



Comments by EarthRights International on *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders*

Submitted to Global Affairs Canada

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INTRODUCTION

EarthRights International (ERI) welcomes the opportunity to provide feedback on *Voices at Risk: Canada's Guidelines on Supporting Human Rights Defenders*.

ERI is a nonprofit international human rights organization with offices in the United States, Southeast Asia, and the Amazon. For 25 years, we have worked to support human rights defenders around the world, while using legal strategies to promote corporate accountability in the natural resource sectors.

As other international NGOs such as Global Witness and Frontline Defenders have reported, the number and severity of threats directed towards human rights defenders, and environmental and land defenders in particular, has reached dangerous levels and continues to grow.¹ Drawing from ERI's experience supporting environmental and land defenders (who we refer to as "earth rights defenders"), we recently published *Fighting Back: A Global Protection Strategy for Earth Rights Defenders*.² This strategy is based on a four-part framework:

- **Protect** – address immediate threats to earth rights defenders, including to keep them safe;
- **Prevent** – address the structural issues that cause threats to earth rights defenders, including to prevent the shrinking of space for civil society and indigenous rights;
- **Reveal** – shine a light on corruption and expose those who perpetrate abuses; and
- **Redress** – obtain justice for victims by holding the perpetrators accountable.

We submit the following recommendations for consideration by Global Affairs Canada and would be happy to elaborate on any of these points in more detail.

STATEMENT OF VALUES

Section 1.1 (Objectives of Canada's guidelines) outlines the two key values that underlie *Voices at Risk*: "do no harm" and the universality and inalienability of human rights. We believe that

¹ See e.g., Global Witness, *At What Cost? Irresponsible business and the murder of land and environmental defenders in 2017* (July 2018), <https://www.globalwitness.org/en/campaigns/environmental-activists/at-what-cost>; Frontline Defenders, *Global Analysis 2018*, <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2018>.

² The report is available at <https://earthrightsdefenders.org>.

Global Affairs Canada could further align this statement of values with those of the United Nations by adding an additional key value: the human rights principle of non-discrimination. Applying the principle of non-discrimination would help ensure that the government’s interventions account for the differential risks and threats facing women, indigenous peoples, and LGBTI defenders.

RISKS AND THREATS TO HUMAN RIGHTS DEFENDERS

We encourage Global Affairs Canada to add a “legal” dimension to Section 1.4 (Risks and threats to human rights defenders). Human rights defenders around the world are being criminalized for their legitimate actions to protect communities and the environment. The legal system – both criminal and civil – is being used to silence the work of defenders. Governments, for example, have brought spurious criminal charges of terrorism, racketeering, and disturbing the peace against defenders. Legislatures have adopted laws that criminalize peaceful assembly and free speech. The courts are being used as a weapon of repression rather than a tool for justice. This trend is occurring across the world, including in the United States.

Voices at Risk mentions that non-state actors such as criminal organizations and terrorist groups are also targeting human rights. This is undoubtedly true, but in our experience, corporations are also actively involved in targeting defenders. In some cases, corporations are using paramilitary and security forces to inflict violence against their critics. In Honduras, for example, corporations in the palm oil and hydropower sectors are tapping into existing criminal networks as they attempt to seize land and resources from local communities, hiring assassins and death squads to intimidate and murder human rights defenders who oppose them.

Corporate targeting of human rights defenders is also occurring within the courts, especially using an intimidation tactic called “Strategic Lawsuits Against Public Participation” (or SLAPPs).³ In the United States, for example, several corporations have attempted to target environmental organizations with frivolous lawsuits that allege violations of the U.S. Racketeer Influenced Corrupt Organization (RICO) Act, an anti-mafia law. The purpose of these bullying lawsuits is not to win in court, but to drain an opponent’s resources and silence criticism of corporate activity. Organizations such as the Business and Human Rights Resource Centre have started to track the rising use of SLAPPs across the world.⁴

ERI attorneys have taken on a number of cases in Peru, Myanmar, and the United States, in which human rights defenders are being targeted by corporations. For more examples of the tactics that corporations are using against human rights defenders, we invite you to read our report, *Fighting Back: A Global Protection Strategy for Earth Rights Defenders*.⁵

³ For more information on SLAPPs, please visit the website of the Protect the Protest coalition, <https://www.protecttheprotest.org>.

⁴ See e.g., Business and Human Rights Resource Center, “Lawsuits by companies seek to silence accountability advocates,” <https://www.business-humanrights.org/en/lawsuits-by-companies-seek-to-silence-accountability-advocates>.

⁵ Case studies are available at <https://earthrightsdefenders.org>.

OVERALL APPROACH

Section 2 of *Voices at Risk* summarizes the overall approach that Global Affairs Canada uses to support human rights defenders. In general, we believe that this section of the guidelines would benefit from greater clarity, in order to help Missions more easily articulate the Canadian government's policy to stakeholders. Currently, it is not entirely clear how this section is intended to differ from Section 3 (Guidelines to supporting human rights defenders at risk).

Additionally, we believe that Global Affairs Canada could have a more impactful approach in its engagement with multilateral institutions by incorporating the following elements:

- Including a specific reference to international financial institutions (such as the World Bank Group) in this section;
- Advocating for human rights defenders not only during rule-making and standard-setting activities, but also with respect to issues arising out of specific development projects and multilateral operations.
- Supporting the mainstreaming of human rights defender considerations into other types of assistance, such as economic development, military and security assistance, and humanitarian assistance.

GUIDELINES

Section 3 describes a toolbox of interventions available to Missions when providing support to human rights defenders. As currently presented, however, the list of interventions is unwieldy; it is unclear when each type of intervention is appropriate. We recommend that Global Affairs Canada organize this list of tools into the following five categories, each of which requires different types of activities and interventions: (1) ***information gathering*** – the ongoing process to understand the threats facing human rights defenders and to establish relationships with key stakeholders; (2) ***preventative measures*** – to be taken in high risk areas before a specific threat arises, (3) ***protection measures*** – to support human rights defenders facing imminent threats, (4) ***redress measures*** – to support human rights defenders and their families in seeking justice when a violation has already occurred, and (5) ***special considerations*** in situations that involve Canadian citizens, companies, or the government.

As discussed in more detail below, organizing the guidelines in such a manner might also help Global Affairs Canada to articulate a more comprehensive approach for providing support to women, indigenous, and LGBTI defenders.

(1) Information Gathering

Designating an in-country point person for human rights defenders. Section 3.2 of *Voices at Risk* discusses information gathering and reporting. If not already occurring, each Mission would ideally designate a human rights officer or point of contact who receives advanced training in human rights defender support. This person could also play an important role in coordinating the actions of various offices within the Canadian government when support for a human rights defender is being provided.

Enabling secure communications with human rights defenders. As noted in *Voices at Risk*, an important element of effective information gathering issues is having strong relationships with human rights defenders and local civil society organizations. This is sometimes easier said than done. In our experience, some diplomatic missions have difficulties maintaining strong ties with civil society when diplomatic staff rotate through assignments. We encourage Global Affairs Canada to flag this challenge for Missions and encourage them to prepare for successful handover of local contacts for human rights defender work.

Secure communications and trust-building are also important elements of relationship building with human rights defenders. The following actions can help:

- Providing secure ways for human rights defenders to communicate with the embassy (such as through Signal and Jitsi).
- Developing or funding early warning systems.
- Organizing, funding, or participating in consultations with human rights defenders, both to conduct outreach on Canada's role in supporting human rights defenders and to collect information on threats.

Aligning staff incentives with the guidelines. Additionally, it is important to ensure that staff incentives are aligned with the objectives of these guidelines. Providing support to human rights defenders is a complex task that often involves rapid response to events occurring in real time. Intervening in such situations can present political and reputational risks to the Mission. But if staff members are concerned that taking risks in such situations will harm their own status or advancement within the Canadian government, they might be less willing to intervene. We believe it is important for Global Affairs Canada to provide appropriate incentives for Mission representatives to be proactive on this issue.

(2) Preventative Measures

Several sections of *Voices at Risk* describe steps that Missions can take to help prevent attacks against human rights defenders. These include Sections 3.3 (Information exchanges with individuals and their families), 3.4 (Helping build the capacity of human rights defenders' networks), 3.5 (Engaging with local authorities), 3.6 (Cooperation with key regional and international actors), and 3.7 (Enhancing visibility for human rights defenders).

We agree that these are important preventative measures. When updating its list of prevention measures, we recommend that Global Affairs Canada also consider the following:

Funding development programs that strengthen legal support. In addition to those measures already listed, Missions could help to prevent attacks against human rights defenders through development programming that strengthens access to effective legal support. This might include, for example, development assistance aimed at building the capacity of the judiciary to handle sensitive human rights cases, and strengthening access to pro bono or low-cost legal support for human rights defenders.

Preventing threats to defenders by combating corruption. Combating impunity for high-level corruption is an essential part of ending the threat to human rights defenders. Threats to environmental and land defenders tend to arise when corruption networks and entities attempt to seize natural resources or other state assets without regard for the rights of local communities. (It is notable that the word “corruption” does not currently appear in *Voices at Risk*.) ERI is currently working on cases in Honduras and Colombia, where corporate actors are receiving political cover from high-ranking government officials as they employ paramilitary units that commit atrocities against community organizers who oppose their efforts to seize land and natural resources.

Building the capacity of human rights defenders. ERI has particular expertise in building the capacity of human rights defenders. Capacity needs include legal issues, campaign tactics, communications and social media, cyber and physical security, and organizational management and fundraising. Capacity-building should be sustainable over the long-term and serve to reinforce prior capacity-building and training efforts. In 2017, for example, ERI opened the Mitharsuu Center for Leadership and Justice in Chiang Mai, Thailand to house the Earthrights School, which has helped train and build the capacity of environmental and human rights defenders in Southeast Asia for more than 20 years. ERI also convenes an annual *seminario* for human rights defenders in the Amazon region.

One of the best ways a diplomatic mission can help strengthen the capacity of human rights defenders is by supporting opportunities for defenders and their organizations to meet and share experiences at the national, regional and global levels. These opportunities enable peer-to-peer learning and the development of solidarity networks, which can help create an additional measure of protection for defenders. We also believe there is untapped potential for cross-regional exchanges between organizations from Asia, Africa and Latin America.

Such exchanges can be resource- and time-intensive and are thus difficult for many organizations to carry out successfully. Nevertheless, their learning impact can be significant. It is also important to consider ways to make these learning opportunities sustainable over time, so that they are not “one-off” experiences but are progressively reinforced and expanded. At ERI, we have utilized the Mitharsuu Center for this purpose, most recently hosting the Forest Defenders Conference in August 2018, which brought together 50 environment and human rights defenders from Southeast Asia to develop forest protection strategies. We hope that the center will evolve into a global hub for sustainable long-term learning and training for defenders from around the world.

As part of its efforts to build capacity, the Canadian government could provide “seed” funding to local and international organizations for such initiatives and promote coordination among other bilateral donors to leverage additional financial support.

Engaging Canadian companies on human rights defender issues. For many human rights defenders, particularly land and environmental defenders, attacks and threats originate when their work runs counter to the interests of corporate sector actors. Canadian companies have been involved in a number of such cases. Promoting companies’ respect for human rights through the entire value chain is critically important.

Missions should engage proactively with Canadian companies on these issues on an ongoing, rather than one-off, basis. At minimum, in line with the UN Guiding Principles, companies should have a policy framework in place to “do no harm” to human rights defenders, as well as high level commitments from senior management to implement these policies. Companies should track these efforts at the project level and report publicly on progress.

One of the most important steps a company can take is to engage early and often with human rights defenders in its countries of operations and across its value chains. Building these relationships in advance can help to diffuse some conflicts. Yet a company’s stakeholder engagement should not evolve into a public relations exercise; the company should strive to maintain open and frank dialogue, even on the toughest issues. If a company anticipates that tensions will arise, it should set aside adequate time in its production or construction schedule for good faith negotiations with affected stakeholders.

When threats to human rights defenders arise, companies should be prepared to respond rapidly and responsibly. In the business and human rights community, much discussion focuses on the use of company-level grievance mechanisms to resolve conflicts. But because threats to human rights defenders often arise to the level of criminal activity, a company-level grievance mechanism might not always be the most appropriate channel. Carefully structured dialogue or mediation might be better.

Missions are well-positioned to offer advice to companies on human rights defender issues. Multi-stakeholder roundtables, such as regular meetings between Canadian companies and civil society facilitated by the Mission, can be one approach. In some situations, Global Affairs Canada might also use its leverage to pressure companies to take certain actions.

(3) Protection Measures

Differentiating between interventions for “prevention” versus “protection” situations. *Voices at Risk* describes a number of protection measures available to Missions. These include Sections 3.3 (Information exchanges with individuals and their families), 3.5 (Engaging with local authorities), 3.6 (Cooperation with key regional and international actors), 3.7 (Enhancing visibility for human rights defenders), 3.8 (Attending trials and hearings and visiting detained human rights defenders), 3.9 (Making public statements and using social media), and 3.10 (Supporting emergency assistance needs).

We believe that this list is fairly comprehensive, but would be more useful to Missions if packaged together as “protection measures,” which are distinct from the types of interventions that are more appropriate for an information gathering, prevention, or redress situation.

Conducting “health checks” of human rights defender protection systems. All of the protection measures described in *Voices at Risk* will have a higher rate of success if the appropriate groundwork is prepared in advance. Global Affairs Canada could encourage Missions to perform regular “health checks” of their human rights defender protection systems. For example, Missions could assess if the following steps are being taken:

- Information exchanges with individuals and families (Section 3.3) are more effective if a trusting relationship has already been built. Missions should have repeated interactions with defenders at risk and should have established safe channels of communication.
- Likewise, engaging with local authorities (Section 3.5) and key regional/international actors (Section 3.6) is more effective if pre-existing relationships are in place.
- Enhancing visibility for human rights defenders (Section 3.7) is more effective if the Ambassador and other Mission spokespeople are kept regularly apprised of threats to human rights defenders.
- Attending trials and hearings of human rights defenders (Section 3.8) will be more effective if the Mission’s representative is thoroughly familiar with the relevant law enforcement and judicial procedures, so that any divergences from local law can be immediately identified. Additionally, the Mission can help to ensure that human rights defenders are receiving effective legal counsel by funding local and international organizations that provide or find pro bono legal representation.
- Making public statements and using social media (Section 3.9) effectively, of course, depends on having already identified the appropriate platforms and established “followers.”
- Supporting emergency assistance needs (Section 3.10) requires familiarity with the available options and an existing relationship with the implementing organizations.

(4) Redress Measures

Including “redress” measures in the guidelines. *Voices at Risk* does not explicitly address redress measures, yet ERI considers this to be an essential component of a human rights defender strategy. After a threat is carried out, human rights defenders and their families face the challenge of rebuilding their lives. In many countries, criminal investigations into the crimes committed against defenders do not move forward without sustained political pressure, especially if the perpetrators have connections to the ruling elite. Likewise, human rights defenders and their families should be able to bring civil claims against the petitioner or to petition the government for adequate compensation, but corruption often prevents courts from providing a fair trial. Human rights defenders whose reputations have been smeared often face prolonged stigmatization within their own communities.

Contributing diplomatic support to defenders’ efforts to obtain redress: Missions can help human rights defenders to obtain redress in several ways, for example:

- Applying diplomatic pressure to ensure the continuation and impartiality of a criminal investigation and prosecution;
- Providing funding to public interest legal organizations that can represent human rights defenders in civil claims and other procedures for seeking redress;
- Providing funding for trauma healing programs;
- Issuing public statements supporting human rights defenders and condemning the abuses committed against them.

(5) Situations that involve Canadian Citizens, Companies, or the Government

As indicated in *Voices at Risk*, situations involving Canadian citizens, companies, or the government have an extra layer of complexity, because Missions might need to manage conflicting policies, laws, or ministry mandates. In particular, what happens when a Mission's support for a human rights defender comes into conflict with its role in supporting a Canadian company abroad?

Navigating situations involving Canadian companies. Section 4.2 of *Voices at Risk* (Cases involving Canadian entities) spells out the Canadian government's expectation that Canadian companies act in a responsible manner. The guidelines also suggest that a Mission can use its leverage to place pressure on the company, for example by denying or withdrawing trade advocacy support. Additionally, Canada's Corporate Social Responsibility Counselor may have an advisory or intervention role.

However, the current version of *Voices at Risk* does not provide guidance to Missions on how to manage conflicting roles. At minimum, Missions should commit to engage proactively with Canadian companies operating in high risk sectors (such as extractive industries or agribusiness) or high-risk regions of the country to ensure that the companies are aware of their responsibility to respect human rights.

If a conflict arises, the Mission should provide both sides with an adequate opportunity to present their perspectives on the situation. The Mission should also avoid taking a position that might be perceived as a conflict of interest, such as attempting to mediate between the company and the human rights defender, while also advising the company unilaterally. This could potentially be perceived as a breach of trust and damage longer-term relationships with human rights defenders in the country.

Processing asylum cases of human rights defenders in an expedited manner. The guidelines should ask Missions to respond in an expedited manner to asylum requests of human rights defenders facing imminent threats. As discussed further below, we encourage the Canadian government to consider the differential threats facing human rights defenders who come from marginalized communities when processing asylum requests.

ADDRESSING SITUATIONS INVOLVING GENDER, INDIGENOUS, AND LGBTI DEFENDERS

Voices at Risk would provide more effective guidance to Missions if it accounted for the differentiated factors affecting various categories of human rights defenders. In this submission, we focus on women, indigenous peoples, and LGBTI defenders.

Information gathering. We encourage Global Affairs Canada to design a deliberate information gathering process for human rights defender issues that is sensitive to the specific concerns of marginalized groups, such as women, indigenous, and LGBTI defenders. For example, Missions should be cognizant of barriers to building trust and open communication. For example, a female human rights defender might be hesitant to report threats of sexual assault to a male diplomat at the Mission.

While conducting information gathering, we recommend that Mission staff pay attention to the following:

- Voice – Mission staff should be sensitive to the way in which human rights defenders wish to have their story portrayed. A defender might or might not, for example, self-identify as an “activist,” “peasant farmer,” member of a particular ethnic or social group, or “leader” in a particular community. The way they describe their struggles might also vary: an indigenous human rights defender might have a different world view and a different way of communicating about problems than is typically used at the Mission. An LGBTI human rights defender might prefer language that avoids binary gender references. (Indeed, we recommend that Global Affairs Canada attempt to avoid using binary gender definitions such as he/she or boy/girl in its guidelines.)
- Affiliation – Not all human rights defenders are professionals who work for a public interest organization. It is important to recognize that defenders often do not work as individuals, but in collectives, communities, or as part of a family. This can affect how a human rights defender makes decisions, uses funding, or communicates with the Mission. For example, Missions should avoid asking defenders to make decisions unilaterally if they operate as part of a collective.
- Family members – Many human rights defender protection mechanisms aim to help not only the defender at risk, but also relevant family members. Mission staff should take care not to make assumptions about which family members might be at risk. For example, in a country that does not recognize same-sex marriage, a family member might include an unmarried defender’s partner.
- Discriminatory legal protections – Missions should also recognize that certain classes of individuals might have fewer legal rights and protections under national law. For example, in the Democratic Republic of the Congo, property and inheritance laws favor men over women, which leaves women vulnerable to literally lose everything if their husband dies. Missions should be aware of instances in which national law violates international human rights standards.
- Discriminatory treatment within communities and by the authorities – Even where the law is not discriminatory, human rights defenders can be subjected to discriminatory treatment. This includes prejudicial treatment by the authorities. For example, a woman who has survived a sexual assault might be stigmatized by her community, health care professionals, and law enforcement officials.

Preventative measures. As Missions make efforts to prevent attacks on human rights defenders, it is important to ensure that the voices of defenders of marginalized groups are heard. We have seen this often in our work supporting environmental and land defenders advocating against economic development projects. Missions should not assume that a single community leader (or human

rights defender, for that matter) represents the interests of all of the people living in that community. The same is true in the context of economic development projects:

- The impacts of development projects can be gendered, affecting women differently from men. Women might have different roles, sources of income, and health concerns than men within the community. The dynamics within an affected community might mean that men in leadership roles are unaware of, or less concerned with gender-specific impacts.
- Indigenous peoples often face unique challenges when threatened by economic development projects. They might have traditional rights to land and natural resources that are not fully recognized under national laws. They might have collective decision-making processes. They might have cultural heritage that is tied to a specific piece of land.

Global Affairs Canada can help to support human rights defenders from marginalized communities by providing capacity building support that is geared towards their specific situations, and by accounting for their rights and interests in all activities that affect them. (At the same time, Missions should take care to avoid “divide and conquer” situations, in which a corporation attempts to stir up resentment and tensions between different members of an affected community.)

Protection measures. The threats that human rights defenders face can vary depending on their unique circumstances. Violence and intimidation can affect all types of defenders. But in many countries, women, children, and LGBTI defenders might be at a particularly high risk of sexual assault. The geographic location of threats can also vary; for example, if the women of a rural community are the ones who travel outside the village into the forest to fetch water, they might be more vulnerable to attack than men who remain in the village.

Redress measures. Finally, the process of seeking redress can vary. Sexual assault cases are notoriously difficult to prosecute; perpetrators often try to put the private lives of their victims on trial. This discourages victims from coming forward. Similarly, survivors of sexual assault might have to deal with stigmatization in their families and local communities afterwards.

IMPLEMENTATION OF THE GUIDELINES

Finally, we encourage Global Affairs Canada to adopt a plan to implement the new guidelines in an effective manner. Key elements of an implementation plan include:

(1) Outreach

Human rights defenders will benefit from greater awareness of these guidelines and of the Canadian government’s commitment to support them. Numerous opportunities for outreach exist. We recommend that Global Affairs Canada translate the guidelines into local languages, publish the document on local embassy websites, and proactively distribute it through social media channels. Missions could also conduct in-country consultations, as well as conduct targeted outreach. These outreach efforts should be designed to reach defenders from marginalized communities—which might require additional funding to support travel costs and creation of a “safe space” for open dialogue.

At the global level, the Minister of Foreign Affairs could use the opportunity of the John Diefenbaker Defender of Human Rights and Freedom Award ceremonies to raise awareness of the guidelines and the Canadian government's commitment to support human rights defenders. Numerous other international forums exist through which the Canadian government can exercise leadership on this issue.

(2) **Monitoring and evaluation**

To facilitate learning, we encourage Global Affairs Canada to continue to monitor the use of the guidelines, being sure to disaggregate data by geographic region and by categories of defenders (women, indigenous peoples, LGBTI, and others).

(3) **Public reporting**

In our experience, successful protection of human rights defenders requires the commitment of numerous actors across multiple sectors. We hope that Global Affairs Canada will share its lessons learned from implementing these guidelines—both the positive and the negative—to help inform the efforts of all of us working in this space.

CONCLUSION

EarthRights International welcomes the review and revision of *Voices at Risk*. We look forward to the results of this review process, which has the potential to result in a set of “state-of-the-art” guidelines that truly reflect current challenges and raise the bar for other governments and the private sector. EarthRights International is happy to provide further comments and recommendations as this process moves forward.