

# Speak Without Fear

---

## The Case for a Stronger U.S. Policy on Human Rights Defenders



# Contents

Executive Summary..... 3

Introduction..... 6

Methodology..... 10

Background: The Impunity Crisis..... 11

Findings..... 15

Recommendations..... 28

Annex 1: Embassy Human Rights Tools..... 32

Annex 2: Advice for Human Rights Officers..... 38

About the Authors..... 41

Endnotes..... 42

# Executive Summary

Even before the COVID-19 crisis began, attacks against human rights defenders had reached alarming levels around the world, especially for those who work on land and environmental issues. The attacks — which include killings and other tactics designed to threaten, criminalize and stigmatize — have had a chilling effect on civil society, while allowing powerful political and economic actors to harm their fellow citizens with almost total impunity. Governments rarely investigate and prosecute these cases.

The global pandemic has made the situation worse. In many countries, human rights defenders find themselves more vulnerable to attacks as they stay at home, unable to vary their movements. In Colombia, assassins murdered more than 20 human rights defenders during the first three months after shelter-in-place orders went into effect. While many governments around the world have taken necessary and proportionate steps to prevent people from gathering together, others have used the opportunity to silence critics. When the pandemic eventually subsides, some governments might attempt to keep these restrictions on basic rights and fundamental freedoms in place.

U.S. embassies have long played an important role in protecting human rights defenders, especially when the defenders cannot look to their own governments for protection. Even in an era where U.S. global leadership is in question, the U.S. State Department remains an important voice on global human rights issues. But U.S. embassies have a mixed track record in engaging with human rights defenders, including in countries where urgent support is needed. In recent years, U.S. embassies have helped protect human rights defenders around the world, but have also backed economic, political and military activities that have harmed human rights defenders.

In this report, we call for a more consistent, coordinated and elevated U.S. State Department response to these attacks.

EarthRights International, which works globally to support land and environmental defenders, has prepared this report in conjunction with the Defending Land and Environmental Defenders Coalition.<sup>1</sup> While our coalition's goal is to protect those who work on land and environmental issues, many of the threats that we see — and the solutions — apply to a broader range of human rights defenders. Accordingly, the scope of this report examines U.S. embassy support for human rights defenders broadly.

## Methodology

We gathered information from a number of sources, including interviews with members of civil society who have engaged directly with embassies, as well as a literature review of publicly available material. Altogether, we examined more than 80 cases in 30 countries. This includes 34 cases related to land and environmental defenders.

Our research is based on external perceptions of the U.S. State Department and its embassies. As members of civil society, we do not typically witness the U.S. government's internal deliberations. An embassy's silence on a human rights defender's case could mean that the U.S. government chose not to help. But it could also mean that the embassy pursued quiet diplomacy and did not communicate this back to the human rights defender. External perceptions matter when it comes to protecting human rights defenders. As this report argues, failing to manage those perceptions can be damaging, even if quiet action is taken.

## Findings

Although this is not a comprehensive survey of U.S. embassy efforts to protect human rights defenders worldwide, several common threads emerged in our research.

These findings suggest that the U.S. State Department has made important contributions to protecting human rights defenders but would benefit from a more coordinated approach. (See **Box 1**.)

### Box 1: Key Findings

In our interviews with human rights defenders, several perceived trends emerged:

1. In Washington, D.C., the State Department has an **open-door approach to human rights defenders**.
2. Other countries' embassies **rely on U.S. embassies for leadership** on this issue.
3. **U.S. embassies have many tools** that can be used to support human rights defenders.
4. When engaging with U.S. embassies, **human rights defenders see more “personality” than “policy.”**
5. **U.S. embassies rarely initiate follow-up** with human rights defenders after meeting with them.
6. Many embassies **have not found a way to reach rural areas**, where the threats are often greatest.
7. U.S. embassies appear to **struggle when dealing with “repressive allies,”** such as Bahrain, Honduras, the Philippines and Saudi Arabia.
8. **U.S. embassies do not systematically coordinate their work** on human rights defenders with their economic portfolios.
9. Existing safeguards, such as the Leahy Law, **are not sufficient to prevent U.S. security assistance from supporting perpetrators of attacks** on human rights defenders.



## Recommendations

At the end of the report, we recommend a number of steps that would contribute to a more coordinated U.S. State Department response to the crisis facing human rights defenders. In recent years, many of the State Department's key human rights reforms have come through congressional mandates, such as the annual Human Rights Reports, Global Magnitsky sanctions, Section 7031(c) visa restrictions and the Leahy Law.

The State Department should take the following steps, either of its own accord or through a Congressional mandate:

**Take immediate action to strengthen protections in crisis countries, such as Brazil, Colombia, Honduras and the Philippines.** Informed by consultations with civil society, the State Department should lead the development of a strategy for protecting human rights defenders in each country where attacks have reached crisis levels. The strategy should coordinate actions by a range of U.S. government actors, including those engaged in political, economic and national security affairs.

**Develop comprehensive, public-facing guidelines for U.S. embassy action to protect human rights defenders, in consultation with a broad range of civil society organizations.** These guidelines will help the State Department to develop clear, open and sustained lines of communication with civil society on this issue.

The guidelines should commit the U.S. government to treat the protection of human rights defenders as a foreign policy priority. They should articulate the role that U.S. embassies can play in protecting and legitimizing the work of human rights defenders, and in placing pressure on the businesses, security forces, and government actors that are behind these attacks. The guidelines should also equip human rights de-

fenders with guidance on how to frame their requests for support and describe their cases in a manner that is helpful to embassy officials.

The State Department should post the guidelines on all embassy websites in local languages, in order to facilitate outreach to human rights defenders in host countries. Until the guidelines are developed, the State Department should post its existing (but outdated) human rights defender factsheet on all embassy websites in local languages.

**In conjunction with the public-facing guidelines, develop internal protocols and training on human rights defender issues.** This will facilitate stronger coordination within the State Department and help embassies to better leverage existing resources. One outcome of this process should be strengthened interagency sharing of data collected on reprisals against human rights defenders, on a regular and timely basis, with all relevant U.S. government agencies involved in the implementation of U.S. security assistance and cooperation, foreign assistance, multilateral development financing and immigration.

**Add a section to the State Department's annual human rights reports on reprisals against human rights defenders and the host government's response.** The annual human rights reports are a cornerstone of the State Department's approach to human rights and are used widely within the U.S. government. Until the annual reports examine patterns of attacks on human rights defenders in a systematic way, the U.S. government will have difficulty prioritizing this issue.

# 1.0 INTRODUCTION

National security, public health and economic stability suffer when citizens are silenced for criticizing those in power.<sup>2</sup> In February 2020, hundreds of millions of Chinese citizens overwhelmed the censors and broke their silence to express their grief and outrage after Dr. Li Wenliang succumbed to the COVID-19 virus. Dr. Li gained national attention when he tried to warn the public of the deadly outbreak, only to be reprimanded by government security forces for “spreading rumors” and forced to sign a statement admitting to “illegal behavior.” Even afterwards, he continued to speak up.

An online protest erupted as news of Dr. Li’s death spread. The hashtag #wewantfreedomofspeech appeared on social media for a few hours before the Chinese government took it down. In memory of the doctor, people around the country blew whistles on a designated night and posted photos of candles on their social media. Even high-ranking government officials and heads of corporations publicly conveyed their grief.<sup>3</sup>

It was a brief but powerful flicker of free speech. As the New York Times reported, “For many people in China, the doctor’s death shook loose pent-up anger and frustration at how the government mishandled the situation by not sharing information earlier and by silencing whistle-blowers.”<sup>4</sup>

For people living in the United States and across the world, Dr. Li’s story has served as an inspiration and reminder of the importance of protecting human rights even as governments take unprecedented measures to contain the pandemic.<sup>5</sup> As U.S. embassy officials who live and work in closed societies are well aware, respect for human rights rarely appears out of thin air. Constitutions, international treaties and international law confer rights on people. Fulfilling those rights, however, requires brave individuals

who speak truth to power, push societies to reform and prevent the erosion of basic protections that are already in place. These champions have come to be known in the international community as “human rights defenders.”<sup>6</sup>

Human rights defenders come from all walks of life — medical workers, farmers, religious leaders, journalists, migrants, indigenous peoples, and trade unionists, among others. They challenge those in power to act in the public’s best interests. They advocate for respect for people’s basic rights and fundamental freedoms. While the work of human rights defenders is diverse, the international community uses this common term to affirm their legitimacy, especially because so many are targeted with accusations of “terrorism” and other vicious smear campaigns.

Impunity is the antithesis of human rights. Across the world, human rights defenders face serious threats to their safety and their lives. Hundreds of human rights defenders are killed each year while countless others are threatened, criminalized and stigmatized.<sup>7</sup> (See **Box 2.**) Almost all of these attacks occur with absolute impunity. Governments often fail to investigate attacks on human rights defenders, let alone prosecute and convict the perpetrators.

A few of these cases find their way into the international spotlight, such as the assassinations of Honduran activist Berta Cáceres in March 2016<sup>8</sup> and Brazilian activist Marielle Franco in March 2018.<sup>9</sup> Even in these examples, where there has been sustained public pressure to bring the perpetrators to justice, the masterminds of these crimes have so far escaped accountability.

### Box 2: Number of Attacks on Human Rights Defenders

- Frontline Defenders documented 304 killings of human rights defenders in 2019, over one-third of which took place in Colombia.<sup>10</sup>
- Of these killings, 40 percent were of people defending land, the environment, and indigenous rights.<sup>11</sup>
- The Business and Human Rights Resource Center documented 572 attacks in 2019 against human rights defenders raising concerns about business-related human rights abuses, up from 492 in 2018. Almost half of the attacks in 2019 involved judicial harassment of defenders.<sup>12</sup>

The impunity crisis is having a noticeable effect on societies around the world, and not just on the families and friends of those who are lost. Attacks on human rights defenders can have a chilling effect on others who might have dared to speak up. Silencing human rights defenders is an effective way to quickly close down a free and open society.

## 1.1 Civil Society's Response

In response to this crisis, civil society has mobilized across the world, creating protection networks, documenting attacks, campaigning in support of criminalized colleagues, advocating for more responsible business practices and lobbying governments to protect defenders.

In 2018, for example, a group of 58 civil society organizations created the **Defending Land and Environmental Defenders Coalition**.<sup>13</sup> Globally, those who work on land and environmental issues face high levels of violence. (See **Box 3**.) The coalition uses evidence-based advocacy to prevent attacks and strengthen rapid-response protections for this at-risk group.<sup>14</sup>

### Box 3: Land and Environmental Defenders

Human rights defenders who work on land and environmental issues are particularly vulnerable to violence. Between 2002 and 2018, Global Witness documented over 1,400 killings of land and environmental defenders. Many of these cases involved people responding to harm caused by large-scale mining, logging and agribusiness projects.<sup>15</sup>

In its 2019 Global Analysis, Front Line Defenders reported that “Land, environmental and indigenous people’s rights remained the most dangerous sector of human rights defense due to the profit-driven exploitation of natural resources, combined with rampant corruption, weak governments, and systematic poverty.”<sup>16</sup>

Land and environmental defenders tend to live in remote areas, which makes them vulnerable to attacks. They often lack political power and do not have connections to international civil society networks and journalists who can share their stories with the outside world. Many land and environmental defenders are members of marginalized or indigenous communities that have been evicted from their homes and are living in extreme poverty.

Struggles over land and natural resources typically last for years, if not decades. Countless land-dependent communities, especially indigenous peoples, lack government recognition to their rights to land and natural resources, even when they have lived in the same place for generations. The lack of secure rights leaves them vulnerable when a powerful actor wants to seize the land and extract the natural resources.

The overwhelming majority of attacks against land and environmental defenders relate to business activities — such as mining or agribusiness projects — whose proponents have strong political and economic ties. In numerous cases, these businesses

### Box 3, continued

have hired government police, military forces and paramilitary groups to target communities and have used the courts to harass those who oppose them. Attacks on land and environmental defenders are rarely investigated or prosecuted.

In an April 2019 resolution, the U.N. Human Rights Council recognized the “important and legitimate role” of human rights defenders working on “the benefits and risks of development projects and business operations, including in relation to workplace health, safety and rights, and natural resource exploitation, environmental, land and development issues.” The Human Rights Council called on states to “take the measures necessary to safeguard space for such public dialogue and its participants.”<sup>17</sup>

and embolden those who wish to protect them; and

- A robust legal and policy framework that protects civic space, promotes rule of law and holds perpetrators accountable for violations.

Embassies can help with all three.<sup>19</sup> Embassies often have resources and connections that can help people get the protections they need. They often have a seat at the table in high-level political discussions in countries where ordinary citizens themselves might not get to participate, and where host government officials have direct links to the sources of threats against defenders.

U.S. embassies have a particularly important role to play. The U.S. government has endorsed the U.N. Declaration on Human Rights Defenders and advocates for the protection of human rights defenders at multilateral institutions.<sup>20</sup> It has funded capacity building and emergency support programs for defenders at risk. In at least a few cases, the U.S. government has used its powerful foreign policy tools, such as sanctions and visa restrictions, to hold perpetrators accountable for attacks on human rights defenders.<sup>21</sup>

In many parts of the world, like-minded governments look to the U.S. government for leadership on human rights. Many senior U.S. State Department officials have a deep understanding of how human rights advance U.S. foreign policy goals.<sup>22</sup> (See **Box 4.**) U.S. embassies also tend to have more resources available for monitoring human rights issues than their counterparts at other embassies. Most U.S. embassies have a designated human rights officer who is tasked with meeting regularly with civil society organizations.

## 1.2 What Can Embassies Do?

The U.S. government, under both Republican and Democratic administrations, has recognized the central role that human rights play in its foreign policy and has been willing to dedicate embassy resources to this issue.<sup>18</sup> In practice, U.S. embassies have advocated for protections for human rights defenders around the world, but have also backed economic, political and military activities that cause harm to human rights defenders.

When a threat arises, a human rights defender’s most important assets include:

- A robust network of supporters who provide physical, legal and psychosocial protections;
- The support of powerful political and economic actors who affirm the legitimacy of the defender’s work, dissuade those who wish to do them harm



#### Box 4: How Attacks on Human Rights Defenders Affect U.S. Foreign Policy

Attacks on human rights defenders rarely happen in isolation. Each attack is often part of a broader pattern of abuse and can run counter to U.S. foreign policy interests in several ways:

- **Closing civic space** – Attacks on human rights defenders create a chilling effect that reverberates across civil society, eroding the civil and political rights that underlie a democratic society.
- **Unfair business environment** – Human rights defenders act as a check on corruption and kleptocracy, both of which create an unfair playing field that disadvantages U.S. businesses.
- **Untrusted security partner** – Members of a host government's security forces are frequently implicated in attacks on human rights defenders, potentially exposing the U.S. government and its contractors to reputational damage when they provide security assistance and cooperation to these forces.
- **Abuse of the U.S. financial system** – Many attacks on human rights defenders arise from a profit or business motive, and the proceeds from these abuses can find their way into the U.S. financial system, exposing U.S. businesses and banks to reputational risk.

### 1.3 Why this report?

This report was born out of conversations within the Defending Land and Environmental Defenders Coalition. Members have had diverse experiences engaging with U.S. embassies to protect human rights defenders. Some members reported effective, timely U.S. interventions, while others found U.S. embassy officials to be disinterested and even counterproductive.

Many civil society organizations believe that the U.S. government is not doing enough to protect human rights defenders in allied countries, such as Honduras and the Philippines, where attacks against human rights defenders are happening on a large scale.

In March 2013, the U.S. State Department published a factsheet expressing its support for human rights defenders, but the document is outdated and does not provide sufficiently detailed guidance to help embassies respond to complex threats.<sup>23</sup> During the course of our interviews, only a few human rights defenders knew about the factsheet. Those who knew of it had tried to raise it in U.S. embassy meetings, only to find that embassy personnel were themselves not aware of it.

In this report, we explore the track record of U.S. embassies in helping to protect human rights defenders. While U.S. embassies have had success stories, our interviews with human rights defenders reveal that the U.S. government's lack of a systematic approach is a key factor that has prevented some embassies from providing support where it is most needed. We hope that this report will contribute to the U.S. State Department's development of a clearer and more consistent policy on human rights defenders.

At the end of this report, we provide several resources to assist the U.S. government in strengthening its approach:

- The **Recommendations** section (p. 28) suggests a way for the U.S. State Department to update its human rights defender policy framework.
- **Annex 1** (p. 32) describes the various tools available to U.S. embassies to support human rights defenders.
- **Annex 2** (p. 38) offers advice for human rights officers at U.S. embassies based on our interviews with human rights defenders.

## 2.0 METHODOLOGY

While the focus of our coalition's work is on land and environmental defenders, many of the threats—and solutions—apply to the broader range of human rights defenders. Accordingly, the scope of this report covers human rights defenders broadly, but particularly emphasizes those who work on land and environmental issues.

We gathered information for this report from a number of sources. Between May 2019 and March 2020, we interviewed 37 human rights defenders about their experiences engaging with embassies. These included members of civil society organizations with direct experience supporting human rights defenders under threat, as well as 13 individuals who reached out to U.S. embassies when they personally faced threats. We also conducted a literature review of NGO investigations, reports by U.S. government agencies, media coverage of high-profile cases and statements published by U.S. embassies. Altogether, we gathered information from more than 80 cases in 30 countries around the world.<sup>24</sup> Of these, 34 cases directly involved land and environmental defenders.

We included a diverse sampling of cases from around the world. While each case is unique, clear trends did emerge in our research. We view this research as a starting point that will provoke discussion and open possibilities for meaningful reform.

For security reasons and to protect sensitive relationships between embassy officials and civil society organizations, we do not mention specific cases in this report, except where we could find public information about a case that is available from multiple sources.

Our research is based on external perceptions of the U.S. State Department and its embassies. Inevitably, we did not capture all of the deliberations and actions that take place behind the scenes. Yet we believe that

external perceptions matter when it comes to protecting human rights defenders, and, as this report argues, failing to manage those perceptions can be damaging.

Finally, we wish to express our gratitude to all of the human rights defenders who took the time to share their experiences and insights with us. We are honored to have spoken with so many inspirational people, many of whom have risked their lives to achieve a better future for their communities, often in the face of overwhelming opposition from powerful political and economic forces. We hope this report — based on their recommendations — will contribute to improving and elevating the U.S. government's efforts to protect human rights defenders.

## 3.0 BACKGROUND: THE IMPUNITY CRISIS

Attacks against human rights defenders often emerge as part of a broader pattern of abuse. In order to effectively protect human rights defenders, we must look at these patterns of abuse.

Killings are not the only form of attack. Perpetrators use a wide range of tactics against human rights defenders. Often, attacks begin with efforts to harass or threaten a defender, then escalate into physical violence. In its 2019 Global Analysis, Front Line Defenders reported that 85 percent of human rights defenders who were killed during the year had previously been threatened.<sup>25</sup>

In this section, we look at the “impunity crisis” that drives so many attacks on human rights defenders. Government authorities rarely bring perpetrators of these attacks to justice.

When perpetrators discover that they can silence an opponent without facing consequences, they use similar tactics against others. Fear spreads quickly. Civil society organizations often refer to the “chilling effect” that these attacks can have on entire networks of human rights defenders. (See **Box 5**.)

### Box 5: How COVID-19 Increases the Vulnerability of Human Rights Defenders

Even before the pandemic, **Colombia** and **Honduras** were widely regarded as two of the most dangerous countries in the world for human rights defenders. In May 2020, human rights organizations sent letters to the governments of both countries raising concerns about the ways that the COVID-19 pandemic had increased the vulnerability of human rights defenders.<sup>26</sup>

In **Colombia**, for example, shelter-in-place orders prevented human rights defenders from varying their movements or easily leaving their homes when threats became imminent. In the first three months of the pandemic, more than 20 defenders were murdered.

In **Honduras**, human rights defenders in the Bajo Aguán region faced similar challenges with shelter-in-place orders. The government also used the pandemic as an opportunity to adopt policies that increased agribusiness companies’ control of land and resources in the Bajo Aguán. These companies are the primary driver of violence against campesino movements in the region.

### 3.1 Authorities rarely investigate or prosecute attacks against human rights defenders

Attacks on human rights defenders increase when perpetrators are able to silence human rights defenders with impunity. Authorities rarely investigate or prosecute attacks against defenders, especially when the masterminds of the crimes are well-connected.

In 2019, for example, Brazil gained notoriety as human rights investigators reported on how the illegal logging operations of “rainforest mafias” have fueled violence in the Amazon.<sup>27</sup> Criminal networks have retaliated against public officials, farmers and members of indigenous communities who patrol the forests and report illegal logging. Brazil’s Pastoral Land Commission has documented more than 300 killings since 2009, of which only 14 went to trial.<sup>28</sup> Human Rights Watch examined 28 of these killings, as well as four attempted murders and more than 40 death threats. Of these 28 killings, only two went to trial. Of the more than 40 nonlethal attacks and threats, zero went to trial.<sup>29</sup> Almost all of the attacks in the Amazon go uninvestigated; only those that attract national media attention tend to earn any police response at all.<sup>30</sup>

### 3.2 Attacks often come from those who are “above the law”

The masterminds of attacks on human rights defenders — the ones who order and fund the attacks — are often powerful interests who are “above the law” in their home countries. Combating impunity requires challenging these powerful interests, which many host governments lack the political will to do.

The Philippines — a close ally of the U.S. government — is a prime example. In September 2019, Global Witness published a report on the widespread violence against land and environmental defenders in the country. The report describes how President Rodrigo Duterte’s “war on drugs” has opened the door to a culture of impunity, “emboldening the politically and economically powerful to use violence and hitmen against those they see as an obstacle or a threat.”<sup>31</sup> Many of those being accused and targeted are actually human rights defenders and members of civil society who have no connection to the drug war. Global Witness documented 113 killings of land and environmental killings during the first three years that President Duterte was in office, almost half of which were allegedly carried out by armed state forces.<sup>32</sup> For example, paramilitary “Investment Defense Forces,” often composed of members of the military, have allegedly committed dozens of extrajudicial killings in the name of protecting mines, plantations, and other private interests.<sup>33</sup>

### 3.3 In addition to physical attacks, “criminalization” and “stigmatization” are used to silence human rights defenders

In many countries, perpetrators have turned the host government’s courts, laws, and media institutions into weapons used to silence dissenting views. Global Witness describes the growing use of “criminalization” as an intimidation tactic: “At its simplest, it means creating, changing, or re-interpreting laws so as to make once legitimate activities illegal, and turn those doing them into criminals.”<sup>34</sup> Likewise, “stigmatization” — in which defenders face smear campaigns whose goal is to isolate them from their communities and societies — is another common tactic, made all the more prevalent by the widespread use of social media.



In February 2020, Michel Forst, the United Nations Special Rapporteur on Human Rights Defenders, completed an investigation into the ways that human rights defenders are being criminalized in **Peru**.<sup>35</sup> He found that human rights defenders, especially those working on land and environmental issues, are being stigmatized in the media as “criminals,” “terrorists,” and “enemies of the state.” Similarly, certain religious and conservative groups are stigmatizing LGBTQ rights activists as “killers” and “sinners,” inciting harassment on social media.

In at least 960 cases, the government and companies have wielded Peruvian courts as a weapon against human rights defenders.<sup>36</sup> The government is prosecuting these individuals on trumped-up criminal charges, and then targeting lawyers and doctors who support the cases. Courts are allowing prosecutors to draw out the investigations and prosecutions of defenders for years, imposing a severe financial and emotional toll on those who are targeted. When human rights defenders raise complaints to law enforcement officials about harassment, they must meet an “unreasonably high” standard of proof to receive protection, and the government’s response to attacks is often “unduly slow.”<sup>37</sup>

Likewise, the **Myanmar** government has actively used its judicial system to punish activists and journalists for criticizing the government and military, and for reporting on human rights abuses. In 2017, for example, activist Khaing Myo Htun was found guilty of defamation and incitement and forced to serve a 19-month prison sentence after the political party for which he was deputy spokesman alleged—with extensive evidence—that the military had committed torture, forced labor and forced evictions in Rakhine State.<sup>38</sup> Such prosecutions are common in Myanmar; Human Rights Watch documented more than 250 in 2019 alone.<sup>39</sup>

The Myanmar government has also used the trial process itself as a form of punishment. In 2016, Human

Rights Watch documented numerous examples where prosecutors purposefully prolonged criminal proceedings, forcing human rights defenders to remain in detention for years while awaiting a verdict, or to return to court for weekly hearings for months on end.<sup>40</sup>

**Russia and Central Asia** have become breeding grounds for innovative repression tactics.<sup>41</sup> In 2019, for example, Crude Accountability and its partners published a comparative report documenting threats to environmental defenders in the former Soviet Union and the United States.<sup>42</sup> In addition to killings, the report highlighted other ways in which defenders in the former Soviet Union are being targeted:

- Repressive legislation, such as a 2012 Russian law used to label NGOs as “foreign agents”;
- Legal and judicial harassment, ranging from burdensome NGO reporting requirements to strategic lawsuits against public participation (commonly known as SLAPPs);<sup>43</sup>
- Character assassinations and smear campaigns in the media; and
- Physical violence against defenders and their property.<sup>44</sup>

### 3.4 Gender-based violence against human rights defenders is rarely investigated

In 2019, U.N. Special Rapporteur Forst expressed concern over the increasing repression of women, girls and gender-nonconforming people who stand up for human rights.<sup>45</sup> The Business and Human Rights Resource Center has observed an increase in business-related attacks against **women human rights defenders** every year for the past five years, with almost half of these attacks targeting indigenous women and members of rural communities.<sup>46</sup>

Women defenders face the same dangers that all human rights defenders face, but also encounter heightened risks based on discrimination and gender-based violence. They are at greater risk of sexual violence, especially in conflict-affected areas. Their children are more likely to be targeted. They do not always receive the same levels of support within their own communities, especially in societies where men have traditionally held the leadership roles. They often face attacks on their honor and their reputation. Their communities might blame or stigmatize them if they suffer a sexual assault.<sup>47</sup>

In these cases, discrimination contributes to impunity. Government authorities feel less political pressure to investigate attacks against someone who has defied social norms. In 2016, for example, Human Rights Watch reported that security forces in **Sudan** were using sexual violence to silence women human rights defenders. None of the security officers involved were disciplined or prosecuted for the rape, assault, or harassment of these women.<sup>48</sup> Instead, as described in Amnesty International's recent investigation in **Afghanistan**, authorities often discourage women from standing up for human rights, making statements such as, "You do not need to do this work. The best way [to stay safe] is to stay at home."<sup>49</sup>

### 3.5 Local law enforcement is treating these cases as isolated incidents, rather than tracking patterns of abuse

Government law enforcement agencies and prosecutors often fail to track patterns of abuses against human rights defenders. When authorities do investigate violent attacks, they tend to investigate each crime as an individual incident. When death threats or other forms of harassment occur that fall short of murder, authorities often refuse to investigate altogether.

Tracking patterns of abuse is an essential part of the response to protecting human rights defenders. Assassinations in a given country might follow a predictable pattern of escalation.<sup>50</sup> Likewise, a death threat waged against a few human rights defenders might not only be devastating for those individuals and their families, but could indicate a wider problem. Nonlethal attacks, such as the systematic use of the courts or the media to target defenders, can also cause significant damage.

For example, in **Zambia**, Front Line Defenders analyzed the growing number of attacks on civil society and journalists and identified patterns of repression.<sup>51</sup> Many of the government's attacks followed similar patterns: (1) defamation campaigns targeting the leaders of civil society organizations and prominent human rights defenders with the goal of blurring the line between these individuals and the opposition political party; (2) repeated arrests and harassment of defenders by government officials; (3) harassment of women human rights defenders and their families by alleging socially unacceptable behavior in their private lives; and (4) targeting of journalists and media organizations that report on human rights issues. By identifying these patterns, the report helped identify priorities for interventions.

## 4.0 FINDINGS

Human rights defenders have mixed feelings about the U.S. government's track record. In some countries, especially in Latin America and parts of the Middle East, human rights defenders view the U.S. government with suspicion and point to its history of siding with repressive regimes. In other countries, especially in Africa, the U.S. government is seen as a longtime champion in efforts to protect human rights defenders.

NGOs that support human rights defenders rarely reach out to a single embassy or member of the international community with requests for help. In most cases, outreach occurs to multiple actors who might be willing to use their leverage, including to different U.S. government officials and members of Congress. Many interviewees felt they could reach out to U.S. embassies for support, particularly in life-or-death situations.

The authors of this report have personally witnessed the effectiveness of U.S. embassies. In 2015, embassy officials mobilized in defense of youth activists in the **Democratic Republic of the Congo**, after President Joseph Kabila's security forces raided a peaceful music and arts event. The embassy helped to get some of the human rights defenders safely out of the country, while monitoring the trials of the Congolese activists who were detained and supporting them while they were in prison.<sup>52</sup>

In 2018, U.S. officials spoke out in support of 26 activists in **Niger** who were arrested for demonstrating against a regressive finance law that would have provided significant tax breaks for foreign investors while raising taxes on Niger's citizens. Public pressure from Congress and the State Department helped to secure the release of 15 of the activists after four months in prison.<sup>53</sup>

When deciding whether to intervene in these types of cases, U.S. embassies have to manage complex political, economic, and national security concerns. In order to support a human rights defender, U.S. embassy officials must generally identify a nexus between that person's case and U.S. interests.

Yet human rights defenders perceive that **the U.S. government does not have a consistent approach for responding to their requests for support**, especially in cases involving land and environmental defenders. Our interviews suggest that the U.S. government's lack of a strategic approach to protecting human rights defenders leaves many embassies without the resources, communication protocols, and plans needed for effective interventions even when a nexus to U.S. interests is identified.

### 4.1 In Washington, D.C., the State Department has an open-door approach to human rights defenders

When human rights defenders want to reach out to the U.S. government for help, securing a meeting is the first big step.

In Washington, D.C., State Department officials have repeatedly demonstrated openness to engaging in dialogue with civil society on this issue. The Department's Bureau of Democracy, Human Rights, and Labor (DRL) has met frequently with civil society organizations to discuss protections for human rights defenders. DRL routinely shares information provided by civil society organizations with relevant embassies and officials in the field. They also help to connect civil society organizations with relevant points of contact. (**See Box 6.**)

### Box 6: How Human Rights Defenders Can Contact the U.S. State Department

Many human rights defenders communicate with the U.S. State Department through their existing contacts. For those who do not have preexisting contacts, the State Department has created two email addresses that can be used by civil society organizations around the world.

*Before using these email addresses, please read the descriptions in the endnotes for more detailed instructions.*

**Civilsociety@state.gov** – Members of civil society can use this email to request help identifying the appropriate official within the U.S. State Department or a U.S. embassy to contact.<sup>54</sup>

**7031c@state.gov** – Members of civil society can use this email to submit evidence that the State Department might use to place visa restrictions or recommend Global Magnitsky sanctions on perpetrators of gross human rights violations and kleptocracy.<sup>55</sup>

Interviewees pointed to two notable success stories where the State Department in Washington, DC has successfully coordinated its efforts with embassies on human rights defender issues. In 2011, the State Department launched the **Lifeline Fund for Embattled CSOs** as a concrete way to support civil society organizations that face threats for engaging in human rights work.<sup>56</sup> The fund is now supported by 18 other governments and administered by a consortium of seven international NGOs.<sup>57</sup> Lifeline provides rapid response assistance grants to civil society organizations facing threats due to their human rights work, as well as short-term grants for advocacy and resiliency projects that defend freedom of association and assembly rights. To date, Lifeline's partners have provided nearly \$14.5 million to more than 2,200 civil society organizations in 113 countries. U.S. embassies

can advance requests on behalf of civil society organizations to the fund, and often engage with Lifeline grantees as part of their advocacy efforts.

The State Department has also dedicated resources to tackling the unique challenges of providing support to land and environmental defenders who are under threat. In 2017, the Department created the **Interagency Working Group on Environmental Defenders**, which has met with numerous defenders and helped them to contact U.S. embassies. The interagency working group actively follows trends related to environmental and land defenders, distributes information to over 40 embassies and numerous government agencies, and organizes well-attended webinars for U.S. government officials where civil society organizations can present their work.

## 4.2 Other countries' embassies rely on U.S. embassies for leadership on this issue

In many countries, U.S. embassies are in a unique position to mobilize the diplomatic community at large. The U.S. government frequently uses multilateral channels to advocate for protections for human rights defenders.<sup>58</sup> U.S. embassies tend to have more resources and staff capacity than their counterparts, allowing them to follow individual cases with a level of depth that other embassies cannot manage. As a result, other embassies often rely on U.S. officials to conduct due diligence on specific cases. If the U.S. embassy signals that it will act in support of a human rights defender, other embassies are likely to follow.

One interviewee told us, for example, that the U.S. embassy in **Indonesia** played an important leadership role in monitoring the situation in the conflict-affected Papua region. Because the embassy had the resources to travel to the region, other embassies depended on the U.S. embassy to keep them informed.



In 2017, Myanmar authorities arrested two Reuters journalists and sentenced them to seven years of prison for reporting on the military's atrocities against the Rohingya people. The case received extensive international media coverage, and the State Department issued a public statement demanding their immediate release.<sup>59</sup> Numerous ambassadors, including the U.S. ambassador, attended the court hearing and issued public statements after the men were convicted.<sup>60</sup> Public pressure continued, and the journalists were eventually released after spending more than 500 days in prison.<sup>61</sup> The State Department later referenced this incident when it announced visa restrictions on Myanmar military officials involved in atrocities against the Rohingya people and others in the country.<sup>62</sup>

Among the people that we interviewed, however, these two examples were the exception rather than the rule. Several interviewees expressed concern that U.S. embassies were falling short in countries where their leadership was needed. A common criticism was that U.S. embassies do not seem to collaborate with like-minded embassies on human rights defender issues.

### 4.3 U.S. embassies have many tools that can be used to support human rights defenders

U.S. embassies make political, economic and national security calculations when deciding whether to intervene on behalf of a human rights defender. Generally, the case must have a nexus to U.S. interests, and the embassy must have some sort of leverage. The choice of interventions depends on this calculation — sometimes it makes sense to be loud and visible, and sometimes it is preferable to work behind the scenes. Embassies have numerous tools at their disposal that can be tailored to each case. **(See Annex 1: Embassy Tools for Supporting Human Rights Defenders.)**

Interviewees consistently described how U.S. embassies can have a positive impact on human rights defenders' situations by providing visible support. In 2014, for example, civil society organizations sent a joint letter to the newly appointed U.S. ambassador to **Guatemala**, proposing a series of specific actions that the U.S. government could take to protect human rights defenders and promote justice in the country.<sup>63</sup> The ambassador responded by visibly increasing U.S. embassy support for human rights, attending emblematic trials and events, engaging directly with human rights defenders, and strongly supporting the International Commission Against Impunity in Guatemala (commonly known as the CICIG for its initials in Spanish).

In countries where attacks against human rights defenders have reached crisis levels — such as the Philippines, Honduras, Colombia, Brazil and Bahrain — multiple interviewees observed that the U.S. government has largely refrained from making public statements in support of human rights defenders or softened its language in a way that legitimizes the practices of the repressive regime. Many reported that the U.S. government's perceived silence damaged its relationship with civil society.

The U.S. government's human rights interventions tend to focus on the most egregious cases, known as gross violations of human rights. In U.S. law, this generally includes extrajudicial killings, torture, enforced disappearances, arbitrary detention and rape under color of law.<sup>64</sup> Focusing on these human rights violations is a useful way for the U.S. government to prioritize its resources. But it also means that many nonlethal attacks against human rights defenders — such as criminalization, smear campaigns, illegal surveillance or threats of violence — do not necessarily meet the State Department's thresholds for intervening. Since many attacks follow patterns of escalation, this leaves U.S. embassies with reduced ability to prevent violence.

The lack of a clear approach with regard to human rights defenders appears to make it difficult for embassy officials to know how to deploy the tools available, especially in complex situations involving “repressive allies” (see Section 4.7), economic interests (see Section 4.8) or national security interests (see Section 4.9).

#### **4.4 When engaging with U.S. embassies, human rights defenders see more “personality” than “policy”**

We found that U.S. embassies were generally willing to meet with human rights defenders. According to interviewees, however, when embassy officials met with human rights defenders and civil society organizations, much of the engagement was one-directional. Human rights defenders traveled to the embassy and provided information about what was happening. The embassy official listened and took notes. In many countries, interviewees reported having no further interaction with the embassy.

From the perspective of an embassy official, the decision not to engage on a human rights defender’s case might be based on factors unrelated to the case itself. For example, the embassy might be short staffed or the human rights officer might be juggling multiple portfolios and not have time. From the perspective of human rights defenders that we interviewed, however, the embassies’ decisions are opaque.

Practically every interviewee perceived that an embassy’s response depends on the personal interests of the ambassador and individual human rights officers. Some embassies engage actively with human rights defenders, while others engage minimally. Some embassies use all of the tools at their disposal to help human rights defenders, while others limit themselves to reporting about cases in the congressionally mandated annual Human Rights Reports. To several interviewees, the value of the annual Human Rights

Reports was unclear: It did not help resolve the immediate threats against the human rights defender, and it was unclear how the reports influenced U.S. foreign policy.

Engaging on human rights issues often entails taking a vocal and critical stance when abuses happen. In countries where the U.S. embassy was balancing complex political, economic or national security interests, some embassy officials seemed to have a desire to help but lacked clear guidance from the State Department on how to navigate the situation. Several interviewees observed that human rights officers seem to rank low within the embassy’s hierarchy. Presumably, host governments respond differently to pressure that comes from low-ranking embassy officials compared to statements made by ambassadors or other senior officials.

When an active human rights officer rotates out of post, engagement with human rights defenders sometimes drops to zero when the next human rights officer arrives. This frustrated many human rights defenders, who felt they could not rely on a predictable level of support from the embassy.

#### **4.5 U.S. embassies rarely initiate follow-up with human rights defenders after meeting with them**

An overwhelming majority of interviewees told us that they found it impossible to know what, if any, actions were taken by embassy officials in response to their requests for support. As one interviewee explained, “We don’t know if the embassy does or says anything with the information we provide them.”

In many cases, an embassy official might have valid reasons for not reporting back to a human rights defender who has requested support. However, interviewees were not privy to these internal deliberations and tended to assess their relationship with and trust

of the embassy official based on the official's efforts to maintain open channels of communication.

Embassy officials rarely revealed to human rights defenders whether they took any actions on their behalf. Some interviewees attributed positive outcomes to U.S. diplomatic interventions, but could not confirm this with any real certainty. In multiple cases, the embassy's lack of communication affected human rights defenders' willingness to continue sharing information with embassies or approaching them for support.<sup>65</sup>

Even if embassy officials cannot share details, human rights defenders deeply appreciate knowing that follow-up action was taken. This kind of moral support is immeasurable for those who risk their lives and reputations to stand up for human rights. It also helps to build trust between embassy officials and members of civil society.

## 4.6 Many embassies have not found a way to reach rural areas, where the threats are often greatest

Interviewees observed that U.S. embassy officials often restrict their outreach to civil society organizations that receive funding from the State Department or USAID, or to those based in the capital cities. These organizations tend to be international NGOs or the largest, most politically connected NGOs in the country.

Some of these restrictions are practical: U.S. embassy officials must comply with security protocols that might prohibit them from traveling to conflict zones or high crime areas. Even when embassy officials are allowed to visit these areas, they sometimes must travel in the accompaniment of host government officials, making it difficult to have frank conversations with human rights defenders.

Yet in many countries, the human rights defenders who are at greatest risk of attacks are the ones working at the grassroots level—those who live outside the capital cities in rural areas, do not speak the national language, and come from marginalized groups or indigenous communities that have faced years of discrimination.<sup>66</sup>

Many human rights defenders who work on land and environmental issues — and who face high rates of murder and violence — are based in rural areas. Human rights defenders in rural areas tend to have less understanding of the roles of embassies, much less how to contact them. They do not have access to the same internet or even telephone resources that people in the city have. Defenders in rural areas are often the individuals who need the most support, but U.S. embassies are not reaching them.<sup>67</sup>

## 4.7 U.S. embassies appear to struggle when dealing with “repressive allies”

The U.S. government makes alliances for a variety of strategic and historical reasons, and not all of these allies have strong human rights records. U.S. embassies often refrain from criticizing the host government's human rights record due to concerns about damaging sensitive economic, political or national security relationships, or of compromising intelligence sources. In our interviews, these countries emerged as the locations where U.S. embassies were most likely to fail to protect human rights defenders. At the same time, these might be the countries where U.S. influence can be most helpful to defenders.

The State Department's annual Human Rights Reports often do not shy away from criticizing the human rights records of these governments, even where there are sensitive relationships. However, as currently designed, these reports do not examine

patterns of attacks against human rights defenders in a systematic way. Nor do the reports necessarily help U.S. embassies to make real-time statements in defense of a human rights defender who faces an imminent threat.

Interviewees who tried to engage with U.S. embassies in these countries perceived that embassy officials were less willing to provide support to human rights defenders. Most embassies were still willing to meet with human rights defenders, but exceptions exist. In one country where U.S. diplomatic relations with the host country government are particularly complex, a senior-level embassy official told a member of civil society, “We want to meet with human rights defenders, but we don’t want to get into trouble.”<sup>68</sup>

In the best cases, U.S. embassies shied away from criticizing the host government; in the worst cases, they provided direct support to known perpetrators of human rights atrocities.

For example, the U.S. embassy has struggled to play a meaningful role as **Bahrain**, a strategic ally in the Middle East, retaliates against human rights defenders. The U.S. Navy’s Fifth Fleet maintains a presence in Bahrain, where it has proximity to Iran and patrols a crucial waterway for transporting oil out of the Persian Gulf. Over the course of the past decade, Bahrain has sentenced numerous human rights defenders to lengthy prison sentences, where several have been tortured. In 2019, Bahrain expanded its censorship of the internet and social media, declaring that it would prosecute people even for following social media accounts or sharing the posts of dissidents.<sup>69</sup> The U.S. government has had only limited success intervening on behalf of Bahraini human rights defenders, while at times choosing to remain silent. Although the U.S. government temporarily conditioned some arms sales to Bahrain, it has not interrupted defense cooperation or imposed sanctions on any Bahraini officials.<sup>70</sup>

In the **Philippines**, where extensive violence against human rights defenders is underway as part of President Duterte’s “War on Drugs,” the government has used a “red tagging” tactic to dissuade the U.S. and other embassies from engaging with human rights defenders.<sup>71</sup> By labeling peaceful human rights defenders as “terrorists” or “criminals” and accusing them of violence, the Philippines government has deterred embassies from meeting with these individuals or investigating their cases with rigor.<sup>72</sup> Only recently, in January 2020, did the U.S. government take public action to express disapproval of Duterte’s campaign, revoking the U.S. visa of the former police chief who helped to start the violent campaign.<sup>73</sup>

In countries where the host governments have aligned themselves with **China**, U.S. embassies appeared to struggle with reduced leverage. One interviewee described how the U.S. embassy in an African country tried to raise concerns about the prosecution of human rights defenders after an “unauthorized protest,” but did not succeed in getting face time with the Minister of Justice. China, in contrast, had unfettered access to the government’s elites.

In several cases, host governments have attempted to counter U.S. government criticisms of their human rights records by threatening to realign their security interests with China or Russia.<sup>74</sup> Having a clear policy on human rights defenders could help to navigate this challenge, by allowing host governments to predict in advance when and how the U.S. government will respond to attacks on human rights defenders, and by providing a framework for raising these issues in bilateral discussions.

In some cases involving “repressive allies,” Congress has played an important oversight role in promoting human rights, pressuring or even mandating the State Department to act.

For example, in **Saudi Arabia**, the host government has retaliated against Saudi women who demand



greater respect of their rights. Human rights activists have reported that several prominent women were imprisoned for their activism in 2018, and that several were tortured, placed in solitary confinement, and sexually assaulted.<sup>75</sup> Interviewees familiar with the situation reported that senior leadership at the U.S. embassy was hesitant even to monitor the women's trials or check on those in prison, even though one of the imprisoned human rights defenders had previously won the State Department's International Women of Courage Award. It required congressional pressure to force the State Department to demand that the embassy take a more proactive stance.<sup>76</sup>

## 4.8 U.S. embassies do not systematically coordinate their work on human rights defenders with their economic portfolios

In our interviews, we found that U.S. embassies have a mixed record in supporting human rights defenders in business-related cases. The effectiveness of an embassy's approach appears to depend on the willingness of individual embassy officials to engage with businesses on difficult human rights issues.

A disproportionate number of attacks against human rights defenders are linked to business activities. Between 2015 and 2019, the Business and Human Rights Resource Center documented nearly 2,200 attacks on human rights defenders raising concerns about business-related activities. These attacks ranged “from frivolous lawsuits, arbitrary arrests and detentions to death threats, beatings, and even killings.”<sup>77</sup>

In **Colombia**, the Business and Human Rights Resource Center documented 181 attacks in 2015–2019 against human rights defenders who were raising concerns about businesses. Many of these defenders were raising concerns about multinational companies. Two murdered defenders had opposed opera-

tions of the U.S. mining company Drummond.<sup>78</sup>

The **Philippines** is another country where business-related attacks on human rights defenders have reached crisis levels. According to Global Witness: “The Philippines has consistently recorded the highest number of killings in Asia of people who oppose illegal logging, destructive mining or corrupt agribusiness. Few of the perpetrators have ever been prosecuted.”<sup>79</sup>

Many of the tactics used by businesses to harass and attack human rights defenders—hiring security forces or paramilitary groups, waging smear campaigns, conducting illegal surveillance, lobbying governments to criminalize human rights advocacy, infiltrating peaceful civil society networks to provoke conflict—are difficult to document and prove. Moreover, even where these activities are illegal under national law, host governments often lack the political will to investigate or prosecute. As a result, U.S. embassies are left to navigate business-related human rights abuses on a case-by-case basis without clear standards to follow.

The situation becomes even more complicated when U.S. companies are involved. In these cases, if the U.S. embassy decides to intervene, its default response appears to be engaging with the company behind closed doors. This approach can fuel mistrust with civil society, however, especially when coupled with public statements in support of the company.

For example, U.S. embassies have provided support for Colorado-based Newmont Corporation in various parts of the world.<sup>80</sup> In **Peru**, security forces acting under a memorandum of understanding with Newmont responded with violence against community activists protesting the Conga mine. The police fired tear gas, rubber bullets, and live ammunition, killing several people and injuring dozens between 2011 and 2014.<sup>81</sup> Newmont and other mining companies operating in the Cajamarca region also initiated dozens

of baseless criminal complaints and other forms of harassment designed to silence human rights defenders.<sup>82</sup> Around this time, Newmont began a years-long effort to intimidate land defender Máxima Acuña-Atalaya de Chaupe and her family, bringing meritless charges against them and, according to allegations by the family and their local lawyers, acting to influence the Peruvian courts in their favor.<sup>83</sup> (Note: EarthRights International represents Ms. Chaupe in ongoing litigation against Newmont.)

Behind closed doors, it appears that the U.S. embassy might have advocated for Newmont to adopt more responsible business practices. Interviewees reported, however, that the U.S. embassy took a public position in support of the company during this conflict.<sup>84</sup>

Similarly, in 2015, the State Department listed Newmont's subsidiary in **Ghana** as a finalist for the Secretary of State's Award for Corporate Excellence. Local communities (with support from EarthRights International) sent the U.S. government a letter of protest, describing multiple incidents where the company coordinated with the military to raid a community that was protesting Newmont's operations.<sup>85</sup> Newmont was not selected for the award.<sup>86</sup>

The embassy's protocol for gathering credible information about cases of business-related attacks is important because misinformation is common. Several interviewees perceived that companies often downplay the leverage they have over a situation when they meet with U.S. embassies.<sup>87</sup> Interviewees emphasized that U.S. embassy officials should not take company representatives at face value when they claim not to have the leverage to address situations that are resulting in human rights abuses.

In *Shared Space under Pressure: Business Support for Civic Freedoms and Human Rights Defenders*, Bennett Freeman, author and former Deputy Assistant Secretary for Democracy, Human Rights and Labor at the State Department, observed, "Many companies

have strong experience in discrete diplomacy and subtle advocacy for their own commercial interest, which can also be deployed to protect civic freedoms and human rights."<sup>88</sup>

A U.S. embassy's engagement with the private sector typically falls within the portfolio of the economic officer. Interviewees reported that, to their knowledge, they rarely had interactions with the embassy's economic officer, even in cases involving business-related human rights abuses. Most interviewees were not aware of the internal structure of U.S. embassies and did not request the presence of economic officers in their meetings. Instead, they relied on the human rights officer to invite the appropriate embassy personnel to join.

It is unclear whether the State Department trains economic officers on how to engage with businesses on human rights defender issues. At a minimum, economic officers should coordinate their portfolios with those of human rights officers. In meetings with businesses, economic officers should advocate for responsible human rights practices, both preventative and in response to incidents that occur. On the preventative side, economic officers can encourage companies to carry out robust environmental and social impact assessments and genuine public consultations. When discussing the use of security forces, economic officers can encourage companies to participate in initiatives such as the Voluntary Principles on Security and Human Rights and International Code of Conduct Associations.

However, different strategies apply when a human rights abuse has already occurred. In these cases, economic officers should be aware of the limitations of voluntary self-reporting initiatives and advocate for access to remedies for human rights defenders.

## 4.9 Existing safeguards, such as the Leahy Law, are not sufficient to prevent U.S. security assistance from supporting perpetrators of attacks on human rights defenders

In May 2020, the weekly news magazine *Semana* reported that army intelligence units in **Colombia** had recently carried out illegal surveillance of more than 130 people, including numerous human rights defenders, national and international journalists, labor leaders, lawyers, judges and possible military whistleblowers. The intelligence officers allegedly intercepted communications, prepared military intelligence reports on the personal lives of these individuals and shared the information with politicians in the ruling party.<sup>89</sup> Several of the surveilled individuals received threats during this time. American journalists and partners of American NGOs were among those targeted.

This is not a one-time incident. In the past 15 years, Colombia's intelligence services have been implicated in multiple scandals involving mass surveillance of human rights defenders, opposition politicians, journalists, judges, and peace accord negotiators.<sup>90</sup>

Colombia is the most dangerous country in the world for human rights defenders. In response to the most recent attacks, the Washington Office for Latin America wrote: "Intelligence should ... be used when appropriate to support investigations by the Attorney General's Office into the killings of human rights defenders and social leaders. Instead, what the *Semana* reports reveal is that military intelligence is targeting reformers and the free press. The perversity of this can't be understated."<sup>91</sup>

*Semana's* report also revealed connections between the U.S. government and the intelligence units implicated in the attacks. The *Wall Street Journal* and oth-

ers reported that the U.S. government had supplied equipment that was used in the illegal surveillance, and there are indications that the U.S. government also provided technical support to the unit.<sup>92</sup> In an interview with *Semana*, U.S. Senator Patrick Leahy (D-VT) said, "U.S. taxpayers' money should never be used for illegal activities, much less to violate the rights of American citizens. If these allegations are correct, it would be a serious breach of trust, and those involved must be punished."<sup>93</sup>

In our research for this report, several interviewees expressed concern that the U.S. government has knowingly provided security assistance and cooperation (collectively referred to as "U.S. security assistance" in this report) to those who perpetrate attacks against human rights defenders.<sup>94</sup> These concerns have arisen in Colombia, Honduras, the Philippines and other countries. For example, see the **case study** of Honduras below.

Beginning in 1998, Congress enacted safeguards, named for Senator Leahy, to prevent U.S. security assistance from going to those who commit gross human rights violations.<sup>95</sup> The law arose specifically out of the human rights crisis in Colombia, where U.S.-supported security forces collaborated with paramilitary groups to commit atrocities against local populations during Colombia's civil war.

As described by a State Department official who was charged with overseeing implementation of the law, "The Leahy Law is intended to prevent U.S.-funded assistance from reaching specific security force units or individuals who have committed gross violations of human rights. Less commonly acknowledged, the law is also intended to promote accountability for violations through its 'remediation' clause, which allows the restoration of eligibility for U.S. assistance once violators have been held to account."<sup>96</sup>

The Leahy vetting process applies when a U.S. agency or contractor offers training, materials, and equip-

ment to foreign security forces using funds made available through the State Department or the Department of Defense.<sup>97</sup> The law does not necessarily require vetting of commercial arms sales, direct technical assistance, or intelligence sharing.<sup>98</sup>

State Department officials vet thousands of individuals and units each year, and the process depends heavily on U.S. embassies to continually update a database with information about perpetrators of human rights abuses.<sup>99</sup> In rare cases, the State Department has reportedly allowed security assistance to proceed even though the vetting process has connected the beneficiaries to gross human rights violations.<sup>100</sup>

Leahy vetting plays an essential role in preventing U.S. funds from going to security forces that commit gross human rights violations, and in pressuring governments to bring the perpetrators of violations to justice. But the law does not necessarily account for situations related to human rights defenders. Leahy vetting only applies to acts committed by those who are authorized by the host government to use force. If a member of a security force is involved in a human rights atrocity in an unofficial capacity, this would not necessarily be sufficient to block U.S. security assistance.

Many attacks on human rights defenders occur at the hands of security forces—military, police, prison guards and other officials acting in their *official* capacity, but also in an *unofficial* capacity on behalf of companies and criminal organizations. The State Department distinguishes “official” from “unofficial” acts on a case-by-case basis, looking at evidence such as whether the security forces wore official uniforms or used government-provided equipment when committing the human rights violations.

Often, the lines between “official” and “unofficial” are blurry, with state security forces being hired out to private interests. In **Peru**, EarthRights documented the existence of 138 contracts where extractive companies hired police units to provide security

services.<sup>101</sup> On several occasions, these forces have harassed and attacked human rights defenders during peaceful protests. As UN Special Rapporteur on Human Rights Defenders Michel Forst observed, “This commercialization of the police force creates institutional and individual ties that seriously interferes with the impartiality of law enforcement, exposing environmental defenders to additional risk.”<sup>102</sup>

Human rights activist Annie Bird has been one of the leading international figures reporting on the extreme levels of violence related to the palm oil plantations of the Bajo Aguán Valley in **Honduras**. In 2011, she wrote: “Military, police and private security forces are reported to exchange uniforms depending on the context, to mobilize jointly both in police patrol cars and automobiles that belong to private security companies employed by the [palm oil plantations].”<sup>103</sup> Local activists confirm that this type of behavior continues today.

Because so many attacks on human rights defenders occur at the hands of security forces operating in this gray zone, the Leahy Law does not necessarily apply. Additionally, the law does not necessarily apply to some of the most common types of attacks on human rights defenders:

**The law focuses on “gross violations” of human rights, which excludes many types of attacks.**

Foreign security officials and units can pass the vetting process even if they falsely imprison a human rights defender on trumped up charges, violently evict a community from their homes, conduct illegal surveillance or harass or threaten human rights defenders.

**The vetting process does not seem to account for collaboration between state security forces and nonstate perpetrators**, such as paramilitary groups, company-financed death squads and organized crime networks. Modern security forces are fluid, and their members often float between official and unofficial roles, both legal and illegal.



**Nor does the law address U.S. support provided to judges and other officials who might have links to the torture, detention and false imprisonment of human rights defenders detained by security officials,** e.g., by accepting as evidence in court a confession that was obtained through torture. Interviewees reported that foreign judges and judicial officials are eligible to receive training and other U.S. support, even if they are involved in the criminalization or arbitrary detention of human rights defenders (although they might be denied as a matter of policy). This has reportedly occurred in **Bahrain** and other countries.<sup>104</sup>

In 2016, almost two decades after the law was first passed, Senator Patrick Leahy said, “The law requires active diplomacy—‘**Leahy Law diplomacy.**’ Civilian and military officials at foreign posts should regularly discuss with their partners when and why units have been deemed ineligible for U.S. aid through the vetting process, and what steps the foreign government can and should take to remediate.”<sup>105</sup>

For years, the Leahy Law has opened the doors needed for diplomatic discussions about gross human rights violations associated with security forces. However, this system does not provide a universal safeguard against attacks by security forces on human rights defenders.

## 4.10 Case study: The human rights defender crisis in Honduras

On the night of March 2, 2016, assassins stormed the house of renowned Honduran activist Berta Cáceres and shot her to death. Cáceres had been organizing indigenous communities opposed to a hydropower dam that a company called DESA was building, arguing that the dam was illegally sited on indigenous lands.<sup>106</sup>

Cáceres’s assassination outraged the international community. Numerous human rights organizations and media outlets reported on the crime, demanding justice. By 2018, seven assassins were convicted. Yet none of the people who ordered the murder have been brought to justice. One of the alleged masterminds, DESA executive David Castillo, was arrested leaving the country, but has not yet stood trial. Investigators for Ms. Cáceres’s family have gathered evidence that members of the powerful Atala Zablah family are also responsible; however, no member of that family has been charged.<sup>107</sup>

The U.S. government immediately condemned the murder. After intense advocacy from civil society, the U.S. government began to monitor the case, sending a high-level State Department delegation to Honduras, placing pressure on the Honduran government to investigate and prosecute the crime, and observing court proceedings.

The U.S. government has supported the Honduran government through decades of authoritarianism and repression of protesters and activists.<sup>108</sup> During the 1980s, a U.S. military base in Honduras served as the launching point for U.S. operations in wars in Nicaragua and El Salvador.<sup>109</sup> U.S. security forces have cooperated with the Honduran government to fight drug trafficking and organized crime, even as these same security forces were implicated in the crimes they were fighting.<sup>110</sup>

Perhaps for this reason, the U.S. government has tiptoed around Honduras’s human rights and corruption crises. The State Department supported Honduran elites after they seized power in a 2009 coup, and again after contested elections in 2017, even though the Organization of American States called for new elections amid concerns over extreme irregularities.<sup>111</sup>

Sarah Chayes of the Carnegie Endowment for International Peace describes the government of the

current president Juan Orlando Hernández as a kleptocracy; it has stolen countless public assets for the benefit of the elite families that control the ruling party.<sup>112</sup> The government has also worked closely with drug traffickers, details of which association have become public during the trial and sentencing of the president's brother in U.S. federal court.<sup>113</sup> The Hernández regime has also allowed the state's security forces to step into domestic business activities.<sup>114</sup> Those who protest the regime have faced severe repression.<sup>115</sup>

The Congressional Research Service found that the Honduran government has often waged smear campaigns against human rights defenders—labeling them as criminals, drug traffickers, and gang members—and bringing criminal charges against them.<sup>116</sup> Like Berta Cáceres, many human rights defenders are killed each year by paramilitary groups linked to companies, the military, and the Honduran government. Those living in rural areas who oppose economic projects by the country's ruling elite are particularly at risk.

In the summer of 2014, tens of thousands of unaccompanied minors from Honduras arrived at the U.S. border.<sup>117</sup> Political actors in the United States connected these events to U.S. political debates over immigration. The U.S. government, in close cooperation with the Honduran government, crafted a narrative that blamed the migration crisis on drug traffickers and organized crime, while saying that the solution was to provide more weapons and security assistance to the Honduran government.<sup>118</sup> This narrative contrasted with the U.S. government's ongoing support for the ruling elites and security forces that play a leading role in this criminal activity.<sup>119</sup> Interviewees reported, for example, that the ruling elites regularly employ assassins and paramilitary groups to terrorize trade unionists who want to organize and evict farmers from their land to make way for natural resource extraction projects.

The U.S. embassy has provided support to human rights defenders in several cases, as part of its regional security initiative.<sup>120</sup> Labor rights activists who we interviewed suspect that the U.S. embassy might have intervened to stop a potentially violent reprisal by security forces of workers who were on strike, but have no evidence to confirm. When two former trade unionists received death threats, the U.S. embassy reportedly processed their visas so they could leave the country for safety.

Yet while the U.S. embassy has intervened in some life-or-death situations, interviewees felt that the embassy becomes defensive whenever the attacks link back to Honduras's ruling elite and security forces. Trust between the U.S. embassy and civil society is low, according to those who we interviewed.

For example, interviewees reported that the U.S. embassy has promoted a false narrative that frames violence in the Bajo Aguán region as the result of intercommunity violence, rather than focusing on the role of the Dinant Corporation and other palm oil barons that are driving the violence.<sup>121</sup> The U.S. government has assisted Honduran prosecutors to pursue only a limited scope of cases that fit within this narrative. Several interviewees also believed that sensitive information they shared with the U.S. embassy was finding its way to the Honduran government, and that the embassy had accepted false reports from the Honduran government and companies without question.

Human rights investigators have documented how U.S. security assistance is finding its way to individuals and units in the Honduran security forces that are alleged to have committed atrocities against local populations.<sup>122</sup> The U.S. embassy's support for Honduras's then-Director of Police, Juan Carlos "El Tigre" Bonilla, who is alleged to have participated in multiple extrajudicial killings, is one blatant example.<sup>123</sup>

Over the past decade, members of Congress have sent at least 10 letters to the State Department demanding a more careful approach to how U.S. security assistance is being used in Honduras. For the most part, these calls have gone unheeded, although Congress has placed conditions on some U.S. government funding to Honduras.<sup>124</sup>

As Berta Cáceres's case illustrates, protection for human rights defenders in Honduras requires sustained pressure from the U.S. government and international actors. One-off, ad hoc interventions are not effective. So far, the U.S. government has used its leverage to demand that the prosecution of Ms. Cáceres's assassins continues. Meanwhile, alleged mastermind David Castillo, despite his arrest in Honduras, has leveraged his connections as a West Point graduate and hired public relations firms to lobby policymakers in Washington, D.C., to cease applying this pressure.<sup>125</sup> Over two years after his arrest, his trial has yet to begin, and no one else involved in planning or ordering the killing has been arrested. The final outcome of this tragedy remains far from certain.

# 5.0 RECOMMENDATIONS

U.S. embassies have made significant contributions to protecting human rights defenders and affirming their essential role in peaceful, democratic, and prosperous societies. However, the U.S. government would benefit from being able to respond to attacks on human rights defenders in a more systematic way.

Until the State Department strengthens its overarching policy framework with respect to human rights defenders, U.S. embassies will continue to respond in an inconsistent manner that is not grounded in the strategic identification and targeting of patterns of abuse. Embassies will continue to struggle with their responses when the attacks link to “repressive allies,” businesses, and U.S.-supported foreign security forces. Personality, rather than policy, will continue to drive many embassies’ approaches.

We believe that a congressional mandate to this effect could be helpful. In recent years, many of the State Department’s key human rights reforms have come through congressional mandates, including the annual Human Rights Reports,<sup>126</sup> Global Magnitsky sanctions,<sup>127</sup> Section 7031(c) visa restrictions<sup>128</sup> and the Leahy Law.

The State Department should take the following steps, either on its own accord or through a Congressional mandate:

## 1. Take immediate action to strengthen protections in crisis countries.

Threats against human rights defenders working on land, environmental, and labor issues have reached crisis levels in several countries—such as the Philippines, Honduras, Colombia and Brazil—and merit a concerted response.

In 2019, the State Department held a well-received briefing for civil society in Washington, D.C. on how human rights defenders can best engage with embassies. After the COVID-19 pandemic subsides, similar civil society events could be replicated in these key countries and at global gatherings. These events could be combined with various communication tools to ensure widespread and inclusive participation of human rights defenders, including those in rural areas. To the extent possible, outreach should be designed as a two-way dialogue that provides human rights defenders with an opportunity to meet embassy staff and learn how to work with embassies, while also providing input into how the State Department can best engage with human rights defenders.

Informed by these events, the State Department should lead the development of an interagency strategy for responding to and elevating this issue in each country. The strategy should coordinate actions by a range of U.S. government actors, including those engaged in political, economic and national security affairs.

## 2. In consultation with a broad range of civil society organizations, develop comprehensive, public-facing guidelines for U.S. embassy action to protect human rights defenders.

As this report argues, an effective approach to human rights defenders requires clear, open and sustained lines of communication with civil society and other members of the public. A cornerstone of this approach should be comprehensive, public-facing guidelines describing how U.S. embassies can help to protect human rights defenders.



By making these guidelines publicly available, the State Department will be able to:

- Reaffirm this issue as a foreign policy priority for U.S. embassies;
- Equip human rights defenders with guidance on how to frame their requests for support and describe their cases in a manner that is helpful to embassy officials;
- Enhance public trust in American businesses overseas by reassuring local stakeholders that U.S. embassies are monitoring this issue and advocating for responsible business practices;
- Provide a mechanism for opening dialogue and building trust with civil society in the host country;
- Help to counter disinformation aimed at delegitimizing the U.S. government's human rights interventions within the host country;
- Facilitate learning and constant improvements in the U.S. government's approach; and
- Perhaps most importantly, help to legitimize the work of human rights defenders, including land and environmental defenders, within the host country.

The development of the guidelines should be informed by consultations with civil society organizations on the ground in key countries where reprisals against human rights defenders are taking place. We recommend consulting with a wide variety of civil society actors from different regions of the world, not just organizations that receive State Department or USAID funding.

The guidelines should provide a starting point to ensure that human rights defenders get the response they need from those best placed to do so. To be effective, the guidelines should commit the State Department not just to focus on killings of human rights defenders, but on other types of attacks. Embassies should monitor trends and patterns of attacks. In this way, U.S. embassies will be better pre-

pared to provide support to human rights defenders before threats escalate into violence. Prevention and mitigation should become a core component of how U.S. embassies support the work of human rights defenders. Additionally, the U.S. government should establish itself as a leader among embassies in vigorously pursuing accountability when human rights abuses occur.

Because so many reprisals against human rights defenders are linked to business activities, the guidelines also need to create channels for placing pressure on businesses — including subsidiaries, contractors, supply chains and financiers. As Global Witness has observed, “promoting the safety of defenders is strongly associated with a stable business operating environment. Companies and defenders alike thrive in contexts of transparency, rule of law, nondiscrimination, and freedom of association.”<sup>129</sup>

The guidelines should also highlight the variations in vulnerability that can occur among different types of human rights defenders, such as those that work on land and environmental issues, labor, women's rights, the rights of indigenous and Afro-descendant communities and LGBTQ rights, among others.

We have included two annexes to this report to help the State Department identify best practices to be included in these guidelines, as recommended by human rights defenders. This includes Annex 1: Embassy Tools for Supporting Human Rights Defenders, as well as Annex 2: Advice for Human Rights Officers at U.S. Embassies.

At least seven other governments have developed guidelines that could serve as a reference point. These include Canada, the Netherlands, the European Union, Finland, Norway, Sweden, and the United Kingdom.<sup>130</sup> Resources also exist that can inform the development of these guidelines, including recommendations that several civil society organizations have developed for embassies.<sup>131</sup>

The guidelines should be posted on all embassy websites in local languages, in order to facilitate outreach to human rights defenders in host countries, and in order to provide clarity to host governments on when and how the U.S. government will respond to attacks on human rights defenders. The State Departments should ensure that all embassy personnel, not just human rights officers, are aware of the guidelines.

Until the guidelines are developed, the State Department should post its existing human rights defender factsheet on all embassy websites in local languages.<sup>132</sup> The existing factsheet on human rights defenders was developed in 2013 and is outdated, but provides an important starting point for conversations between embassy officials and human rights defenders on what kind of support is provided. Posting the factsheet on embassy websites can provide a temporary placeholder while more robust guidelines are developed. The embassy website should also list a focal point for human rights defender issues and relevant contact information.

Finally, the State Department should develop a system to monitor implementation of the guidelines, report publicly on progress and adapt its practices on a regular basis to reflect lessons learned. As in any large bureaucracy, a complex issue such as this can get lost if accountability systems are not in place.

### **3. In conjunction with the public-facing guidelines, develop internal protocols and training to facilitate stronger coordination within the State Department on human rights defender issues.**

Effective coordination within the State Department and the interagency on human rights defender issues will also require protocols and training that is not necessarily included in public-facing guidelines.

Internal procedures should facilitate a coordinated response from the State Department in Washington, D.C.; embassy officials working on political, economic and consular affairs; and other relevant government agencies. Corresponding training — not just for human rights officers, but for all foreign service officers — could help to ensure that officers understand the foreign policy rationale for protecting human rights defenders and the tools available for providing support. Training could include case studies, both positive and negative, which are identified in partnership with human rights organizations.

One outcome of this process should be strengthened interagency sharing of data collected on reprisals against human rights defenders, on a regular and timely basis, with all relevant U.S. government agencies involved in the implementation of U.S. security assistance and cooperation, foreign assistance, multi-lateral development financing and immigration.

The State Department should also ensure that all embassy staff are aware of the emergency assistance resources that are available in each country. This includes U.S. government-funded programs such as Lifeline, non-U.S. government-funded resources (where available) and local public interest lawyers who can represent human rights defenders in legal proceedings.

Given the limitations of the Leahy Law in preventing U.S. resources from reaching perpetrators of attacks on human rights defenders, the State Department should assess how foreign security forces are perpetrating attacks against human rights defenders through official and unofficial ties to paramilitary groups and organized crime. Where the Leahy Law is insufficient, the State Department should develop a strategy for applying similar vetting processes to perpetrators of attacks against human rights defenders.

The State Department has already made tremendous progress in opening strong communications channels

between civil society and the offices responsible for implementing Section 7031(c) visa restrictions and recommending sanctions under the Global Magnitsky Human Rights Accountability Act. The U.S. government could promote accountability for attacks against human rights defenders by making a concerted effort to apply these authorities to these types of cases.

#### **4. Add a section to the State Department's annual human rights reports on reprisals against human rights defenders and the host government's response.**

The congressionally mandated annual human rights reports are a cornerstone of the Department's approach to human rights. The reports should highlight attacks on human rights defenders as a specific issue of concern. This should include not only killings, but other forms of reprisals. Reporting should pay special attention to patterns of abuse, in order to inform U.S. government interventions. The reports should differentiate between attacks on human rights defenders working on land and environmental issues, labor rights, women's rights, the rights of indigenous and Afro-descendant communities, LGBTQ rights and other subgroups.

# ANNEX 1

## Embassy Tools for Supporting Human Rights Defenders<sup>133</sup>

Consistent with the “Do No Harm” principle, all embassy actions in support of human rights defenders should take place in coordination with those who are being targeted.

### Help the human rights defender find emergency support

#### Examples

- Connect the human rights defender to Freedom House’s Emergency Assistance Program.
- Connect a civil society organization with the Life-line Embattled CSO Fund.
- Refer the human rights defender to an organization that can provide physical accompaniment, such as Peace Brigades International.
- Refer the human rights defender to a local public interest lawyer who can represent them in legal proceedings.

#### Implementation Guidance

*The embassy can provide more targeted and rapid support if the human rights officer has previously reached out and established a relationship with points of contact at these organizations.*

*Having the defender’s consent for these actions is important, especially when the actions involve physical relocation or appointment of legal counsel.*

### Express public support for a human rights defender

#### Examples

- Issue a public statement.
- Conduct site visits to a community or a civil society organization’s office.
- Invite defenders to embassy events.
- Arrange meetings with human rights defenders during VIP visits.
- Send an observation team to public demonstrations.
- Give a State Department award to the human rights defender.

#### Implementation Guidance

*Public support can deter attacks if the perpetrators know the case is being watched. It can affirm the legitimacy of the work of human rights defenders, while counteracting smear campaigns. But raising the public profile of a case or associating the person with the U.S. government occasionally places the person at higher risk or can impact their legitimacy in the eyes of society, especially if it leads the host government to denounce the human rights defender as a “foreign agent.”<sup>134</sup> Defenders should therefore be consulted before such actions are taken.*



## Engage through diplomatic channels

### Examples

- Arrange a meeting or phone call with the relevant authority.
- Present a démarche<sup>135</sup> to officials in the host government, parliament, or security forces raising concerns.
- Raise concerns during high-level, bilateral meetings.
- Advocate for the approval or strengthening of host government protective measures for the defender.
- Regularly check in to monitor the implementation of host government protective measures
- Engage with local or provincial officials, especially if engagement at the national level is too politically sensitive

### Implementation Guidance

*Diplomatic engagement helps to mobilize the host government to use its resources to prioritize protections for the human rights defender. It can also deter threats that originate from high-level officials, by sending a signal that the diplomatic community is watching the case.*

## Mobilize the broader diplomatic community

### Examples

- Convene a briefing with civil society for ambassadors from several countries on embassy premises.
- Organize joint public statements or press conferences.
- Conduct joint site visits or investigations.
- Issue a démarche with coordinated messaging from multiple embassies.
- Raise the case at meetings of multilateral bodies like the U.N. or the World Bank Group.

### Implementation Guidance

*U.S. embassies often have more resources than other embassies. When the U.S. embassy has done its due diligence and expressed support for the human rights defender, other embassies might be more willing to follow. Likewise, in sensitive countries, speaking up together can make it safer to criticize the host government without repercussions.*

## Physically accompany human rights defenders at critical moments

### Examples

- Accompany the human rights defender to or from the airport or border to ensure safe transport.
- Accompany the human rights defender on high-profile domestic journeys.

### Implementation Guidance

*As with other forms of support, it is important to have the consent of the human rights defender, especially if being publicly associated with the U.S. embassy creates any risks.*

## Call for investigations and prosecution of crimes<sup>136</sup>

### Examples

- Call publicly for the host government to investigate and prosecute a crime against a human rights defender.
- Call for an investigation by U.N. special mandate holders or bodies, or by independent experts.
- Refer cases where appropriate for visa restrictions or Global Magnitsky sanctions

### Implementation Guidance

*Embassies can encourage the pursuit of justice where impunity might otherwise exist. One-off demands might be insufficient to keep the case moving through the judicial process; sustained pressure is often necessary.*

## Report on cases in the State Department's annual Human Rights Reports<sup>137</sup>

### Examples

- Report on individual cases.
- Report on patterns of abuses.
- Conduct outreach to civil society to solicit information for inclusion in the annual report.

### Implementation Guidance

*The annual human rights reports provide visibility and international recognition of human rights defenders' cases. These reports can also help the U.S. government to identify patterns of abuse.*

*Embassies should take care not to exclude information from NGOs or grassroots groups that are falsely labeled by the host government as "terrorists," "seditious," "corrupt" or "criminals."*

## Monitor trials

### Examples

- Attend trials and formal proceedings, monitoring to determine if due process exists.
- Issue a public statement about the legitimacy of a trial.
- Coordinate with other embassies to establish a trial observation rotation.
- Facilitate connections to international jurists from the United States, as well as the countries of other participating embassies, to add weight to the case for the defense.

### Implementation Guidance

*Trial monitoring signals that the international community is concerned about the case. It is important for embassies to discuss with the human rights defender whether the observer's presence would be helpful.*

*If the embassy observes a sham trial and fails to make a public statement afterwards, its silent presence can have the counterproductive effect of validating the proceeding.*

## Visit human rights defenders in prison

### Examples

- Visit the human rights defender in detention or in prison and ensure that conditions meet international standards.
- Facilitate access to the human rights defender, especially for a medical assessment, by U.N. special mandate holders or bodies, or by independent international experts.
- Publicly call for access to medical assistance.

### Implementation Guidance

*Embassies should ensure that prison visits do not undermine calls for unconditional release of a human rights defender.*

## Provide relocation and visa support

### Examples

- Issue an emergency visa to allow rapid exit from the country to safety.
- Help the human rights defender to obtain a valid entry visa to safe countries for an extended period.

### Implementation Guidance

*Helping a human rights defender to relocate can help protect that person and their family from imminent threats.*

<ul style="list-style-type: none"> <li>• Provide shelter in the embassy as an exceptional last resort.</li> <li>• Provide material support to a defender in exile — or connect the defender with an organization that provides support.</li> <li>• Provide continuing pressure to ensure that the host government does not retaliate against a defender in exile by freezing bank accounts, threatening family members, etc.</li> </ul>	<p><i>To the degree possible, it is important to ensure that relocated defenders and their families have access to support networks and resources in their country of relocation to ease their transition.</i></p>
<p><b>Advocate for responsible business practices and access to remedies when abuse occurs</b></p>	
<p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• Meet regularly with businesses in high-risk sectors, such as natural resource extraction, to learn more about their human rights due diligence and encourage adoption of best practices.</li> <li>• Raise concerns with senior-level business officials about alleged threats.</li> <li>• Discourage businesses from using SLAPPs and other judicial harassment tactics.</li> <li>• Monitor public consultations, as well as environmental and social impact assessments, to ensure that they address key human rights risks.</li> <li>• Organize multistakeholder dialogues on human rights defender issues.</li> <li>• Design foreign assistance programming in the country to promote responsible business practices.</li> <li>• Withhold or deny embassy support to businesses implicated in abuses.</li> <li>• Refer evidence of abuses to the Justice and Treasury Departments for investigation.</li> </ul>	<p><b>Implementation Guidance</b></p> <p><i>The State Department should encourage the embassy’s economic officer to coordinate closely with the human rights officer on human rights defender issues linked to business activities.</i></p>



**Advocate for legal and policy reforms that protect civic space, promote the rule of law and hold perpetrators accountable**

**Examples**

- Advocate for laws that protect human rights defenders, freedom of speech, freedom of assembly, indigenous people’s rights and other related issues.
- Issue public statements expressing concern with legislation and policies that would restrict civic space or create risks for human rights defenders.
- Design programming in the country to support human rights defenders.

**Implementation Guidance**

*The State Department has a role to play in ensuring that all U.S. government agencies that provide funding or support in the host country have the information needed to avoid contributing inadvertently to attacks on human rights defenders. This is especially important in the judicial sector, where there is a high risk that U.S. foreign assistance is channeled to judges and court officials involved in the criminalization of human rights defenders.*

# ANNEX 2

## Advice for Human Rights Officers at U.S. Embassies<sup>138</sup>

*During the course of our interviews, human rights defenders recommended the following best practices for embassy human rights officers.*

<b>First steps upon arriving at post</b>	<ul style="list-style-type: none"><li>• Connect with the outgoing human rights officer to ensure a handover of ongoing cases.</li><li>• Establish contact with organizations that provide emergency funding, accompaniment and specialized legal support services to human rights defenders.</li><li>• Organize initial outreach meetings with the human rights community, including those located in high-risk areas. Be sure to reach out to coalitions, as well as individual groups. Avoid limiting your outreach just to U.S. government grantees and international NGOs, making a particular effort to establish contact with a range of human rights defenders in urban and rural areas.</li></ul>
<b>Following up</b>	<ul style="list-style-type: none"><li>• Follow up with human rights defenders on a regular basis to receive and provide updates, or at least aim to be responsive when human rights defenders follow up with you.</li><li>• Let human rights defenders know that you are doing something, beyond just listening.</li><li>• Ensure that you are aware of the security situation of each human rights defender with whom you are in contact, in order to ensure that it is safe for that individual to have direct contact with the U.S. embassy.</li></ul>
<b>Obtaining consent</b>	<ul style="list-style-type: none"><li>• Consistent with the “do no harm” principle, seek the consent of human rights defenders before taking actions on their behalf.</li></ul>
<b>Mobilizing the diplomatic community</b>	<ul style="list-style-type: none"><li>• Rather than acting alone, inform the embassy’s leadership and other colleagues, especially economic officers, defense attachés, and USAID representatives, about your cases.</li></ul>

<b>(cont.) Mobilizing the diplomatic community</b>	<ul style="list-style-type: none"> <li>• Facilitate regular meetings with counterparts at other embassies to coordinate on human rights defender issues.</li> <li>• Look for opportunities to integrate human rights defender considerations into U.S. foreign assistance and security assistance programming.</li> </ul>
<b>Respecting collective and community-based approaches</b>	<ul style="list-style-type: none"> <li>• Recognize that in some cases, an entire community or group might be at risk, as is often the case with indigenous and Afro-descendent peoples.</li> <li>• Remember that indigenous peoples, Afro-descendent peoples, and other communities might have different expectations for how they would like their voice represented. For example, it might be culturally appropriate for them to send multiple representatives to speak on behalf of a community.</li> <li>• Be careful not to engage in “kingmaking,” in which you select who speaks on behalf of a community.</li> </ul>
<b>Pressuring authorities to investigate or prosecute</b>	<ul style="list-style-type: none"> <li>• Use this tactic aggressively to fight impunity; it does not require taking a position on conflicts between the government and local communities, rather it simply requires taking a stance on the importance of rule of law.</li> <li>• Urge the host government to investigate threats and patterns of abuse, not just killings. Law enforcement authorities rarely investigate threats, even though threats often escalate into attacks.</li> <li>• Advocate for the investigation and prosecution of those who plan, direct, and commission attacks on defenders, not just the individuals who carry out the crimes.</li> <li>• Meet periodically with local authorities to check on the status of specific human rights cases; regular engagement is more effective than one-off requests for investigations.</li> </ul>
<b>Engaging with U.S. businesses</b>	<ul style="list-style-type: none"> <li>• Work with economic officers to incorporate questions about companies’ human rights conduct, policies, and practice into their meetings with companies.</li> <li>• Seek out information about U.S. businesses’ use of security forces, including informal paramilitary and criminal organizations, in areas where there are conflicts with local communities.</li> <li>• Work with the economic officer to place pressure on U.S. businesses whose behavior abroad does not reflect U.S. human rights values.</li> <li>• Look for opportunities to facilitate multistakeholder dialogues to promote the security of human rights defenders.</li> </ul>

<b>(cont.) Engaging with U.S. businesses</b>	<ul style="list-style-type: none"> <li>• Encourage businesses facing security challenges to join the Voluntary Principles on Security on Human Rights and the International Code of Conduct Association, while also recognizing the limitations of voluntary initiatives in providing access to remedies.</li> <li>• Be aware of businesses that attempt to deflect responsibility for human rights abuses using misinformation tactics.<sup>139</sup></li> </ul>
<b>Monitoring trials</b>	<ul style="list-style-type: none"> <li>• When observing trials, issue a public statement after the proceeding; be aware that the host government might try to use the embassy's silent presence to validate a sham trial.</li> </ul>
<b>Getting out into the field</b>	<ul style="list-style-type: none"> <li>• Accept invitations to human rights defenders' events.</li> <li>• Visit the offices and communities of human rights defenders.</li> <li>• Get outside the capital city to visit human rights defenders in rural areas.</li> <li>• Make a point to visit a diversity of groups.</li> <li>• Coordinate with other embassies to ensure that someone is conducting regular factfinding in sensitive areas.</li> <li>• If an area is dangerous, consider participating in joint delegations with other embassies or the U.N., or meeting with human rights defenders at secure offsite locations.</li> </ul>
<b>Inviting human rights defenders to embassy events</b>	<ul style="list-style-type: none"> <li>• Invite human rights defenders to embassy events as a way to affirm the legitimacy of their work.</li> <li>• Before extending invitations, double-check the optics of events to ensure that human rights defenders are not portrayed as members of opposition political parties or in other ways that might be harmful.</li> <li>• Create or facilitate opportunities for human rights defenders to meet with other key embassy staff, such as the ambassador and economic officer.</li> </ul>
<b>Maintaining relationships as embassy personnel rotate out</b>	<ul style="list-style-type: none"> <li>• Build in a continuity plan as you transition out of post, in order to keep relationships and trust intact.</li> <li>• Maintain files on specific cases, so that it takes the embassy less effort to get up to speed at crisis moments.</li> </ul>



# ABOUT THE AUTHORS

**Kirk Herbertson** is a Senior Policy Advisor at EarthRights International. For more information on EarthRights, please visit <https://www.earthrights.org>.

**Filmona Hailemichael** is a member of the Defending Land and Environmental Defenders Coalition and the former director of Publish What You Pay – United States.

**The Defending Land and Environmental Defenders Coalition** consists of 58 civil society organizations from around the world who are working to build protection skills among land and environmental defenders, strengthen government and business safeguards for defenders and protect civil society actors who are addressing root causes of threats and attacks on defenders. For more information, please visit <https://elaw.org/defenderscoalition>.

# ACKNOWLEDGMENTS

The authors would like to express their gratitude to the many human rights defenders and policy experts who took the time to speak with us, share their insights and experiences, and provide feedback on drafts of this report. For security reasons and to protect sensitive relationships, we do not mention these individuals by name.

We would also like to thank our colleagues at EarthRights International who provided extensive support in developing this report and bringing it to publication. This includes Keith Slack, Audrey Schreiber, and Kate Fried, who led the conceptualizing, design, layout, and production processes of the report, as well as Ysabel Echiverri, Wyatt Gjullin, Ben Hardman, Kelsey Jost-Creegan, Mona Laczó, Marco Simons, Marissa Vahlsing, and Juliana Bravo Valencia, who provided invaluable technical input.

# ENDNOTES

<sup>1</sup> For more information about EarthRights International’s work supporting environmental and land defenders, please see our report *Fighting Back: A Global Protection Strategy for Earth Rights Defenders*, [https://earthrightsdefenders.org/wp-content/uploads/2018/12/ERD\\_Report\\_Web.pdf](https://earthrightsdefenders.org/wp-content/uploads/2018/12/ERD_Report_Web.pdf). For more information about the Defending Land and Environmental Defenders coalition, see section 1.1 of this report. The views and findings expressed in this report are the authors’ and do not necessarily reflect the positions of all coalition members.

<sup>2</sup> Researchers have demonstrated that respect for human rights is good for business and promotes economic stability. For example, in 2018, the B Team found that “limits on important civic freedoms are linked to negative economic outcomes,” and that these trends “translate to unpredictable costs, unreliable markets, increased corruption and weakened legislative systems.” Annabel Lee Hogg & Robin Hodess, *The B Team, The Business Case for Protecting Civic Rights* (Oct. 2018), <https://bteam.org/assets/reports/The-Business-Case-for-Protecting-Civic-Rights.pdf>.

Likewise, Rights Co-Lab and the law firm DLA Piper have reported on how companies depend on civil society to reveal important human rights information that is relevant to their operations, alerting them to corruption and other risks that can disrupt business operations and damage brand reputations. Edwin Rekosh & Lamin Khadar, *DLA Piper & Rights Co-Lab, The Business Case for Civil Society* (Sept. 2018), [https://rightscolab.org/app/uploads/2018/12/the\\_business\\_case\\_for\\_civil\\_society.pdf](https://rightscolab.org/app/uploads/2018/12/the_business_case_for_civil_society.pdf).

<sup>3</sup> See e.g., Li Yuan, “Widespread Outcry in China Over Death of Coronavirus Doctor,” *New York Times*, 7 Feb. 2020, <https://www.nytimes.com/2020/02/07/business/china-coronavirus-doctor-death.html>; Bloomberg News, “Death of a Hero Doctor Sparks Crisis of Confidence in Xi’s China,” Feb. 7, 2020, <https://www.bloomberg.com/news/articles/2020-02-07/death-of-a-hero-doctor-sparks-crisis-of-confidence-in-xi-s-china>; Verna Yu, “‘Hero who told the truth’: Chinese rage over coronavirus death of whistleblower doctor,” *The Guardian*, Feb. 7, 2020, <https://www.theguardian.com/global-development/2020/feb/07/coronavirus-chinese-rage-death-whistleblower-doctor-li-wenliang>; James Griffiths, “The fallout from the death of a Chinese doctor is turning into a major challenge for Xi Jinping,” *CNN*, Feb. 13, 2020, <https://www.cnn.com/2020/02/13/asia/china-wuhan-free-speech-xi-intl-hnk/index.html>.

<sup>4</sup> Li Yuan, “Widespread Outcry in China Over Death of Coronavirus Doctor,” *New York Times*, Feb. 7, 2020, <https://www.nytimes.com/2020/02/07/business/china-coronavirus-doctor-death.html>.

<sup>5</sup> Dr. Li’s story has served as an inspiration in the United States as the U.S. government implements unprecedented measures to respond to the coronavirus pandemic. In February 2020, for example, the U.S. Senate passed a resolution with bipartisan support commemorating Dr. Li’s life. See U.S. Senate Resolution 497 (2020), <https://www.congress.gov/bill/116th-congress/senate-resolution/497>.

<sup>6</sup> The U.N. Declaration on Human Rights Defenders defines human rights defenders as individuals, groups and associations “contributing to the effective elimination of all violations of human rights and fundamental

freedoms of peoples and individuals.” U.N. Declaration on Human Rights Defenders, General Assembly Res. A/RES/53/144 (1988), <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

As described by Michel Forst, the U.N. Special Rapporteur on the Human Rights Defenders: “Human rights defenders are those who, individually or with others, act to promote or protect human rights, nationally and internationally, in a peaceful manner. They are members of civil society organizations, journalists, bloggers, whistle-blowers as well as political activists who advocate for the right to a safe and healthy environment. They do not need to belong to any registered organization to be a human rights defender. They can be ordinary women, men and children, who believe in the universality of human rights and act to defend them. They are indigenous people who fight to defend and preserve their ancestral land and their cosmovision. They are agents of change, safeguarding democracy and ensuring that it remains open, pluralistic and participatory.” Michel Forst, End of Mission Statement, Visit to Peru, Jan. 21 – Feb. 3, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25507&LangID=E>.

While the international community uses this term widely, many human rights defenders do not necessarily self-identify as “human rights defenders.” The United Nations identifies defenders by the actions that they take, which must be nonviolent in nature. However, these actions do not necessarily need to be “legal” under national law; acts of civil disobedience can qualify, especially where national laws are used to repress human rights. U.N. Office of the High Commissioner for Human Rights, “Who is a defender,” <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

<sup>7</sup> Attacks against human rights defenders occur in a number of different ways and are often designed to (1) delegitimize, (2) stigmatize, and (3) silence human rights defenders. For example: extrajudicial killings and other forms of violence, threats against defenders and their families, illegal surveillance, judicial harassment (including the use of strategic lawsuits against public participation, or SLAPPs), false imprisonment, infiltration of activist networks, sexual harassment, use of force to disrupt peaceful protests, smear campaigns, social media trolling, restrictions on freedom of movement, freezing of bank accounts, travel bans and restrictions on NGOs’ activities and funding.

<sup>8</sup> Freddy Cuevas, “7 found guilty in killing of Honduran environmental activist,” Associated Press, updated Dec. 7, 2018, <https://apnews.com/a90a3105af7b405ebfea3719cf71f0c9>; “4 Years Seeking Justice: Daughter of Slain Indigenous Environmental Leader Berta Cáceres Speaks Out,” Democracy Now, Jan. 17, 2020, [https://www.democracynow.org/2020/1/17/berta\\_caceres\\_laura\\_caceres\\_interview](https://www.democracynow.org/2020/1/17/berta_caceres_laura_caceres_interview).

<sup>9</sup> Ernesto Londoño, “A Year After Her Killing, Marielle Franco Has Become a Rallying Cry in a Polarized Brazil,” New York Times, 14 Mar. 2019, <https://www.nytimes.com/2019/03/14/world/americas/marielle-year-death.html>.

<sup>10</sup> Frontline Defenders, Global Analysis 2019, executive summary, [https://www.frontlinedefenders.org/sites/default/files/global\\_analysis\\_2019\\_web.pdf](https://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf). Of the 304 killings, 106 took place in Colombia, 43 in the Philippines, 31 in Honduras, 23 in Brazil, and 23 in Mexico.

<sup>11</sup> Frontline Defenders, Global Analysis 2019, executive summary, endnote 10.

<sup>12</sup> “Human Rights Defenders & Business – Annual Snapshot,” Business & Human Rights Resource Center, Jan. 2020, <https://www.business-humanrights.org/en/human-rights-defenders-business-annual-snapshot>.

<sup>13</sup> For more information please visit the coalition’s webpage, <https://elaw.org/defenderscoalition>.

<sup>14</sup> EarthRights International, *Fighting Back: A Global Protection Strategy for Earth Rights Defenders* (2018), <https://earthrights.org/publication/fighting-back-a-global-protection-strategy-for-earth-rights-defenders>.

<sup>15</sup> Global Witness, *Responsible Sourcing: The business case for protecting land and environmental defenders and indigenous communities’ rights to land and resources* (April 2020), p.4, <https://www.globalwitness.org/en/campaigns/environmental-activists/responsible-sourcing>; see also, Global Witness, *Enemies of the State? How governments and businesses silence land and environmental defenders* (July 2019), <https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state>. The highest number of killings of environmental and land defenders occurred in the Philippines (30), Colombia (24), India (23), Brazil (20), and Guatemala (16). Global Witness noted, “The real figure is likely to be much higher, because cases are often not recorded and very rarely investigated. Reliable evidence is hard to find or verify.” (p. 6.)

The attacks often link to industries involved in natural resource extraction. As described by Global Witness: “As demand for products like timber, palm oil and minerals continues to grow, governments, companies and criminal gangs are routinely stealing land and trashing habitats in pursuit of profit. When the ordinary people who live on these lands take a stand, they come up against companies’ private security, state forces, contract killers, or in less violent confrontations, teams of aggressive lawyers.” (Id. at p.6.) Members of indigenous communities and ethnic minorities have been particularly vulnerable to these attacks.

<sup>16</sup> Frontline Defenders, *Global Analysis 2019*, pp. 7-8, endnote 10.

<sup>17</sup> U.N. Human Rights Council, *Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development*, adopted on 21 Mar. 2019, U.N. Doc. A/HRC/RES/40/11.

<sup>18</sup> The U.S. Congress has mandated that “a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.” 22 U.S.C. 2304. See also, the Trump administration’s policy statement, “Human Rights and Democracy,” <https://www.state.gov/policy-issues/human-rights-and-democracy>.

<sup>19</sup> In this report, we use the term “embassies” to encompass embassies, consulates, and other diplomatic posts of the U.S. government.

<sup>20</sup> In June 2019, the U.S. government reaffirmed its commitment to the U.N. Declaration on Human Rights Defenders (HRDs). According to the State Department, “We endorse an inclusive definition of HRDs as individuals, working alone or in groups, who nonviolently advocate for the promotion and protection of human

rights and fundamental freedoms. HRDs, as well as their families, friends, and associates, are often harassed, detained, interrogated, imprisoned, tortured, and killed for doing the work of holding governments accountable and protecting human rights. We recognize a wide range of HRDs, including but not limited to those working on human rights issues related to democracy, labor rights, and the environment; advocates for marginalized populations (women, indigenous, disabled, youth, LGBTI, ethnic groups, and religious minorities); and media actors (independent journalists, bloggers, editors).” Permanent Mission of the United States to the U.N. and Other International Organizations, Letter to Michelle Bachelet, Office of the U.N. High Commissioner for Human Rights, U.N. Office at Geneva, June 19, 2019, <https://www.ohchr.org/Documents/Countries/LAC/HRDAmericas/UnitedStates.pdf>.

<sup>21</sup> One prominent example is the U.S. government’s announcement in Nov. 2018 that it was placing sanctions on 17 Saudi citizens alleged to be involved in the murder of journalist Jamal Khashoggi (although Crown Prince Mohammed bin Salman was notably absent from this list). Mark Landler & Gardiner Harris, “U.S. Levels Sanctions on 17 Saudis for Alleged Involvement in Khashoggi Killing,” *New York Times*, Nov. 15, 2018, <https://www.nytimes.com/2018/11/15/world/middleeast/saudis-sanctions-khashoggi.html>.

<sup>22</sup> See e.g., Shannon N. Green, “When the U.S. Gives Up on Human Rights, Everyone Suffers,” *Foreign Policy*, Apr. 4, 2017, <https://foreignpolicy.com/2017/04/04/when-the-u-s-gives-up-on-human-rights-everyone-suffers>.

<sup>23</sup> See U.S. State Department, “Fact Sheet: U.S. Support for Human Rights Defenders,” reposted Jan. 20, 2017, <https://www.state.gov/u-s-support-for-human-rights-defenders>. The original factsheet was published in March 2013. It is no longer available on the U.S. State Department’s website but is referenced in its archives. See e.g., U.S. State Department, Bureau of Democracy, Human Rights, and Labor, Archived Content: 2013 Factsheets, <https://2009-2017.state.gov/j/drl/rls/fs/2013/index.htm>.

<sup>24</sup> This included 26 cases in Latin America, 11 in Southeast Asia, 17 in Sub-Saharan Africa, 10 in the Middle East and North Africa, one in Central Asia, three in China, four in Russia and six in Brazil.

<sup>25</sup> In its Global Analysis 2019, Front Line Defenders reported, “In the cases for which the data is available, 85 percent of those killed had previously been threatened, either individually or as part of the community / group in which they worked.” See endnote 10.

<sup>26</sup> “Organizations Urge Governments to Protect Activists and Communities Threatened by Armed Groups During COVID-19 Pandemic,” EarthRights International, May 4, 2020, <https://earthrights.org/media/organizations-urge-governments-to-protect-activists-and-communities-threatened-by-armed-groups-during-covid-19-pandemic>.

<sup>27</sup> Human Rights Watch, *Rainforest Mafias: How Violence and Impunity Fuel Deforestation in Brazil’s Amazon*, Sept. 2019, <https://www.hrw.org/news/2019/09/17/brazil-criminal-networks-target-rainforest-defenders>.

<sup>28</sup> Human Rights Watch, *Rainforest Mafias*, p.4, id.



<sup>29</sup> Human Rights Watch, *Rainforest Mafias*, p.4, id.

<sup>30</sup> Human Rights Watch, *Rainforest Mafias*, p.5, id.

<sup>31</sup> Global Witness, *Defending the Philippines: Environmental activists at the mercy of business at all costs*, Sept. 2019, p.6, <https://www.globalwitness.org/en/campaigns/environmental-activists/defending-philippines>; see also, Divina Nova Joy Dela Cruz, “Attacks on rights defenders alarm CHR,” *The Manila Times*, 10 Feb. 2020, <https://www.manilatimes.net/2020/02/10/news/top-stories/attacks-on-rights-defenders-alarm-chr/681977>.

<sup>32</sup> “Six Months On: Defending the Philippines,” Global Witness, May 4, 2020, [https://www.globalwitness.org/en/blog/six-months-defending-philippines/?utm\\_source=hootsuite&utm\\_medium=twitter\\_](https://www.globalwitness.org/en/blog/six-months-defending-philippines/?utm_source=hootsuite&utm_medium=twitter_); Gabriel Pabico Lalu, “113 environmental activists killed since Duterte assume office – Int’l group,” *Inquirer.net*, 24 Sept. 2019, <https://globalnation.inquirer.net/180127/113-environmental-activists-killed-since-duterte-assumed-office-intl-group>.

This represented an increase from 65 deaths in the three years before Duterte took office. Of the 113 killings, at least 46 percent allegedly involved state security forces; 44 percent occurred in Mindanao; 27 percent of those killed belonged to indigenous peoples; 36 percent were linked to agribusiness; and 27 percent were linked to mining. See also Human Rights Watch, *World Report 2020*, “Philippines: Events of 2019,” <https://www.hrw.org/world-report/2020/country-chapters/philippines>.

<sup>33</sup> Global Witness, *Defending the Philippines*, p.6, endnote 31.

<sup>34</sup> Global Witness also adds: “These legal battles are generally heavily mismatched. Armies of well-paid lawyers often face off against farmers or indigenous leaders of remote communities, who may have little formal education or knowledge of their rights. Once charged, defenders are stigmatized publicly, branded as terrorists or criminals by their government and the media it often controls.” Global Witness, *Enemies of the State?*, p.28, endnote 15.

<sup>35</sup> End of mission statement by Michel Forst, United Nations Special Rapporteur on Human Rights Defenders, Visit to Peru, January 21 –February 3, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25507&LangID=E>.

<sup>36</sup> This is based on information provided to the U.N. Special Rapporteur on Human Rights Defenders by the Coordinadora Nacional de Derechos Humanos in Peru. Since 2002, at least 960 human rights defenders have been criminalized, including 538 who were criminalized for their roles in social protests. Forst, *End of Mission Statement*, Visit to Peru, id.

<sup>37</sup> Michel Forst, *End of Mission Statement*, Visit to Peru, endnote 35.

<sup>38</sup> Skylar Lindsay, “Earth Rights Defender Khaing Myo Htun Released From Prison,” *EarthRights International*.

al, Mar. 5, 2018, <https://earthrights.org/blog/earth-rights-defender-khaing-myo-htun-released-prison>.

<sup>39</sup> Human Rights Watch, “Myanmar: Events of 2019,” World Report 2020, <https://www.hrw.org/world-report/2020/country-chapters/myanmar-burma>.

<sup>40</sup> Human Rights Watch, “They Can Arrest You at Any Time”: The Criminalization of Peaceful Expression in Burma, 29 June 2016, <https://www.hrw.org/report/2016/06/29/they-can-arrest-you-any-time/criminalization-peaceful-expression-burma>.

<sup>41</sup> In 2020, for example, the Russian government convicted seven activists to 6–18 years in prison on fabricated charges of “terrorism” and conspiring to bomb the 2018 World Cup. Human rights organizations widely condemned the sham trial and alleged torture that was used to obtain the activists’ confessions. Robyn Dixon, “They were Russian vegans, environmentalists, antifascists and airsoft players. Then they were accused of terrorism,” The Washington Post, Feb. 10, 2020, [https://www.washingtonpost.com/world/they-were-russian-vegans-environmentalists-antifascists-and-airsoft-players-then-they-were-accused-of-terrorism/2020/02/10/1197d95e-4c19-11ea-a4ab-9f389ce8ad30\\_story.html](https://www.washingtonpost.com/world/they-were-russian-vegans-environmentalists-antifascists-and-airsoft-players-then-they-were-accused-of-terrorism/2020/02/10/1197d95e-4c19-11ea-a4ab-9f389ce8ad30_story.html).

<sup>42</sup> Crude Accountability, FracTracker Alliance, and Ecoforum, *Dangerous Work: Reprisals Against Environmental Defenders* (2019), [https://crudeaccountability.org/wp-content/uploads/Report\\_DangerousWork\\_compressed\\_for\\_web.pdf](https://crudeaccountability.org/wp-content/uploads/Report_DangerousWork_compressed_for_web.pdf).

<sup>43</sup> A “strategic lawsuit against public participation” (SLAPP) is a legal intimidation tactic in which a private party, such as a corporation, files a meritless civil or criminal claim against a defendant for the purpose of harassing them through high litigation costs, stress, and public embarrassment.

<sup>44</sup> Crude accountability et al., *Dangerous Work*, p.8, endnote 42.

<sup>45</sup> “Women human rights defenders face worsening violence, warns UN human rights expert,” U.N. Office of the High Commissioner for Human Rights, Feb. 28, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24232&LangID=E>.

<sup>46</sup> “Human Rights Defenders & Business: January 2020 Snapshot,” Business & Human Rights Resource Center, <https://dispatches.business-humanrights.org/hrd-january-2020/index.html>.

<sup>47</sup> At a U.N. event in May 2017, Marusia Lopez from Just Associates (JASS) described some of the particular challenges that women human rights defenders face. UN Office of the High Commissioner for Human Rights, “Summary of the event: Strengthening protection networks for women human rights defenders to combat discrimination: Challenges and opportunities in the current context,” Geneva, May 18, 2017, <https://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WomenHumanRightsDefendersGender.aspx>.

<sup>48</sup> Human Rights Watch, *Sudan: Silencing Women Rights Defenders* (Mar. 2016), <https://www.hrw.org/news/2016/03/23/sudan-silencing-women-rights-defenders>.

<sup>49</sup> Amnesty International, *Defenseless Defenders: Afghanistan's Human Rights Community Under Attack* (2019), <https://www.amnesty.org/download/Documents/ASA1108442019ENGLISH.pdf>.

<sup>50</sup> As described by Brian Dooley of Human Rights First: "There is often a discernible pattern to the killings. For example, the murders of [human rights defenders] in Colombia are usually committed by a hired assassin or hired gun in or near the victim's home, usually late at night or very early in the morning, say local activists. In Bangladesh's capital Dhaka, [human rights defenders] report that murders of their colleague[s] are often prefaced with a series of threatening phone calls, with boys in black shirts hanging around near their homes for some time before the activist is eventually murdered in a machete attack." Testimony before the Tom Lantos Human Rights Commission of the U.S. Congress, Hearing on "Human Rights: Taking Stock and Looking Forward," Dec. 8, 2016, <https://humanrightscommission.house.gov/events/hearings/human-rights-taking-stock-and-looking-forward>.

<sup>51</sup> Frontline Defenders, *Creeping Towards Authoritarianism? Impacts on Human Rights Defenders & Civil Society in Zambia* (Nov. 2018), [https://www.frontlinedefenders.org/sites/default/files/zambia\\_report\\_digital.pdf](https://www.frontlinedefenders.org/sites/default/files/zambia_report_digital.pdf).

<sup>52</sup> "DR Congo: Free Youth Activists: One Year Since Fred Bauma, Yves Makwambala Detained," Human Rights Watch, Mar. 15, 2016, <https://www.hrw.org/news/2016/03/15/dr-congo-free-youth-activists>.

<sup>53</sup> "Niger: Civil Society activists released after 4 months in prison, but challenges continue," Publish What You Pay, July 24, 2018, <https://www.publishwhatyoupay.org/pwyp-news/niger-civil-society-activists-released-4-months-prison-challenges-continue>.

<sup>54</sup> In 2020, the State Department created an email address, [CivilSociety@State.gov](mailto:CivilSociety@State.gov), which you can use to contact the State Department in Washington, D.C., if you need assistance identifying the appropriate point of contact for a civil society or human rights defender issue. This is not an emergency assistance hotline.

When sending an email to this address, please be sure to include: (1) your specific request; (2) the facts of your case, preferably with a timeline of events; and (3) a description of any previous interaction with or outreach to the U.S. embassy or consulate regarding this issue.

The email address is monitored by the Bureau of Democracy, Human Rights and Labor. When they receive your message, they will forward it to the relevant points of contact in the State Department, U.S. embassies or other U.S. government agencies, as appropriate. This email address should not replace existing NGO email contacts for emergency assistance requests.

<sup>55</sup> In 2020, the State Department also created an email address, [7031c@state.gov](mailto:7031c@state.gov), where you can submit evidence of gross human rights violations or kleptocracy that the U.S. government can consider when placing sanctions or visa restrictions on foreign individuals. The name of the email comes from Section 7031(c) visa restrictions, one of the foreign policy tools that the U.S. government uses to hold human rights violators and foreign kleptocrats accountable. See Sec. 7031(c), Public Law 116-94 (H.R. 1865, pp. 331-334). Section 7031(c) visa restrictions, along with several other types of visa restrictions under Section 212 of the Immigra-

tion and Nationality Act or Presidential Proclamation 7750, allow the U.S. government to prohibit individuals and their immediate family members from entering the United States.

The State Department issues 7031(c) visa restrictions on a foreign official involved directly or indirectly in a “gross violation of human rights” or “significant corruption.” Some visa designations are made public, while others are kept confidential.

Likewise, the State Department can recommend that the Treasury Department issue Global Magnitsky sanctions for gross violations of human rights or significant corruption. Sanctions not only restrict travel to the United States but freeze assets and cut the perpetrator off from the U.S. financial system.

When you submit information to this email address, the State Department will consider it both for sanctions and visa restrictions. While Section 7031(c) visa restrictions apply only to foreign government officials, other types of visa restrictions and sanctions apply broadly to any foreign citizen or business. Please note that all information submitted through this email is treated with confidentiality and is not made available to the public.

To put visa restrictions or sanctions in place, the U.S. government needs: (1) identifying information — the name, country of birth, approximate or actual date of birth and any additional information that can help to avoid accidentally placing restrictions on someone with a similar name; (2) credible information that demonstrates direct or indirect involvement in gross violations of human rights or kleptocracy.

For more details about Section 7031(c) visa restrictions, see Congressional Research Service, FY2020 Foreign Operations Appropriations: Targeting Foreign Corruption and Human Rights Violations, Apr. 2020, <https://www.hsdl.org/?view&did=837107>; for more information about Global Magnitsky sanctions, see “Targeted Human Rights and Anti-Corruption Sanctions (Global Magnitsky) Resources,” Human Rights First, <https://www.humanrightsfirst.org/topics/global-magnitsky/resources>.

<sup>56</sup> For more information, please see “Embattled CSO Assistance Fund: Lifeline,” Freedom House, <https://freedomhouse.org/program/embattled-cso-assistance-fund>.

<sup>57</sup> The Lifeline fund consortium is led by Freedom House and supported by the Asian Forum for Human Rights and Development, CIVICUS, Front Line Defenders, the International Center for Not-for-Profit Law, People in Need, and the Swedish International Liberal Center.

<sup>58</sup> See e.g., Permanent Mission of the United States to the U.N. and Other International Organizations, Letter to Michelle Bachelet, OHCHR, June 2019, endnote 20; U.S. government response to OHCHR request for contribution on good practices regarding intimidation and reprisals, Mar. 2019, <https://www.ohchr.org/Documents/Issues/Reprisals/GoodPractices/US.pdf>.

<sup>59</sup> Jonathan Landay, “U.S. State Department calls for Myanmar to release Reuters journalists,” Reuters, Dec. 19, 2017, <https://www.reuters.com/article/us-myanmar-journalists-usa-idUSKBN1ED2RP>.

<sup>60</sup> Jamie Fullerton & Jacob Goldberg, “Reuters reporters jailed for seven years in Myanmar,” The Guard-

ian, Sept. 3, 2018, <https://www.theguardian.com/world/2018/sep/03/myanmar-reuters-journalists-sentenced-to-seven-years-in-prison-rohingya>.

<sup>61</sup> Simon Lewis & Shoon Naing, “Two Reuters reporters freed in Myanmar after more than 500 days in jail,” Reuters, May 6, 2019, <https://www.reuters.com/article/us-myanmar-journalists-idUSKCN1SD056>.

<sup>62</sup> U.S. Department of State, Special Briefing: On Public Designation, Due to Gross Violations of Human Rights, of Burmese Military Officials, 16 July 2019, <https://www.state.gov/on-public-designation-due-to-gross-violations-of-human-rights-of-burmese-military-officials>.

<sup>63</sup> “US groups call on new US Ambassador to Guatemala to promote justice,” Network in Solidarity with the People of Guatemala (NISGUA), Oct. 14, 2014, <https://nisgua.org/us-groups-call-on-new-us-ambassador-to-guatemala-to-promote-justice>.

<sup>64</sup> For example, 22 U.S.C. 2304, which governs human rights and security assistance, defines “gross violations of internationally recognized human rights” to include torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty or the security of person.

<sup>65</sup> EU embassies have faced the same challenge. Amnesty International found that EU embassies lacked follow-up after taking key actions in support of human rights defenders, such as trial observation, relocation support, and public statements. Amnesty International, *Defending Defenders? An Assessment of EU Action on Human Rights Defenders* (2019), p.8, <https://www.amnesty.org/en/documents/ior60/0995/2019/en>.

<sup>66</sup> Colombia, which has the highest rate of killings of human rights defenders in the world, is one example. Michel Forst, the U.N. Special Rapporteur on Human Rights Defenders, reported: “The defenders most at risk are social leaders defending human rights in rural areas, in particular those promoting the implementation of the Peace Agreement and defending land and environmental rights and the rights of ethnic communities against the interests of criminal groups, illegal armed groups and State and non-State actors, such as national and international corporations and other powerful interest groups.” United Nations Human Rights Council, *Visit to Colombia: Report of the Special Rapporteur on the Situation of Human Rights Defenders*, Dec. 26, 2019, U.N. Doc. A/HRC/43/51/Add.1, [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_43\\_51\\_Add.1\\_E.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_43_51_Add.1_E.pdf).

<sup>67</sup> This problem is not unique to the U.S. government. In its evaluation of the EU’s protections for human rights defenders, Amnesty International reported similar challenges in Honduras. Amnesty International, *Defending Defenders?*, p.52, endnote 66.

<sup>68</sup> This is a quote from an interviewee that paraphrases the words of a senior level State Department official.

<sup>69</sup> Human Rights Watch, “Philippines: Events of 2019,” *World Report 2020*, <https://www.hrw.org/world-report/2020/country-chapters/bahrain>.



<sup>70</sup> According to the Congressional Research Service, “The United States has repeatedly urged Bahrain’s leaders not to use force against protesters and to release jailed opposition leaders. High-level U.S. engagement with Bahraini leaders and U.S.-Bahrain defense cooperation have continued and no sanctions have been imposed on any Bahraini officials. The Obama Administration withheld or conditioned some arms sales to Bahrain.” Congressional Research Service, Bahrain: Unrest, Security, and U.S. Policy (Feb. 2020), <https://fas.org/sgp/crs/mideast/95-1013.pdf>.

In 2011-2012, the U.S. State Department openly encouraged the implementation of the report of the Bahrain Independent Commission of Inquiry, including calls to stop reprisals against human rights defenders. See e.g., Testimony of Assistant Secretary Michael H. Posner of the Bureau of Democracy, Human Rights, and Labor before the Tom Lantos Commission on Human Rights in U.S. Congress, Aug. 1, 2012, <https://2009-2017.state.gov/j/drl/rls/rm/2012/195516.htm> See also “Case History: Nabeel Rajab,” Front Line Defenders, <https://www.frontlinedefenders.org/en/case/case-history-nabeel-rajab>; “U.S. urges Bahrain to free jailed rights,” Reuters, Sept. 6, 2016, <https://www.reuters.com/article/us-bahrain-activist-usa-idUSKCN11C2J0>; Brian Dooley, “Silent Witness – The U.S. Government and the Trial of Bahraini Human Rights Defender Abu Deeb,” Huffington Post, April 5, 2013, [https://www.huffpost.com/entry/silent-witness---the-us-g\\_b\\_3022694](https://www.huffpost.com/entry/silent-witness---the-us-g_b_3022694).

<sup>71</sup> For example, a global petition circulated by Philippines NGOs in 2019 observed that “Humanitarian NGOs such as Oxfam Philippines and the Citizens' Disaster Response Center were also red-tagged by the Department of National Defense as a front of terrorist groups. Environmental groups Kalikasan People’s Network for the Environment and Center for Environmental Concerns are experiencing harassment and threats of a raid from police forces for more than a month now.” 350.org Philippines, “Defend Environmental Defenders,” Nov. 2019, [https://world.350.org/philippines/environmental-defenders/?fbclid=IwAR00PkLaMHwJnl6dSQ9MhP-janqMMDGzaiP2ki466sgNa\\_cSHVqEy7Ee7uXw](https://world.350.org/philippines/environmental-defenders/?fbclid=IwAR00PkLaMHwJnl6dSQ9MhP-janqMMDGzaiP2ki466sgNa_cSHVqEy7Ee7uXw).

<sup>72</sup> Global Witness, *Enemies of the State?*, p.28, endnote 15.

<sup>73</sup> John Sifton, “US Revokes Visa of Philippines ‘Drug War’ Police Chief,” Human Rights Watch, Jan. 22, 2020, <https://www.hrw.org/news/2020/01/22/us-revokes-visa-philippines-drug-war-police-chief>.

<sup>74</sup> For example, this has happened in Bahrain and the Philippines. In 2017, Bahrain further insulated itself from sanctions by announcing that it was discussing arms sales with Russia. Congressional Research Service, Bahrain: Unrest, Security, and U.S. Policy (Feb. 2020), pp. 21-22. Less than one month after the U.S. government revoked the visa of the former police chief, President Duterte notified the U.S. government that it was terminating the countries’ 22-year-old military agreement and realigning his government towards China. Andreo Calonzon & Philip J. Heijmans, “Duterte to Scrap U.S. Military Agreement in Rebuke of Trump,” Bloomberg, Feb. 11, 2020.

<sup>75</sup> “Saudi Arabia: Over 50 Human Rights Groups Call for Immediate Release of Women’s Rights Defenders,” Amnesty International, Mar. 1, 2019, <https://www.amnesty.org/en/documents/mde23/9948/2019/en>; “Saudi Arabia: Release Women Human Rights Defenders Immediately!,” Amnesty International, June 21, 2018, <https://www.amnesty.org/en/latest/campaigns/2018/06/saudi-arabia-release-women-human-rights-defend->

ers; Frontline Defenders, “Samar Badawi,” <https://www.frontlinedefenders.org/en/profile/samar-badawi>.

<sup>76</sup> Yonah Diamond, “Speak up for human rights in debate over Saudi relations,” *The Hill*, Dec. 22, 2018, <https://thehill.com/opinion/civil-rights/421798-speak-up-for-human-rights-in-debate-over-saudi-relations>.

<sup>77</sup> “Human Rights Defenders & Business – Annual Snapshot,” endnote 12.

<sup>78</sup> Business & Human Rights Resource Center, *Business & Human Rights Defenders in Colombia* (Mar. 2020), <https://www.business-humanrights.org/sites/default/files/Business%20%26%20Human%20Rights%20Defenders%20in%20Colombia.pdf>.

<sup>79</sup> Global Witness, *Defending the Philippines*, p.3, endnote 15. For example, in 2016, assassins murdered Gloria Capitan, an anti-coal activist who was opposing a coal power plant in Bataan, near the capital city of Manila.

<sup>80</sup> Please note that EarthRights International currently represents Máxima Acuña-Atalaya de Chaupe in litigation against the Newmont Corporation. See “Maxima Acuna-Atalaya v. Newmont Mining Corp.,” EarthRights International, <https://earthrights.org/case/maxima-acuna-atalaya-v-newmont-mining-corp>. Court filings are available at the bottom of the page.

<sup>81</sup> “Campos-Alvarez v. Newmont Mining,” EarthRights International, <https://earthrights.org/case/campos-alvarez-v-newmont-mining>.

<sup>82</sup> Front Line Defenders, *Environmental Rights Defenders at Risk in Peru* (2014), <https://www.frontlinedefenders.org/en/statement-report/environmental-rights-defenders-risk-peru>.

<sup>83</sup> *Maxima Acuna-Atalaya v. Newmont Mining Corp.*, Plaintiffs’ Memorandum of Law in Opposition to Defendants’ Motion to Dismiss on the Grounds of Forum Non Conveniens, pp.4, 7, 8, [https://earthrights.org/wp-content/uploads/2017-12-04-Answering-Brief-dckt-43\\_0.pdf](https://earthrights.org/wp-content/uploads/2017-12-04-Answering-Brief-dckt-43_0.pdf). As documented by the New York Times, this is not the first time that evidence has emerged that implicates Newmont in corrupt practices. Jane Perlez & Lowell Bergman, “Tangled Strands in Fight Over Peru Gold Mine,” *New York Times*, June 14, 2010, <https://www.nytimes.com/2005/10/25/world/americas/tangled-strands-in-fight-over-peru-gold-mine.html>.

<sup>84</sup> For example, in an interview with *The Politic*, the U.S. Ambassador to Peru described the conflict between Newmont and the communities, implying support for Newmont’s side of the conflict. She described Newmont’s conflict with local communities and said, “Part of our job is to support U.S. companies that are trying to do legitimate business overseas.” She did not indicate that support for the human rights of the local communities was part of the U.S. embassy’s role. Angie Hanawa, “An Interview with Rose M. Likins, U.S. Ambassador to Peru,” *The Politic*, Aug. 14, 2013, <https://thepolitic.org/an-interview-with-rose-m-likins-u-s-ambassador-to-peru>.

The U.S. embassy’s support for Newmont in Peru goes back at least as far as the mid-2000s when it expressly backed the company in a dispute with a French company. The U.S. embassy defended Newmont even as it faced allegations of engaging in bribery and other illegal behavior. See e.g., “Montesino’s Web: Interviews and

bios of the key players,” PBS Frontline, Oct. 2005, <https://www.pbs.org/frontlineworld/stories/peru404/pkurlander.html>.

<sup>85</sup> Mines and Communities, “Newmont Ghana does not deserve excellence award,” Feb. 2016, <http://www.minesandcommunities.org/article.php?a=13276>.

<sup>86</sup> Newmont did not receive a 2015 award, but was listed as a finalist. See U.S. Department of State, Bureau of Public Affairs, Archived Content: Finalists for the 2015 Secretary of State's Award for Corporate Excellence, 27 Jan. 2016, <https://2009-2017.state.gov/r/pa/prs/ps/2016/01/251710.htm>.

<sup>87</sup> Companies often make the following arguments to deflect responsibility for human rights abuses: (1) delegitimize the human rights defender — arguing that the human rights defenders or local communities have an ulterior, self-interested political or economic motive for opposing the project; (2) legacy issues — arguing that problems that first began before the company took over operations or a concession are not their responsibility; (3) we did our due diligence and found no problems — arguing that the company checked the boxes on all of the basic steps it is expected to take, especially in monitoring its supply chains; (4) we consulted with the community — arguing that the company checked the box in conducting consultations with local communities, and it's not their fault that the community doesn't like them; (5) efforts to divide the community — arguing that some members of the community support the company's operations, and that the ones who oppose the company are outliers; (6) it's the government, not us — arguing that since it is the government's primary duty to protect human rights, the company is off the hook, and if the company were to take a strong stance, it could get kicked out of the country; (7) cumulative impacts — arguing that there are several actors contributing to the problem, and since the company is not solely to blame, it cannot be held responsible.

<sup>88</sup> Bennett Freeman, Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders, Sept. 2018, p.46, <https://www.business-humanrights.org/sites/default/files/Executive%20Summary%20-%20Shared%20Space%20Under%20Pressure%20-%20Business%20Support%20for%20Civic%20Freedoms%20and%20Human%20Rights%20Defenders.pdf>.

<sup>89</sup> Semana, “Las carpetas secretas,” May 1, 2020, <https://www.semana.com/nacion/articulo/espionaje-del-ejercito-nacional-las-carpetas-secretas-investigacion-semana/667616>; see also, Editorial Board, “What Colombia Did With American Spy Tools,” New York Times, May 8, 2020, <https://www.nytimes.com/2020/05/08/opinion/colombia-spying-corruption.html>.

<sup>90</sup> Adam Isacson, “A New Scandal Underscores Colombia's Stubborn Inability to Reform Military Intelligence,” Washington Office on Latin America (WOLA), May 7, 2020, <https://www.wola.org/analysis/scandal-colombia-military-intelligence-spying>.

<sup>91</sup> “Illegal Surveillance by Colombia's Military is Unacceptable,” WOLA, May 4, 2020, <https://www.wola.org/2020/05/illegal-surveillance-by-colombias-military-is-unacceptable>.

<sup>92</sup> Kejal Vyas, “Colombian Intelligence Unit Used U.S. Equipment to Spy on Politicians, Journalists,” Wall Street Journal, May 4, 2020, <https://www.wsj.com/articles/colombian-intelligence-unit-used-u-s-equip->

ment-to-spy-on-politicians-journalists-11588635893.

<sup>93</sup> “¿Peligra la ayuda de Estados Unidos a Colombia?” *Semana*, May 3, 2020, <https://www.semana.com/nacion/articulo/espionaje-desde-el-ejercito-peligra-la-ayuda-de-estados-unidos-a-colombia/668863>. [The quote in the report was translated into English from the original Spanish.]

<sup>94</sup> The U.S. government does not have an established term to describe all of its security assistance-related activities. Often, “security assistance” refers to programs managed by the State Department, whereas “security cooperation” refers to programs managed by the Defense Department. For an in-depth profile of U.S. programs related to security, see Adam Isacson & Sarah Kinoshian, WOLA, *Putting the Pieces Together: A Global Guide to U.S. Security Aid Programs* (Apr. 2017), [https://www.wola.org/wp-content/uploads/2017/04/WOLA\\_Putting\\_the\\_Pieces\\_Together\\_042717.pdf](https://www.wola.org/wp-content/uploads/2017/04/WOLA_Putting_the_Pieces_Together_042717.pdf).

<sup>95</sup> The Leahy Law is codified at 22 U.S.C.2378d (for the State Department) and 10 U.S.C.2249e (for the Department of Defense).

<sup>96</sup> Daniel R. Mahanty, “The ‘Leahy Law’ Prohibiting US Assistance to Human Rights Abusers: Pulling Back the Curtain,” *JustSecurity.org*, 27 June 2017, <https://www.justsecurity.org/42578/leahy-law-prohibiting-assistance-human-rights-abusers-pulling-curtain>.

<sup>97</sup> For purposes of the Leahy Law, security forces might include, for example, individuals and units belonging to military, police, prison guards and others that have government authorization to use force. For purposes of this report, “U.S. agencies and contractors” refers to any U.S. government agency providing funding towards security forces and any form of contractor or grantee implementing these U.S. programs.

<sup>98</sup> Generally, Leahy vetting applies when an activity falls under a specific funding source that is covered by the law. According to a report by the U.S. Government Accountability Office (GAO) in 2016: “In contrast to State’s vetting requirements for training, State’s policies and procedures encourage, but do not specifically require vetting for foreign security forces that receive U.S.-funded equipment, including those in Egypt.” The GAO reported that the State Department does not have specific vetting procedures for equipment; moreover, equipment sales can take years, and no follow-up is conducted once the end-user is known. GAO, *Security Assistance: U.S. Government Should Strengthen End-Use Monitoring and Human Rights Vetting for Egypt*, GAO-16-435, Apr. 2016, p.35, 39.

<sup>99</sup> The State Department’s Bureau of Democracy, Human Rights, and Labor has an Office of Security and Human Rights (SHR) that oversees Leahy vetting and manages the database. Currently, the U.S. government uses an application called the International Vetting and Security Tracking (INVEST) system. The current iteration of the system is called INVESTc and was launched in Fall 2019. In 2017, SHR led the development of a new Leahy Law guide for the Departments of State and Defense. For more information on INVEST, see U.S. Office of the Inspector General, *Inspection of the Bureau of Democracy, Human Rights, and Labor*, pp. 10-11. Since the launch of the INVEST system in 2010, the State Department has processed more than one million cases.



See also, U.S. Government Accountability Office (GAO), Security Assistance: U.S. Government Should Strengthen End-Use Monitoring and Human Rights Vetting for Egypt, p.36. The GAO also noted: “According to State officials, they do not submit names for training that are not expected to clear the vetting process.” p.37, footnote 48. In its evaluation of the mission to Egypt, the GAO found that U.S. embassy officials were not recording human rights abuses by Egyptian officials on INVEST since FY2011, despite State requirements to do so. The GAO wrote: “The U.S. government completed some, but not all, human rights vetting required by State policy before providing training or equipment to Egyptian security forces.” GAO, Security Assistance: U.S. Government Should Strengthen End-Use Monitoring and Human Rights Vetting for Egypt, p.1; see also, pp. 35, 43, 46. The U.S. government suspended some assistance to Egypt in Oct. 2013 following abuses by security forces after Morsi’s removal, but then resumed assistance in Feb. 2015 for national security reasons. p.5.

<sup>100</sup> According to the Tahrir Institute for Middle East Policy (TIMEP): “The politicization of the Leahy Law is best evidenced by looking at the history of its enforcement. However, the State Department seldom publicizes cases when [the] Leahy Law has been implemented. According to open-source information, the Leahy Law has been enforced in Colombia, Pakistan, Bangladesh, Indonesia and Nigeria. There is no evidence that the Leahy Law has been implemented in the Middle East, in countries that receive weapons and have a history of human rights abuses such as Saudi Arabia, Egypt, and Israel.” TIMEP, Brief: Accountability in U.S. Arms Transfers, June 10, 2019, <https://timep.org/reports-briefings/accountability-in-arms-transfers>.

According to Dana Frank: “Under the 1998 Leahy Law, the United States is required to vet all individual recipients of its security aid to ensure that they have not committed gross abuses of human rights. In most cases that has meant a rapid check in US agency databases and a Google search for reports of human rights crimes. Some special ‘vetted units’ are composed entirely of vetted individuals; those units work closely with US forces, such as the DEA. US officials point to these vetting processes in order to publicly proclaim US adherence to human rights standards. But special vetted units in Honduras continuously committed human rights violations. The Tegucigalpa soldiers who hunted down and killed fifteen-year old Ebed Yanes in 2012, when he passed through a security checkpoint, and the colonel who ordered a coverup, had been vetted. The Honduran police who shot and killed four innocent Hondurans in Ahuas in May 2012, on the instructions of the DEA, had been vetted.” Dana Frank, *The Long Honduran Night: Resistance, Terror, and the United State in the Aftermath of the Coup* (Nov. 2018), p.240.

<sup>101</sup> “Report Reveals Contracts Between Peru’s National Police and Extractive Companies,” EarthRights International, Feb. 19, 2019, <https://earthrights.org/media/report-contracts-perus-police-extractive-companies>.

<sup>102</sup> Michel Forst, End of Mission Statement, Visit to Peru, 21 January – 3 February 2020, endnote 35.

<sup>103</sup> Annie Bird & Karen Spring, “Campesinos in Honduras Killed,” Rights Action, Aug. 2011, <https://afgj.org/campesinos-in-honduras-killed>; see also, Dana Frank, *The Long Honduran Night*, p.83, endnote 100.

<sup>104</sup> In 2016, for example, the State Department submitted a report to Congress evaluating the Bahrain government’s implementation of the 2011 Report of the Bahrain Independent Commission of Inquiry. The State Department observed that the U.S. government was funding training for Bahrain’s judiciary and prosecutorial personnel on the need to ensure that their activities contribute to the prevention and eradication of torture



and ill-treatment, but that: “Despite training and technical improvements, political influence and the lack of judicial independence appear to compromise implementation of fair and transparent judicial procedures. Detainees have alleged torture and mistreatment in detention, and claimed that security officials used physical and psychological mistreatment and torture to extract confessions; the extent to which these claims of ill-treatment are considered during judicial proceedings varies by case, and confessions allegedly obtained under duress are rarely rejected as evidence.” U.S. State Department, Steps Taken by the Government of Bahrain to Implement the Recommendations of the Bahrain Independent Commission of Inquiry, June 2016, pp.7-8, <https://pomed.org/wp-content/uploads/2016/06/State-BICI-Report.pdf>.

<sup>105</sup> “Aid is Key to Reform Local Forces on Rights, Leahy Says,” U.S. Institute of Peace, Feb. 12, 2016, <https://www.usip.org/index.php/publications/2016/02/aid-key-reform-local-forces-rights-leahy-says>.

<sup>106</sup> Nina Lakhani, “Family of slain Honduran activist appeal to US court for help in her murder trial,” The Guardian, Aug. 31, 2019, <https://www.theguardian.com/world/2019/aug/31/berta-caceres-murder-trial-subpoena-david-castillo>. Lakhani wrote, “The dam opposed by Cáceres was among scores of lucrative renewable energy projects sanctioned after a 2009 coup d’état, which went ahead without legally required community consultations and environmental impact studies. Nonetheless, since 2009, the price of electricity in Honduras has risen by 164%.”

<sup>107</sup> “New Report Implicates Man Accused of Berta Cáceres’ Murder in a Pattern of Violence, Human Rights Violations & Corruption to Benefit Associated Companies,” Guatemala Human Rights Commission, Aug. 30, 2019, <http://www.ghrc-usa.org/wp-content/uploads/2011/10/August-30-Press-Release-David-Castillo.pdf>; “Honduras: Masterminds of the Berta Cáceres Killing Still At Large, Say UN Experts,” U.N. Office of the High Commissioner for Human Rights, Dec. 7, 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23994&LangID=E>.

<sup>108</sup> See e.g., Nina Lakhani, “Honduras deploys security forces as doctors and teachers demand president’s resignation,” The Guardian, June 5, 2019, <https://www.theguardian.com/world/2019/jun/05/honduras-protests-teachers-doctors-president>.

<sup>109</sup> Congressional Research Service (CRS), Honduras: Background and U.S. Relations, July 22, 2019, p.11.

<sup>110</sup> See e.g., Jake Johnston, “Informants Claim Drug Traffickers Sought Assistance of U.S.-Backed Honduran Security Minister,” The Intercept, Nov. 26, 2017, <https://theintercept.com/2017/11/26/honduras-election-pacheco-security-minister-is-running-drugs-according-to-court-testimony>; Héctor Silva Ávalos & Parker Asmann, “4 Takeaways from the US Trial against the Honduras President’s Brother,” InSight Crime, Oct. 24, 2019, <https://www.insightcrime.org/news/analysis/takeaways-us-trial-honduras-president-brother>.

<sup>111</sup> CRS, Honduras: Background and U.S. Relations, pp. 3, 4, 11-12.

<sup>112</sup> See Sarah Chayes, When Corruption Is the Operating System: The Case of Honduras, Carnegie Endowment for International Peace, May 30, 2017, <https://carnegieendowment.org/2017/05/30/when-corruption-is-operating-system-case-of-honduras-pub-69999>. For example, protests erupted in 2015 after the regime stole \$90 million from the national health service. Dana Frank, The Long Honduran Night, p.212, endnote 100.

- <sup>113</sup> Claudia Torrens, “US prosecutors tie Honduras president to drug trafficker,” Associated Press, Mar. 3, 2020, <https://apnews.com/e85a0f7b43264a5eb6b879701356e1f3>.
- <sup>114</sup> For example, see Kelsey Jost-Creegan, “Honduras’ New Militarized Agricultural Policy: A Threat to Defenders and Human Rights,” EarthRights International, Dec. 11, 2019, <https://earthrights.org/blog/honduras-new-militarized-agricultural-policy-a-threat-to-defenders-and-human-rights>.
- <sup>115</sup> United Nations Human Rights Council, Visit to Honduras: Report of the Special Rapporteur on the situation of Human Rights Defenders, Jan. 11, 2019, UN Doc. A/HRC/40/60/Add.2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/005/53/PDF/G1900553.pdf?OpenElement>.
- <sup>116</sup> CRS, Honduras: Background and U.S. Relations, p.22.
- <sup>117</sup> Haeyoun Park, “Q. and A.: Children at the Border,” New York Times, Oct. 21, 2014, <https://www.nytimes.com/interactive/2014/07/15/us/questions-about-the-border-kids.html>; Dara Lind, “The 2014 Central American migrant crisis,” Vox, Oct. 10, 2014, <https://www.vox.com/2014/10/10/18088638/child-migrant-crisis-unaccompanied-alien-children-rio-grande-valley-obama-immigration>.
- <sup>118</sup> Dana Frank, *The Long Honduran Night*, pp. 106, 190, 201, endnote 100.
- <sup>119</sup> Peter Tinti, “Inside the Corruption and Repression Forcing Hondurans to Flee to the US,” Vice News, Oct. 25, 2018, [https://www.vice.com/en\\_us/article/yw98nm/inside-the-corruption-and-repression-forcing-hondurans-to-flee-to-the-us](https://www.vice.com/en_us/article/yw98nm/inside-the-corruption-and-repression-forcing-hondurans-to-flee-to-the-us).
- <sup>120</sup> The U.S. government often delivers its citizen security programs through the Central America Regional Security Initiative (CARSI). See e.g., CRS, Honduras: Background and U.S. Relations, p.18, 20. This includes, for example, USAID crime and prevention programs; INL model police precincts focused on high risk neighborhoods; and DEI creation and support of specifically vetted units to combat transnational organized crime, drug trafficking, and money laundering.
- <sup>121</sup> See e.g., Nina Lakhani, “Honduras and the dirty war fueled by the west’s drive for clean energy,” *The Guardian*, Jan. 7, 2014, <https://www.theguardian.com/global/2014/jan/07/honduras-dirty-war-clean-energy-palm-oil-biofuels>. For an example of the U.S. government’s framing, see “Land Rights Conflicts: Bajo Aguan,” U.S. Embassy in Honduras, July 27, 2014, [https://hn.usembassy.gov/our-relationship/policy-history/current-issues\\_\\_trashed/lrc-bajo-aguan](https://hn.usembassy.gov/our-relationship/policy-history/current-issues__trashed/lrc-bajo-aguan).
- <sup>122</sup> See e.g., Ed Pilkington & Nina Lakhani, “US investigating allegations Honduran military had hitlist of activists to target,” *The Guardian*, July 8, 2016, <https://www.theguardian.com/world/2016/jul/08/honduras-military-hitlist-activists-us-investigation>; Nina Lakhani, “Berta Cáceres’s name was on Honduran military hitlist, says former soldier,” *The Guardian*, June 21, 2016, <https://www.theguardian.com/world/2016/jun/21/berta-caceres-name-honduran-military-hitlist-former-soldier>.
- <sup>123</sup> See e.g., Dana Frank, *The Long Honduran Night*, pp. 108, 110, 152, 164, 166, endnote 100; Lauren Carasik, “Honduras: When will the US stop funding death squads?”, *Al Jazeera*, June 4, 2013, <https://www.aljazeera.com/indepth/opinion/2013/06/201363749961821.html>; Hannah Stone, “Honduras’ New Top Cop

Comes with Dark Past,” InSight Crime, May 29, 2012, <https://www.insightcrime.org/news/analysis/honduras-new-top-cop-comes-with-dark-past>.

<sup>124</sup> This includes numerous letters, as well as legislation. In annual appropriations legislation, Congress has placed conditions to link U.S. government funding to Honduras’s human rights performance. The Consolidated Appropriations Act of 2019, like prior appropriations bills, withholds 50 percent of assistance until the Secretary of State certifies that the Honduran Government is meeting 16 conditions, including protections for civil society from interference. CRS, *Honduras: Background and U.S. Relations*, pp. 13-14. Numerous bills, such as the Berta Caceres Human Rights in Honduras Act (H.R. 1945, introduced March 2019), are still pending.

<sup>125</sup> For more background on David Castillo, see Due Process of Law Foundation et al., *Violence, Corruption & Impunity in the Honduran Energy Industry: A Profile of Roberto David Castillo Mejía* (Aug. 2019), <http://www.soaw.org/wp-content/uploads/2019/08/Violence-Corruption-Impunity-A-Profile-of-Roberto-David-Castillo.pdf>. One of Castillo’s public relations firms, Amsterdam & Partners, produced a white paper attacking Caceres’s organization, COPINH. Lobbyists for the firm reportedly circulated the report to policymakers and legislators in Washington, DC and Brussels. Amsterdam & Partners LLP, “Honduras: DESA Executives in Berta Cáceres Trial are ‘Political Prisoners’,” <https://amsterdamandpartners.com/white-papers/honduras-desa-executives-in-berta-caceres-trial-are-political-prisoners>.

<sup>126</sup> The congressional mandate for the State Department’s annual human rights reports is codified in 22 U.S. 2151n, 2304 and 19 U.S.C. 2464, 2467.

<sup>127</sup> The Global Magnitsky Act is codified in the notes to 22 U.S.C. 2656. Executive Order 13818 (Dec. 20, 2017) provides further instructions on the implementation of the law.

<sup>128</sup> For more information on Section 7031(c) visa restrictions, see endnote 56.

<sup>129</sup> See Global Witness, *Responsible Sourcing*, p.9, endnote 15.

<sup>130</sup> See e.g., Government of Canada, *Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders* (2019), [https://www.international.gc.ca/world-monde/issues\\_developpement-enjeux\\_developpement/human\\_rights-droits\\_homme/rights\\_defenders\\_guide\\_defenseurs\\_droits.aspx?lang=eng](https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng); European Union, *Guidelines on Human Rights Defenders* (2016), [https://eeas.europa.eu/headquarters/headquarters-home-page\\_en/3958/EU%20Guidelines%20on%20Human%20Rights%20Defenders](https://eeas.europa.eu/headquarters/headquarters-home-page_en/3958/EU%20Guidelines%20on%20Human%20Rights%20Defenders); the United Kingdom, Switzerland, Finland, and Norway have also developed guidelines. Most of these guidelines have shortcomings, especially in the extent to which they encourage embassies to collaborate and share information on an ongoing basis with civil society and human rights defenders. Nevertheless, they could serve as important reference points as the U.S. government develops its own guidelines.

<sup>131</sup> Some recommended resources include: Lisa Haugaard, Latin America Working Group Education Fund, *Actions for U.S. Embassy Human Rights Officers to Protect Environmental & Land Rights Defenders*, <https://www.lawg.org/actions-u-s-embassies-can-take-to-protect-environmental-defenders>; Amnesty International, *Defending Defenders? An Assessment of EU Action on Human Rights Defenders* (2019), <https://www.amnesty.org/en/documents/ior60/0995/2019/en>; Council for Global Equality, *Accessing U.S. Embassies: A Guide for LGBT Human Rights Defenders* (2012), <http://globalequality.org/storage/documents/pdf/ngo-guide-final-en>

lowres2012.pdf; Front Line Defenders, Toolkit for the European Union: Women Human Rights Defenders (2020), [https://www.frontlinedefenders.org/sites/default/files/whrd\\_toolkit\\_en.pdf](https://www.frontlinedefenders.org/sites/default/files/whrd_toolkit_en.pdf); International Service for Human Rights, Strengthening diplomatic initiatives for the protection of human rights defenders: Tools for diplomats (May 2019), <https://www.ishr.ch/diplomatic-support>.

<sup>132</sup> State Department, “Fact Sheet: U.S. Support for Human Rights Defenders,” endnote 23.

<sup>133</sup> We would like to acknowledge the significant contributions that Matthew Hale (Freedom House) and Front Line Defenders made to this section. This text box draws extensively from their work on this issue.

<sup>134</sup> For an interesting discussion on the benefits and potential pitfalls of proactive U.S. embassy engagement, see Gregory Warner, “When the U.S. Backs Gay and Lesbian Rights in Africa, Is There A Backlash?,” NPR, 30 Aug. 2016, <https://www.npr.org/sections/goatsandsoda/2016/08/30/491818892/when-the-u-s-backs-gay-and-lesbian-rights-in-africa-is-there-a-backlash>.

<sup>135</sup> As described by the State Department: “A démarche is a formal diplomatic representation of one government’s official position, views, or wishes on a given subject to an appropriate official in another government or international organization. Démarches generally seek to persuade, inform, or gather information from a foreign government. Governments may also use a démarche to protest or object to actions by a foreign government.” U.S. State Department, 7 FAM 034, <https://fam.state.gov/fam/07fam/07fam0030.html>.

<sup>136</sup> The international community can encourage host governments to investigate and prosecute crimes against human rights defenders, but it requires sustained pressure. The Berta Caceres case, described in Section 4.10, is one example.

In Colombia, the U.N. Special Rapporteur on Human Rights Defenders reported that “the impunity rate for murders of human rights defenders in Colombia has stood at around 95 percent, compared to an overall impunity rate for homicide cases reported to the authorities of between 86.58 percent and 94.30 percent.” Since 2016, with pressure from the United Nations, the Attorney General’s Office has prioritized investigating 302 murders of human rights defenders. As of August 2019, the government had final judgments in 33 cases (11 percent), 55 cases in trial (18 percent), 86 cases under investigation with charges or arrests made (28 percent), and three dismissed because the suspect had died. Visit to Colombia: Report of the Special Rapporteur on the situation of Human Rights Defenders, U.N. Human Rights Council, Dec. 26, 2019, UN Doc. A/HRC/43/51/Add.1, <https://undocs.org/en/A/HRC/43/51/Add.1>.

<sup>137</sup> The State Department’s annual human rights reports are mandated by Congress and report on issues in approximately 199 countries and territories. The U.S. Government uses the reports to inform its decisions related to foreign assistance, asylum cases, and other issues. U.S. State Department, Office of Inspector General (OIG), Inspection of the Bureau of Democracy, Human Rights, and Labor (Oct. 2018), p.15.

<sup>138</sup> We would like to acknowledge the extensive contributions that Lisa Haugaard, Executive Director of the Latin America Working Group, made to the content of Annex 2: Advice for Human Rights Officers. See Haugaard, Actions for U.S. Embassy Human Rights Officers to Protect Environmental & Land Rights Defenders, endnote 132.

<sup>139</sup> For a description of common misinformation tactics, please see endnote 88.



[earthrights.org](http://earthrights.org)