

# Fighting Back:

A Global Protection Strategy for  
Earth Rights Defenders

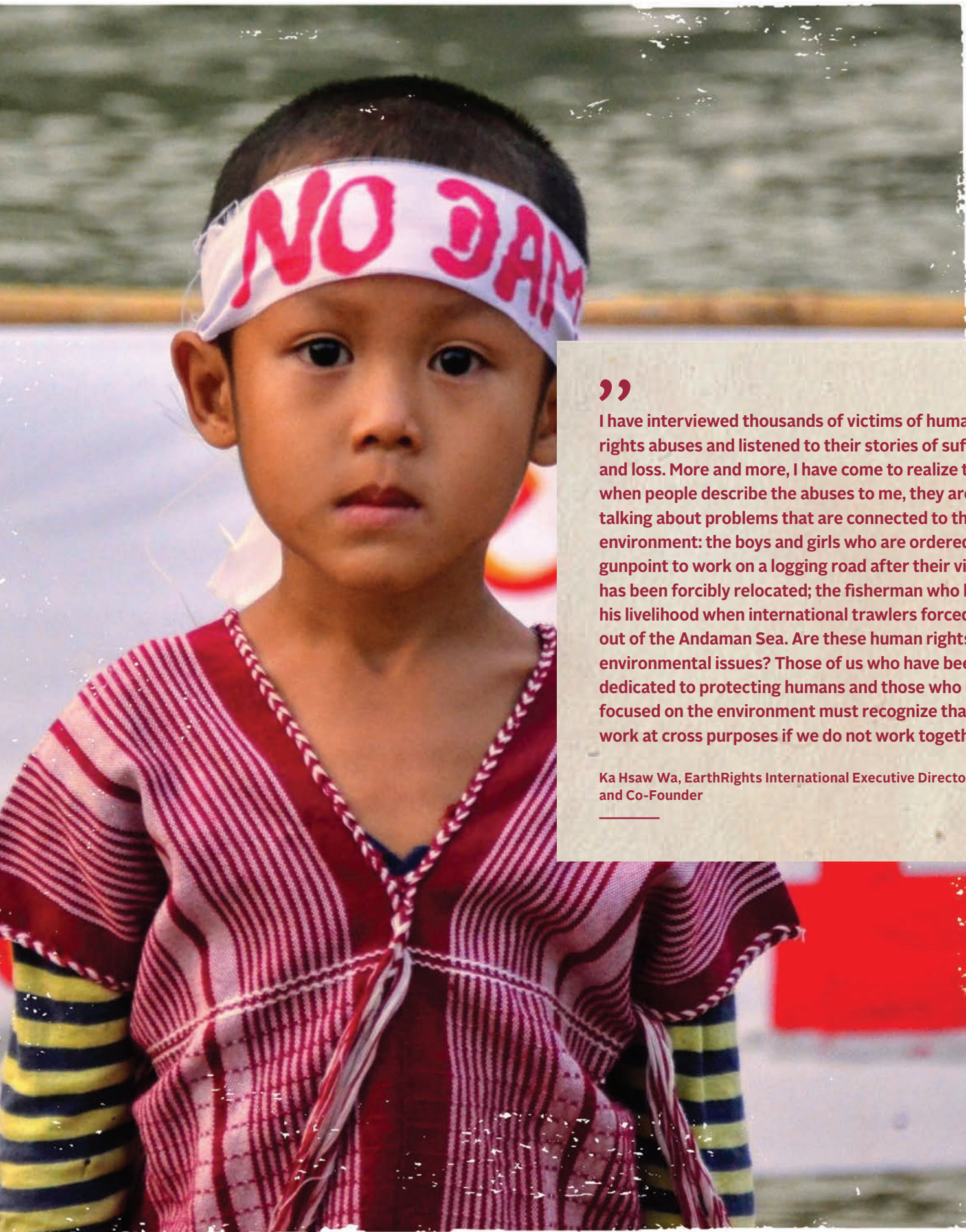


**EARTH RIGHTS  
DEFENDERS**



EARTHRIGHTS INTERNATIONAL





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I have interviewed thousands of victims of human rights abuses and listened to their stories of suffering and loss. More and more, I have come to realize that when people describe the abuses to me, they are also talking about problems that are connected to the environment: the boys and girls who are ordered at gunpoint to work on a logging road after their village has been forcibly relocated; the fisherman who lost his livelihood when international trawlers forced him out of the Andaman Sea. Are these human rights or environmental issues? Those of us who have been dedicated to protecting humans and those who have focused on the environment must recognize that we work at cross purposes if we do not work together.

Ka Hsaw Wa, EarthRights International Executive Director and Co-Founder

# Table of Contents



04	Executive Summary
06	Introduction
08	Background
08	Attacks and threats against earth rights defenders
10	The usual suspects: who's behind threats and attacks against earth rights defenders?
12	A global protection strategy
12	EarthRights International's vision for change
12	Components of an effective global protection strategy
13	Protecting and keeping earth rights defenders safe
21	Addressing structural issues including to prevent the shrinking of civil space
29	Revealing and shining a light on collusion and corruption
35	Obtaining redress and justice for victims
38	Conclusion

Prepared by Christina Hill, independent consultant for EarthRights International  
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This report was produced by EarthRights International. ERI is a nongovernmental, nonprofit organization that combines the power of law and the power of people in defense of human rights and the environment, which we define as “earth rights.” We specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and community leaders, and advocacy campaigns. Through these strategies, ERI seeks to end earth rights abuses, to provide real solutions for real people, and to promote and protect human rights and the environment in the communities where we work.

A child at an event protesting the damming of the Salween River at the Day of Action for Rivers at Eu Wae Tta Internally Displaced Persons camp.

**Cover:** Goldman Prize winner Berito Kuwaru'wa and his son.





# Executive Summary

Earth rights defenders are instrumental in supporting their communities to stand up for and claim their rights: they expose injustice, demand accountability from their governments, and change the laws that undermine human rights. They also directly challenge the prevailing political and economic systems. Earth rights defenders are advocates, organizers, trainers, educators, and connectors. Because they are often the last line of defense between frontline communities and ecosystems, and powerful elites that seek to extract and exploit those resources, their lives and security can be threatened. Their work is critically important.

December 2018 marks the 20th anniversary of the UN Declaration on Human Rights Defenders. Despite their important work, or maybe because of it, earth rights defenders are increasingly under attack. Two hundred and seven killings of land and environment defenders were documented in 2017, the worst on record. The scale of killings indicates a truly global crisis. Because indigenous people, by definition, live in close connection to specific lands, and often stand between valuable resources and the elites who want those resources, it is predictable that they are vastly over-represented in the number of earth rights defenders killed each year.

It is not just the deaths of earth rights defenders but also other threats and attacks against them that is of grave concern – these other threats include torture and disappearance, physical violence, rape, criminalization (including illegal arrest and arbitrary detention, and using criminal, defamation, and libel laws to silence earth rights defenders) and digital surveillance. Women earth rights defenders experience additional gender-specific threats – including threats that contain sexualized and gender-specific messages, and sexual assault – stemming from their status as both women and as earth rights defenders. Women earth rights defenders are navigating the brutal intersection of environmental devastation, cultural dislocation, and sexual violence and gender-based persecution.

Attacks and threats against earth rights defenders are not isolated but instead the result of deliberate and concerted actions by persons capitalizing on major institutional weaknesses – such as collusion between governments and corporations, corruption, and where indigenous peoples in particular are excluded from decision-

Ka Hsaw Wa, EarthRights International  
Executive Director and Co-Founder.



making processes in relation to their lands and territories – and the lack of political will to halt attacks and threats.

Around the world, people are standing between the world's most powerful corporate, financial, and government elites and the world's most valuable natural resources that these elites will increasingly do anything to get. Communities are fighting against projects that extract and exploit, and that will have detrimental impacts on their lives. Not surprisingly, threats and attacks against human rights defenders are most frequently connected to the mining, oil and gas sectors, and to agribusiness, logging, hydropower and large infrastructure projects, and are often carried out or condoned by state actors and vested business interests.

In too many parts of the world, attacks against earth rights defenders are rarely investigated and fewer still result in any serious consequences for the perpetrator. Failure to take any action against the perpetrators of abuse against earth rights defenders increases the risks posed to earth rights defenders, and leads to further attacks against them.

EarthRightsInternational believes that the global protection strategy outlined in this report will help to protect and keep earth rights defenders safe; address the structural issues that are causing threats to earth rights defenders, including to prevent the shrinking of civil space; reveal and shine a light on collusion and corruption; and obtain justice for victims by holding the perpetrators accountable. The global protection strategy is a plan of action.

The component parts of the strategy include actions that are proven strategies that we know can work and that we

want to scale up, and the “next generation” of strategies that we want to test and pilot. These include:

- Equipping earth rights defenders with the knowledge, tools, and resources to stay safe; challenging the criminalization of earth rights defenders in the courts; and ending ties between corporations and police and paramilitaries to prevent the occurrence of violence against earth rights defenders
- Fighting against those projects that extract and exploit – such as fossil fuel projects – and that are connected to threats and attacks against earth rights defenders, and preventing the shrinking of civil space by pushing back on corporate attempts to silence earth rights defenders and intimidate their critics
- Using anti-corruptions laws and demanding greater revenue transparency in those industries most frequently connected to threats and attacks against earth rights defenders
- Using transnational litigation and efforts to strengthen global legal protections to obtain redress and justice for victims of human right abuse, and to end the impunity that the perpetrators of attacks against earth right defenders enjoy

There is an urgent need for our collective efforts to be scaled up and for civil society to act in a coordinated and strategic way to reduce the number and severity of threats and attacks against earth rights defenders. These efforts must pay attention to those earth rights defenders most marginalized – in particular, indigenous earth rights defenders and women earth rights defenders – and therefore those most vulnerable to attacks and threats.

This strategy provides a partial roadmap to potential solutions, and a world in which earth rights defenders can peacefully speak out in defense of their rights and homelands without fearing retribution. The 20th anniversary of the UN Declaration on Human Rights Defenders also presents the global community with an opportunity to celebrate the importance and legitimacy of all human rights defenders, and their rights to peacefully protest all exploitation and abuse, including the exploitation and abuse of this finite planet on which we all depend.



Villagers fleeing Burmese military violence in the Yadana pipeline in 1995.



# Introduction

An earth rights defender is someone who advocates for the protection of the environment and the right to a healthy environment, and the corresponding human rights necessary to defend threatened and sensitive ecosystems on which people and communities depend for survival. These corresponding rights include the right to speak out, assemble, and protest in defense of their lands and livelihoods, and the right to participate in the development decisions that affect them.

Earth rights defenders<sup>1</sup> are instrumental in supporting their communities to stand up for and claim their rights: they expose injustice, demand accountability from their governments, and change the laws that undermine the realization of everyone's human rights. They also directly challenge the prevailing political and economic systems. Earth rights defenders are advocates, organizers, trainers, educators, and connectors. Because they are often the last line of defense between frontline communities and ecosystems, and powerful elites that seek to extract and exploit those resources, their lives and security can be threatened. Their lives can also be transformed from the ordinary to the extraordinary through their leadership, courage, and commitment to protecting and defending earth rights.

## **THEIR WORK IS CRITICALLY IMPORTANT.**

Advocacy matters. And advocacy works. It is a fundamental human right embodied in the right to freedom of speech and freedom of association, and because it works, it is now under attack. December 2018 marks the 20th anniversary of the UN Declaration on Human Rights Defenders.<sup>2</sup> Despite their important work, or maybe because of it, human rights defenders are increasingly under attack. Earth rights defenders working to promote human and environmental

rights are being silenced through criminalization lawsuits and, surveillance, digital intrusion and hacking, physical intimidation, and are even being killed by those connected to governments and corporations. Defending human rights over profit, privilege, and prejudice, and opposing powerful interests, is dangerous work.

Earth rights defenders can be grassroots activists, human rights investigators, trainers, lawyers, and campaigners. And all of these people came together in 1995 to start EarthRights International (ERI) and that is why this issue is so core to our identity.

In the early 1990s, two multinational oil companies – Total of France and Unocal of the United States – formed a partnership with Myanmar's (Burma) notorious State Law and Order Restoration Council. They planned to exploit natural gas reserves in the Andaman Sea and build the Yadana gas pipeline into Thailand. Their contract stipulated that military units would procure labor and provide security for the project. In carrying out its part of the deal, the Burmese army transformed a previously peaceful area into a highly militarized pipeline corridor, resulting in forced labor, land grabs, torture, rape, extrajudicial killings, and attacks on indigenous and ethnic minority peoples. Big Oil had partnered with a pariah military junta, and together they were getting away with murder. ERI was born in response. The ground-breaking lawsuit *Doe v. Unocal* was based on evidence collected by ERI's co-founder Ka Hsaw Wa, a Burmese democracy and human rights activist. Ka Hsaw Wa trained a team of local investigators who together, and at great personal risk, travelled to the pipeline corridor to gather the testimonies of people who had experienced or witnessed gross human rights abuses directly connected to the pipeline and to the foreign companies that were building it. Ka Hsaw Wa and

<sup>1</sup> Earth rights defenders are sometimes called environmental human rights defenders, environmental defenders and land rights defenders

<sup>2</sup> The Declaration's full name is the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms"



his team of earth rights defenders, working with ERI's other co-founders Katie Redford and Tyler Giannini, made legal history in *Doe v. Unocal* which was the first case in which a U.S. judge granted jurisdiction over a private company for human rights abuses abroad.

## PROTECT, PREVENT, REVEAL, REDRESS.

This report presents ERI's analysis of the causes of threats and attacks against earth rights defenders, the trends, and the reasons why this issue is trending in the wrong direction. We present our analysis to expose the problem, including the drivers and perpetrators of the abuse, to articulate a solution – one that urgently needs to be undertaken. The report outlines a global protection strategy to support earth rights defenders to fight back. The strategy draws on the 'protect, prevent, reveal and redress' framework. This emerging framework brings together complementary and mutually reinforcing strategies aimed at addressing the closing of civil society space for the environment.

### The framework's parts are to:

1. Address immediate threats to earth rights defenders, including to keep them safe (**protect**);
2. Address the structural issues that cause threats to earth rights defenders, including to prevent the shrinking of space for civil society and indigenous rights (**prevent**);
3. Shining a light to reveal collusion and corruption, and to expose all those who perpetrate abuse (**reveal**); and
4. Obtain justice for victims by holding the perpetrators accountable (**redress**).

The global protection strategy contains concrete actions that will help reduce the number and severity of attacks against earth rights defenders. The strategy includes actions to fight projects that extract and exploit, fight corruption, challenge donor policies that harm defenders, strengthen the skills of and resources available to earth rights defenders, and includes options for use of the legal system. It is our hope that by outlining our vision and strategy that civil society – including both national and international NGOs – can act in a coordinated and strategic way, and with our collective efforts scaled up, to be more effective in working to reduce threats and attacks against earth rights defenders. We also hope that the strategy acts as a guide for funders, and a resource for communities, governments, international



Participants at the Mekong Legal Advocacy Institute at the Mitharsuu Center for Leadership and Justice.

institutions, and others who want to support the work of earth rights defenders. The strategy also references the responsibilities of governments, companies, and the international finance institutions (IFI).

This strategy provides a partial roadmap to potential solutions, and a world in which earth rights defenders can peacefully speak out in defense of their rights and homelands without fearing retribution. The 20th anniversary of the UN Declaration on the Rights of Human Rights Defenders also presents the global community with an opportunity to celebrate the importance and legitimacy of all human rights defenders, and their rights to peacefully protest all exploitation and abuse including (and perhaps especially) the exploitation and abuse of this finite planet on which we all depend.





Goldman Prize winner Berito Kuwaru'wa.

# Background

## ATTACKS AND THREATS AGAINST EARTH RIGHTS DEFENDERS

Around the world – from Brazil to the Philippines, to the Standing Rock Reservation – attacks and threats against earth rights defenders are on the rise.

Two hundred and seven killings of land and environment defenders were documented in 2017, the worst on record,<sup>3</sup> although the actual numbers are likely much higher. Statistics for 2018 are likely to be as bad.<sup>4</sup> The scale of killings indicates a truly global crisis.<sup>5</sup> Many more earth rights defenders have been killed in Brazil, the Philippines, and Colombia than elsewhere, although the number of people killed in Peru, India, the Democratic Republic of the Congo, Nicaragua, and Honduras is also high.<sup>6</sup>

The death of one earth rights defender is of course too many, and the death of one person can act to intimidate and silence entire communities and have a chilling effect on others working in that region or country. It is not just the deaths of earth rights defenders but also other threats and attacks against them that is of grave concern.

Attacks against earth rights defenders are occurring within a broader context where attacks against all human rights defenders are multiplying, and where attacks are not isolated but instead the result of deliberate and concerted actions by persons capitalizing on major institutional weaknesses and the lack of political will to halt attacks and threats.<sup>7</sup> The UN Special Rapporteur on the situation of human rights defenders has noted that human rights defenders working in the field of business and human rights – which includes earth rights defenders – operate in ever more hostile environments and are subjected to an increasing number of attacks, often carried out or condoned by state actors and vested business interests.<sup>8</sup>

Various studies show that threats and attacks against human rights defenders are most frequently connected to the mining, oil and

<sup>3</sup> Global Witness (2017) At what cost? Irresponsible business and the murder of land and environmental defenders in 2017

<sup>4</sup> John Vidal in the Huffington Post, 2018 Is On Pace To Be Another Bloody Year For Environmental Defenders Around The World, [https://www.huffingtonpost.com.au/entry/2018-grim-year-environmental-defenders-around-world\\_us\\_5bbdb0b80e4b0876eda3016b](https://www.huffingtonpost.com.au/entry/2018-grim-year-environmental-defenders-around-world_us_5bbdb0b80e4b0876eda3016b)

<sup>5</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/71/281, 3 August 2016

<sup>6</sup> Global Witness (2017) At what cost? Irresponsible business and the murder of land and environmental defenders in 2017; and Global Witness (2015) On dangerous ground: 2015's deadly environment the killing and criminalization of land and environment defenders worldwide

<sup>7</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/34/52, 23 January 2017

<sup>8</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/72/170, 19 July 2017



gas sectors, and to agribusiness, logging, hydropower, and large infrastructure projects.<sup>9</sup> Further, 25% of all threats and attacks against human rights defenders in 2016 and 2017 were connected to companies headquartered in Canada, China, and the United States.<sup>10</sup>

Because indigenous people, by definition, live in close connection to specific lands, and often stand between valuable resources and the elites who want those resources, it is predictable that they are vastly over-represented in the number of earth rights defenders killed each year – representing almost 40% of all victims killed in 2016.<sup>11</sup> The UN Special Rapporteur on the rights of indigenous peoples has noted with concern the drastic increase in attacks and acts of violence against, criminalization of, and threats aimed at indigenous peoples, particularly those who are voicing concerns over the negative impacts of development projects on their lands.<sup>12</sup> These threats and attacks occur in a context where indigenous peoples have long experienced marginalization, poverty, dispossession, and displacement, and where they have had to fight for their right to live on their ancestral lands,<sup>13</sup> and where indigenous peoples are marginalized, or excluded, from decision-making processes in relation to their lands and territories.

In many parts of the world, a high proportion of natural resource wealth – in the form of minerals, for example – is on territory belonging to indigenous peoples, thus creating the basis for conflict between local communities and companies.<sup>14</sup> Such projects, the Special Rapporteur notes, are frequently undertaken without consulting with the indigenous peoples concerned, nor is their free, prior and informed consent (FPIC) sought.<sup>15</sup> Further, a crucial underlying cause of the current intensified attacks is the lack of respect for indigenous peoples' collective land rights and the failure to provide indigenous communities with secure land tenure, as this in turn

#### Threats and attacks on earth rights defenders can take many forms, including:

- Killings and attempted killings
- Rape and other forms of sexual violence
- Torture
- Forced disappearances
- Physical violence (and threats of violence) and intimidation
- Illegal arrest, arbitrary detention, judicial harassment, and other forms of criminalization
- Stigmatization (such as accusing earth rights defenders of being 'anti-development', 'anti-government', 'agents of the west', or 'environmental terrorists')
- Digital surveillance, hacking and online harassment
- Financial threats (such as closing defenders' bank accounts)
- Regulatory threats (such as taking away organizations' non-profit or legal status)

undermines their ability to effectively defend their lands, territories and resources from the damage caused by large-scale projects.<sup>16</sup>

Women earth rights defenders, and indigenous women in particular, face even greater challenges and dangers, as they navigate the brutal intersection of environmental devastation, cultural dislocation, and sexual violence and gender based persecution.<sup>17</sup> Women earth rights defenders face additional and gender-specific threats stemming from their status as both women and as earth rights defenders. As part of their work defending human and environmental rights, these women experience sexism,<sup>18</sup> while challenging systemic power, inequality, and discrimination, including companies' power and deeply rooted patriarchy,<sup>19</sup> and question patriarchy or misogyny, sometimes within their own communities.<sup>20</sup>

The gender-specific threats women face must also be understood in the context where the projects they and their communities are fighting against have clearly gendered impacts. Extractive

<sup>9</sup> See for example Global Witness (2017) At what cost? Irresponsible business and the murder of land and environmental defenders in 2017; Global Witness (2015) On dangerous ground: 2015's deadly environment the killing and criminalization of land and environment defenders worldwide; and Business and Human Rights Resource Centre (2017) Latin American Briefing: Focus on Human Rights Defenders under threat & attack

<sup>10</sup> Business and Human Rights Resource Centre in Report of the UN Special Rapporteur on the situation of human rights defenders, A/72/170, 19 July 2017

<sup>11</sup> Global Witness (2016) Defenders of the earth: Global killings of land and environmental defenders in 2016

<sup>12</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/39/17, 10 August 2018

<sup>13</sup> Amnesty International (2017) Deadly but preventable attacks, killings and enforced disappearances of those who defend human rights

<sup>14</sup> Front Line Defenders (2018) Stop the killings

<sup>15</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/39/17, 10 August 2018

<sup>16</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/39/17, 10 August 2018

<sup>17</sup> Common Dreams (2017), On International Women's Day honoring women land and human rights defenders, <https://www.commondreams.org/views/2017/03/07/international-womens-day-honoring-women-land-and-human-rights-defenders>

<sup>18</sup> EarthRights International, Criminalized Indigenous Women Environmental Defenders from Ecuador Demand their Rights at Inter-American Commission for Human Rights, <https://earthrights.org/media/criminalized-indigenous-women-environmental-defenders-from-ecuador-demand-their-rights-at-inter-american-commission-for-human-rights/>

<sup>19</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/72/170, 19 July 2017

<sup>20</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/71/281, 3 August 2016

industries and other similar projects deepen and perpetuate structural violence against women. This is evident in the increased concentration of land ownership that limits women's access to land title, and in increased care-giving work for women due to their responsibility to care for family members whose health may suffer because of pollution from these projects<sup>21</sup>, for example. The gender-specific threats women face must also be understood in the context where women's ability to speak out publicly can be limited by gender norms on women's place in society, and where women (particularly indigenous women) can be marginalized from decision-making processes.

While women experience threats and attacks like other earth rights defenders, they experience additional gender-based threats. This includes gendered verbal abuse, ridicule and hostility; threats that contain sexualized and gender-specific messages; attacks on a woman's reputation; stigmatization; threats against a woman's children and family; sexual abuse, and rape.<sup>22</sup> Violence against women human rights defenders may be gendered as a way to recast women back into their 'traditional' gender roles,<sup>23</sup> and occur in contexts where there is a backlash against women stepping outside these roles.<sup>24</sup>

## WHO'S BEHIND THREATS AND ATTACKS AGAINST EARTH RIGHTS DEFENDERS?

Around the world, people are standing between the world's most powerful corporate, financial, and government elites and the world's most valuable natural resources that these elites will increasingly do anything to get. Communities are fighting against projects that extract and exploit, and that will have detrimental impacts on their lives. The mining, oil and gas, agribusiness, logging and hydropower projects that are frequently connected to threats and attacks against earth rights defenders too often negatively impact the right to food and clean water, and the right to a healthy and safe environment.

Natural resource extraction and other major development projects in or near indigenous territories are one of the most significant sources of abuse of the rights of indigenous peoples worldwide.<sup>25</sup> Extractive industries projects carry the risk of pollution and contamination from their activities, and mine waste tailing dams have a consistent record of failure, unleashing toxic and otherwise hazardous waste on communities.<sup>26</sup> Large agribusiness projects are also a significant source of abuse of the rights of indigenous peoples and other communities. Human rights abuses arise out of loss of land and property, involuntary resettlement and forced eviction, reduced access to land used for hunting, gathering, or grazing, and the destruction of sites of religious, spiritual, and cultural significance.<sup>27</sup> Across the world, human rights are being trampled in the rush to build mega-infrastructure projects, including large dams, oil and gas pipelines, ports, highways, and railways, and to develop mines and agribusiness projects.<sup>28</sup>

It is no wonder that communities are fighting these projects. Yet these projects continue to be promoted by both governments and the private sector (often with the backing of the IFIs). In some countries, for example, constitutional mechanisms are used to declare some projects 'national priorities' and extraordinary powers are given to public agencies to move these projects forward. As noted above, insecure land tenure and lack of respect for FPIC makes it extremely difficult for communities to stop these developments.

This is exacerbated by a lack of information and transparency, collusion between governments and corporations, and corruption. Opaque decision-making processes are not only major flaws in the implementation of large-scale development projects but also lead to the marginalization and vulnerability of defenders and affected communities, and seriously undermine the credibility and legitimacy of both state and non-state actors involved in the projects.<sup>29</sup> Further, and as a study on corruption in the

21 Earth Rights International (2018) Women Earth Rights Defenders: Defying earth rights abuses and patriarchy <https://earthrights.org/blog/women-earth-rights-defenders-defying-earth-rights-abuses-patriarchy/>

22 Association for Women's Rights in Development (2014) Our Right To Safety: Women Human Rights Defenders' Holistic Approach to Protection; and EarthRights International (2018) Women lead the fight <https://earthrights.org/blog/women-lead-fight/>; Mesoamerican Initiative of Women Human Rights Defenders (2014) Violence against women human rights defenders in Mesoamerica 2012-2014 Report; and FIDH (2017) In harms way: women human rights defenders in Thailand

23 Association for Women's Rights in Development (2014) Our Right To Safety: Women Human Rights Defenders' Holistic Approach to Protection

24 JASS (Just Associates) (2017) Rethinking protection, power and movements: Lessons

25 Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/18/35, 11 July 2011

26 Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (2018) [https://www.ohchr.org/Documents/Issues/ToxicWastes/Communications/OL\\_MEX\\_03.09.2018.pdf](https://www.ohchr.org/Documents/Issues/ToxicWastes/Communications/OL_MEX_03.09.2018.pdf)

27 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/71/291, 4 August 2016

28 UN High Commissioner for Human Rights, Human rights trampled in push to build infrastructure, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21322&LangID=E>

29 Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/39/17, 10 August 2018



mining sector found, corruption in the mining approval process can result in environmentally unsound and socially destructive mining projects being approved, rights to a country's mineral wealth being granted to unqualified or unethical operators, and politicians or government officials taking advantage of their position to profit from their interests in the sector.<sup>30</sup> The same is most likely true for other sectors. Corruption and manipulation of community consultation and negotiation processes are also prevalent.<sup>31</sup>

In too many parts of the world, attacks against human rights defenders are rarely investigated and fewer still result in any serious consequences for the perpetrator.<sup>32</sup> Failure to take any action against the perpetrators of abuse against earth rights defenders increases the risks posed to earth rights defenders, and leads to further attacks against them. The Special Rapporteurs on the situation of human rights defenders and on the rights of indigenous peoples have both expressed concern at the impunity enjoyed by perpetrators of attacks against human rights defenders. The Special Rapporteur on the rights of indigenous peoples has noted that the widespread impunity for violent acts against indigenous human rights defenders globally continues to perpetuate their vulnerability and marginalization.<sup>33</sup>

Impunity particularly affects women. The Inter-American Commission on Human Rights has acknowledged that “in several countries there is a pattern of systematic impunity in the judicial process and in the actions taken around cases of violence against women due to the fact that the vast majority of these cases lack formal investigations, sanctions, or redress. The context of impunity in which these human rights violations take place perpetuates the social acceptance of the phenomenon of violence against women”.<sup>34</sup>

While the perpetrators of violence against earth rights defenders are rarely brought to justice, the work of earth rights defenders is increasingly being restricted and criminalized. In fact, impunity goes hand in hand with criminalization,<sup>35</sup> and criminalization occurs when judicial systems are vulnerable to undue influence by powerful

interests and to corruption.<sup>36</sup> The numerous threats and attacks against human rights defenders are made more volatile owing to an increase in repressive laws and regulations designed to delegitimize and criminalize human rights activities of defenders.<sup>37</sup>

The effect of these efforts to criminalize earth rights defenders is to stigmatise, silence, delegitimize, and obstruct them and their work.

In many parts of the world, government and corporate interests are pursuing projects that extract and exploit, where corruption is rife, the perpetrators of abuse against earth rights defenders enjoy impunity, and the work of earth rights defenders is increasingly criminalized. Addressing these issues is made all the more difficult because the space for civil society to operate is closing, and political freedoms are being restricted in too many parts of the world. The task ahead is clearly enormous but there is hope. We can make a difference through coordinated and strategic action, including the strategies outlined in the following sections.

#### **The criminalization of earth rights defenders can take many forms, including:<sup>1</sup>**

- Accusing earth rights defenders of serious crimes without foundation or based on false and fabricated evidence
- Subjecting earth rights defenders to distorted and unreasonably lengthy criminal proceedings, and subjecting earth rights defenders to pretrial detention
- Misusing counter-terrorism laws and other national security laws against earth rights defenders
- Illegal arrest and arbitrary detention
- Criminalizing the rights to free speech, participation in peaceful protest, and public assembly
- Using criminal, defamation, or libel laws to punish or silence earth rights defenders
- Criminalizing organizations and human rights defenders who receive foreign funding or support

<sup>1</sup> Inter-American Commission on Human Rights (2015) Criminalization of the work of human rights defenders; and Protection International (2015) Criminalisation of human rights defenders: Categorisation of the problem and measures in response

<sup>30</sup> Transparency International (2017) Combatting corruption in mining approvals: assessing the risks in 18 resource-rich countries

<sup>31</sup> Transparency International (2017) Combatting corruption in mining approvals: assessing the risks in 18 resource-rich countries

<sup>32</sup> Front Line Defenders (2018) Stop the killings

<sup>33</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/39/17, 10 August 2018

<sup>34</sup> Mesoamerican Initiative of Women Human Rights Defenders (2014) Violence against women human rights defenders in Mesoamerica 2012-2014 Report

<sup>35</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/39/17, 10 August 2018

<sup>36</sup> Protection International (2015) Criminalisation of human rights defenders: Categorisation of the problem and measures in response

<sup>37</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/HRC/31/55, 1 February 2016



Tuenjai Deetes, from the Thai National Human Rights Committee visits the Dawei Special Economic Zone in Myanmar.

# A Global Protection Strategy

## **EARTHRIGHTS INTERNATIONAL'S VISION FOR CHANGE**

Earth rights defenders are operating in ever more hostile environments and are subjected to an increasing number of attacks. This must change. ERI, and our partners and allies around the world, are working to reduce the number and severity of attacks against earth rights defenders.

The global protection strategy outlined below contains concrete actions that we believe will help reduce the number and severity of attacks against earth rights defenders. It is our hope that by working in a coordinated and strategic way that civil society can reduce threats and attacks against earth rights defenders.

The global protection strategy is based on the 'protect, prevent, reveal, and redress' framework developed by human rights and environmental organizations and funding institutions in 2016 in response to the growing pressure and violence directed at earth rights defenders. The framework led to the development of the Environmental Defenders Fund, a joint donor effort to support threatened activists that is coordinated by the Biodiversity Funders Group.<sup>38</sup>

## **COMPONENTS OF AN EFFECTIVE GLOBAL PROTECTION STRATEGY**

The global protection strategy is a plan of action. Its components are described in the sections below and are arranged consistently with the 'protect, prevent, reveal, and redress' framework, although some of the components may address more than one element of the framework. The components include actions that are proven strategies that we know can work and that we want to scale up, and the next generation of strategies that we want to test and pilot. The sections below also give examples of action taken by ERI to show what is possible.

<sup>38</sup>Inside Philanthropy, A growing pooled-funding effort to support environmental defenders, <https://www.insidephilanthropy.com/home/2018/7/17/a-growing-pooled-funding-effort-to-support-environmental-defenders>



## SOLUTIONS

1. **Protect:** Address immediate threats to earth rights defenders
2. **Prevent:** Address the structural issues that cause threats to earth rights defenders, including preventing the shrinking of space for civil society and indigenous rights
3. **Reveal:** Shine a light to reveal collusion and corruption, and to expose all those who perpetrate abuse
4. **Redress:** Obtain justice for victims by holding the perpetrators accountable

### Protect

## PROTECTING AND KEEPING EARTH RIGHTS DEFENDERS SAFE

There are numerous actions that can be taken to address some of the immediate threats to earth rights defenders, and to help protect them and help keep them safe. These include equipping earth rights defenders with the knowledge, tools, and resources to stay safe; challenging the criminalization of earth rights defenders in the courts; and ending ties between corporations and police and paramilitaries to prevent the occurrence of violence against earth rights defenders.

## TRAINING EARTH RIGHTS DEFENDERS

Earth rights defenders do extraordinary work in very difficult circumstances. The skills and strategies they use to do their work are as varied as the contexts within which they work, and earth rights defenders are constantly finding creative ways to work in restrictive spaces. Yet earth rights defenders can benefit from learning new skills and increasing their knowledge (particularly to ensure

their security and safety), and meeting other earth rights defenders and hearing about their experiences. Training programs are one way to help achieve this. Training programs can also serve to provide individuals with the tools needed to help strengthen their own organizations.

ERI's EarthRights School provides training for earth rights defenders from countries in the Mekong region and Myanmar. The seven-month long program integrates campaign, storytelling, and legal advocacy strategies used to address earth rights abuses caused by large-scale development projects, along with peace-building and conflict transformation, gender mainstreaming, indigenous rights and the physical, legal, and digital security of earth rights defenders.<sup>39</sup> The training program also includes a fieldwork component where the participants return home to document issues around local environmental and human rights problems. The fieldwork allows the collection of evidence on the human rights and environmental impacts of projects of concern and strengthens participants research skills.

ERI also provides shorter training programs in the Mekong region and Latin America focused on legal

<sup>39</sup> EarthRights International, EarthRights School Mekong is now accepting applications, <https://earthrights.org/blog/earthrights-school-mekong-is-now-accepting-applications/>

### Security training for earth rights defenders

ERI delivers holistic security training for earth rights defenders. This includes tools and strategies to:

- Understand security challenges and approaches
- Analyze the actors and factors that influence earth rights defender's security situations
- Recognize vulnerabilities and capacities
- Recognize and react to threats and security incidents
- Identify and mitigate risks to office and home security, digital security and information management, and security in the field
- Practice personal and collective well-being and mutual support

advocacy strategies and strengthening networks between legal advocates and lawyers, and communities and earth rights defenders.<sup>40</sup> Training in Latin America also helps indigenous defenders to defend their communities using legal advocacy strategies.<sup>41</sup>

It is critically important that earth rights defenders are able to identify immediate threats and risks to their security and safety and be able to devise strategies to address these risks. Training can play a role here by providing earth rights defenders with tools and strategies to anticipate, identify, and address risks, including those risks specifically relevant to women earth rights defenders.



Pairot Panapaisakul, Thatafong villager and river defender in Mae Hong Son, Thailand.

Developing collective mechanisms and protocols for the protection of earth rights defenders at risk is also needed. If a community is unified and well organized it can very effectively protect activists, and a strong social fabric makes it more difficult for governments or non-State actors to intimidate or divide communities.<sup>42</sup> Guidance for developing collective protection strategies does exist and highlights the value of communities forming community security and protection teams; creating safe spaces; strengthening collective power, organization and leadership, for example; and drawing on the experiences and wisdom of women and those most targeted and stigmatized.<sup>43</sup>

### **BUILDING CROSS-REGIONAL LINKAGES AMONG DEFENDERS AND THEIR SUPPORTERS**

There can be a disconnect between earth rights defenders themselves, and between earth rights defenders and sources of support – such as that provided by funders, NGOs and inter-governmental agencies – including those things that might address some of the immediate threats faced by earth rights defenders. International gatherings, such as the 2018 Forest Defenders Conference co-hosted by ERI in Thailand,<sup>44</sup> can be an important opportunity for earth rights defenders to connect with each other and with potential supporters. International gatherings can also help strengthen and grow support networks of earth rights defenders, develop collaborations and joint actions, and provide an opportunity for advocacy and security training. A key piece of feedback from the 2018 Forest Defenders Conference was that it provided an important opportunity for earth rights defenders to step back from the daily stress of their work to rest and reflect in a safe space. Furthermore, there is a critical need to continue building solidarity between earth rights defenders and their support networks in order to foster a sustainable, resilient movement of earth rights defenders.

<sup>40</sup> EarthRights International, Mekong Legal Advocacy Institute, <https://earthrights.org/how-we-work/training/legal-training/mekong-legal-advocacy-institute/> and Indigenous Seminar, <https://earthrights.org/how-we-work/training/legal-training/indigenous-seminar/>

<sup>41</sup> EarthRights International, Latin American Seminar on indigenous legal defense, <https://earthrights.org/latin-american-seminar-on-indigenous-legal-defense-2018/>

<sup>42</sup> JASS (Just Associates) and The Fund for Global Human Rights (undated) Collective Protection, [https://justassociates.org/sites/justassociates.org/files/collective\\_protection.pdf](https://justassociates.org/sites/justassociates.org/files/collective_protection.pdf)

<sup>43</sup> JASS (Just Associates) and The Fund for Global Human Rights (undated) Collective Protection, [https://justassociates.org/sites/justassociates.org/files/collective\\_protection.pdf](https://justassociates.org/sites/justassociates.org/files/collective_protection.pdf)

<sup>44</sup> EarthRights International, Forest Defenders Conference 2018, co-hosted by ERI NotiMore, and Cambodia Youth Network, <https://earthrights.org/forest-defenders-conference-2018/>





Khaing Myo Htun is an earth rights defender and a former EarthRights School student.

## DEFENDING EARTH RIGHTS DEFENDERS AGAINST UNLAWFUL CHARGES

Khaing Myo Htun is an earth rights defender from Myanmar, a former student of the EarthRights School, and former deputy-spokesperson in the Information and Organizing Department of the Arakan Liberation Party (ALP). He is now Program Coordinator with National Resources for the People, an NGO in Arakan/Rakhine State. He has a long history of working for human rights, justice, and accountability in Myanmar, and it appeared that Khaing Myo Htun was targeted for his activism. He was charged for alleged offenses relating to a statement released by the ALP alleging human rights abuses by the Tatmadaw (Myanmar military) in Rakhine state – there is credible evidence for these abuses – despite no evidence to suggest that Khaing Myo Htun was personally responsible for the statement by the ALP. Khaing Myo Htun was detained for eight months before being charged on 5 April 2017.<sup>1</sup> He was denied bail twice, once in August 2016 and again in February 2017. Finally, in February 2018, Khaing Myo Htun was released. The arrest and detention of Khaing Myo Htun was arbitrary and illegal under international law, and his trial breached the right to a fair trial. ERI worked with a group of lawyers in Myanmar to defend Khaing Myo Htun in court, and to strengthen their legal, security, and advocacy capacity. ERI also worked to highlight his situation in local and international media, with various embassies and at the United Nations via UN Special Procedures. Large protests by local people in Sittwe, the capital of Rakhine State, also occurred before the military threatened protesters with criminal charges. While it is difficult to evaluate the impact of this work, it is possible that without our support that Khaing Myo Htun could have faced a much longer sentence. We hope that our work will deter other future prosecutions of earth rights defenders in Myanmar.

In a similar case in Peru, ERI successfully defended 12 “ronderos” (community patrol members) from the community of Yagén, in the Cajamarca region, in Peru’s courts.<sup>2</sup> These earth rights defenders had been defending their territories and the Marañón River by opposing the Chadín 2 hydroelectric project. The 12 ronderos had been falsely charged with aggravated kidnapping. Evidence given in the court implicates the company behind the Chadín 2 hydroelectric project, Odebrecht, of fabricating evidence. Separately, ERI and Instituto de Defensa Legal have supported communities affected by the dam project in filing a constitutional request for protection of their rights, and the rights of the Marañón River and its rich biodiversity.<sup>3</sup>

In another case in Peru, ERI successfully defended Milton Sánchez Cubas against charges of being the “author” of the crime of “disturbance” in accordance with Article 315 of the Peruvian Criminal Code, for alleged damages that occurred during a protest against Newmont Mining.<sup>4</sup> Milton Sánchez Cubas had been involved in protests aimed at protecting fresh water lagoons near Tragadero Grande, Cajamarca. No evidence was presented during the trial to prove that Milton Sánchez was responsible for any damage that might have occurred. Instead the investigation and trial were used to persecute and harass Milton Sánchez and other earth rights defenders.

<sup>1</sup> EarthRights International (2018) Earth rights defender Khaing Myo Htun released from prison, <https://earthrights.org/blog/earth-rights-defender-khaing-myo-htun-released-prison/>

<sup>2</sup> EarthRights International (2018) Environmental defenders of the Marañón River win in trial, <https://earthrights.org/blog/environmental-defenders-of-the-maranon-river-win-in-odebrecht-trial/>

<sup>3</sup> EarthRights International (2018) Communities File Lawsuit for Recognition of Rights of the Marañón River in Peru, <https://earthrights.org/media/communities-file-lawsuit-for-recognition-of-rights/>

<sup>4</sup> EarthRights International (2018) Human Rights Defender Acquitted, <https://earthrights.org/media/human-rights-defender-acquitted>

## USING NATIONAL LITIGATION AND LOCAL LEGAL STRATEGIES TO DEFEND DEFENDERS

The work of earth rights defenders is increasingly being restricted and criminalized, and courts misused to stigmatize, silence, delegitimize, and obstruct earth rights defenders. National litigation and local legal strategies can be used to both defend individual earth rights defenders (addressing the threat of illegal arrest or arbitrary detention for example) and to push back on restrictive laws on protest and assembly, or on NGO activity, and that otherwise criminalize the work of earth rights defenders and their supporters. Such work might involve observing trials where earth rights defenders are accused of crimes (or encouraging foreign diplomats or UN officials to do

so); visiting places of detention or arrest; and providing support (such as financial) to earth rights defenders who are victims of criminalization and their families, along with the provision of legal support to defend unlawful charges in criminal proceedings against earth rights defenders.<sup>45</sup>

Work to push back on restrictive laws on protest and assembly and that otherwise criminalize the work of earth rights defenders, and to prevent the shrinking of civil society space, must necessarily respond to the local legal context. The Special Rapporteur on the situation of human rights defenders has set out minimum standards that should be applied in the development and application of legislation affecting the activities of human rights defenders to ensure a conducive working environment for human rights defenders. These standards draw attention to the importance of the principles of legality, necessity and proportionality, and non-discrimination, and the need for legal systems to respect constitutional and procedural safeguards.<sup>46</sup> The Special Rapporteur has also made specific recommendations to states to ensure that various legislation – related to anti-terrorism, access to information, defamation, and the registration and funding of associations – contribute to, rather than undermine, a conducive working environment for human rights defenders. These standards and recommendations may usefully guide civil society work in this space.

## REFORMING INTERNATIONAL FINANCIAL INSTITUTIONS POLICIES TO ENSURE PROTECTION OF EARTH RIGHTS DEFENDERS

The increased scale of acts of reprisal against environmental human rights defenders protesting against environmental harms caused by projects funded by the IFIs is disquieting.<sup>47</sup> The World Bank and many other IFIs (or multilateral development banks) have safeguard policies designed to prevent environmental and social harm, and accountability mechanisms to address violations of these policies. While in theory these policies and mechanisms may be leveraged to protect communities



Adolfin García is a Achuar woman from Peru, and a plaintiff in the case against Occidental Petroleum.

<sup>45</sup> Protection International (2015) Criminalisation of human rights defenders: Categorisation of the problem and measures in response

<sup>46</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/67/292, 10 August 2012

<sup>47</sup> Report of the Special Rapporteur on the situation of human rights defenders, A/71/281, 3 August 2016





A participant in the ERI's annual Latin American Indigenous Legal Seminar.

and the environment, they do not sufficiently address rights-related risks or provide protection to human rights defenders.<sup>48</sup> For example, the Sustainability Framework of the International Finance Corporation (IFC) – which is the largest of the IFIs focused exclusively on the private sector (including the mining, oil, and gas sectors) in developing countries, and a member of the World Bank Group – does not mention the need to ensure protection of human rights defenders.

Civil society calls for reform to IFIs' policies and practices include:<sup>49</sup>

- Developing methods to enable all people to freely participate in proposed IFI-financed projects that may affect them or that should benefit them, without risk of reprisals
- Mitigating the risk of all forms of threats and attacks against community members, workers, activists, journalists, human rights defenders, and civil society organizations for criticizing or opposing a project,

including by incorporating clauses preventing reprisals in loan agreements and developing an urgent response system to address threats to project critics

- Analyzing and taking measures to mitigate project-related risks relating to freedoms of expression, assembly, and association
- Highlighting the importance of the rights of freedom of expression, assembly, and association for participatory, sustainable, and accountable development in dialogue with governments

In October 2018, the IFC published a statement on the 'Retaliation against Civil Society and Project Stakeholders'. In it, the IFC states that it "does not tolerate any action by an IFC client that amounts to retaliation – including threats, intimidation, harassment, or violence – against those who voice their opinion regarding the activities of IFC or our clients".<sup>50</sup> The IFC has also committed to developing internal protocols that will integrate these issues into the IFC's risk screening procedures so that

<sup>48</sup> Human Rights Watch et al (2015) Development Finance Institutions: Human rights obligations and the rights to remedy, [https://www.ohchr.org/Documents/Issues/Business/ForumSession4/18\\_Nov\\_82o\\_DevelopmentFinanceInstitutions.pdf](https://www.ohchr.org/Documents/Issues/Business/ForumSession4/18_Nov_82o_DevelopmentFinanceInstitutions.pdf)

<sup>49</sup> for more see International Financial Institutions' responsibility to ensure meaningful and effective participation, <https://rightsindevelopment.org/our-work/hrd/participationstatement/>

<sup>50</sup> International Finance Corporation (October 2018) IFC Position Statement on Retaliation against Civil Society and Project Stakeholders

it can identify operating contexts, that are high risk for retaliation and violence.<sup>51</sup> It is hoped that policy reform by the IFC (and in the future other IFIs) will contribute toward other efforts aimed at keeping earth rights defenders safe, and address some of the immediate threats to earth rights defenders.

## **STRENGTHENING CORPORATE ACCOUNTABILITY**

Central to this strategy and to ERI's core mission are efforts to reign in corporate power, strengthen corporate accountability and transparency, improve corporate behavior so that corporations respect human rights and the environment, and recognize the importance and legitimacy of earth rights defenders. Some examples of ways to do this are discussed elsewhere in this global protection strategy. Others include civil society efforts to dismantle the investor-state dispute settlement regime<sup>52</sup> and wind back rights for foreign investors enshrined in trade and investment treaties.<sup>53</sup>

In addition to these structural changes, individual companies must implement human rights policies.

This must include commitments to redress any harms experienced as a result of company activities and due diligence processes consistent with the UN Guiding Principles on Business and Human Rights.<sup>54</sup> This must also include policy commitments to respect the human rights of earth rights defenders. Such policy commitments should recognize the status and role of human rights defenders and the legitimacy of their activities, and publicly adopt a policy that includes a zero-tolerance approach to any violence, intimidation, or harassment directed at earth rights defenders. Companies should also build commitments to respect earth rights defenders into their contracts with joint venture partners and local contractors. Companies have a normative responsibility to address these issues that supersedes “business case” considerations.<sup>55</sup>

## **ENDING TIES BETWEEN CORPORATIONS AND POLICE AND PARAMILITARIES**

In some mining operations security providers also commit serious human rights abuses against local community members. In some countries, mining companies can legally contract state and private police forces to ‘protect’

<sup>51</sup> International Finance Corporation (October 2018) IFC Position Statement on Retaliation against Civil Society and Project Stakeholders

<sup>52</sup> Investor-state dispute settlement (ISDS) is a mechanism contained in investment and trade agreements that allows investors to bring claims against states if that state has allegedly breached a standard in the agreement. The ISDS regime has been used by corporate interests to undermine efforts to strengthen environmental, social and labour regulations by allowing corporations to sue governments when such regulations have the potential to impact their investments.

<sup>53</sup> <http://www.bhrinlaw.org/key-developments/69-france#Devoir%20de%20vigilance>

<sup>54</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011)

<sup>55</sup> Business and Human Rights Resource Centre and International Service for Human Rights (2018) Shared space under pressure: business support for civil freedoms and human rights defenders guidance for companies

## **LEGAL ACTION TO ADVANCE IMPLEMENTATION OF SARAYAKU V. ECUADOR AND RESPECT FOR FREE, PRIOR, AND INFORMED CONSENT**

In February 2017, ERI, along with the Due Process Law Foundation and the Center for Law, Justice and Society (Dejusticia), submitted an amicus curiae to the Inter-American Court of Human Rights (IACHR) to advance implementation of the 27 June 2012 decision issued in the case of the Kichwa Indigenous People of Sarayaku v. Ecuador.<sup>1</sup> Sarayaku v. Ecuador was a landmark case that affirmed the rule that indigenous communities throughout the Americas must be consulted before their governments approve investment projects that affect their use and enjoyment of their traditional lands. The case added to the requirements of FPIC already established in the 2007 case of Saramaka v. Suriname.<sup>2</sup> Yet Ecuador has directly contravened the IACHR decision and has approved – without consultation – three new oil exploration licenses, affecting more than 91% of the Sarayaku territory.

<sup>1</sup> ESCR-Net (2017) Members submit amicus brief to the Inter-American Court regarding implementation of Sarayaku v. Ecuador, <https://www.escr-net.org/news/2017/members-submit-amicus-brief-inter-american-court-regarding-implementation-sarayaku-v-ecuador/>

<sup>2</sup> EarthRights International (2012) A hard earned victory for indigenous rights in Latin America: Sarayaku v Ecuador, [earthrights.org/blog/a-hard-earned-victory-for-indigenous-rights-in-latin-america-sarayaku-v-ecuador/](http://earthrights.org/blog/a-hard-earned-victory-for-indigenous-rights-in-latin-america-sarayaku-v-ecuador/)





Aura Tegria Cristancho, community leader and lawyer for the U'wa Nation in Colombia with her family.

their extractive industry assets. As evidence from the Yanacocha mine in Peru (whose largest owner is the U.S. company Newmont Mining Corporation) shows, this can take the form of restricting local residents' freedom of movement, conducting surveillance of community leaders and earth rights defenders, and directly threatening earth rights defenders.<sup>56</sup> More serious forms of violence, and other threats to earth rights defenders, are almost inevitable in such situations where there is organized community opposition to the projects being protected by state or private security forces. Again, to take Yanacocha as an example, in August 2006, Minera Yanacocha sent between 75 and 200 Forza (private security) and Peruvian National Police officers to remove a roadblock in Cajamarca, formed in opposition to their mine's expansion. As armed security clashed with peaceful protestors, a

local man, Isidro Llanos Cavaría, was shot and killed by an off-duty police officer who was either an employee of Forza or directly hired by Yanacocha.<sup>57</sup>

Even where there is not widespread community opposition to a mining project, security providers can still commit serious human rights abuses. One such example relates to the Porgera gold mine in Papua New Guinea where for many years security guards employed by the mine operator, Barrick Gold, systemically raped local women and girls, and beat and shot local boys and men. ERI represented many women who were sexually assaulted and ultimately reached an out of court settlement in 2015 with Barrick Gold in relation to the claims made by a number of these women.<sup>58</sup> In 2017, new allegations have been made that security employed by the Porgera Joint Venture continues to commit serious human rights

<sup>56</sup> EarthRights International (2016) Police forces resort to surveillance and violence against peaceful protestors, <https://earthrights.org/blog/police-forces-resort-to-surveillance-and-violence-against-peaceful-protestors/>

<sup>57</sup> EarthRights International (2016) Police forces resort to surveillance and violence against peaceful protestors, <https://earthrights.org/blog/police-forces-resort-to-surveillance-and-violence-against-peaceful-protestors/>

<sup>58</sup> EarthRights International, Barrick – security guards for world's largest gold mining company rape and kill locals in Papua New Guinea, <https://earthrights.org/case/barrick/#timelineff69-1a905f26-f4b6>



Esther Kiobel – who believes Shell collaborated with Nigerian authorities to murder of her husband – at the Supreme Court oral argument of her case in 2013.

abuses, including the rape and beating of girls and boys.<sup>59</sup> In another example of police brutality in Peru, again linked to a Newmont Mining project, an estimated 24 civilians were injured when police fired tear gas, rubber bullets, and live ammunition at people protesting against Newmont's proposed Conga mine in November 2011. The police were acting pursuant to a contract with Minera Yanacocha for the provision of security services at the site of the Conga concession. The police were in contact and coordination with members of the company's private security provider, Securitas, and possibly other mining personnel.<sup>60</sup> The actions of police are the subject of various legal proceedings in Peru and the U.S. In 2015, a U.S. federal court ordered Newmont Mining to turn over evidence relating to the November 2011 incident. The order was made under the Foreign Legal Assistance (FLA) Statute, which allows people to request evidence

found in the U.S. that can assist a legal case in another country.<sup>61</sup> ERI represented one of the injured protestors, Elmer Campos Álvarez who was shot and left paralyzed as a result, in the U.S. proceedings. Legal action such as this is important in ending the culture of impunity for such violence and to obtain justice for victims.

There is also an urgent need to end the ties between corporations and police and paramilitaries to prevent the occurrence of such violence, and to remove the specific threats to earth rights defenders associated with police and paramilitaries, in the first instance. In Peru, for example, ERI and local partners are taking legal action on contracts between the national police and mining companies. We are also working to bring transparency to these arrangements through the publication of a comprehensive research report.

<sup>59</sup> see for example MiningWatch Canada, <https://miningwatch.ca/news/2017/3/28/village-houses-burnt-down-again-barrick-mine-papua-new-guinea-violence-against-local>

<sup>60</sup> EarthRights International, *Campos-Avarex v. Newmont Mining*, <https://earthrights.org/case/campos-alvarez-v-newmont-mining/#media>

<sup>61</sup> EarthRights International, *Federal Court Orders Newmont Mining to Turn Over Evidence to Peruvian Wounded in Protest* <https://earthrights.org/media/federal-court-orders-newmont-mining-to-turn-over-evidence-to-peruvian-wounded-in-protest/>





## ENDING IMPUNITY FOR VIOLENCE BY POLICE AND PARAMILITARIES, DOE V. CHIQUITA BRANDS INTERNATIONAL

In 2007, ERI initiated court proceedings against Chiquita Brands International, a U.S. banana company, on behalf of victims and surviving family members of thousands of villagers, labor leaders, banana workers and community organizers who were killed by the Colombian paramilitary group, Autodefensas Unidas de Colombia (AUC). Over the course of several years, Chiquita and its executives – including former CEOs, General Counsels, and General Managers – made or approved illegal payments to the AUC which totalled approximately at least \$1.7 million, knowing that they were funding a violent terrorist organization, in order to maintain its profitable control of Colombia's banana growing regions.<sup>1</sup> After just over a decade of legal action, the plaintiffs' claims are scheduled to be heard in U.S. courts beginning in late 2019.<sup>2</sup>

<sup>1</sup> EarthRights International, Victims of Colombian death squads can move forward with case against former Chiquita executives, <https://earthrights.org/media/victims-of-colombian-death-squads-can-move-forward-with-case-against-former-chiquita-executives/> and Doe v. Chiquita Brands International, <https://earthrights.org/case/doe-v-chiquita-brands-international/#media>

<sup>2</sup> EarthRights International, Doe v. Chiquita Brands International, <https://earthrights.org/case/doe-v-chiquita-brands-international/#documentsff69-1a905f26-f4b6>

## Prevent

### ADDRESSING STRUCTURAL ISSUES INCLUDING TO PREVENT THE SHRINKING OF CIVIL SPACE

Actions to address some of the structural issues that are causing threats to earth rights defenders include fighting against those projects that extract and exploit – such as fossil fuel projects – and that are connected to threats and attacks against earth rights defenders, and preventing the shrinking of civil space by pushing back on corporate attempts to silence earth rights defenders and intimidate their critics.

#### FIGHTING NEW COAL AND OIL DEVELOPMENT

Earth rights defenders are leading the fight taken up by their communities against projects that extract and exploit. Too often, fossil fuel projects, and projects linked to land grabs, are connected to threats and attacks against earth rights defenders. There is an urgent need to fight new coal and oil projects. This is of course happening though numerous collaborations between local communities and national and international groups globally, including in Myanmar, where ERI and its allies and partners have had some success stopping new coal developments. In one case, communities successfully

suspended development of the 1,280 MW Hpa-An coal-fired power plant.<sup>62</sup> Efforts to stop the development of individual coal projects is happening alongside work that is calling on the Myanmar Government to completely abandon coal (and hydropower) as solutions to Myanmar's future energy needs and instead focus on renewable energy, especially community-owned off-grid solutions.<sup>63</sup>

Advocacy against new fossil fuel projects is happening alongside efforts to monitor the impacts of existing projects on local communities and environments, and to obtain redress for people harmed by these fossil fuel projects including through the courts. In an example of this, ERI successfully brought suit on behalf of 25 indigenous Achuar plaintiffs from the Peruvian Amazon against Occidental Petroleum Corporation. The plaintiffs allege serious harm caused by the company over a 30-year period in the Corrientes River basin during which Occidental contaminated the rivers and lands of the indigenous Achuar communities.<sup>64</sup> After Occidental lost its effort to have the case dismissed, the parties announced the settlement of the case in 2015.<sup>65</sup>

### ENDING FINANCING FOR COAL AND OIL, AND FOR PROJECTS LINKED TO LAND GRABS

In addition to fighting individual coal and oil developments, there is an urgent need to campaign for structural change so that financial institutions – including commercial

<sup>62</sup> EarthRights International, Myanmar official says Hpa-An coal plant cancelled, <https://earthrights.org/media/myanmar-official-says-hpa-coal-plant-cancelled/>

<sup>63</sup> EarthRights International, Myanmar: Say 'no' to coal and big hydropower, <https://earthrights.org/blog/myanmar-say-no-to-coal-and-big-hydropower/>

<sup>64</sup> EarthRights International, Maynas v. Occidental Petroleum, <https://earthrights.org/case/maynas-v-occidental-petroleum/#timelineff69-1a905f26-f4b6>

<sup>65</sup> The parties release the following statement: "The parties are pleased to confirm a mutual settlement of the claims in the litigation. Under the settlement, the terms of which are confidential, Oxy will provide assistance for community development projects for the benefit of these five Achuar communities. All parties are satisfied with the resolution of the dispute."

## DRIVERS

INTERNATIONAL BANKS



CORPORATE POWER



CLIMATE CHANGE



MEGA PROJECTS



LAND DEVELOPMENT



EXTRACTIVE INDUSTRIES



Earth Rights Defen  
world's most power  
world's most valu

SOLU

### Prevent

Address the structural issues that cause threats to earth rights defenders, including preventing the shrinking of space for civil society and indigenous rights

EARTH  
DEFE

### Reveal

Shine a light to reveal collusion and corruption, and to expose all those who perpetrate abuses



Defenders stand between the powerful corporations and the vulnerable natural resources.

CTIONS

EARTH RIGHTS DEFENDERS

### Protect

Address immediate threats to earth rights defenders

### Redress

Obtain justice for victims by holding the perpetrators accountable

## THREATS



PHYSICAL



PSYCHOLOGICAL



DIGITAL



LEGAL



FINANCIAL

This global protection strategy contains concrete actions that we believe will help reduce the number and severity of attacks against earth rights defenders.



## DEFENDING THE DEFENDERS IN U.S. COURTS, MÁXIMA ACUÑA-ATALAYA V. NEWMONT MINING CORP

Máxima Acuña de Chaupe – winner of the Goldman Environmental Prize for her courage in standing up to a large multinational mining company – and her family are subsistence farmers who live in the rural highlands of Cajamarca, Peru. They have cultivated crops and raised livestock on a plot of land known as Tragadero Grande for over 20 years. In August 2011, agents of Newmont Mining Corporation attempted to forcibly oust Máxima and her family from their farm so that Newmont could expand its gold mining operations. Máxima and her family resisted. Since then, the Chaupes complain that Newmont's agents have used harassment and violence (including physical attacks against Máxima and one of her daughters, and destruction of property) to try to evict them from their farm.<sup>1</sup> Newmont even sued the Chaupe family in a provincial court, which found them guilty of illegally squatting on their own land. Máxima was sentenced to a suspended prison term of almost three years, and fined nearly \$2,000 which is a huge sum for a subsistence farmer in Peru. She appealed the ruling and the courts eventually ruled in her favor.<sup>2</sup>

In September 2017, ERI filed a lawsuit against Newmont in the U.S. courts to stop this harassment and abuse. The case is ongoing.

<sup>1</sup> EarthRights International, "Of course I will keep fighting", <https://earthrights.org/blog/course-will-keep-fighting/> and Máxima Acuña-Atalaya v. Newmont Mining Corp. <https://earthrights.org/case/maxima-acuna-atalaya-v-newmont-mining-corp/#timelineff69-1a905f26-f4b6>

<sup>2</sup> The Goldman Environmental Prize, Máxima Acuña, <https://www.goldmanprize.org/recipient/maxima-acuna/>

banks and pension funds – cease their support for fossil fuel projects and projects linked to land grabs in order to achieve more systemic change. Without finance, these projects cannot proceed.

Civil society can claim much credit for the growing list of banks that have committed to stopping direct finance for new coal mines and coal-fired power plants worldwide.<sup>66</sup> More work needs to be done including to focus on banks not headquartered in Europe or the U.S. The proponents of fossil fuel projects and projects linked to land grabs are just as likely to seek finance from local or regional banks as from European or U.S. banks.<sup>67</sup> This is important given the massive expansion of coal-fired power plants planned for countries including China, India, and Vietnam<sup>68</sup>, and that the world's biggest coal mining and coal power companies are predominantly Chinese and Indian.<sup>69</sup>

The work of Fair Finance Guide International is just one example of campaigning directed at the Brazilian, Indonesian, and Japanese banking sectors (along

with some European banks).<sup>70</sup> The Fair Finance Guide compares banks on their human rights – including rights to land and FPIC (to guard against land grabbing) – and corruption policies and practice, along with other issues. ERI is also active in this space and is working with Thailand's Extraterritorial Obligations Watch Working Group to protect human rights and improve human rights due diligence in Thailand's outward bound investments through the development of a National Action Plan on Business and Human Rights.<sup>71</sup> This is important given the high level of Thai investment in energy projects and large-scale sugar projects in Southeast Asia.

## PUSHING TO PHASE OUT IFI SUPPORT OF FOSSIL FUEL PROJECTS AND PROJECTS LINKED TO LAND GRABS

The IFIs, along with other potential sources of finance, should also cease their support for projects that extract and exploit – projects like the Tata Mundra coal-fired power plant in India and Dinant palm oil projects in

<sup>66</sup> see for example BankTrack [https://www.banktrack.org/campaign/coal\\_banks\\_policies](https://www.banktrack.org/campaign/coal_banks_policies)

<sup>67</sup> Fern (2016) Financing land grabs and deforestation: The role of EU banks and investors; and Market Forces (2018) Major banks are failing Vietnam by violating Equator Principles commitments in financing coal power projects, [https://www.banktrack.org/article/major\\_banks\\_are\\_failing\\_vietnam\\_by\\_violating\\_equator\\_principles\\_commitments\\_in\\_financing\\_coal\\_power\\_projects](https://www.banktrack.org/article/major_banks_are_failing_vietnam_by_violating_equator_principles_commitments_in_financing_coal_power_projects)

<sup>68</sup> Urgewald, [https://coalexit.org/sites/default/files/download\\_public/img\\_Proposed\\_Coal\\_Plants\\_%2Bheadline.png](https://coalexit.org/sites/default/files/download_public/img_Proposed_Coal_Plants_%2Bheadline.png)

<sup>69</sup> Urgewald, <https://coalexit.org/downloads>

<sup>70</sup> Fair Finance Guide International, <https://fairfinanceguide.org/ffg-international/home/>

<sup>71</sup> EarthRights International, Thai Outbound Investments in the Mekong Region and Myanmar <https://earthrights.org/publication/thai-outbound-investments-mekong-region-myanmar/>



Honduras. These projects have had devastating impacts on communities and earth rights defenders as the IFC's own Compliance Advisor Ombudsman has found.<sup>72</sup> Beyond these two specific cases, there is a need for all IFIs to cease support for fossil fuel projects, including coal mining, and projects that are implicated in large scale land-grabs. On the latter, it should be noted that IFI sponsored land 'reforms' have in many cases encouraged the alienation of collective title, and the privatization of that land, which has then enabled subsequent land grabbing.<sup>73</sup> Earth rights defenders are leading the fight taken up by their communities against those projects that will have a detrimental impact and that, in many cases, will further entrench poverty, which is at odds with the stated purpose of most IFIs.

The IFC recently announced that it has taken steps to reduce its exposure to coal through new financial intermediary (FI) investments which would see the IFC working with commercial banks, investment funds, and other financial institutions to shed coal from their investment portfolios.<sup>74</sup> Civil society groups have been critical of the IFC for supporting financial intermediaries that have coal exposures. The IFC's announcement shows that civil society campaigning is having an impact. This comes after an earlier announcement in 2017 that by 2019 the World Bank Group will no longer finance upstream oil and gas projects (except in rare circumstances).<sup>75</sup>

## STRENGTHENING FREE, PRIOR, AND INFORMED CONSENT LAWS

A lack of FPIC is a key underlying issue. Too often, projects that extract and exploit are developed without the consent of affected people. This is despite the near universal support from governments for the Universal Declaration on the Rights of Indigenous Peoples.<sup>76</sup> The International Labour Organization Convention 169 on Indigenous and Tribal Peoples (ILO 169) is another important part of the international human rights framework and also requires the FPIC of affected indigenous people. ILO 160 has been ratified by 22 countries – mostly in Central and South America – and unlike the UN Declaration, creates legally binding obligations for governments that ratify the

convention. FPIC is also required by a number of regional human rights frameworks, some national legislation, and by some IFIs and industry and multi-stakeholder initiatives. Unfortunately, companies and governments do not respect the rights of affected people to give or withhold their FPIC as is articulated in international human rights law; in countries where there is legislation requiring FPIC relevant laws are not properly implemented; and there is not universal coverage of laws requiring FPIC. There is a clear need to strengthen FPIC laws and implementation of these laws to address a structural issue that causes threats to earth rights defenders.

## FIGHTING SLAPP SUITS

Corporations are increasingly using Strategic Lawsuits Against Public Participation (SLAPP suits) to silence and intimidate their critics, and drain their resources and commitment. SLAPP suits are often targeted at the national or international NGOs supporting earth rights



ERI co-founders Katie Redford and Ka Hsaw Wa teaching in the early days of the EarthRights School.

<sup>72</sup> Compliance Advisor Ombudsman, [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=223](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=223) and [http://www.cao-ombudsman.org/cases/case\\_detail.aspx?id=171](http://www.cao-ombudsman.org/cases/case_detail.aspx?id=171)

<sup>73</sup> EarthRights International, *Juana Doe et al v. IFC*, <https://earthrights.org/case/juana-doe-et-al-v-ifc/>

<sup>74</sup> IFC (2018) Opinion: A new IFC vision for greening banks in emerging markets <https://www.devex.com/news/opinion-a-new-ifc-vision-for-greening-banks-in-emerging-markets-93599>

<sup>75</sup> World Bank Group (2017) World Bank Group Announcement at One Planet Summit, [http://www.worldbank.org/en/news/press-release/2017/12/12/world-bank-group-announcements-at-one-planet-summit?cid=CCG\\_TT\\_climatechange\\_EN\\_EXT](http://www.worldbank.org/en/news/press-release/2017/12/12/world-bank-group-announcements-at-one-planet-summit?cid=CCG_TT_climatechange_EN_EXT)

<sup>76</sup> The Declaration requires that States consult and cooperate in good faith with indigenous peoples in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources, Article 32(2) of the Universal Declaration on the Rights of Indigenous Peoples

defenders and have the effect, along with other threats, of shrinking civil space. SLAPP suits have been used predominantly in the U.S. where legal frameworks have enabled their proliferation.<sup>77</sup> While many U.S. states have now enacted anti-SLAPP legislation in response to this trend, corporations are now using the Racketeering Influenced and Corrupt Organizations (RICO) Act to similar effect. Use of SLAPP suits is not restricted to the U.S.<sup>78</sup> When successful, SLAPP suits make it even more difficult for civil society to shine a light on the collusion and corruption that enables the development of the projects that communities and earth rights defenders are fighting against.

Fighting SLAPP suits drains the defendants' resources, time, and morale, yet these suits must and are being defended and defeated. In one example, Energy Transfer Partners, developer of the Dakota Access Pipeline in the U.S., sued BankTrack for hundreds of millions of dollars.<sup>79</sup> BankTrack is a human rights and environmental NGO focused on private sector commercial banks that has been publicly critical of the pipeline's impacts on the land and water supplies of the Standing Rock Sioux. Energy Transfer Partners had argued BankTrack was involved in a criminal racketeering enterprise and claimed damages under the RICO Act. ERI served as consulting counsel for BankTrack in the lawsuit. The case was dismissed with the court ruling that Energy Transfer Partners' interpretation of RICO was "dangerously broad," and that the law cannot be used to connect public criticism to remote criminal activities and that using RICO in this way could "curtail almost any disagreeable, arguably protected speech."

ERI is also part of the 'Protect the Protest' campaign, which is working to protect free speech with a focus on use of SLAPP suits by corporations.<sup>80</sup>

## ENGAGING WITH CHINESE COMPANIES

Chinese companies, along with others from emerging economies, are increasingly active in the mining, oil and gas, agribusiness, logging and hydropower sectors. China's global footprint is growing which is resulting in Chinese companies increasingly in conflict with communities opposing Chinese natural resource projects. As a result of the rapid expansion of the Chinese overseas investment, civil society and academia have started to monitor and engage with Chinese investors. There is also a need to bring together earth rights defenders, affected community representatives and others in civil society to share information and strategize on ways to diminish the negative impacts of Chinese investments on local people and to ensure protection of earth rights defenders opposing Chinese projects. In one example, ERI and the Mott Foundation convened a meeting in late 2017 with activists from the Mekong region and Latin America concerned with increased Chinese outbound investment and the pattern of negative impacts that seem to follow these investments.<sup>81</sup> At this meeting participants shared strategies for identifying points of leverage and reaching out to major financiers and Chinese enterprises, and evaluated the guidelines that China has introduced to set environmental and human rights standards for Chinese overseas projects.

A number of environmental and human rights guidelines and standards apply to Chinese projects<sup>82</sup> including the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters' (CCCME) "Guidelines for Social Responsibility in Outbound Mining Investments", and the CCCME and OECD's "Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains". The Chinese-backed Asia Infrastructure Investment Bank (AIIB) is currently developing a grievance mechanism to address concerns, and complaints and resolve disputes

<sup>77</sup> Special Rapporteur on the rights to freedom of peaceful assembly and of association (undated) Info Note SLPPs and FoAA rights

<sup>78</sup> see for example use of SLAPP suits in South Africa to silence critics of an Australian mining project <https://www.fordfoundation.org/ideas/equal-change-blog/posts/how-companies-are-using-law-suits-to-silence-environmental-activists-and-how-philanthropy-can-help/> and in Thailand against labor rights activists <https://www.business-humanrights.org/en/natural-fruit-company-lawsuits-re-defamation-suits-against-andy-hall-thailand>

<sup>79</sup> EarthRights International, Court dismisses frivolous and "dangerously broad" lawsuit and NGO BankTrack for opposing Dakota Access Pipeline, <https://earthrights.org/media/court-dismisses-lawsuit-against-banktrack/>

<sup>80</sup> EarthRights International, Major global NGOs launch "protect the protest" task force, <https://earthrights.org/media/major-global-ngos-launch-protect-the-protest-task-force/>

<sup>81</sup> EarthRights International (2017) A dialogue on Chinese investment in the Global South: Challenges and possible solutions, <https://earthrights.org/blog/a-dialogue-on-chinese-investment-in-the-global-south-challenges-and-possible-solutions/>

<sup>82</sup> for more information see Inclusive Development International (2017) Safeguarding People and the Environment in Chinese Investments: A Guide for Community Advocates



from project-affected people.<sup>83</sup> This mechanism might be useful for people affected by AIIB projects – such as hydropower projects, which are a priority areas for the AIIB.

Many Chinese standards are not accompanied by grievance and enforcement mechanisms, which makes it difficult for affected communities and earth rights defenders to hold companies accountable. However, standards are usually approved by Chinese ministries and other high-level government institutions and as such do carry some 'normative' weight. While there is generally awareness among Chinese companies – especially the bigger companies – of their responsibilities, including to comply with international standards, there remain many challenges. Nevertheless, engaging with Chinese companies around the legitimacy and safety of human rights defenders is both possible and a potentially useful approach – and often the only option – to improving the practices of Chinese companies operating overseas. Any experience gained from engaging with these mechanisms and guidelines needs to be shared among earth rights defenders and with others in civil society to improve our collective effectiveness in engaging with Chinese companies.

## USING THE GLOBAL HUMAN RIGHTS REGIME

The global human rights regime can both help keep defenders safe by drawing international attention to their specific situations and, more importantly, by drawing attention to some of the structural issues that cause threats to defenders. Internationally, this includes use of the Universal Periodic Review process and the special procedures of the Human Rights Council, such the Special Rapporteur on the situation of human rights defenders or Special Rapporteur on the rights of indigenous peoples both who are able to act on individual cases and intervene directly with governments. The Universal Periodic Review process could also be used to highlight the ways that a government is undermining the ability of earth



At the launch of the Protect the Protest task force, activists and advocacy groups threatened by SLAPPs (Strategic Lawsuits Against Public Participation).

rights defenders to do their work in a safe and enabling environment, facilitating the shrinking of civil society space for the environment, preventing the victims of human rights abuse from obtaining justice, or enlarging gaps in fulfilling its extraterritorial human rights obligations. ERI and our partners in Peru recently engaged in China's Universal Periodic Review process highlighting human rights violations linked to Chinese mining companies in Peru.<sup>84</sup> Concerns regarding threats against women earth rights defenders can also be brought to the attention of the Committee on the Elimination of Discrimination Against Women.

Similar procedures exist within the International Labour Organization (ILO) where a Committee of Experts regularly reviews states' implementation of ILO conventions and recommendations. ERI contributed to the 2018 alternative report on Peru's Compliance with ILO Convention 169 on the rights of indigenous peoples.<sup>85</sup> Among other issues, the alternative report highlights criminalization of the work of human rights defenders in Peru noting the negative impact this has on indigenous peoples, their communities, leaders, and representative organizations throughout the country.

<sup>83</sup> Asia Infrastructure Investment Bank (2017) Draft AIIB Complaints Handling Mechanism for Phase II Public Consultation [https://www.aiib.org/en/policies-strategies/\\_download/consultation/draft-AIIB-complaint-handling-mechanism.pdf](https://www.aiib.org/en/policies-strategies/_download/consultation/draft-AIIB-complaint-handling-mechanism.pdf)

<sup>84</sup> Universal Periodic Review of People's Republic of China Peru National Alternative – CSO Report (2018) <http://chinaambienteyderechos.lat/reports/>

<sup>85</sup> <http://derechoshumanos.pe/2018/10/informe-alternativo-2018-sobre-el-cumplimiento-del-convenio-169/>



Earth Rights Defenders at the Forest Defenders Workshops at the Mitharsuu Center for Leadership and Justice.

At a regional level, the IACHR, for example, has powers to investigate the situation of individuals whose human rights are at risk and make recommendations to the responsible government accordingly. The IACHR is also able to request urgent measures or order precautionary measures to prevent and protect against potential serious and irreparable harm to persons or groups of persons who are in imminent peril.<sup>86</sup> In Asia, civil society is working to improve the effectiveness of regional human rights institutions, primarily the ASEAN Intergovernmental Commission on Human Rights, which has a potentially useful role to play here.

ERI has supported communities seeking precautionary measures from the IACHR. In one case, ERI supported indigenous communities affected by 50 years of oil spills and contamination from the Norperuano Pipeline in northern Peru who successfully received precautionary

measures.<sup>87</sup> The measures called on the Peruvian Government to ensure that the affected communities have access to adequate medical care and potable water. The Commission's decision also calls on the Peruvian Government to carry out medical screenings to determine the level of contamination that affected community members have been exposed to, with the aim to then provide appropriate medical treatments. ERI is also representing the U'wa Nation from Colombia before the IACHR. The U'wa have suffered the impacts of hydrocarbon, mining and tourism projects, and militarization of their territories, developed without prior consultation. ERI's merits brief to the Commission argues that the Colombian State is responsible for these human rights violations and calls for reparation and the cessation of aggressions against the U'wa.<sup>88</sup> The case is highly symbolic because it is the first brought against Colombia in relation to indigenous peoples' rights.

<sup>86</sup> Inter-American Commission on Human Rights, About precautionary measures, <http://www.oas.org/en/iachr/decisions/about-precautionary.asp>

<sup>87</sup> EarthRights International, Norperuano pipeline contamination, <https://earthrights.org/case/norperuano-pipeline-contamination/>

<sup>88</sup> EarthRights International, The U'wa Nation continues lawsuit against Colombia at the Inter-American Commission for Human Rights, <https://earthrights.org/media/the-uwa-nation-continues-lawsuit-against-colombia-at-the-inter-american-commission-for-human-rights/>



## Reveal

### REVEALING AND SHINING A LIGHT ON COLLUSION AND CORRUPTION

There are many actions that can be taken to reveal and shine a light on corruption and collusion. This includes use of anti-corruptions laws and demanding greater revenue transparency in those industries most frequently connected to threats and attacks against earth rights defenders.

### ENFORCING GLOBAL ANTI-CORRUPTION LAWS AND POLICIES IN THE NATURAL RESOURCE SECTOR

There is growing global awareness of the connections between corruption and human rights violations.<sup>89</sup> Corruption networks have been linked to attacks on earth rights defenders,<sup>90</sup> including the killing of Honduran activist Berta Caceres. To address this, anti-corruption laws must be strengthened and enforced. These laws have the power to reveal collusion between corrupt and powerful interests. Two examples of U.S. anti-corruption legislation that have extraterritorial reach are given below – the first focuses on the actions of foreign nationals and the second on people and companies linked to the U.S. The development and enforcement of similar legislation in other jurisdictions is necessary to ensure better global coverage.

The U.S. Global Magnitsky Human Rights Accountability Act allows the U.S. President (or his or her delegate) to block or revoke travel visas or impose sanctions on any foreign national responsible for gross violations of internationally recognized human rights, and on government officials (or their senior associates) responsible for “ordering, controlling, or otherwise directing, acts of significant corruption, including . . . corruption related to government

contracts or the extraction of natural resources”.<sup>91</sup> The act has the potential to expose those who perpetrate abuse, and to bring some accountability and end impunity for acts of significant corruption. Its focus on corruption is important given the broader context within which earth rights defenders are working. Important for civil society is that credible information obtained by NGOs that monitor violations of human rights should be taken into consideration in determining whether or not the U.S. will impose sanctions using the act.<sup>92</sup> Other jurisdictions such as the UK have, or are considering developing, similar legislation.

One person who has been hit with sanctions is Israeli national Dan Gertler.<sup>93</sup> Gertler built a fortune worth hundreds of millions of dollars’ through opaque and corrupt mining deals in the Democratic Republic of the Congo (DRC). Gertler used his close friendship with DRC President Joseph Kabila to act as a middleman for mining asset sales, requiring some multinational companies to go through Gertler to do business with the Congolese state.<sup>94</sup> As a result, between 2010 and 2012 alone, the DRC reportedly lost over \$1.36 billion in revenues from the underpricing of mining assets that were sold to offshore companies linked to Gertler.<sup>95</sup> Some of the companies connected to Gertler have been accused of serious human rights abuse.<sup>96</sup>

The U.S. Foreign Corrupt Practices Act (FCPA) prohibits the payment of money or anything of value to a foreign

207  
KILLINGS OF  
LAND AND  
ENVIRONMENT  
DEFENDERS

were documented in 2017, the worst on record,<sup>1</sup> and 2018 is likely to be as bad.<sup>2</sup>

<sup>1</sup> Global Witness (2017) At what cost? Irresponsible business and the murder of land and environmental defenders in 2017

<sup>2</sup> John Vidal in the Huffington Post, 2018 Is On Pace To Be Another Bloody Year For Environmental Defenders Around The World, [https://www.huffingtonpost.com.au/entry/2018-grim-year-environmental-defenders-around-world\\_us\\_5b5db080e4b0876eda3016b](https://www.huffingtonpost.com.au/entry/2018-grim-year-environmental-defenders-around-world_us_5b5db080e4b0876eda3016b)

<sup>89</sup> Harvard Kennedy School Carr Centre for Human Rights Policy (2018) Corruption and human rights: The linkages, the challenges and paths for progress

<sup>90</sup> Carnegie Endowment for International Peace (2017) When corruption is the operating system: The case of Honduras

<sup>91</sup> Global Magnitsky Human Rights Accountability Act, Section 3(a)(3) <https://www.congress.gov/bills/114/congress/114th-congress/senate-bill/284/text>

<sup>92</sup> Global Magnitsky Human Rights Accountability Act, Section 3(c)(2) <https://www.congress.gov/bills/114/congress/114th-congress/senate-bill/284/text>

<sup>93</sup> US Department of the Treasury, Press release: United States sanctions human rights abusers and corrupt actors across the globe, <https://home.treasury.gov/news/press-releases/sm0243>

<sup>94</sup> such as Glencore for example (Global Witness (2014) Glencore and the gatekeeper)

<sup>95</sup> US Department of the Treasury, Press release: United States sanctions human rights abusers and corrupt actors across the globe, <https://home.treasury.gov/news/press-releases/sm0243>

<sup>96</sup> see for example, SOMO (2016) Cobalt blues: Environmental pollution and human rights violations in Katanga's copper and cobalt mines



Earth rights defender Jorri Odochao with EarthRights School students speaking about the specific conservation land laws that criminalize their traditional agricultural practices in Ban Nong Tao, Thailand.



**The Special Rapporteur on the rights of indigenous peoples found that extractive industry projects have caused the degradation and destruction of ecosystems which have devastating resultant effects on indigenous peoples' subsistence economies; the depletion and contamination of water resources which has harmful effects on available water for drinking, farming and grazing cattle; the loss of traditional livelihoods, which consequently threatens food security; and the forced emigration of indigenous peoples from their traditional lands – either because of the taking of those lands or environmental degradation caused by resource extraction projects – which has had an overall negative impact on indigenous cultures and social structures.<sup>1</sup>**

<sup>1</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/18/35, 11 July 2011

official in order to influence them to obtain or retain business. The act applies to companies listed in U.S. securities exchanges, U.S. nationals and companies whose principle place of business is the U.S., and other nationals and companies that have some connection – through use of U.S. banks, even if only incidentally, for example – to the U.S. The FCPA has broad extraterritorial reach and is actively enforced – resulting in corrupt activity routinely exposed – with multi-million dollar fines regularly imposed.<sup>97</sup> In one case, the Brazilian oil-and-gas company *Petróleo Brasileiro S.A.* agreed to a \$1.78 billion fine for a massive bribery and bid-rigging scheme. Some of the companies subject to FCPA action have also been accused of serious human rights abuse.<sup>98</sup> Similar anti-corruption legislation exists in other jurisdictions including the UK and Canada.

### **EFFECTIVELY IMPLEMENT MONITORING AND CONTROLS, AND PROMOTING TRANSPARENCY OF SOURCING ALONG NATURAL RESOURCE SUPPLY CHAINS**

Effectively implementing monitoring and controls, and promoting transparency of sourcing along natural resource supply chains may support efforts to expose collusion, and fight corruption and human rights abuse. Timber, gold, and diamonds are obvious places for this work to focus on but there are others, including in the

supply chains of food products such as sugar, bananas, palm oil, and others implicated in large scale land grabs. The example of the Dinant palm oil corporation in Honduras is particularly alarming because of the scale and severity of the violence by hit men, military forces, and private security guards employed by the company against the farmers, community leaders, and their lawyers, fighting the grabbing of their lands for expansion of Dinant's palm oil plantations.<sup>99</sup> It clearly shows that when a resource is deemed to be valuable it can become connected with corrupt and violent behavior as some actors seek to monopolize the wealth generated by the resource. In such cases earth rights defenders are fighting very powerful interests who aren't afraid to attack and threaten them. Increasing attention should and is also being paid to the booming extraction of minerals and metals such as cobalt, lithium, nickel, manganese, and graphite that are needed

Indigenous peoples are vastly over-represented in the number of earth rights defenders killed each year – representing almost

**40%**  
OF ALL VICTIMS  
KILLED IN 2016.<sup>1</sup>

<sup>1</sup> Global Witness (2016) *Defenders of the earth: Global killings of land and environmental defenders in 2016*

<sup>97</sup> US Securities and Exchange Commission, SEC enforcement actions: FCPA cases, <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>

<sup>98</sup> see for example, Above Ground (2017) *Swept Aside: An investigation into human rights abuse at Kinross Gold's Morro do Ouro mine*

<sup>99</sup> EarthRights International, *Juana Doe et al v. IFC*, <https://earthrights.org/case/juana-doe-et-al-v-ifc/>

**Many more earth rights defenders have been killed in Brazil, the Philippines, and Colombia than elsewhere although the number of people killed in Peru, India, the Democratic Republic of the Congo, Nicaragua and Honduras is also high.<sup>1</sup>**

<sup>1</sup> Global Witness (2017) At what cost? Irresponsible business and the murder of land and environmental defenders in 2017; and Global Witness (2015) On dangerous ground: 2015's deadly environment the killing and criminalization of land and environment defenders worldwide

for renewable energy and other “green” technologies. This new wave of extraction holds the potential for increasing negative impacts on the rights of indigenous peoples, local communities and earth rights defenders.<sup>100</sup>

Industry and multi-stakeholder initiatives such as the Roundtable on Sustainable Palm Oil, Forest Stewardship Council, Kimberley Process (for diamonds) and the Voluntary Principles on Security and Human Rights have

some value in promoting transparency, and more ethical behavior, along supply chains (or at certain points in the supply chain). The OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (and its supplements on tin, tantalum, tungsten, and gold) and the EU's Conflict Minerals Regulation (which will come into effect from 2021) serve a similar purpose. However, the ability of initiatives of this type to be effective mechanisms for protecting earth rights defenders depends on what, if any, sanctions exist for breach of the initiative's standards; whether affected people or earth rights defenders can formally lodge grievances in a safe and secure manner that is free from the threat of reprisal, and receive redress; and whether the initiative is able to improve wider industry practice and behavior. In any case they must not be seen as substitutes for fulfilment of corporations' legal obligations to respect human rights.

## REVENUE TRANSPARENCY

A lack of information and transparency, opaque decision-making processes, collusion between governments and corporations, and corruption exacerbates the threats against earth rights defenders. Oil, gas, and mining project payments in particular made in secret to governments make it too easy for officials to misuse or outright steal their people's money, and difficult for NGOs, journalists, and civil society to track government revenues and root out fraud, waste, and corruption. Public disclosure of the project-level payments made by companies to governments for the extraction of natural resources shines a light on these payments and promotes transparency.

A number of mechanisms exist to promote revenue transparency in the extractive industries. These include the Extractive Industries Transparency Initiative that is implemented by national governments in collaboration with industry operating in that country and local civil



Selen Çatalyürekli and Zephania Repollo talk about gender specific threats to Women Human Rights Defenders at the Forest Defenders Conference.

<sup>100</sup> The Washington Post, Tossed aside in the 'white gold' rush, <https://www.washingtonpost.com/graphics/business/batteries/tossed-aside-in-the-lithium-rush/>





Pa Saw Phaw, EarthRights School Alumni and defender from Myanmar.

society. Another mechanism is legislation that applies extraterritorially such as the Canadian Extractive Sector Transparency Measures Act (ESTMA). This requires mandatory reporting of payments by Canadian mining, oil, and gas companies to government-related entities in both Canada and overseas. The mandatory reporting requirements apply to Canadian companies listed on a Canadian stock exchange and private companies that meet a certain threshold, and apply when total payments exceed CAD \$100,000 in a financial year. Reporting is on a country-by-country and project-by-project basis.

In the U.S., ERI has played a leading role in advocating for and legally defending Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act which requires payment disclosure.<sup>101</sup> ERI has served as counsel

to Oxfam America in legal actions and advocacy around implementation of Section 1504. The organization filed two lawsuits against the Securities and Exchange Commission (SEC) over its failure to meet the deadline set by the U.S. Congress to develop the rules to implement section 1504, and intervened in an industry lawsuit against the commission. The SEC eventually issued a strong rule in June 2016, under which U.S.-listed companies would have started reporting on their payments to governments. However, the Trump administration, in one of its first acts, gutted the rule, necessitating another rule-making process by the SEC. ERI, along with its allies in Publish What You Pay-USA continue to engage with the U.S. Congress and SEC to try to ensure that a strong rule is ultimately produced.

<sup>101</sup> EarthRights International, The public's rights to know what companies are paying their governments, <https://earthrights.org/what-we-do/extractives-industries/extractive-industry-transparency/>



Pathi Jorri, a Pakayaw (Karen) elder and land rights defender in Ban Nong Tao Village, Thailand.

## Redress

### OBTAINING REDRESS AND JUSTICE FOR VICTIMS

There are many actions that can be taken to help obtain redress and justice for victims of human rights abuse, and to end the impunity that the perpetrators of attacks against earth rights defenders enjoy. Actions include use of transnational litigation and efforts to strengthen global legal protections.

### USING TRANSNATIONAL LITIGATION TO DEFEND DEFENDERS

Using the power of law and litigation is core to ERI's mission and remains a focus of our earth rights defender strategy. Earth rights defenders are subjected to an increasing number of threats and attacks due in part to the impunity that the perpetrators of these attacks enjoy. Unless there is accountability for those responsible – and justice for victims – earth rights defenders will remain vulnerable to attack. Transnational litigation is one means of holding the perpetrators legally accountable.

**Work by the Business and Human Rights Resource Centre and Global Witness shows that threats and attacks against human rights defenders are most frequently connected to the mining, oil and gas sectors, and to agribusiness, logging and hydropower projects.<sup>1</sup> Further, 25% of all threats and attacks against human rights defenders in 2016 and 2017 were connected to companies headquartered in Canada, China and the United States.<sup>2</sup>**

<sup>1</sup> See for example Global Witness (2017) At what cost? Irresponsible business and the murder of land and environmental defenders in 2017; Global Witness (2015) On dangerous ground: 2015's deadly environment the killing and criminalization of land and environment defenders worldwide; and Business and Human Rights Resource Centre (2017) Latin American Briefing: Focus on Human Rights Defenders under threat & attack

<sup>2</sup> Business and Human Rights Resource Centre in Report of the UN Special Rapporteur on the situation of human rights defenders, A/72/170, 19 July 2017



## STRENGTHENING GLOBAL LEGAL PROTECTIONS FOR DEFENDERS AND ENDING IMPUNITY

Global legal protections for earth rights defenders must be strengthened as well as global accountability mechanisms for those responsible for attacks. The U.S. has two relevant statutes with extraterritorial reach: the Global Magnitsky Act and the Alien Torts Statute (ATS), whose use in global corporate human rights cases ERI helped pioneer more than two decades ago. Replication of these legal protections in other jurisdictions is needed to strengthen global legal protections for earth rights defenders, and to obtain redress and justice for victims. An example of a regional mechanism – the Escazú Agreement – is also discussed below.

As has been noted above, the U.S. Global Magnitsky Human Rights Accountability Act allows the U.S. President to impose sanctions on foreign nationals responsible for gross violations of internationally recognized human rights. Specifically the act applied to those people responsible for human rights abuse committed against people who seek to ‘expose illegal activity carried out by government officials; or obtain, exercise, defend, or promote internationally recognized human rights and freedoms . . .’<sup>102</sup> Coordinated efforts by civil society organizations, taking their cues from earth rights defenders, may usefully ensure this law is used against those responsible for gross violations of the rights of earth rights defenders.

The ATS has been an important tool allowing victims and survivors of some of the most horrific abuses – including torture, crimes against humanity, and genocide – to sue those responsible in the U.S. and to obtain justice.<sup>103</sup> While early human rights ATS cases were primarily filed against individuals, beginning in the 1990s, a number of cases were filed against multinational corporations for their complicity in human rights abuses. In 1996, ERI filed *Doe v.*



A defender in Dawei, Myanmar.

Unocal on behalf of Burmese villagers who were enslaved, tortured, and raped by Myanmar military forces providing security for Unocal's pipeline.<sup>104</sup> It was the first ATS case filed against a corporation to be allowed to proceed, and established that corporations and their executives could be held legally responsible under the ATS for violations of international human rights law. Unocal agreed to compensate the plaintiffs. ERI has filed several other ATS claims involving serious human rights abuse against earth rights defenders.<sup>105</sup>

But the successful use of the ATS as a tool for corporate accountability also made it a target. The corporate lobby has devoted enormous energy and resources to undermining the ATS. In 2013, the Supreme Court held that in the *Kiobel* case, Shell could not be sued for abuses occurring outside the U.S. because it was a foreign corporation with a ‘mere corporate presence’ in the U.S. only.<sup>106</sup> This decision ran contrary to 30 years of ATS cases based on violations occurring overseas.<sup>107</sup>

<sup>102</sup> Global Magnitsky Human Rights Accountability Act, Section 3(a)(1) <https://www.congress.gov/bills/114th-congress/senate-bill/284/text>

<sup>103</sup> EarthRights International, The Alien Tort Statute: Holding human rights abusers accountable, <https://earthrights.org/how-we-work/litigation-and-legal-advocacy/legal-strategies/alien-tort-statute/>

<sup>104</sup> EarthRights International, *Doe v. Unocal*, <https://earthrights.org/case/doe-v-unocal/#timelineff69-1a905f26-f4b6>

<sup>105</sup> *Wiwa v. Royal Dutch Shell* for example (see EarthRights International, *Wiwa v. Royal Dutch Shell*, <https://earthrights.org/case/wiwa-v-royal-dutch-shell/>)

<sup>106</sup> EarthRights International, The Alien Tort Statute: Holding human rights abusers accountable, <https://earthrights.org/how-we-work/litigation-and-legal-advocacy/legal-strategies/alien-tort-statute/>

<sup>107</sup> EarthRights International (2013) *Out of Bounds: Accountability for corporate human rights abuse after Kiobel*

The impact of the *Kiobel* case remains unclear today. Some courts have dismissed ATS cases under the *Kiobel* decision, even where they involve a U.S. defendant, while other courts have reached different conclusions in cases involving foreign conduct. Nevertheless, the ATS continues to apply and will continue to provide a remedy for some survivors of human rights abuse (including earth rights defenders) – although exactly how and to whom will be determined by the courts. ERI continues to pursue claims in U.S. courts, including in *Doe v. Chiquita Brands International*, which was initially filed under the ATS but is now proceeding under Colombian law.

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, known as the Escazú Agreement, was signed by 12 countries in September 2018. The Escazú Agreement aims to guarantee the full and effective implementation of the rights of access to environmental information, public participation in the environmental decision-making process, and access to justice in environmental matters. Importantly, the Agreement also seeks to guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters and requires States to take appropriate, effective, and timely measures to prevent, investigate and punish attacks, threats, or intimidations against human rights defenders in environmental matters.<sup>108</sup> The Escazú Agreement is the first of its kind and is legally binding on those countries that ratify it. The Agreement is an important step in strengthening protections for earth rights defenders in a particularly dangerous part of the world for these defenders. It offers civil society an additional tool to potentially hold governments accountable for their actions, including to ensure justice for victims and that perpetrators are held accountable.

## CHALLENGING WORLD BANK GROUP IMMUNITY

Compounding the silence in IFI policies regarding the protection of earth rights defenders, which is discussed above, is the immunity from legal action that international organizations, such as the IFC currently enjoy in U.S. courts. This immunity means there cannot be any redress for people harmed by IFC projects.

ERI is representing in the U.S. Supreme Court (in *Budha Ismail Jam, et al vs IFC*) Indian fisher and farmer communities who are challenging the claim made by the IFC that its special status as an international organization means that it is immune from legal action. The IFC is arguing that it cannot be sued or held liable in U.S. courts for its role in funding the controversial Tata Mundra coal-fired power plant in Gujarat, India, that has devastated these communities.<sup>109</sup> If the court rules in favor of the communities in this case, it will have far reaching implications as it would increase the accountability of the IFC and other international organizations for their environmental and human rights impacts, for its



Ruth Alipas, a defender from the indigenous community of San José de Uchupiamonas in Bolivia, at the Latin American Seminar on Indigenous Legal Defense.

<sup>108</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Article 9

<sup>109</sup> EarthRights International, *Budha Ismail Jam, et al v. IFC*, <https://earthrights.org/case/budha-ismail-jam-et-al-v-ifc/#documentsff69-1a905f26-f4b6> and U.S. Government Opposes “Absolute” Immunity for World Bank Group in Brief to SCOTUS, <https://earthrights.org/media/u-s-government-opposes-absolute-immunity-for-world-bank-group-in-brief-to-scotus/>





Nguyen Tuan Long, a Vietnamese participant at the Mekong Legal Advcacy Institute at ERI's Mitharsuu Center for Leadership and Justice.

environmental and human rights impacts, including in relation to the protection of earth rights defenders. The outcomes of *Budha Ismail Jam, et al, vs IFC* will have implications for *Juana Doe vs IFC*. In *Juana Doe vs IFC*, ERI and other human rights lawyers are representing Honduran farmers sue the World Bank Group for aiding and abetting gross violations of human rights. This suit arises out of the substantial financial support the IFC and the IFC Asset Management Corporation (IFC-AMC),

invested in Dinant, the Honduran palm-oil companies owned by the late Miguel Facussé, and which have been at the centre of a decades-long and bloody land-grabbing campaign in the Bajo Aguán region of Honduras. The Plaintiffs in the suit allege that they are among the scores of farmers in the Bajo Aguán who have been shot, had family members killed and were terrorized by Dinant and security forces working on its behalf.<sup>110</sup>

<sup>110</sup> EarthRights International, *Honduran Farmers Sue World Bank Group for Human Rights Violations*, <https://earthrights.org/media/honduran-farmers-sue-world-bank-group-for-human-rights-violations/>



## Conclusion

Earth rights defenders are fighting to protect their rights, and the rights of their communities, including to food and clean water and to a healthy and safe environment. Earth rights defenders and their supporters are up against powerful vested interests with influence and money, and who aren't afraid to attack and threaten those who stand up to them. Too often earth rights defenders pay with their lives. However, together we can fight back. There is an urgent need for our collective efforts to be scaled up and for civil society – working with and led by earth rights defenders – to act in a coordinated and strategic way to reduce the number and severity of threats and attacks. These efforts must pay attention to those earth rights defenders most marginalized – in particular indigenous earth rights defenders and women earth rights defenders – and therefore those most vulnerable to attacks and threats.

ERI believes that the global protection strategy outlined in this report will help to protect and keep earth rights defenders safe; address the structural issues that are causing threats to earth rights defenders including to prevent the shrinking of civil space; reveal and shine a light on collusion and corruption; and obtain justice for victims by holding the perpetrators accountable. The global protection strategy is a plan of action.

**The Special Rapporteur on the rights of indigenous peoples has concluded that natural resource extraction and other major development projects in or near indigenous territories is one of the most significant sources of abuse of the rights of indigenous peoples worldwide.<sup>1</sup>**

<sup>1</sup> Report of the Special Rapporteur on the rights of indigenous peoples, A/HRC/18/35, 11 July 2011

Marianna, an indigenous Tacana woman, defends her territory from oil exploration.



## A global action agenda requires us all to:

- 1 Provide the tools and strategies necessary to ensure earth rights defenders' security and safety and provide opportunities for earth rights defenders to participate in training programs to strengthen their advocacy skills and knowledge and build broader support networks..
- 2 Use national litigation and local legal strategies to defend individual earth rights defenders – including against illegal and arbitrary arrest and detention – and to push back on restrictive laws on protest and assembly and that otherwise criminalize the work of earth rights defenders.
- 3 Campaign for the IFIs to develop policies and practices that mitigate risks against earth rights defenders, and to develop an urgent response system to address threats to earth rights defenders critical of IFI funded projects. Similarly, strengthen corporate accountability including so that individual companies develop policy commitments to respect the human rights of earth rights defenders.
- 4 Work to end ties between corporations and police and paramilitaries to prevent the occurrence of extreme violence and human rights abuse against earth rights defenders, and end impunity for violence by police and paramilitaries.
- 5 Fight those projects that extract and exploit and that are most frequently connected to threats and attacks against earth rights defenders. This must include fighting individual fossil fuel projects, and projects linked to land grabs, and campaigning for financial institutions – including commercial banks and the IFIs – to cease their support for these projects. It also includes engaging with Chinese companies on the legitimacy and safety of earth rights defenders.
- 6 Strengthen FPIC laws and implementation of these laws so that those projects that extract and exploit, and that do not have the consent of affected people, are not developed.
- 7 Fight those practices – particularly use of SLAPP suits by corporations – that makes it difficult for civil society to criticize those behind the projects that earth rights defenders are fighting against. Also use the global human rights regime to draw attention to efforts by governments to shrink civil space.
- 8 Fight corruption with a focus on strengthening global anti-corruption laws and using existing laws to reveal collusion between governments and corporations, and ending impunity for corruption.
- 9 Implement monitoring and controls, and promote transparency of sourcing along natural resource supply chains especially in supply chains characterized by illegal and extreme use of violence against earth rights defenders. Also ensure the enactment of legislation requiring revenue transparency so that the payments made between companies and governments in relation to those projects that extract and exploit are known.
- 10 Use transnational litigation to ensure accountability for those responsible for attacks against earth rights defenders and justice for victims, and to remove legal immunity where any such immunity is enjoyed by those potentially responsible for attacks and threats against earth rights defenders.
- 11 Strengthen and expand global legal protections for earth rights defenders, and global accountability mechanisms for those responsible for threats and attacks against earth rights defenders.





**Amazon Office**

infoperu@earthrights.org  
Lima, Peru

**Mekong Office**

infoasia@earthrights.org  
Chiang Mai, Thailand

**Myanmar Office**

infoasia@earthrights.org  
Yangon, Myanmar

**U.S. Office**

infousa@earthrights.org  
Washington, DC

infousa@earthrights.org • +1 (202) 466-5188



@EarthRightsIntl • www.earthrights.org