march from Trinity to La Paz in August 2011 protesting the imposition of the project on their territory. They demanded a respect for collective, human, economic, social, and environmental rights and the right to free consent. They stated the project had not even considered its social and environmental impact that would have an effect on the way of life and subsistence of the three indigenous groups inhabiting the territory.

With the presidential diplomacy by the Brazilian government in the negotiation between both countries, along with the BNDES and the construction company, there are strong interests behind the project. Petrobras has important oil concessions inside the TIPNIS, and Brazil has been pushing for infrastructure projects with the IIRSA.⁸⁵ There are also local interests of cattle and logging companies and the producers of coca, who in the process of expanding the agricultural border (due to the dynamics of the market) have increased their occupation of the southern part of the territory.

When members of the communities and other human rights defenders organised protests and other actions regarding the case, they reported they were the target of attacks by hitmen and repression by the police.⁸⁶ After a long period of conflict resulting from the violent police intervention in the indigenous march, the arrival in La Paz, the publication of the law to protect the TIPNIS, and the 'post-consultation' call that was rejected by the indigenous people, the Bolivian government decided to resolve the contract with the OAS at the end of 2012.⁸⁷

However, the conflicts and pressure on the indigenous people in the TIPNIS have not ended. The governmental decision to create a military ecological force under the name 'Ecological Batallion' in the TIPNIS, the justification of the highway as a condition for the State to respond to the needs of indigenous communities, and the announcement in April 2015 by President Evo Morales that, 'Accepted or not accepted, sooner or later there will be a paved roadway through the Tropic of Cochabamba to the department of Beni, which will go through San Ignacio de Moxos'⁸⁸ all of set the stage for threats, intimidation, and persistent human rights violations.

Of course human rights defenders who demand respect for consultation and free, prior, and informed consent and lead community processes on this subject often face harassment, threats, and attacks as a result of their legal and legitimate work.

85 The TIPNIS is In the Central Inter-oceanic Axis of the IIRSA that links the Atlantic port with the Pacific, going through Bolivia. The main investments in construction of the highways in Bolvia take place in this Axis.

86 See: <http://www.notimerica.com/politica/noticia-bolivia-corregidores-indigenas-tipnis-denuncian-agresiones-sicarios-funcionarios-gobernacion-beni-20130622220141.html> y <http://otramerica.com/radar/crisis-en-bolivia-tras-represion-de-la-marcha-del-tipnis/632>.

87 Information provided by Unitas, Bolivia.

88 <http://eju.tv/2015/04/evo-a-los-indgenas-accepten-o-no-habr-carretera-por-el-tipnis/#sthash.M8Y8ptqM.dpuf>

In December 2014, during the development of the informational phase of the consultation, members of the Popular Assembly of the Juchiteco People (APPJ), an indigenous organisation in Juchitan, **Mexico**, reported security incidents related to their opposition to the construction of the wind farm in their community. On 5 December 2014, Maria del Carmen Ruiz Martinez, member of APPJ, received a threatening telephone call from an unidentified woman who warned her that she and her co-workers should not go to the consultation meetings.⁸⁹

On 4 December 2014, Maria Isabel Jimenez Salinas, another member of APPJ, reported that a motorcycle followed her while she was accompanying Mariano Lopez Gomez to his home. Mariano is a member, representative, and speaker for APPJ. Maria Isabel was able to avoid the motorcycle, which followed her into an alley. However, once she arrived at her home she could hear shots at her door and window and an alley nearby her home.⁹⁰ A neighbour reported seeing a man pick up the bullet casings. The same night, Mariano Lopez reported a car with polarised glass, which no one in the area knew, was parked outside his home for about 10 minutes with the motor on. Previously, Mariano had also reported he saw two unknown men circling his home on a bike. One of them had a hat on, while the other had his face covered with a handkerchief.⁹¹

Bettina Cruz Velazquez is another member of the Assembly of the Isthmus of Tehuantepec, Indigenous People in Defence of Land and Territory, and the National Network of Women Human Rights Defenders in **Mexico**. This defender worked in the name of her community to counteract the impact of private businesses creating and operating wind farms on traditional land in the state of Oaxaca. She was the object of a long legal proceeding with unfounded accusations for ‘crimes against consumption and national wealth’ and ‘illegal deprivation of liberty’ regarding a peaceful protest before the Federal Electricity Commission in Juchitan, Oaxaca, which she had not attended. She was finally absolved in February 2015.⁹²

Construction of the hydroelectric power station in Belo Monte, in the Amazon in **Brazil**, began without providing the affected people with the right to free, prior, and informed consent. According to information provided by the Movement of People Affected by Dams (MAB), there are about 40 thousand people affected by this project; even President Dilma recognised the project does not respect the rights of the displaced people. Approval of the operating license is expected this year, even though the licensing agency (IBAMA) concluded that failure to implement the conditions of the project prevents approval. Belo Monte is only one of the hydroelectric power plant projects the government plans to construct in the Brazilian Amazon.⁹³

An adequate State response to the risks defenders of the rights to land, territory and the environment face would have to address the fundamental causes of the violence to which they are exposed, given that this is the root of their threats. These roots are in the ‘systematic violation’⁹⁴ of communities’ rights to free, prior, and informed consent before any business project affecting their rights can move forward. It is due to these conditions that communities are compelled to become human rights defenders.

6. THE IMPACT OF PROJECTS ON COMMUNITY

89 Urgent Action, Amnesty International, Available at: <https://www.amnesty.org/download/Documents/204000/amr410442014en.pdf>

90 Cuestionable el respeto a derechos humanos en consulta sobre proyecto eólico en Juchitán, Oaxaca. Aumentan agresiones. [Respect for human rights is questionable in the consult for the wind farm in Juchitan, Oaxaca. Attacks Increase] Press Release, PRODESC, 2014.

91 Urgent Action, Amnesty International, Available at: <https://www.amnesty.org/download/Documents/204000/amr410442014en.pdf>

92 See www.ishr.ch/news/mexico-juzgado-retira-cargos-penales-infundados-contra-bettina-cruz-velazquez

93 Information provided by Global Justice, Brazil.

94 [Smaller than David](#) The struggle of human rights defenders in Guatemala.; and the Human Rights Index of the State Department of the United States [Índice de Derechos Humanos](#) del Departamento de Estado de Estados Unidos.

RELATIONSHIPS

Extractive and hydroelectric projects can cause divisions in communities between people directly affected by a project and people who obtain even a temporary benefit (like work). The IACHR has spoken out against the phenomena in some countries of attacks and harassment to indigenous leaders or leaders of African descent by former or current members of the communities. These people are contracted by authorities or criminal groups with the goal of weakening efforts to defend the rights of their people.⁹⁵ With regard to women defenders—attacks by family members, people close to them, or members of the community are increasing. These attacks are generally invisible, as defenders do not want to publicly report these crimes. Reporting them often makes the situation worse, as it can trigger defamation campaigns and slanderous attacks that are aimed at making the women feel guilty for stepping outside socially assigned gender roles.

A deliberate policy to divide communities occurred in the case of Belo Monte hydroelectric power plant in **Brazil**. The company responsible for the power plant directly distributed quotas to the indigenous people and counted them as part of the mitigation of impacts. This measure encouraged internal conflicts among the community and resulted in the rupture of tribal relationships and divisions, all of which saw the main objective of debilitating resistance to the project achieved.⁹⁶

⁹⁵ IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#) (2012), paragraph. 306.

⁹⁶ Socio-Environmental Institute – ISA [Dossiê Belo Monte – Não há condições para a Licença de Operação](#), [Belo Monte – Conditions have not been met to license the operation] 2015.

IV. A WIDE PANORAMA OF THREATS AND HUMAN RIGHTS VIOLATIONS OF HUMAN RIGHTS DEFENDERS OF THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT

The contexts described allow for a wide variety of attacks, threats, restrictions, and discrimination against defenders of the rights to land, territory and the environment. This includes murder, harassment, physical aggression, sexual violence, forced eviction, torture, death threats, surveillance, the theft of information, legal persecutions, defamation and smear campaigns, and raids of offices. As previously mentioned, the kind of work performed by these defenders and the conditions in which they develop their activities makes them extremely vulnerable. They are affected at a greater scale than other groups of defenders due to:

- Violent attacks, even murder, against them
- Stigmatisation and smear campaigns to delegitimise their work and reduce the amount of support they receive for their human rights work
- Undue use of criminal legislation and the criminalisation of their work, by fabricating charges and evidence against them
- Violent repression of social protest, forced eviction from their land, and the militarisation of their territory

1. MURDERS OF DEFENDERS OF THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT

As previously stated, in recent years the murder rate of defenders of the rights to land, territory and the environment has exponentially increased. While **Brazil** continues to be the country with the largest number of defenders who have been killed, **Honduras** has the largest number of murders per capita. In 2015, various cases have already been documented, including:

- On 5 April 2015, the **Guatemalan activist** who fought against the presence of the Telesforo Pivaral mine in his territory died at the hands of hitmen near his village, El Volcancito⁹⁷.
- Also on 5 April 2015, Luis de Reyes Marcia, an indigenous leader who fought against illegal logging in his community, was killed in the north of **Honduras**.⁹⁸
- The We Are Defenders Program in **Colombia** documented 16 defenders of the land and environment who were killed between January and June 2015.⁹⁹ Fernando Salazar Calvo—defender of the Embera Chamí indigenous community in the Department of Caldas, President of the Association of Miners of the Union, and speaker for the Association of Miners of the Indigenous Reservation in Cañamomo Lomapieta Riosucio and Supía Caldas (ASOMICARS)—was killed on 7 April 2015 by an unidentified person who shot at him several times outside his home. This was especially concerning since 40

97 [Guatemalan activist murdered near mine site](#). Oxfam America (April 9, 2015). Cited in [How many more?](#).

98 Press release by MADJ (April 5, 2015). Cited in [How many more?](#).

99 “[Los nadies](#)” [The nobodies] Report January – June 2015. We are Defenders Program Colombia. 2015

members of the Embera Chami Indigenous People are beneficiaries of precautionary measures since 2002 (MC-265-02) due to threats, harassment, and violence against them.¹⁰⁰

- On 11 September 2015, defender Sebastian Sajic Córdova was found dead in the village of Santa Abelina, **Guatemala**.¹⁰¹ Cordova represented his community before the National Compensation Program—he was a survivor and witness of genocide against the Ixil and Mayan native people and one of those who condemned ENEL for the violation of the right to consultation for the installation of towers for the Palo Viejo hydroelectric project. Rigoberto Lima Choc was also killed on 18 September 2015 in Guatemala. He had documented the ecocide of the Passion River.¹⁰²
- Environmentalist Raimundo dos Santos Rodrigues was killed on 25 August 2015 in the state of Maranhão, **Brazil**. He was an environmentalist and advisor of a biological reserve who reported illegal logging in the region since 2012. He received death threats, and even though he filed reports about them the local authorities did not act to investigate the threats or take action to protect his life.¹⁰³

2. STIGMATISATION AND DISCREDITING CAMPAIGNS TO UNDERMINE THE WORK OF HUMAN RIGHTS DEFENDERS

Smear campaigns are one of the main strategies used by businesses, the government, and the media (State-run and non-State run) to discredit the work of people who defend the rights to land, territory and environment. In these campaigns, defenders are accused of being anti-development, terrorists, and conspirators, among other things, which affects their ability to demand justice from the State and leaves them more susceptible to other threats, physical aggressions, criminalisation, lack of visibility, and a loss of community, political, and even financial support. In general, a lack of an adequate response by entities that administer justice in cases of stigmatisation, leave these actions in impunity.

Attempts to discredit defenders by State officials include:

- In **Peru**, on 22 April 2015 during a protest by the people in Valle del Tambo (Arequipa) against alleged irregularities in the State's approval of the open-pit mining project Tia Maria—Implemented by Southern Peru—Antonio Coasaca Mamani was detained by policemen. They forced him to take hold of a sharp, pointed weapon that belonged to the police force, with the clear intention of justifying his detention and incriminating him. In these circumstances, a photographer from *El Comercio* newspaper who saw these irregularities took photos that were later published in a local paper, *Correo*, as alleged proof that the protesters were violent.¹⁰⁴

100 IACHR condemns murder of human rights defenders in Colombia. Press release, June 12, 2015. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2015/070.asp.

101 [Guatemala: Killing of human rights defender Sebastián Córdova Sajic](#). Front Line Defenders, 2015.

102 [Guatemala: Killing of Rigoberto Lima Choc](#). World Movement for Human Rights (FIDH), 2015.

103 [Brazil: Killing of Mr. Raimundo dos Santos Rodrigues](#). World Organisation against Torture (OMCT), 2015.

104 See the notice from the Ombudsman at: <https://redaccion.lamula.pe/2015/04/24/defensoria-del-pueblo-pide-que-minister-investigue-siembra-de-prueba-a-agricultor-antonio-coacasa/albertoniquen/>. The local television channel captured images of the abuses committed and the role of the newspaper. The Ombudsman stated that the act was totally incompatible with the Constitutional duties assigned to the agents, and asked the Ministry of the Interior to find those responsible. (document number 0216-215.) A video of police intervention (edited by TV Islay) can be seen at: <https://www.youtube.com/watch?v=bGbolqrI0ml>.

Discrediting through the public and private media:

- In the case of landowners from La Sierrita in Durango state, **Mexico**, a Contract for Temporary Occupation was signed with a Canadian mining company in 2004 that was renegotiated to benefit the community in 2008. However the mining company did not comply with various clauses in the contract, including the payment of rent for almost two years. There were also acts of criminalisation, harassment, and even repression against defenders in the region. Between the end of 2014 and the beginning of 2015, when the resolution for the payment of late rent was going to be resolved in the Agrarian Tribunal, the landowners of La Sierrita were the object of a smear campaign (in particular in the written press), with the intention of questioning the legitimacy of their demands and representing the company in a favourable light.¹⁰⁵
- Lusbi Portillo, General Coordinator of the NGO Homo et Natura Society in **Venezuela** has suffered from slanderous attacks, threats, and smear campaigns in regard to the possible source of his funding: 'If an embassy finances us or we look for funding with an organisation, then they say that we are CIA agents.'¹⁰⁶ As of 2008, Lusbi Portillo has been the victim of consecutive verbal attacks, smear campaigns, and accusations through the public and private media. These relate to the process of recovering land by the Yukpa indigenous people. As a result he is afraid to access the Sierra de Perija mountains for fear of death. On 25 March 2011, he spoke at the IACHR about the situation of Yukpa Sabino Romero (who was killed in 2013) and left proof of criminalisation and threats against him by officials.
- It is also important to mention the pressure and stigma defenders face in the press. For example in **Guatemala**, since 2012 several articles and inserts in the newspaper have referred to defenders as terrorists and obstacles in the country's economic development.¹⁰⁷

Patterns of defamation enable even more violations:

- In the cases of San Miguel Ixtahuacán and San Juan Sacatepéquez in **Guatemala**, a known pattern of defamation generates a very tense environment that ultimately encourages the use of violence. Rumours, lack of transparent and verifiable information, and lack of response from authorities are other common factors. This same pattern can be identified in the communities of San Jose del Golfo y San Pedro Ayampuc, Mataquescuintla, San Rafael Las Flores, and especially in Santa Cruz Barillas.¹⁰⁸

Stigmatisation can cost defenders their good name, adversely affect their own psychological state, as well as their status in the community.

When the media ridicules arguments against extractive projects, the credibility of work done by communities and organisations is questioned and adversely affected. Moreover, once a discourse against human rights defenders is generated, it is easier to accuse them of having provoked

105 For examples of slander see <http://eleconomista.com.mx/foro-economico/2014/12/09/ya-mas-que-pedido-dado>, <http://www.almomento.mx/diario-ejecutivo-por-que-no-llegaron-los-reyes-versiones/>, <http://www.eldiariodecoahuila.com.mx/notas/2014/12/10/espera-minera-canadiense-determinacion-juez-473192.asp>, <http://www.debate.com.mx/opinion/Incertidumbre-legal-deja-a-la-deriva-inversiones-de-mas-de-2-mmdp-en-mina-La-Platosa-20141204-0270.html>, <http://eleconomista.com.mx/estados/2014/12/30/excellon-dejar-ia-operar-mina-platosa-durango>, <http://www.dineroenimagen.com/2015-01-14/49203>. For counter arguments see : <http://www.jornada.unam.mx/2014/12/30/politica/011a1pol> , <http://www.jornada.unam.mx/2015/01/03/opinion/014a1pol>

106 [Diagnóstico del derecho a la asociación indígena en Venezuela](#). [Diagnosis of the right to indigenous association in Venezuela] Laboratorio de Paz, 2014.

107 United Nations, Report of the High Commissioner for Human Rights on the activities of her office in Guatemala, Annual Report 2012, paragraph. 53. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-17-Add1_EN.pdf and Front Line Defenders 2014 [Annual Report. Global Trends in 2013 for Human Rights Defenders](#). Ireland, 2014.

108 [Smaller than David](#): the struggle of human rights defenders in Guatemala. Report of the international investigation mission. Guatemala. Observatory for the Protection of Human Rights Defenders. 2015

environmental conflicts correlating to development projects in countries in the region, without differentiating the scale, the forms of exploitation, and the dimensions of a project's impacts.¹⁰⁹

Campaigns in the media that discredit organisations, together with criminal accusations, cause individuals to lose their status in the affected community—including potential loss of status within their professional sphere. Similarly, stigmatisation has a psychological impact on families and creates a feeling of being unprotected or vulnerable.¹¹⁰

When there is **defamation or a smear campaign against a female human rights defender**, often there is not only mention of her opposition to development or national security, but also attacks on her honour and a questioning of her actions in line with the role expected of her in a patriarchal society. Actions of this type include distribution of pamphlets or pictures of a sexual nature and denigration of her image and condition as a woman, mother, wife, and social activist.¹¹¹ The organisations in this coalition have witnessed how these campaigns have a great impact on the lives of female defenders, given the social stigma it generates within their communities, families, and even within their own movements—which can cause them to stop their work and abandon their cause.

CASE: Conga Mine Project. Defamation of a human rights defender. Peru¹¹²

The Conga Mine Project (by the multinational company Yanacocha) is looking to mine for gold, silver, and copper in the Cajamarca department in Peru for the next 20 years. The project would have to dry five natural lagoons that supply more than 200 communities and many thousands of urban residents: 'This made the communities begin to organise themselves against the project with the motto: Conga is not going forward! Water yes, gold no!'¹¹³

In one particular case where an environmental rights defender was the object of defamation, material about Mr. Milton Sanchez Cubas was published by the Inter-Institutional Celendina Platform (PIC) 12 in which he had a flag stating, 'Conga will not move forward!' 'Given that the flag is red, which is the colour used by Sendero Luminoso, they argued that the human rights defender sympathised with terrorists.'¹¹⁴

In 2014, the Ombudsman documented 135 environmental conflicts in the country, with 75 percent related to mining disputes.¹¹⁵ Peru is one of the main producers of silver and copper in the world and the fifth largest producer of gold. The mining licenses granted by the national government have generated conflict among authorities, mining companies, and indigenous and peasant communities—whose means of subsistence are threatened by these concessions.¹¹⁶

109 [Conflictos mineros en América Latina: extracción, saqueo y agresión](#). (in Spanish) [Mining conflicts in Latin America: extraction, looting, and aggression] State of the situation in 2014. Observatory of Mining Conflicts in Latin America. 2015.

110 Extracted from [The criminalization of social protest continues](#). Criminal proceedings against defenders: worrying trends, patterns and their impacts. Peace Brigades International, 2013, p.4.

111 [Las mujeres rurales de América Latina son luchadoras, no criminales](#). [Rural women are fighters, not criminals] Oxfam International. 2015

112 [Environmental Rights Defenders at Risk in Peru](#). Front Line Defenders. 2014; [¡CONGA NO VA!](#) Resistencias populares contra el extractivismo minero en Perú. [Conga will not move forward! Popular resistance against mining extraction in Peru] Revista Pueblos, 2015.

113 [¡CONGA NO VA!](#) Resistencias populares contra el extractivismo minero en Perú. Revista Pueblos, 2015.

114 [Environmental Rights Defenders at Risk in Peru](#). Front Line Defenders. 2014; [Informe policial: radicales se esconden tras marcha del agua](#). [Police report: radicals hide behind the march for water] Diario correo. February 2012. (Example of defamation)

115 [¡CONGA NO VA!](#) [Conga will not move forward] Resistencias populares contra el extractivismo minero en Perú. [Popular resistance against mining in Peru] Revista Pueblos, 2015.

116 [Environmental Rights Defenders at Risk in Peru](#). Front Line Defenders. 2014.

3. CRIMINALISATION OF HUMAN RIGHTS DEFENDERS: ABUSE AND MANIPULATION OF THE LEGAL SYSTEM AGAINST PEOPLE WHO DEFEND THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT

Special Procedures of the UN and the IACHR have detailed how abuse and manipulation of the legal system is used to criminalise and stigmatise activities of human rights defenders as a 'sophisticated' way of silencing them.¹¹⁷ In recent years, this restrictive legal environment has disproportionately affected human rights defenders whose work threatens business interests.

There are four main strategies that build on each other and are used to hinder the work of people who defend the rights to land, territory and the environment:

- a) The creation of vague, ambiguous, and poorly defined criminal codes.
- b) The creation of new laws that further restrict the legal framework for defending rights, especially with regard to social protest
- c) The use of counterterrorism legislation to criminalise and stigmatise people who defend the rights to land, territory and the environment
- d) The use of the justice system against human rights defenders

a. The creation of vague, ambiguous, and poorly defined criminal codes

The way the criminal justice system is used against activists is clearly contrary to the principal of legality. With regard to the creation of criminal codes, the IACHR has stated, 'the States must use precise and unambiguous language that narrowly defines the punishable offence, thus giving full meaning to the principle of legality in criminal law. [...] This means a clear definition of the criminalised conduct, establishing its elements and the factors that distinguish it from behaviours that are either not punishable offences or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power.'¹¹⁸

Throughout the continent, States employ vague and ambiguous criminal codes used to arbitrarily criminalise and restrict the work of human rights defenders who defend the rights to land, territory and the environment. These alleged crimes include 'deprivation of liberty', 'attacks on communication networks', and 'attacks on national wealth'. The indiscriminate use of 'preventative detention'¹¹⁹ is used in **Mexico** against people who carry out peaceful activities to defend their rights.

In order to discredit, weaken, and criminalise the actions of human rights defenders, the **Bolivian** government strengthened methods of controlling NGOs working in the country. They argue that

¹¹⁷ [Report of the Special Rapporteur on the situation of human rights defenders](#), Michel Frost, A/HRC/28/63, Paragraph. 57, December 29, 2014; [Report of the Special Rapporteur on the situation of human rights defenders](#), Margaret Sekaggya, A/HRC/25/55, Paragraph. 59, December 23, 2013; [Second report on the situation of human rights defenders in the Americas](#), OEA/Ser.L/V/II., Doc. 66, Paragraphs. 76-126, December 31, 2011.

¹¹⁸ *Ibid.* paragraph. 90.

¹¹⁹ In June 2008 the "Constitutional Reform in Security and Justice" went into effect in Mexico, which gave preventative detention constitutional status at the federal level. It is regulated by Article 16 of the Mexican Constitution and is applicable only for cases of organized crime and for a period of 40 days, and can be extended for up to 80 days. More information available at: CMDPDH *El uso del arraigo a nivel federal, en el estado de Nuevo León y el Distrito Federal: Análisis de constitucionalidad, legislación y práctica*, México [The use of preventative detention at the federal level in the states of Nuevo Leon and the Federal District: Analysis of constitutionality, legislation and practice, Mexico], January 2015. Available at: <http://www.cmdpdh.org/publicaciones-pdf/cmdpdh-arraigo-web.pdf> (accessed on September 8, 2015).

some do not fulfil a social role and instead conspire against the central government by financing anti-government protests or taking an openly political stance.¹²⁰

- The crime of illegal deprivation of liberty is an accusation constantly used against activists in **Mexico**—anyone who protests in front of an institution can be accused of depriving the liberty of an official in the office at the time of the protest.¹²¹ Similarly, in **Guatemala**, the definition of kidnapping was expanded to include depriving liberty of building inhabitants if staging a sit-in.¹²²

In **Guatemala**, in order to protect business operations, the Law for Public Order has been used on a number of occasions to excessively limit the right to gather peacefully and as a way to violently repress human rights defenders. According to UDEFEGUA, a state of emergency can be arbitrarily declared and used in conditions that fall outside of what is allowed by international law¹²³; this allows public forces to freely interrupt meetings, repress social movements with force, and arbitrarily detain people without a legal order.¹²⁴

b. The creation of new laws that further restrict the legal framework for defending rights, especially with regard to social protest

In addition to the use of vague criminal codes, States in the region have also created new laws further restricting the legal framework in which people can act, especially with regard to peaceful protests. Some concerning examples of this include:

- In 2011 in **Colombia**, the crime of ‘obstructing a public thoroughfare, which in turn affects public order’ was created by Law 1453. The ambiguity of this law makes it easy to initiate legal proceedings against any kind of peaceful protest. Resolution 02686 by the National Police authorises the use of a large quantity of arms with the potential to cause damage and permanent injury to citizens who demand their rights in the streets. In many cases this has led to the death of farmers or youth who were participating in protests.¹²⁵ At the same time, the Colombian Congress is currently creating a reform to the police code, which human rights organisations warn will restrict social protest. This reform will require strict prior authorisation and allow ‘transfer for protection’ which will let the police retain a person ‘when they display aggressive or intimidating behaviour, or carry out dangerous or risky activities that put their life or integrity at risk or put a third party at risk.’¹²⁶
- **Bolivia** created Law 367 in May 2013, which prohibits illegal mine invasions. This law places a penalty of between six and eight years in jail for anyone who invades the area of a mine and prevents the exploitation of mineral deposits; Articles 99 and 100 of the new Mining and Metallurgical Law (2014) make it a crime to take individual and collective actions that prevent mining activities.¹²⁷
- In **Paraguay**, as of 2009, the penalty for invading a building that belongs to someone else increased from two to five years; this is a clear strategy to criminalise protests by peasant farmers.¹²⁸
- In **Guatemala**, in February 2014, the Speed Bump Law was created to regulate traffic

120 For more information about the restrictions please see (in Spanish) <http://es.mongabay.com/news/2015/es0522-sri-ellerbeck-soloway-bolivia-morales.html>.

121 [Se nos criminaliza por defender la tierra](#) [We are criminalized for defending the land]: Bettina Cruz. Cimac noticias, 2014.

122 Information provided by the Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEGUA).

123 The conditions in which a state of emergency can be declared are in Article 4 of the Pact, as well as in Article 27 of the American Convention.

124 [Annual Report 2013](#). UDEFEGUA. Guatemala.

125 [Informe sobre protesta social y derechos humanos](#) [Report on social protest and human rights]. MOVICE, 2013.

126 [Polémica por el nuevo Código de Policía que se discute en el Congreso](#), Noticias, 17 junio 2015.

127 [Conflictos mineros en América Latina: extracción, saqueo y agresión](#). (in Spanish) [Mining conflicts in Latin America: extraction, looting, and aggression] State of the situation in 2014. Observatory of Mining Conflicts in Latin America, 2015.

128 [Chokokue Report 1989-2013](#). (in Spanish) The systematic plan of executions in the fight for peasant territory, Coordinator for Human Rights in Paraguay (CODEHUPY), 2014

circulation and obstruction of highways.¹²⁹ According to UDEFEGUA, this decree greatly affects indigenous people and makes it possible to prohibit peaceful protests by the community opposed to mines—it allows criminal and administrative sanctions. This law was used to evict the Puya Movement in 2013 and on 15 August 2015 it was used to remove a protest from a highway running through Samococh, in El Chised municipality, Alta Verapaz. The protests in Samococh were in response to the violent displacement of a community opposed to the construction of a hydroelectric dam as well as a result of the detention of three leaders from another community that protested the high price of electricity.¹³⁰

- In **Mexico**, between May and July 2014, four local laws were created that put unjustified restrictions on the right to social protest and freedom of expression and association. All of these laws have two common elements: they give free rein to authorities to arbitrarily use their faculties to restrict and limit protests, and they restrict the use of public spaces for those who decide to publicly express their opinions and inconformity.¹³¹
- In **Peru**, in January 2014, Law 3015 was approved. This law provides the armed forces and national police with an exemption from all criminal responsibility in the event of physical aggressions and fatalities as a result of the use of firearms or other weapons while in the line of duty.¹³² This excessively affects the right to protest and encourages impunity for police violence.¹³³
- In **Venezuela**, in 2002, the Organic Law for National Security (RENA)¹³⁴ was approved. Article 47 of this law creates something called ‘security zones’ which, according to estimates by local NGOs, cover 34 percent of Venezuelan territory. These security zones are ‘spaces in national territory that, due to their strategic importance, characteristics and elements within them, are subject to special regulation in terms of people, goods, and activities located there, with the goal of guaranteeing the protection of these regions from dangers or internal or external threats’. They cover stretches of land and air used by mixed companies working with the State to extract minerals, as well as basic State companies. For this reason, activities like protests or worker strikes are prohibited in these places.

Article 32 of the law specifies that the executive has the legal authority to use the National Armed Forces to ‘contribute to the control and functioning of public services or basic State companies [in order to protect] the social and economic life of the Republic’. Different protesters have been charged with the alleged crime of ‘violating security zones’, with prison sentences of between five and ten years, according to the law. Also in Venezuela, the reform to the Criminal Code, which took place in 2005, sanctions people who block the communication networks with prison sentences of between four and eight years. The popular movement in Venezuela has historically used this method of protest.

There is an alarming tendency to repress social protest as a way to silence the work of human rights defenders of the rights to land, territory and the environment. As previously mentioned, due to the nature of the work that they carry out, peaceful protest is the main tool this group has to defend its rights. Through actions protected by weak legislation that is arbitrarily applied, or through illegal actions that are ignored or not investigated by the State, human rights defenders see an increase in violence in their territory and at their protests and meetings, as well as the militarisation of their spaces and the use of force—both public and private—to stop their legitimate work.

129 [Decree number 8-2014, Congress of the Republic of Guatemala](#), (in Spanish) Central America, 2014.

130 Documentation from UDEFEGUA, 2015.

131 *Derechos humanos y protesta social en México*. [Human rights and social protest in Mexico] (in Spanish) Report presented to the Inter-American Commission on Human Rights. 2014.

132 See: <http://www.leyes.congreso.gob.pe/Documentos/Leyes/30151.pdf>.

133 [Human rights defenders – Lives in the balance](#). Front Line Defenders. Annual Report 2015.

134 [Organic Law for National Security \(in Spanish\), September 19, 2015](#).

CASE: Detention of a foreigner in the context of social protest. Ecuador

The case of the French-Brazilian defender, scholar, and journalist Manuela Picq in Ecuador also illustrates the use of legislation to obstruct human rights defence work and criminalise social protest in favour of territory and natural resources.

This human rights defender was violently and arbitrarily detained on 13 August 2015 during the March of the Confederation of Indigenous Nationalities of Ecuador (CONAIE).¹³⁵ The next day she was informed that her 12VII visa (a cultural exchange visa) had been cancelled; she was then taken to Hotel Carrion, a detention centre for illegal immigrants, where she would await a hearing. On 17 August 2015,¹³⁶ judge Gloria Pinza from the Judicial Unit for Penal Guarantees, Minor Infractions and Youth Offenders determined there was no reason for her to be arrested or deported. Despite this decision, a no ruling was made about whether her visa would be reinstated. She was left in uncertainty about her legal status in the country.

Picq was also informed on 19 August 2015 that the Ministry of the Interior was going to review the decision of the tribunal. On 20 August 2015, a hearing took place to review a petition presented by Picq to reinstate her visa—a request she made to ensure her rights were protected. This petition was rejected. As a result, she was forced to leave the country to avoid possible legal difficulties. Picq is currently in Rio de Janeiro, Brazil. She had been legally residing in Ecuador for eight years.¹³⁷

c. The use of counterterrorist legislation to criminalise and stigmatise those who defend the rights to land, territory and the environment

There is also an alarming tendency in the region to use counterterrorist legislation against activists, describing them as ‘enemies of the State’ in order to justify abuses committed against them. The organisations that petitioned for this hearing highlighted the following:

- In **Paraguay**, since 2010, the obstruction of a roadway within the context of a peaceful protest can be penalised as if it were terrorism. As a result, this behaviour can be sanctioned with the most serious sentence allowed by Paraguayan law.
- In 2014, the Inter-American Court of Human Rights condemned **Chile** for using a counterterrorist law against the indigenous Mapuche community, who defended their ancestral lands from commercial exploitation. Eight Mapuche activists were charged with ‘terrorist threats’ and ‘terrorist attacks’ based on a law that was approved during the military dictatorship.
- The Chamber of Deputies of **Brazil** recently approved a counterterrorist bill, PL 2016/2015, without any public debate. The text contains subjective elements which allow for the arbitrary application of terms to repress social protest. The Senate of the Republic has yet to approve the law.¹³⁸
- In **Venezuela**, in April 2012, the ‘Organic Law against organised crime and funding for terrorism’ (Lodofat)¹³⁹ was approved. This law defines any alteration to the public order as terrorism. Even any ‘threat against any person or property, in support of or in benefit of an organised criminal group’ will be punished with a prison sentence of eight to ten years. LODOFAT is focused on the criminalisation of protest and prohibits the ways in which civil society and grassroots organisations have historically fought.

¹³⁵ [Ecuador: Concern over deportation efforts against Manuela Picq](#), Front Line Defenders.

¹³⁶ [Ecuador: Update: Human rights defender Manuela Picq no longer facing deportation](#) Front Line Defenders.

¹³⁷ [Ecuador: Update: Human rights defender Manuela Picq leaves Ecuador after visa application is denied](#), Front Line Defenders.

¹³⁸ More information can be found about this on the Conectas Human Rights page at: <http://conectas.org/pt/acoaes/justica/noticia/40312-ataque-contra-a-democracia>.

¹³⁹ [Organic Law against organized crime and funding for terrorism](#) Accessed September 19, 2015.

Article 50 of the Organic Law of the Bolivarian National Armed Forces from 2009 creates so-called ‘combatant squads’, militarised units from public and private companies with an objective to prevent the stoppage of production. This has been reported by organisations as a violation of the right to strike and a potential use of ‘combatants’ to incite conflict with protesters who are defending the rights to land, territory and the environment.

CASE: Closure of an organisation that defends environmental rights and the rights of indigenous people, Ecuador¹⁴⁰.

In June 2013, presidential decree number 16 granted the government of Ecuador the authority to ‘shut down human rights and other groups that interfere with [its] agenda.’ This prohibited the organisations from ‘mov[ing] away from the objectives for which it was created,’ and ‘carrying out political activities reserved to parties and political movements... which interfere with public policies that undermine national or external security of the State or compromise public peace.’¹⁴¹

In the first case of its application, on 4 December 2013, the Minister of the Environment decided to dissolve the Pachamama Foundation,¹⁴² an NGO with more than 15 years of experience dedicated to the defence of indigenous and environmental rights in Ecuador. As documented by HRW,¹⁴³ government officials and police blocked the entrance to the organisation’s headquarters in Quito that same day. They claimed that several of its members had participated in a violent protest ‘undermining public order and the physical integrity of those present’—the president of the Foundation denied this information.

The protest the Minister referred to took place on 28 November 2013 in front of a hotel in the capital ‘where officials were reviewing licensing applications by several foreign companies seeking to explore for oil in areas of the Ecuadorian Amazon populated by indigenous communities.’¹⁴⁴

‘On 1 December 2013, during his weekly TV show, President Correa accused the protesters of physically attacking the Chilean ambassador in Ecuador and a Belarusian businessman, as well as police officers. Correa played a video showing protesters following and verbally accosting the two foreigners, who were escorted by police officers, after they left the meeting.’¹⁴⁵ On 4 December 2013, the organisation was shut down.

This case is an emblematic example of not only the application of restrictive legislation against human rights defenders, but also of how crimes allegedly committed by human rights defenders are quickly taken to justice, whereas crimes committed against them are not.

d. The use of the justice system against defenders

The arbitrary and disproportionate use of the justice system to paralyse the work of people who defend the rights to land, territory and the environment is an increasingly common phenomenon.¹⁴⁶ In many cases, businesses file criminal charges in collusion with public authorities. They stretch the definition of certain ambiguous crimes and/or criminalise peaceful

¹⁴⁰ [Ecuador: Rights group shut down](#), HRW, 2013.

¹⁴¹ [Ecuador: Rights group shut down](#), HRW, 2013.

¹⁴² [Agreement released by the Ministry for the Environment](#), (in Spanish) Accessed on September 08, 2015.

¹⁴³ [Ecuador: Rights group shut down](#), HRW, 2013.

¹⁴⁴ [Ecuador: Rights group shut down](#), HRW, 2013.

¹⁴⁵ [Ecuador: Rights group shut down](#), HRW, 2013.

¹⁴⁶ See for example [Smaller than David](#): the struggle of human rights defenders in Guatemala. Report of the international investigation mission. Guatemala. Observatory for the Protection of Human Rights Defenders, 2015.

protests led by environmental defenders. This pattern is usually accompanied by strong police and military repression and results in arrests, arbitrary detentions, and deaths.¹⁴⁷ Many criminal codes used in these cases require the use of preventative detention or the payment of a large sum of money for a fine or bail.

The criminalisation of human rights defenders through legal proceedings obliges them to use their resources to defend themselves instead of working for their causes. Subsequently, even if they are eventually declared innocent, they often remain stigmatised in their place of origin because of the charges that they faced.

- A hearing about the situation of indigenous people in **Ecuador** during the IACHR's 153rd Ordinary Period of Sessions in 2014 shared information about 54 people who face charges for protesting against concessions for mining and hydrocarbon projects.¹⁴⁸ For example, the national mining company (ENAMI) has acquired the mining concession 'Llurimagua' in order to carry out exploratory work and to begin mining copper in the Toisan Mountain Range in Ecuador. On 10 April 2014, members of the national police detained Darwin Javier Ramirez Piedra, president of the community of Junin, in the county of Nanegalito, without an order from a judge. He was kept without communication for several hours, interrogated without a defence attorney, and received no information about why he was detained. This illegal method was what the prosecutor from Cotachi used to initiate a criminal process against him for the alleged crimes of rebellion and sabotage.¹⁴⁹
- In **Guatemala**, UDEFEGUA documented 61 fabricated legal proceedings against defenders of the rights to land, territory and the environment in 2013,¹⁵⁰ 47 fabricated charges in 2014, and seven so far in 2015.
- In 2014, in **Peru**, almost 400 protesters and human rights defenders faced legal proceedings initiated by mining companies, their staff, or the public ministry. These charges were for rebellion, terrorism, violence, usurpation, disobedience or contempt of the official order, obstruction of public officials, kidnapping, damage to national symbols, and obstruction of public roads, among others.¹⁵¹
- At the Entre Mares project in **Honduras**, 17 members of the Environmental Committee of the Siria Valley have been charged with different crimes in recent years. All of them were put in preventative detention and were later absolved of the charges. The organisations accompanying the Siria Valley communities in their resistance have faced slander from the mining company and members of parliament, and officials of the Executive branch of government have accused them of sedition and violence damaging the interests of the State.¹⁵² Between 2010 and 2012 there were more than 684 cases of female peasants in 15 departments with charges levelled against them; in 2013 there were more than 700 legal charges levelled against women who participated in different processes to recover land.¹⁵³
- In 2012, in **Bolivia**, indigenous protests against mineral exploitation by Canadian company South American Silver in Malku Khota were able to reverse the concession and suspend the project. However, their leader Cancio Rojas¹⁵⁴ was incarcerated and faced criminal charges for allegedly attempting to kill and kidnap policemen.
- Lawyers that work to defend indigenous communities also face risk. In April 2015 in **Paraguay**,

147 [The impact of Canadian Mining in Latin America and Canada's Responsibility](#). Working group on mining and human rights in Latin America, 2014.

148 Information provided by organisations that participated in the hearing. Additional information can be found at: http://cedhu.org/index.php?option=com_content&view=article&id=290:el-uso-del-derecho-penal-para-criminalizar&catid=1:noticiasprincipal&Itemid=10.

149 More information can be found at: http://www.inredh.org/index.php?option=com_content&view=article&id=624:resumen-ejecutivo-intag&catid=1:actualidad&Itemid=143.

150 [Annual Report 2013](#). (in Spanish) UDEFEGUA. Guatemala.

151 https://www.frontlinedefenders.org/files/annual_report_2013_web_1.pdf.

152 [The impact of Canadian Mining in Latin America and Canada's Responsibility](#). Working group on mining and human rights in Latin America, 2014.

153 [Las mujeres rurales de América Latina son luchadoras, no criminales](#). [Rural women in Latin America are fighters, not criminals] Oxfam International, 2015.

154 [Comunario Cancio Rojas pagó fianza y salió de la cárcel](#), [Cancio Rojas paid bail and got out of jail] La Razón, 2012.

human rights lawyer Julia Cabello Alonso faced either a potential year-long suspension of practice or disbarment for her open defence of indigenous communities in the country. The President of the Supreme Court of Justice accused Cabello Alonso of 'bad conduct' after she criticised the Supreme Tribunal's decision to review the constitutionality of the Expropriation Law from 2014.¹⁵⁵

- On 25 October 2011, a group of about 400 indigenous people belonging to 13 Pemon communities in **Venezuela** surrounded a group of 23 soldiers from the National Bolivarian Armed Forces who were carrying out illegal mining activities in the indigenous territory of Alto Paragua. Even though he was not in the area at the time of the events, Alexis Romero, an indigenous leader of the Musuk Pa community, was detained on 19 January 2012 and charged with kidnapping soldiers from the National Armed Forces and attacking the guard. Since he was processed by the military justice system and not by the civilian justice system, Romero was held in a detention centre known as 'La Pica' in Monagas state, a prison that holds common prisoners as well as highly dangerous prisoners. Even though he did not receive a sentence, the indigenous leader was freed only after he received a presidential pardon on 24 January 2012. However, the tribunal ordered him to periodically appear before the court. Due to the irregularity of this order, Romero has not followed through with this; to this day he cannot leave his community for fear of being detained again.¹⁵⁶
- In **Peru**, politician Marco Arana suffered from intimidation and harassment for his opposition to the Conga mining project. In July 2012 he was illegally detained, and the justice system later declared him innocent.¹⁵⁷
- In the case of the **Nicaragua** Canal, there have been arbitrary detentions of those protesting mining activities, including Jorge Luis Vega from Comarca Santa Pancha and 36 community leaders from Santo Domingo Chontales.¹⁵⁸ The situation for environmental rights defenders and defenders of territory worsened with the concession of the Megaproject of the Inter-Oceanic Canal in 2013.¹⁵⁹ Thousands of people took to the streets to protest the forced displacement that would take place, as well as the severe environmental damage. In particular, in December 2014, there were acts of aggression, disproportionate use of force, and arbitrary detentions in Rivas and Tule.¹⁶⁰

155 [Chokokue Report 1989-2013](#). (in Spanish) The systematic execution plan in the fight for peasant territory, Coordinator for Human Rights in Paraguay (CODEHUPY), 2014.

156 Indigenous people exercise their right to free association. Alexis Romero, indigenous community of Taurepán, Accessed on September 19, 2015 (in Spanish) <http://laboratoriosdepaz.org/video-los-pueblos-indigenas-ejercen-su-derecho-a-la-libre-asociacion-alexis-romero-comunidad-indigena-taurepan/>.

Provea: Interview with Pemon indigenous leader Alexis Romero about the situation in the Bolivar state for these communities, Online on September 19, 2015 <http://www.derechos.org/ve/2013/02/19/entrevista-al-indigena-pemon-alexis-romero-sobre-la-situacion-en-el-estado-bolivar-de-estas-comunidades/>; [Los pueblos indígenas ejercen su derecho a la libre asociación. Alexis Romero, comunidad indígena Taurepán](#), 2014. En línea al 19.09.2015; [Provea: Entrevista al indígena pemón Alexis Romero sobre la situación en el estado Bolívar de estas comunidades](#), 2013. En línea al 19.09.2015.

157 [Defensores/as de DDHH sufren cada vez más ataques](#), [Human rights defenders suffer from more and more attacks] 2012. Accessed on September 19, 2015.

158 La Prensa. [Mineros marchan en Santo Domingo](#). [Miners march in Santo Domingo] See: <http://www.laprensa.com.ni/2014/02/10/nacionales/181845-mineros-marchan-en-santo-domingo>. Also: CENIDH, Annual Report "Derechos Humanos en Nicaragua" [Human Rights in Nicaragua] 2013 page. 189 and 190, in: http://www.cenidh.org/media/documents/docfile/Informe_CENIDH_2013_FinalWEB.pdf and IACHR, 149th Ordinary Period of Sessions, Hearing on the excessive use of force by the Police in Nicaragua, October 28, 2013.

159 See: IACHR. Hearing on the Construction of the Trans-oceanic canal and its impact on human rights in Nicaragua. 154th Ordinary Period of Sessions, March 16, 2015, at: <https://www.youtube.com/watch?v=oOxVVwrKnBc>.

160 The national police commissioner, Aminta Granera recognized the utilization of tear gas and rubber bullets. She said to the media that "The special troops called out to evict the tracks but nobody listened, we acted with patience and tolerance."

See: [Semana. Unos 87 heridos en las protestas contra el Canal de Nicaragua](#) [Some 87 are injured in protests against the Nicaragua Canal] at <http://www.semana.com/mundo/articulo/unos-87-detenido-en-las-protestas-contra-el-canal-de-nicaragua/413318-3>; La Prensa: [Desaparecidos de Rivas están detenidos en El Chipote](#) [The disappeared from Rivas are detained in El Chipote] <http://www.laprensa.com.ni/2014/12/24/nacionales/1669487-cenidh-prepara-habeas-corpus-para-evitar-arrestos>. Similarly, according to members of the organisation, "87 people were captured, the first 17 during the day, people who went by in a car in solidarity with us, and 70 at night, including children" see: La Prensa "Sangre por el Canal" [Blood for the Canal] <http://www.laprensa.com.ni/2014/12/26/nacionales/1669979-sangre-por-el-canal-sangre-por-el-canal>; La Prensa: [Entregan a 18 detenidos por el Canal](#) [18 people are detained because of the Canal] <http://www.laprensa.com.ni/2014/12/25/nacionales/1669628-entregan-a-18-detenido-en-protestas-contra-gran-canal>.

CASE: Agua Zarca Dam. Criminalisation of a human rights defender. Honduras

Almost 30 percent of the territory of Honduras is reserved for mining concessions, generating a demand for cheap energy to provide for future operations:¹⁶¹ 'To cover this need, the government approved hundreds of projects to construct dams. This includes the Agua Zarca Dam, a joint initiative between the Honduran company Energetic Development SA (DESA) and the Chinese company Sinohydro. With construction on the Gualcarque River, Agua Zarca was initiated without consulting the Lenca indigenous people of the region, who would be left without water, food and medicine.'

Berta Cáceres, a well-known Honduran human rights defender, organised a series of blockades in 2013 with the goal of preventing DESA from starting their project. For one year, the indigenous Lenca people maintained a constant peaceful presence—they even 'put up with several attempts to evict them and violent attacks from militarised security guards and the Honduran Armed Forces', as well as the assassination of at least one person as a result of repression of the protest.¹⁶²

That same year, criminal proceedings began against the defender for alleged 'illegal possession of a firearm endangering the security of the Honduran State.'¹⁶³ According to documentation by Global Witness, the defender alleged, 'A gun was planted by military officers in her car at an army checkpoint. Her ability to travel was restricted as a result of the charges until the case against her was dismissed in February 2014. However, while this case was still active, the Honduran government and the dam company filed a second case against Cáceres, accusing her of inciting others to commit crimes, occupying public and private property, and damages to the hydroelectric company. A judge sentenced her to jail time. According to Amnesty International, the judge did not consider any of the evidence for the defence, which includes the community's legal right to be consulted about the dam project.'¹⁶⁴

Cáceres' case is emblematic of the criminalisation and fabrication of charges against those who oppose business interests. Cáceres, similar to other human rights defenders in Honduras and Latin America, has been criminalised by the government as a result of her work.

Criminalisation has a political cost for human rights defenders. In cases where people lose their freedom of movement and action due to arrest warrants against them, the lives of individuals in the community are limited, which has an economic impact on the family, 'I cannot go to buy seed anymore, which I need to grow my crops, or sell my produce; I feel completely cut off and unable to earn a living.' This testimony illustrates the situation.¹⁶⁵ In the event that an adult in the family is faced with deprivation of liberty (preventative detention), young children may need to work in order to sustain the family financially.¹⁶⁶

161 See article (in Spanish) about the dam and Berta Cáceres: <http://www.ipsnoticias.net/2015/04/la-defensa-del-ambiente-necesita-de-los-movimientos-sociales/>.

162 See article (in Spanish) about the dam and Berta Cáceres: <http://www.ipsnoticias.net/2015/04/la-defensa-del-ambiente-necesita-de-los-movimientos-sociales/>.

163 This and more information about the case was documented by Global Witness in their 2015 report "[How many more?](#) 2014's deadly environment: the killing and intimidation of environmental land activists, with a spotlight on Honduras."

164 "[How many more?](#) 2014's deadly environment: the killing and intimidation of environmental land activists, with a spotlight on Honduras." Global Witness, 2015.

165 Extracted from [The criminalization of social protest continues](#). Criminal proceedings against defenders: worrying trends, patterns and their impacts. Peace Brigades International, 2013, p.4

166 *Ibid.*

V. THE PARTICULARITIES OF THE OBSTACLES AND VIOLATIONS FACED BY GROUPS IN ESPECIALLY VULNERABLE SITUATIONS

Various national and international organisations have shown that, due to the specific context in which defenders of the rights to land, territory and the environment develop their work, the effects of threats, attacks, stigmatisation and discrimination against them are distinct and specific.¹⁶⁷ Within the defenders in this group there are those with particular characteristics that increase the level of vulnerability they experience, and there remains a need for specific action to guarantee their protection.

‘One of the weaknesses of current protection mechanisms is that they are not adapted to the different roles that women human rights defenders play in their workplaces, families, organisations and movements, and communities. Most protection programs contain a range of measures that are common to all defenders at risk, not taking into account how different factors such as gender, sexual orientation, or ethnicity affect the experience and consequences of a violation of rights.’¹⁶⁸

1. FEMALE DEFENDERS

Environmental damage generated by extractive industries impacts women’s ability to get food and water for their families and communities. With the loss of land and displacement, the work that women must do to support their family increases. For these reasons, many have assumed leadership roles defending their territories, making them more visible and putting them at greater risk.¹⁶⁹

In addition to facing the same risks as their male colleagues, women human rights defenders face gender-specific risks and violations that have a distinct impact on their lives and work. Women defenders working on issues related to the defence of the rights to land, territory and the environment throughout the continent have all reported harassment, smear campaigns, physical and verbal abuse, threats of sexual violence or death, attempted forced evictions, criminalisation, attacks, and harassment of their families.¹⁷⁰ In addition, peasant and indigenous women fear being arrested for their roles as defenders, based upon the experiences of colleagues who have suffered sexual harassment during detention.¹⁷¹

The growing context of militarisation of territories and increasing use of army, police, paramilitary, and private security agencies to curb opposition to projects of ‘development’ have had a serious impact on defenders’ lives and safety. Particularly, defenders in mining areas are at higher risk of

167 Presentation to the IACHR in October 2009 by Tlachinollan, UDEFEGUA, COFADEH, CENIDH, FESPAD and CEJIL.

168 [Our Right to Safety](#): Women human rights defenders' holistic approach to protection. International Coalition of Women Human Rights Defenders. 2014.

169 Critical issues identified during the investigation by AWID and the International Coalition of Women human Rights Defenders in “The impact of activities of transnational corporations and other companies on women human rights defenders” in process, 2014-2015.

170 Historically specific violence has been used – especially sexual violence against women activists in the continent, in military dictatorships, internal armed conflicts, civil war. Sexual threat is palpable in the life of women in the continent and reference to it spreads fear amongst women defenders.

171 Extracted from [The criminalization of social protest continues](#). Criminal proceedings against defenders: worrying trends, patterns and their impacts. Peace Brigades International, 2013, p.4.

being sexually harassed and raped by security guards or military personnel. Impunity and lack of access to justice are serious challenges for them.¹⁷²

Criminalisation processes as described in the previous section also affect female human rights defenders in different ways than male human rights defenders. As mentioned, criminalisation is often accompanied by smear campaigns during which rumours about gender, sexuality, and honour circulate. The rumours reinforce gender stereotypes and can lead to their families and communities rejecting and isolating them. Such campaigns also undermine their leadership roles in organisations and movements.

It is also important to take into account that, once businesses are installed, there is a notable 'masculinisation' of the territories due to the demand for workers.¹⁷³ In a context already repressive of the defence of human rights, few or no legal or protective recourses are designed for women; they therefore remain subject to multiple forms of discrimination and attacks.

Bárbara Díaz of Guatemala provides one example of this. In October 2014, Bárbara Díaz Surin, leader of a community that opposes construction of a cement plant in **Guatemala**, was detained by a group of 40 policemen, of which only one was a woman. The next day during the preliminary hearing—in which an interpreter of her indigenous language was not provided—the judge sentenced her to preventative detention for the duration of the investigation, even though the defence asked for house arrest so that she could care for her seven children. The next hearing would take place in several months.¹⁷⁴ The company instead decided to negotiate her release in exchange for a public tour through all the communities involved, wherein she would admit her mistake, apologise, and call for the communities to support the construction of the cement plant.¹⁷⁵

CASE: Repression of the body as a specific form of violence against women defenders of the rights to land, territory and the environment Guatemala

'Historically, the women's movement and the feminist movement have been able to position themselves within the case of genocide. However, given that women live with different forms of violence (economic, sexual, psychological) in their everyday lives, putting their bodies in the front line of defence of territory makes the situation even more complicated.

I say this because there are women who are not well-known and who live with the consequences of defending their land and territory. For example, the women of San Miguel Ixtahuacan, with more than 14 arrest warrants; the case of Crisanta Perez; the case of San Juan Sacatepequez, 11 women who have endured specific cases of harassment and sexual violence by those who watch over the cement company; the sisters in the Plochic valley, for the evictions that took place there, and who have faced sexual harassment by the private police and the army; the cases of the women who, while defending their territory, have received threatening phone calls that they or their daughters would be raped.

It is a different context than it is for men, because this strategy is being used to repress the body and is a potent tool with a strong misogynous charge. They want to send a message so that as

172 Critical issues identified during the investigation by AWID and the International Coalition of Women human Rights Defenders in "The impact of activities of transnational corporations and other companies on women human rights defenders" in process, 2014-2015.

173 Solano Ortiz, Lina. *Mujer, violencia e industria minera*. [Woman, violence and the mining industry] Provided by the author. Translated from French, published in *Droits et libertés*, by the League for Human Rights and Freedoms of Quebec. Volume 34, number 1. June, 2015.

174 [Human rights defenders – Lives in the balance](#). Front Line Defenders. Annual Report 2015.

175 Update provided by Udefegua, 2015.

women we react with terror, with fear. Their implication is that sexual violence is a tool actively used during conflict, and that complicates our lives.¹⁷⁶

Bolivia

In 2011 in Chaparina, during the VIII indigenous march for dignity, life, and territory and in defence of Indigenous Territory and the Isiboro Secure National Park (TIPNIS), there was a police intervention. Police gassed the encampment and indiscriminately used force without considering that mothers with children in their arms, little girls, pregnant women, and older adults were present. Testimonies by the marchers describe multiple situations in which the women were hit, gagged, and had their hands tied. The mothers were confused and looking for their children, while children were looking for their parents. The mothers could not find their children because they had fled to the mountain for safety.¹⁷⁷

2. INDIGENOUS PEOPLE AND PEOPLE OF AFRICAN DESCENT

Discrimination and social exclusion of indigenous people and communities of African descent are deeply rooted in many countries throughout the Americas. This discrimination—itsself a violation—can lead to a series of abuses against individuals and communities, and against those who fight to defend their human rights. In this context of discrimination, there are many structural barriers to access justice for violations, which entrenches impunity and increases vulnerability.

These defenders may be in a vulnerable situation because they lack sufficient resources to support campaigns for the respect of human rights, have limited access to justice, do not speak the prevailing language in the country, or simply do not know their rights. In addition, many indigenous communities and communities of African descent are located in the midst of dangerous zones because their lands have strategic value to armed actors operating beyond the law, which, in many cases, has led to forced displacement from their lands.

Finally, it is important to note that an advocate may be triply vulnerable by virtue of being a woman, indigenous, and a defender, and as such requires different protection measures:

[I]ndigenous women suffer from multiple forms of discrimination for being indigenous, for being women, and for belonging to one of the most disadvantaged economic groups in society. [...] Indigenous human rights defenders face a daily struggle to reassert the autonomy of their communities and their own autonomy within their communities. Despite the violence they face, it is extremely difficult for indigenous women to denounce human rights violations committed against them due to the distance required to travel to the nearest city, cultural barriers during medical examinations, language barriers (Spanish is not always widely spoken among indigenous women speak), and the fear of reprisals. Indigenous organisations state that when women do report violations, they are frequently rejected or not taken seriously, and as a result these crimes are not investigated.¹⁷⁸

176 Testimony by Guatemalan defender Lorena Cabnal, in an interview with Peace Brigades International 2013. The complete interview is available at: http://www.pbi-ee.org/fileadmin/user_files/groups/spain/1305Entrevista_a_Lorena_Cabnal_completa.pdf.

177 *Informe Defensorial: Respecto a la Violación de los Derechos Humanos en la Marcha Indígena*, [Defence report: the Violation of Indigenous Rights in the the Indigenous March] Defensoría del Pueblo Estado Plurinacional de Bolivia, 2011.

178 Association for the rights of Women and Development (AWID). *Our Right to Safety: Women Human Rights Defenders' Holistic Approach to Safety* Available at: <http://www.awid.org/publications/our-right-safety-women-human-rights-defenders-holistic-approach-protection> (Accessed on 9 October 2015).

CASE: Proyecto Mirador - Minería a cielo abierto. Ecuador¹⁷⁹.

In 2012, the Government of Ecuador signed a contract for the country's first large-scale open-air mining project. The project would be located in the Condor Cordillera—the Shuar people's place of residence. In 2013, indigenous leaders wrote a letter to the Chinese bank that was financing the project for Ecuacorriente. In this letter they stated that the Mirador Project 'would bring negative consequences to the ecosystem and possible human rights violations with regard to the rights of indigenous people, Ecuadorian legislation and international law.' The project would directly affect 'eight indigenous communities and 170 families, who had not been consulted and had not given their consent for the project.'¹⁸⁰ At the same time, several indigenous leaders filed a complaint against Ecuacorriente before national tribunals to protect their right to nature as enshrined in the Ecuadorian Constitution. This complaint was denied; and they subsequently presented a petition to the IACHR.¹⁸¹

In this context, three indigenous Shuar leaders were killed—Jose Tendetza in December 2014, Freddy Taish in November 2013, and Bosco Wisum in September 2009. In the case of Tendetza, 'the activist was suffering from constant attacks and harassment since 2009 as a result of his campaign. In 2012, according to information received [from Amnesty International], his house and his harvest were burnt and destroyed'¹⁸². In spite of the reports filed, there is no information about whether the guilty parties have been brought to justice.

The presence of Ecuacorriente in the region has negatively affected social relationships amongst the community and has provoked the displacement of families; in addition to killings, social leaders have also been criminalised for their work in defending their territory.¹⁸³

Amnesty International points out that Ecuador 'has ratified Convention 169 on Indigenous and Tribal Peoples and supported the Declaration on the Rights of Indigenous Peoples, which requires the recognition of the rights of Indigenous peoples to their ancestral lands and natural resources and the right to consultation and free, prior and informed consent.'¹⁸⁴

This information is a clear example of the violence and harassment suffered by human rights defenders who are against extraction projects—in Ecuador as well as in other countries.

179 Más información sobre el caso en el Informe de CEDHU - FIDH. [Intervención minera a Gran Escala en el Ecuador y Vulneración de derechos humanos, Caso Corriente Resources, 2010, AÚ: 314/14 Índice: AMR 28/004/2014 Ecuador](#), Amnistía Internacional 2014 y <http://www.defensoresdelsur.org/noticias/2015/2/23/situacin-del-pueblo-shuar-del-ecuador-expuesta-ante-el-alto-comisionado-de-naciones-unidas>.

180 [UA: 314/14 Índice: AMR 28/004/2014 Ecuador](#), Amnesty International 2014.

181 [UA: 314/14 Índice: AMR 28/004/2014 Ecuador](#), Amnesty International 2014.

182 [UA: 314/14 Índice: AMR 28/004/2014 Ecuador](#), Amnesty International 2014.

183 [Situación del pueblo shuar del Ecuador, expuesta ante el Alto Comisionado de Naciones Unidas](#). [Situation of the Shuar people is shared with the United Nations High Commissioner for Human Rights] OCMAL, 2015.

184 [UA: 314/14 Índice: AMR 28/004/2014 Ecuador](#), Amnesty International 2014.

VI. THE PERPETRATORS OF VIOLENCE AGAINST DEFENDERS OF THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT

According to information collected by organisations such as Global Witness, large landowners, interested businesses, political actors, and organised crime are behind violence against defenders. The patterns of violations—not only of human rights, but also, specifically, the right to defend human rights—related to large-scale projects such as hydroelectric, extractives, agribusiness, and logging are the same throughout the continent, independent of whether or not the company depends upon mostly foreign or national capital.¹⁸⁵

Among well-documented cases, actors have been identified as private security agents, State security forces (including police and army), and organised criminals. However, company officials, State agents, and media actors have also been identified in threats and actions of physical and verbal abuse. Due to high levels of impunity for such acts, many cases are not investigated and those who are responsible for the crimes are not identified with certainty. Even in cases where witnesses and clear evidence can be provided, the guilty parties are not brought to justice.

The UN Special Rapporteur on the situation of human rights defenders has stated that ‘in the context of the exploitation of natural resources, it is possible that governments carry out income-generating activities through public enterprises or enterprises managed by the State which blur the distinction between the non-profit or profit interests of the State and its role as guarantor that both sectors operate on equal terms.’¹⁸⁶ The organisations endorsing this report affirm that this also occurs in development projects with foreign capital and in the case of private companies, who often have strong support from the host State to the detriment of local communities’ rights.

CASE: Illegal intelligence activities against defenders: Brazil

In Brazil there has been an increased demand for specialised services of companies that gather intelligence and other relevant information for other agencies. Much of the spying in Brazil is carried out by private agencies with the complicity of State actors. An important factor that allows this practice to continue is the connection companies maintain with former members of the military and with intelligence agents who provide services to obtain information and intelligence.

Among the services offered by the spying agencies are electronic surveillance and the collection of personal information. They are able to access this information because of their close ties to public institutions. Their main clients are transnational companies who use the information to maintain control of public criticism of their commercial activities.

Vale S.A. is one of the three main mining companies in the world. In 2004, the media revealed information about the Vale’s espionage of the indigenous community Gavião Parkatejê. The community reported these spying activities as moral and legal persecution of human rights defenders.¹⁸⁷

¹⁸⁵ “[How many more?](#) 2014’s deadly environment: the killing and intimidation of environmental land activists, with a spotlight on Honduras.” Global Witness, 2015.

¹⁸⁶ See A/69/365, paragraphs 10 to 12.

¹⁸⁷ [Aportes DPLF: Business and Human Rights](#), August 2015, p. 37.

The examples presented in the previous sections of this report clearly show actions of the State and its agents that run contrary to the UN Declaration on Human Rights Defenders and other international instruments to protect human rights, as well as in violation of inter-American standards on human rights.

The interventions and attacks against those who defend the rights to land, territory and the environment are often not isolated or independent - both in the patterns described previously, which complement each other (defamation, prosecution, murder, etc.), and in relation to the actors involved in distinct aggressions. Documented cases show there is often a relationship between different actors - State and non-State - who protect economic and business interests before protecting the defenders and their communities affected by projects in their territories.

The growing direct intervention of non-State actors, such as private security companies or organised crime (or other illegal armed groups), is a disturbing pattern that stands out in attacks against this group of defenders that has been increasingly documented by local organisations. This is complemented by ambiguous and repressive State actions—such as those outlined in the previous sections—in addition to evidence (documented in many cases) of a clear collusion between State and non-State actors in perpetrating attacks against human rights defenders.

CASE: Collusion between authorities and a private company. Violence and legal persecution against a human rights defender. Peru.¹⁸⁸

Máxima Acuña, member of the Association of Women in Defence of Life and the Latin American Union of Women (ULAM), is the owner of a piece of land near the Congo mining project (which received its certificate of possession in 1994.) In 1996, the Yanacocha company bought 270 hectares, which did not include the land of Maxima and her family; in May 2011, they began work in the nearby area.

According to documentation by Oxfam,¹⁸⁹ Maxima and her family filed a complaint against Yanacocha. First, they filed a complaint for ‘seizure’—the prosecutor responded by inspecting their land and then notified them that the ‘case would be archived.’ In August of the same year, personnel from the company, accompanied by police, tried to evict the family (without a legal order) using physical aggression and partially destroying their belongings. This was reported to the Office of the Ombudsman.

Two days later, officials from the company, again together with the police, returned with heavy machinery in order to ‘destroy Maxima's home and take possession of the land—once again without a legal order.’ They physically assaulted Maxima, her daughter, and one of her sons. This time the police came back and also assaulted Maxima, her daughter Jilda, and one of her sons; a prosecutor came to the land and suggested that the family abandon the land as a solution to the problem—the family did not accept this option. Moreover, ‘when they went to file a complaint so that Maxima could show the medical examiner the [marks on her body from the] aggression, they found a lawyer and an engineer from Yanacocha meeting with the public prosecutor.’¹⁹⁰

188 This case was mostly taken from [Recuento de la criminalización contra las mujeres rurales de América Latina](#), [Stories of criminalization against rural women in Latin America] Oxfam, March 2015.

189 [Recuento de la criminalización contra las mujeres rurales de América Latina](#), [Stories of criminalization against rural women in Latin America] Oxfam, March 2015.

190 [Recuento de la criminalización contra las mujeres rurales de América Latina](#), [Stories of criminalization against rural women in Latin America] Oxfam, March 2015.

In October 2012, Maxima and her family were sentenced for seizure of the land; after more than two years of appeals, in December 2014, the Criminal Court of Appeals of Cajamarca ruled this inadmissible and the family was declared innocent of the crime.

‘Yanacocha has stated in the media that there is overwhelming proof that shows that Yanacocha is the legitimate owner of the land in dispute. In February 2015 the security guards from Yanacocha and the National Police violently invaded Maxima's land and destroyed a piece of her home. This became a key moment in the violence and violations towards Maxima and her family. The company narrated the events in its webpage, even though the company has corporate policies in security and human rights at the global level.’¹⁹¹The following section features information about cases linked to non-State actors, given that the public security forces, the media, and other State agents were presented in the previous sections.

1. PRIVATE SECURITY

There is an alarming increase in the use of State security forces at the service of private companies, in conjunction with an increase of violence by private security guards hired to protect facilities and business interests in certain communities. Many documented attacks against defenders of land and territory are linked with these actors.

In Brazil, for example, intimidation and threats against human rights defenders in the Suape Industrial Port Complex (CIPS), Recife are evident. Local communities are subjected to continuous aggressions practiced by CIPS through a **private security company**, which operates under the guidance of the director of *Gestion Fundaria y de Patrimonio* (a State agency).¹⁹² In the latest incident of which we have been made aware (May 2015), the home of a lawyer from the local community was raided and watched by persons directly connected with Suape's security. They moved around using the company vehicle, with the obvious intention of intimidating and coercing the lawyer.¹⁹³

2. ORGANISED CRIME

Defenders have complained that both representatives of the State and private companies use groups operating outside the law to attack defenders with impunity in countries like Chile, Colombia, Guatemala, Honduras, Mexico, and Peru. This phenomenon has increased, along with the numbers of organised criminal groups associated with drug trafficking.¹⁹⁴ At the same time, organised crime dedicated to activities such as logging and illegal mining are also threatening communities by establishing themselves in populated areas.¹⁹⁵

In addition, drug traffickers represent a business that—both through its behaviour and through the State's response to it—has led to a rise in the number of human rights violations. As a result there is an increased risk for defenders who expose such violations.¹⁹⁶

- In **Mexico**, in 2014, there was the case of The Barzón—a movement representing various communities in the Northwest of the State of Chihuahua in their opposition to the illegal

191 [Recuento de la criminalización contra las mujeres rurales de América Latina](#), Oxfam, marzo 2015.

192 Information Provided by Conectas Human Rights, Brazil.

193 [Brazil: Protect human rights defenders working on corporate accountability](#), ISHR, 2015.

194 In January 2015, ISHR interviewed 75 defenders from Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Venezuela, Uruguay and the United States. A public version of these consultations will be published at the end of 2015.

195 Global Witness, op cit.

196 <http://www.ishr.ch/news/latin-america-war-drugs-should-not-induce-war-defenders>.

exploitation of water and the presence of Canadian mining company MAG SILVER in the community of Benito Juárez. Members of organised crime syndicates operating in the region directly contacted locals to threaten them by informing them of assassination orders targeting them put out by the mining company. The defence of human rights has already cost the lives of two leaders of the organisation in the community and several members have received precautionary measures from the IACHR.¹⁹⁷

- In **Honduras**, one of the countries in the region with the largest presence of organised crime, ‘powerful drug-trafficking gangs use mining and agribusiness projects to launder the proceeds of crime. Land and environmental defenders have been subjects to threats, attacks, and killings for resisting these criminal groups. The need to ensure trafficking routes has led to violent incursions onto indigenous land. Drug gangs have forcibly taken over indigenous territory to make clandestine runways, for example. The Afro-descendant Garífuna community has been particularly targeted, as their territory lies in a remote coastal region of Northeastern Honduras where traffickers can pass unnoticed.’¹⁹⁸
- In **Colombia**, in 2014, We Are Defenders documented massive threats during which 488 defenders were threatened; among the threats, 88 percent are thought to have come from neo-paramilitary groups.¹⁹⁹ This report also raised the alarm regarding the use of the State intelligence apparatus. As demonstrated in several scandals during that year, anyone with money and contacts is able to put State intelligence services to work towards their own interests. Moreover, in the first six months of 2015, reports indicate that 72 percent of assaults against defenders were committed by these groups.²⁰⁰
- In **Peru** in 2014, the defender Edwin Chota and three leaders from the Saweto Ashaninka village were killed by gangs linked to illegal logging. Before his murder, Chota had reported death threats from logging-related organised crime in the region of Ucayali (in Northeastern Peru and on the border with Brazil). The murders of indigenous leaders took place in front of members of the community, according to witnesses and family.

3. COMPANY OFFICIALS

Frequently, reports state that company officials from public or private businesses are the ones to initiate criminal proceedings against defenders of the land and territory (highlighted in the previous sections of this report). In this sense, they are the direct aggressors in many cases of physical and verbal aggressions and threats to this group of defenders. For example, to cite examples from Guatemala, Mexico, and Venezuela:

- In 2012 in **Guatemala**, Isabela Gaspa, community leader of the resistance to the hydroelectric project of Hidro Santa Cruz, was attacked by a company worker while she walked through the Santa Cruz Barillas Park with her son and his father. The aggressor told her, ‘don’t protest anymore because this is development,’ in reference to the hydroelectric project.²⁰¹
- At midnight on 16 April 2015, Bettina Cruz Velázquez and Rodrigo Peñaloza were going home after participating in a meeting about the consultation in Juchitan, **Mexico**, (with the participation of the National Secretary of Energy) when they were verbally attacked and pursued by a group of construction workers—some who were possibly armed—with ties to the company Eolica del Sur. Upon recognising Cruz and Peñaloza’s vehicle, the aggressors insulted them and Peñaloza slowed down to almost a stop. The attackers surrounded the car and made threats and direct attacks; Cruz and Peñaloza fled from the

197 For more information about the case: <http://propuestacivica.org.mx/defensor-obligado-a-salir/>.

198 “How many more? 2014’s deadly environment: the killing and intimidation of environmental land activists, with a spotlight on Honduras.” Global Witness, 2015.

199 [La Divina Comedia](#). 2014 Annual Report. We are Defenders Program Colombia.

200 “Los nadies” [The nobodies] We are Defenders Program Communications. Colombia, August 18, 2015.

201 [Smaller than David](#): the struggle of human rights defenders in Guatemala. Report of the international investigation mission. Guatemala. Observatory for the Protection of Human Rights Defenders, 2015 .

scene.²⁰²

- In **Venezuela**, employees from the State company Petroleos de Venezuela (PDVSA) threatened indigenous leaders from the kariñas de Tascabaña communities in the municipality of Freites, state of Anzoátegui, stating that social investment in the community would be withdrawn if they talked to the media about the contamination of the Tascabaña River by methane gas. The river is the main source of water for 450 families who have abandoned their traditional parcels of land and depend on potable water provided by the company two times a week. Given these threats, the community is afraid to report this situation, and the problem has worsened over time.²⁰³

CASE: Multiple actors responsible for attacks on defenders in Mexico.²⁰⁴

Since November 2013, the defenders working with the NGO Bios Iguana, A.C, in Colima, Mexico, have been subject to a defamation campaign and a campaign to discredit their work defending the environment and indigenous people. Their work in accompanying the Nahua de Zacualpan community is the main target—this community is opposed to a mining project in the communal land that would affect at least 3,000 people, 200 hectares, water quality, and the land's biodiversity.

The defenders and the organisation filed complaints with the Human Rights Commission of the State of Colima and the National Human Rights Commission (CNDH); the defamation did not stop and they received new attacks and death threats.

In March 2014, there was an 'International and National Mission to Observe the Zacualpan Case.' During the mission, 'the human rights defender Esperanza Salazar and members of the Observation Mission noticed a doll tied to a pole in the community with the name of the defender in red letters. This is together with the defamation, discrediting, and slander that the defenders and their organisation must face; they must see it on signs, cloths and posters in the community; as well as being discrediting in the media.'²⁰⁵

In March 2015, a member of the Indigenous Council was accused by a community member, who was in favour of the mining project, as being the one responsible for bringing 'Bios Iguana [here] and that she is the one responsible for the blood that runs in this town for having brought them here.'²⁰⁶

The defender stated that on previous occasions she has had to leave the area in order to avoid any attacks against her—in 2014 another person from the organisation had to leave the state after suffering an attack by the Land Bureau: 'The defender left the state for more than four months for fear of being attacked again and in order to protect her children.'

202 See complete information (in Spanish) at: <http://www.noticiasmys.com/#!/noticias/demandan-garantias-para-la-activista-oaxaquena-bettina-cruz-638>.

203 [Comunidades Kariñas exigen informes de impacto ambiental a Pdvsa por contaminación de gas en su territorio](#), [Karina Communities demand environmental impact reports from Pdvsa for contamination of gas in their territory] 2010. Accessed on September 19, 2015.

204 This information was largely taken from a [Press Release](#) by the National Network of Human Rights Defenders, April 2015.

205 [Press Release](#) RNDDH, 2015; An anonymous "press release" appeared with threats to members of Bios Iguana and CIDTZ, this can be seen (in Spanish) at: <http://colimatrespuntocero.com/surge-comunicado-de-prensa-anonimo-con-amenazas-contra-miembros-de-bios-iguana-y-del-cidtz/>.

206 The accusation was made in an interview on March 2, 2015 and can be seen in the following video: <https://www.youtube.com/watch?v=Hzs1jxl17c4> en el minuto 6'05. Cited by [Press Release](#), RNDDH, 2015.

The aggressions suffered by the defenders and their organisation are perpetrated by local bosses as well as by authorities from diverse levels of government, 'like the delegate from the Colima Land Bureau and her son, both of whom work in the same institution.'²⁰⁷

4. PUBLIC FORCES

When human rights defenders turn to their right to protest, voicing their demands in response to the State ignoring their petitions and reports of human rights violations, they are usually met with the use of public force in order to 'dissolve' what is considered a disturbance. International doctrine points out that States are obligated to guarantee and protect the right to protest; however, throughout the continent, defamation has resulted in human rights defenders being viewed as delinquents. As a result, protest is considered a criminal act. With the justification of protecting public order, States order the police and/or military forces to break up protests or to evict protesters if they are in public spaces.

These actions take place even though the majority of countries in America recognise international law and subscribe to the majority of conventions relevant to protecting human rights. In terms of the use of force, police from various countries do not follow international guidelines; when breaking up protests, excessive use of force is becoming the norm, particularly against indigenous defenders and peasants who act against business interests.

In **Bolivia**, the demands of the Takovo Mora indigenous people, as well as the rejection of the supreme decrees 2298, 2195, 2366, and 2368 which accelerate the exploration and exploitation of oil in their territories and in protected areas of the country, were denounced in the II Encounter of the Guarani Nation of Argentina and Bolivia. The Guarani People asked the State company YPF for prior consultation. The Guarani indigenous people reported the violent intervention of a contingent of at least 300 policemen at a blockade that they created on the Santa Cruz-Yacuiba highway to demand prior consultation.

In **Peru**, after acquiring the rights to a mining concession on community lands in the north-eastern region of Piura, the company Majaz S.A. installed its mining encampment despite protests and without receiving authorisation from the community involved. The community organised a series of peaceful marches demanding dialog with the central government and that Majaz S.A. leave their territory. These marches were repressed by the police; dozens of landowners were injured and some were killed. In 2007, there was a neighbourhood consultation organised by the district municipalities in which people rejected the mining activities. After a long process in which it was clear that the company did not have a social license, the company left the region.²⁰⁸

In Argentina and Panama for example, there have been various incidents in which excessive public force is used against those who demand their human rights in the context of economic projects.²⁰⁹

²⁰⁷ [Press release](#), (in Spanish) RNDDH, 2015.

²⁰⁸ (in Spanish) http://www.fedepaz.org/images/Folleto_Criminalizacion_de_la_Protesta_Caso_Majaz.pdf.

²⁰⁹ See for example (in Spanish): http://internacional.elpais.com/internacional/2012/02/11/actualidad/1328979790_693583.html, <http://www.noalamina.org/mineria-argentina/cordoba/item/12888-represion-policial-y-detenidos-durante-la-reforma-de-la-ley-ambiental-provincial>, http://www6.rel-uita.org/agricultura/ambiente/mineria/nuevamente_represion_y_muerte_panama.htm and <http://suracapulco.mx/archivos/5009>.

VII. CONCLUSIONS

Human rights defenders of the rights to land, territory and the environment represent a group that, through the Americas, is in a particularly vulnerable situation. It is clear that defending rights violated by businesses - either national or multinational, private or public - means facing additional risks on top of those that human rights defenders already face.

The coalition of organisations who co-author this report call upon the States, businesses, and the IACHR to urgently adopt concrete and effective measures to tackle the issues raised by defenders of the rights to land, territory and the environment, as well as ensuring a respect for, and a guarantee of, the right to defend human rights. For this to happen, there is a need for a complete change in governmental and business culture regarding the planning and development of extractive industries, hydroelectric power, wind power, agribusiness, and similar economic projects.

There is also a need to construct an enabling environment, guaranteeing the rights to freedom of expression and association; free, prior and informed consent; freedom from arbitrary legal proceedings; and the right to peaceful protest. This must also include the elimination of impunity for attacks and threats suffered by human rights defenders and the creation of effective protection mechanisms for those at risk.

Protection mechanisms for this population should be created with consideration of the conditions in which these defenders usually operate - for example, in rural isolation with a lack of resources - and recognise that the main reason for their vulnerability is that their activism is interpreted by very powerful actors as a purposeful obstacle to businesses, and therefore considered illegitimate. When people defend their own land, territory or environment - and therefore their very lives and livelihood - the forces against them are accentuated.

Currently, the attitude of States and businesses towards economic projects is one that excludes defenders at the outset, thereby establishing a foundation for criminalisation, stigmatisation, and the repression of their work. It favours social conflicts and fails to recognise the legitimacy of defenders' work. Stigmatisation opens the door for criminalisation and attacks.

The legal framework in the majority of the countries analysed in this report is created and interpreted in such a way that criminalises the human rights defence activities of this population in particular. If States have a true desire to facilitate the defence of human rights, they must avoid creating laws with vague terminology or with articles criminalising rights safeguarded by the UN Declaration on Human Rights Defenders. They must review existing laws and guarantee that they are not arbitrarily applied against this population.

Despite the clear vulnerability of human rights defenders of the rights to land, territory and the environment, and the grave risks they face, current protection measures and mechanisms are particularly ineffective for them. It is important to conduct an expert analysis so as to create protection measures that consider factors such as ethnicity and gender, that are applied to non-State actors as well as State actors, and that can protect collectives and communities of defenders in addition to individuals and NGOs.

There exist important protection initiatives created by civil society; however, it is not their duty to generate them. International law leaves it clear that the duty to guarantee a safe and enabling environment for human rights defenders lies with the State, though impetus can also come from other actors. It is clear in this report that businesses should do more to contribute to generating and guaranteeing a safe and favourable environment, instead of threatening it. States can take steps to ensure that businesses act on this obligation.

In this context, the Inter-American System of Human Rights continues to be the last resource for protecting and promoting the work of human rights defenders in the region, and it has several tools for doing so. Perhaps one of the most useful tools in the System is the granting of precautionary

measures. These measures provide visibility to the at-risk situation of defenders, and legitimises defenders' demand for protection from the State. However, it is the State's responsibility to comply with the measures granted and to guarantee their implementation. It is precisely this step that continues to be a challenge in the majority of countries in the region.

We believe that international human rights institutions can also play an important role in supporting States and businesses in their task; given the clear urgency of the matter, they should invest resources in doing so.

Given this, we have created a series of recommendations that were generated based on the experience of the coalition of organisations who are co-authors of this report.

The recommendations begin with those directed to the IACHR to ensure that this topic receives the attention it deserves in the continent. Thereafter, recommendations are directed to States and businesses, and should be interpreted and implemented by both. They are grouped in four pillars that together will support the protection of the right to defend the rights to land, territory and the environment:

- i. A profound change in culture, rights, and practices;
- ii. An enabling environment for the defence of the rights to land, territory and the environment;
- iii. An end to criminalisation;
- iv. An improvement in protection mechanisms for this group of defenders.

Finally, there are recommendations directed to other relevant international actors.

VIII. RECOMMENDATIONS

RECOMMENDATIONS TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

- Conduct regional consultations, in the field, on the protection and the participation of defenders of the rights to land, territory and the environment who are working in the area of business and human rights, in order to inform the Commission's work.
- Develop a report that includes an analysis of the contribution of both businesses and their States of origin, with recommendations to both the States of origin and, when appropriate, members of the OAS.
- Develop, together with civil society, proposals for appropriate measures to protect defenders of the rights to land, territory and the environment, including for entire communities of defenders.
- Convene a meeting between businesses and human rights defenders to address corporate responsibility regarding the protection and participation of human rights defenders.
- Incorporate the extraterritorial responsibilities of the States of origin of businesses in the Commission's analysis of human rights violations, and reflect said analysis in the Annual Report, Country Reports, on-site and working visits, press releases, and other resources.
- Urge the States of origin of businesses, members of the OAS, and the businesses themselves to create and implement effective mechanisms for free, prior, and informed consent as a way of addressing the root causes of the risks faced by defenders of the rights to land, territory and the environment.
- Conduct communications with States on cases regarding defenders of the rights to land, territory and the environment, established via Article 41 of the CADH regarding requests of information; publish these communications to generate pressure on the State and to prevent any imminent violations of defenders' human rights.
- Continue to interpret the concept of irreparable damage in a broad sense, including rights that cannot be adequately restored, restored, or remedied once they are violated; it is important not to limit these to only the rights to life and personal integrity. This is particularly important in situations of irreparable damage to land and natural resources connected to indigenous peoples and rural communities.
- Contemplate the suspension of economic projects, including 'mega-projects,' as a precautionary measure to be recommended in cases where the project in question puts the rights of the measures' beneficiaries at risk.

RECOMMENDATIONS TO STATES AND BUSINESSES FOR THE PREVENTION OF VIOLATIONS AGAINST PERSONS WHO DEFEND THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT

1. A change of culture towards inclusion and prevention

- Attack the root causes of the risks faced by defenders of the rights to land, territory and the environment by guaranteeing - in law and in practice - communities' rights to **free, prior, and informed consent** if they are potentially affected by an economic project. Refuse to participate in investment projects when there are doubts regarding this guarantee.
- Prevent further risks to defenders by ensuring the effective implementation of **a legal framework for the protection of the right to land, territory and natural resources** in accordance with international human rights standards, and conduct the necessary processes to establish land titles, recognising ancestral rights to the possession of territories.
- Make declarations **recognising** the important and legitimate work of human rights defenders. These statements should recognise the positive role defenders play in mitigating the human rights effects of economic projects.
- **Train public officials** - including law enforcement agencies, members of the judicial system, and local authorities - about the role of human rights defenders and their rights, including those who defend the rights to land, territory and the environment.
- Publicly and forcefully **condemn** violations against defenders, where your State or company has a link to the project in question.
- **Pay attention** to concerns about the protection of human rights expressed by members of the community that arise from processes in parallel to those carried out by a private company or State, such as public assemblies, and avoid stigmatising those who express these concerns.
- Provide thorough and independent **impact assessments of the effects that projects have** on human rights, incorporating meaningful participation of the communities affected, including human rights defenders. Make such assessments a requirement for funding, and guarantee the inclusion of safeguard mechanisms that address, mitigate, and effectively remedy the negative impact of a project on human rights.
- **Arrange for spaces for dialogue** between representatives of the State, companies, and human rights defenders.
- Incorporate proof of due diligence across supply chains to ensure that **procurement policies** are not linked to operations related to abuses of human or environmental rights, including acts of intimidation, repression, or violence against defenders of the rights to land, territory and the environment.
- Implement **educational campaigns** to raise awareness in communities about the legitimacy and utility of human rights and of those who defend them, especially in the context of business.

2. An enabling environment for the defence of the rights to land, territory and the environment

- **Ensure that the UN Declaration on Human Rights Defenders is enshrined in national law**, with special attention paid to the protection of the freedoms of assembly and expression and access to information.²¹⁰
- **Review**, with civil society, **existing legislation** and abolish all legislative and administrative provisions restricting the rights contained in the Declaration, whilst also approving specific laws to protect human rights defenders.
- **Repeal laws that restrict the defence** of human rights, including when those laws deal with national security, economic reforms, or combating terrorism.
- **Refrain from interfering** in the work of human rights defenders, and contribute to creating a safe and enabling environment for them; business should act proactively to protect defenders if the State is related in any way to the business' conduct and if neglecting to do so would result in damage that could otherwise be avoided.
- Guarantee impartial and effective **investigations** into allegations of violations against human rights defenders, ensuring the punishment of those who are responsible and adequate reparation to the victims.
- Protect **instruments for access to justice** and protection for defenders, taking into account geographical, linguistic, and cultural barriers that often prevent access to these instruments by communities and defenders of the rights to land, territory and the environment.
- **Certify** that businesses - and their subsidiaries and those who hire them - understand what is considered to be a safe and enabling environment for defenders and how they can contribute to such an environment.
- **Establish regulations** for both private security companies and civil authorities to ensure that their actions in public demonstrations meet international standards, and that they respect the right to peaceful demonstration.
- Develop **National Action Plans on Business and Human Rights** with civil society, which recognise the important role of human rights defenders and the duties of the State and business towards their protection.

3. Adequate protection of those who defend the rights to land, territory and the environment²¹¹

- Establish or strengthen, in consultation with defenders, **mechanisms or programs for the protection** of defenders of human rights, guaranteeing them under a specific law and ensuring that such mechanisms or programs have adequate capacity, expertise, and resources.
- Implement effective **protection measures** for at-risk defenders, according to their specific context and the nature of the risks they face. Such measures should be determined via a clear methodology and with the participation of victims. It must take into account the characteristics of the beneficiary or beneficiaries, including (but not limited to) gender, ethnicity, and geographical location. Where necessary, these measures should also be provided for relatives, colleagues, and friends of the victim and should be subject to periodic review.
- Include, where appropriate, protective measures such as the creation of spaces for dialogue between **the company**, State and affected community, or the cancellation of a project if violence and threats against defenders continue.
- **Publicly condemn** threats and violence against human rights defenders linked to conflicts with businesses in their countries.
- Establish **early warning systems** for when aggressions are made against defenders of the rights to land, territory and the environment, in order to prevent a continuation or worsening of these attacks and to ensure the integrity of the defenders.
- Consult with communities affected by risks associated with a business enterprise, in order to assign **the most appropriate security body** the task of ensuring their safety.
- Ensure that human rights defenders have **access to funds and emergency measures**.
- Establish independent **complaint mechanisms** for funded projects, including mechanisms that address violations of defender's rights, and guarantee that such mechanisms respect the rules of confidentiality and are incorporated into an early warning system in the case of threats or other abuses against those who have submitted or who are considering the submission of a complaint.
- **Cooperate fully with international and regional human rights mechanisms**, including the Inter-American Commission on Human Rights (IACHR). Fully implement, without delay, its decisions, recommendations, and provisional and preventative measures.

4. End the criminalisation of defenders of the rights to land, territory and the environment

- **Establish the necessary legal guarantees** to prevent improper use of the judicial system - in particular the criminal branch - by public servants and third parties with the objective of harassing human rights defenders in the course of their work.
- **Refrain from making statements that stigmatise** human rights defenders, or that suggest that human rights organisations act improperly or illegally in the course of performing their work of promoting and protecting human rights.
- **Refrain from criminalising** the peaceful and legitimate activities of persons exercising their right to defend human rights.
- Ensure that the defenders of the rights to land, territory and the environment who are accused of a crime **have access to independent legal counsel**, the support of human rights organisations, and - when requested - the observation of the international community.
- Establish **independent bodies**, composed of experts in the criminalisation of human rights defenders, who can review cases against the defenders and issue expert reports to the justice system.
- **Limit the use of preventive detention** to international guidelines. Enact a review of such laws, with the participation of civil society, being used for the criminalisation of the defence of the rights to land, territory and the environment, in order to modify them so they cannot be used to criminalise the defence of human rights.

KEY RECOMMENDATIONS FOR OTHER INTERNATIONAL ORGANISATIONS

To the United Nations General Assembly and the UN Human Rights Council:

Recognise, through relevant resolutions, the important role of defenders of the rights to land, territory and the environment in the field of business and human rights, and reiterate the State's obligation to protect them adequately.

To the Special Procedures of the UN Human Rights Council:

Pay particular attention to the situation of defenders of the rights to land, territory and the environment, calling for States and business to take action - even urgent, where necessary - to ensure a safe and enabling environment for their work.

To the UN Working Group on transnational corporations and other business entities with respect to human rights, in particular:

Integrate systematically the dimension of human rights defenders into their work, including through protective actions. Explore the role of corporations in protecting human rights defenders, and urge that National Action Plans include a focus on the participation and protection of human rights defenders. Establish principles for free, prior, and informed consent about economic projects with potentially affected communities and their defenders.

To the Treaty Bodies:

Recognise - through lists of issues, concluding observations, statements and general comments - that a violation against a human rights defender is a violation of the rights themselves. Urge States to ensure a safe environment conducive to the protection of the rights to land, territory and the environment, including through the regulation of non-State actors. Reiterate that these duties are applied extraterritorially.

To the UN Intergovernmental Working Group for the elaboration of a treaty on business and human rights:

Ensure the safe and effective participation of human rights defenders in the process of elaborating a treaty, and ensure that any treaty guarantees the protection of defenders' work by both State and non-State actors.

IX. APPENDIX: PROTECTION PROGRAMS FOR PEOPLE WHO DEFEND THE RIGHTS TO LAND, TERRITORY AND THE ENVIRONMENT IN THE AMERICAS.

In recent years, some countries in the region have created specific mechanisms and national protection programs for human rights defenders, as a complement to the judicial and administrative systems' task of guaranteeing their rights. To date, four countries have developed protection programs: Brazil, Colombia, Guatemala, and Mexico; Honduras has adopted laws and mechanisms that have not yet been implemented due to their recent approval. Protection programs are different in every country, but have points in common: the majority establish preventive, protective, and emergency measures; articulate inter-agency response plans; and have created physical protection plans for defenders. However, existing protection programs have been criticised because of their insufficient capacity to provide effective protection.²¹⁰ The main dysfunctions identified are delays in processing cases; limited resources in terms of budget and staff; limited presence in rural and remote areas where defenders of the right to land face greater risks; lack of implementation capacity; and an inability to address the root causes that give rise to violations.

Honduras

After adopting a national human rights plan in early 2013,²¹¹ the Secretariat (Ministry) of Justice of Honduras gave support to civil society to establish a national network for the protection of human rights defenders.²¹² Finally, on 15 May 2015, the National Congress of Honduras approved the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators, and Legal Practitioners, the 'Protection Act.'²¹³ This law represents compliance with various recommendations made to Honduras by the Inter-American Commission on Human Rights through the Universal Periodic Review and by virtue of the judgment *Luna López v. Honduras* issued by the Inter-American Court of Human Rights.²¹⁴

This Law recognises the vulnerability and risk faced by groups identified as subjects of protection. Furthermore, it is noteworthy that the Law assumes public recognition of the important work done by human rights defenders in the promotion and protection of democracy and rule of law.

Although many of the comments made by civil society about the bill were included in the legislative decree that was finally approved,²¹⁵ other important recommendations were not included in the final decree. There are various examples; the most notable include the request that the entity responsible for implementing the law be independent of the State Secretariat, an increase of

210 [We are not afraid](#). Land rights defenders: attacked for confronting unbridled development. Observatory for the Protection of Human Rights Defenders (FIDH-OMCT). Annual Report 2014. p. 101.

211 Executive Decree, PCM 003-2013. "Política Pública en Derechos Humanos y Plan Nacional de Acción en Derechos Humanos." [Public Policy in Human Rights and National Human Rights Action Plan] Link: http://www.tsc.gob.hn/leyes/Aprobar_politica_publica_y_plan_nacional_accion_derechos_humanos_2013.pdf (Accessed October 16, 2015).

212 Protection International, *Protection of human rights defenders: best practices and lessons learnt*, 2011, p. 20.

213 Decree No. 34-2015, *Law for the protection of human rights defenders, journalists, social communicators and operators of justice*. La Gaceta, Friday, May 15, 2015. Link: <http://www.sdhigd.gob.hn/biblioteca-virtual/documentos-de-interes/298-ley-de-proteccion-para-las-y-los-defensores-de-derechos-humanos-periodistas-comunicadores-sociales-y-operadores-de-justicia/file> (accessed October 5, 2015).

214 Inter-American Court of Human Rights, *Case Luna López v. Honduras*, Judgement of October 10, 2013. Link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_269_esp.pdf.

215 Protection International, *op. Cit.*, p.22.

representatives from organisations in the National Protection Council from two to five, and that the regulations establish the specific method for the electing representatives in order to avoid arbitrary appointments.²¹⁶ While the adoption of Decree No. 34-2015 represents progress for Honduras in terms of meeting its international obligations as well as the obligation to provide effective protection of the rights of those who defend human rights, it is still too early to observe whether the secondary regulations will meet the objectives—the law was published in May 2015. Its success will be determined by the aforementioned critical points common to all programs of this type: effective implementation through creation of secondary rules, commitment of the Honduran authorities, and sufficient access to financial and human resources.

Colombia

Colombia was one of the first countries in the world to dictate a specific protection program for human rights defenders, and can boast the largest budget and reach: 38 million dollars in 2015 to protect more than 1,300 people.²¹⁷ In 1997, Article 81 of 'Law 418 of 1997' ordered the Ministry of Interior to commission a program to protect persons at risk due to causes related to political and ideological violence or internal conflict. This law led to the Presidential Programme for the Protection of Human Rights under the Ministry of the Interior and Justice in Colombia, aimed at safeguarding the population 'that is in certain, imminent and exceptional risk as a direct result of the exercise of their political, public, social or humanitarian activities or roles.'²¹⁸

Within this protection strategy, a framework is created to analyse risk situations and establish measures. The process is initiated with a complaint to authorities or an application for protection with the National Protection Unit (UNP, according to the acronym in Spanish). Once the request is processed, a group named the Technical Corps for Information Collection and Analysis (CTRAI, according to the acronym in Spanish) is responsible for investigating the case *in situ*. After gathering the information, the case is delivered to the Preliminary Assessment Group (GVP, according to the acronym in Spanish). This committee performs the analysis of the case and assesses risk. With this assessment, the case then passes to the Committee on Risk Assessment and Recommendation of Measures (CERREM, according to the acronym in Spanish), which decides to grant, or not, the protection measures for the affected person.

The report '*Taking Protection to the Blackboard*' ('*Protección Al-Tablero*') by the *Somos Defensores* (We Are Defenders) programme has analysed the effectiveness and the weaknesses of the protection framework. The findings of that investigation conclude: a) the protection mechanism holds an exclusive perspective on physical protection that ignores the political protection needed by human rights defenders; b) there is widespread ignorance of the new regulatory standards and serious confusion among local and regional authorities on how to implement protection; c) there is no joint action among institutions to protect threatened defenders; and d) the institutions responsible for protection are overloaded and do not have enough resources or staff to handle the volume of applications for protection.²¹⁹

Also, beneficiaries of protection and applicants to the mechanism report delay in processing requests is one of the main difficulties under the UNP. The study reports delays of up to 90 days when responding to requests for protection, since a request needs to pass through five different agencies in order to be answered.²²⁰ Likewise, protection frameworks have experienced gradual privatisation. The UNP has 739 permanent staff members. However, 70.2 percent of its budget is

216 Centre for Justice and International Law (CEJIL), "Observations on the protection law for human rights defenders, journalists, social communicators and operators of justice", 2015.

217 Protection International, "Colombia, insuficiente parte del presupuesto dedicado a la protección de defensores/as de derechos humanos", [Colombia, insufficient budget dedicated to the protection of human rights defenders] <http://focus.protectionline.org/es/2015/06/02/insuficiente-presupuesto-defensores-derechos-humanos/>, accessed September 29, 2015.

218 Protection International, *Protection of human rights defenders: best practices and lessons learnt*, Protection International, 2011, p. 14.

219 We are Defenders Program, *Informe Especial: [Special Report] protección "al tablero", [Protection to the Blackboard]* 2014, http://www.somosdefensores.org/attachments/article/88/proteccion_al_tablero_version_eb.pdf, Accessed on September 29, 2015.

220 *Ibid.* p. 22.

allocated to private security companies that provide protection services (security plans, vests, phones, and weapons). Of the more than 3,000 employees responsible for protecting people at risk in Colombia by the UNP, 2,430 of them—76.7 percent—are private actors.²²¹

Finally, the report describes an alarming 95 percent impunity in the investigation of crimes against human rights defenders and community leaders between January 2009 and June 2013. Only 12 of 219 cases have led to sentences, which means that in only 5 percent of investigations have passed the first stage of the new accusatory criminal justice system.²²²

Brazil

The national Human Rights Programme for the Protection of Human Rights Defenders (PPDDH, according to the acronym in Portuguese) was formally established in 2004. Thus, via Decree No. 6,044 of 12 February 2007, the National Policy for the Protection of Human Rights Defenders was approved; it aims to protect people at risk due to their work to defend human rights.²²³ Although there have been attempts to elevate the rank of the Programme to that of law, the project is currently on hold.²²⁴

It is estimated that there are currently about 1,000 human rights defenders threatened in Brazil, of which 400 are part of protection programs.²²⁵ The protection program is decentralised into State Technical Teams in 6 of the 26 states: Bahia, Minas Gerais, Espirito Santo, Pernambuco, Rio Grande do Sul, and Ceará. Recently, programs in Pará (with the largest number of documented violations) and in Rio de Janeiro were suspended, even though both states are characterised by serious violations.²²⁶ States that do not yet have programs are attended by the Federal Technical Team of the Federal Programme, coordinated by the Secretariat for Human Rights of the Office of the President of the Republic.

To qualify for the Protection Programme, human rights defenders at risk must file a request with the Technical Team of the State or Federal Programme—either individually or through a civil society organisation. Any public entity that has knowledge of a violation must file a request for the victim to be included in the program. The Technical Teams are responsible for accompanying the defender from the time of the application to the completion of the program, as well as completing periodic monitoring, risk analysis, vulnerability assessment, and protection. However, the organisation Global Justice (*Justicia Global*) has identified the following issues with implementation of the National Policy for Protection of Human Rights Defenders: a) resources devoted to protection programs are insufficient to meet the volume of cases; b) government programs are hampered by excessive bureaucracy for the effective implementation thereof; c) technical training for the protection of defenders is insufficient.²²⁷

In addition, the report takes note of the need to go beyond police protection—which is merely palliative—to address the structural causes of threats to human rights defenders. Such reforms would entail rigorous investigation and punishment of those responsible for violations (which currently have high rates of impunity), visibility of the work of human rights defenders, and building support for their causes with public support.²²⁸

221 *Ibid.* p. 29

222 *Ibid.* p. 40.

223 Loyanne Paiva Lima, “A institucionalização do programa nacional de proteção aos defensores dos direitos humanos”, [The institutionalization of the national program for the protection of human rights defenders] Catholic University of Brasília, 2010. Link: <https://encontroprogramadeprotecao.files.wordpress.com/2011/11/a-institucionalizac3a7c3a3o-do-programa-nacional-de-protec3a7c3a3o-aos-defensores-dos-direitos-humanos.pdf> (Accessed October 5, 2015).

224 Protection International, *Protection of human rights defenders: best practices and lessons learnt*, Protection International, 2011, p. 21.

225 Protection International, *Focus 2014. Public policies for the protection of human rights defenders: latest trends*, 2015, p. 15.

226 *Ibid.*

227 Protection International, *Focus 2014. Public policies for the protection of human rights defenders: latest trends*, 2015, p. 15.

228 Protection International, *op. cit.*, p. 16.

Mexico

On 25 June 2012, the law entitled the Protection Mechanism for Human Rights Defenders and Journalists in Mexico was passed.²²⁹ The law aims to provide specialised and general protection to such persons. The Mechanism is a unit dependent upon the Ministry of the Interior (SEGOB, according to the acronym in Spanish); its powers are to grant, evaluate, suspend, and, if necessary, modify the preventive and protective measures that the State provides for defenders and journalists.

This Mechanism establishes two types of procedures—Extraordinary and Ordinary—which vary depending on whether or not an imminent risk is determined. Furthermore, the protective measures established by the law consist of a set of actions to quickly safeguard the life, integrity, liberty, and security of beneficiaries; to combat the causes of the person's insecurity; and to establish guarantees of non-repetition.²³⁰

Although the Mechanism is a remarkable achievement by the Mexican government, in the more than two years since its inauguration, it is still not fully implemented and has not provided the expected results. Increasingly, human rights defenders and journalists express more and more scepticism about the ability of the Mechanism to ensure their protection.²³¹ Thus, the *Second Diagnosis of the Implementation of the Mechanism for the Protection of Human Rights Defenders and Journalists*²³² concludes that there are structural problems in its functioning, such as: a) barriers to access the Mechanism for beneficiaries when protection is sought as a group or community, b) distrust in the Mechanism due to the lack of effectiveness, c) lack of visibility of the Mechanism so that defenders know about this option for protection.

In order for the Mexican reality to align with the professed commitment to respect, promote, and guarantee human rights repeatedly proclaimed by Mexican authorities, it is essential to create a suitable environment for the exercise of the defence of human rights and freedom of expression in Mexico.

Guatemala

Guatemala has numerous institutional mechanisms for the protection of human rights defenders that make it stand out from other States in the region.²³³ Some examples include:

- The Human Rights Special Prosecutor (PDH, according to the acronym in Spanish), along with the Public Prosecutor, receives reports of attacks against human rights defenders.²³⁴ It is tasked with protecting the human rights of the population, in addition to receiving individual complaints, reporting public officials whose conduct violates human rights, and recommending actions to improve procedures for the promotion and protection of human rights.
- The Unit for the Analysis of Attacks against Human Rights Defenders is composed of governmental, international, and civil society institutions. Between 2007 and 2008, the Unit was a very effective mechanism to address reports of attacks against human rights defenders and to analyse patterns of attacks against this group. However, in 2009, due to

229 Chamber of Deputies of the Congress of the Union, "Law for the Protection of Human Rights Defenders and Journalists" <http://www.diputados.gob.mx/LeyesBiblio/pdf/LPPDDHP.pdf>, Accessed October 5, 2015.

230 "Protection Mechanism for Human Rights Defenders and Journalists" Mexican Institute for Human Rights and Democracy (IMDHD) <http://imdhd.org/MecanismoF/index.html>, Accessed on October 5, 2015.

231 OSC Space, Second diagnosis on the implementation of the Protection Mechanism for Human Rights Defenders and Journalists, (2015), <http://redtdt.org.mx/wp-content/uploads/2015/07/272758468-Segundo-diagno-stico-Espacio-QSC.pdf>, consultado el 6 de octubre de 2015.

232 *Ibid.*

233 The Observatory for the Protection of Human Rights Defenders (OBS), OMCT, FIDH and UDEFEGUA. (2015). *Guatemala. "Smaller than David" The struggle of human rights defenders in Guatemala*.

234 PDH, *Resolution for reports of threats to human rights defenders, August 27, 2013*, the Human Rights Attorney General declared that the rights to dignity, integrity and safety of human rights defenders were violated; as well as the threat to their right to life and association, in the context of the defamation campaign against them that took place at the time of the trial for genocide.

a shift in the Ministry of the Interior, it began to suffer from instability. On 20 May of that year, it was officially suspended; it was not until August 2012 that the Unit resumed activities. Unfortunately, despite having great potential to ensure social dialogue, throughout 2013 the Unit of Analysis gradually lost all of its reason for existence as a result of internal changes that hampered its performance.²³⁵

- The Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH, according to the acronym in Spanish) is intended to provide protection measures to human rights defenders who are beneficiaries of precautionary measures granted by the Inter-American Commission on Human Rights or of provisional measures granted by the Inter-American Court of Human Rights.
- The Human Rights Unit of the Special Criminal Investigation Division (DEIC, according to the acronym in Spanish) is a unit of the Federal Police specialising in the investigation of crimes committed against justice officials, human rights defenders, trade unionists, and journalists.
- The Prosecutor's Office on Human Rights is a part of the Public Ministry. This Office's task is to provide expertise and increased efficiency in the face of crimes committed against human rights activists, unionists, and journalists.

²³⁵ The Observatory for the Protection of Human Rights Defenders (OBS), OMCT, FIDH and UDEFEGUA. (2015). *Guatemala. "Smaller than David" The struggle of human rights defenders in Guatemala.*

