ARTICLE 19

VERMONT LAW SCHOOL

CIEL

A Deadly Shade of Green

Threats to Environmental Human Rights Defenders in Latin America

2016

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Foreword

Michel Forst, Special Rapporteur on the situation of human rights defenders

On 3 March 2016, a wave of indignation and repudiation swept the world, condemning the brutal and cowardly assassination of Berta Cáceres, a Honduran environmental activist and community leader who inspired thousands of people through her work promoting the rights of the Lenca people.

Her death came amid a growing number of attacks against human rights defenders, particularly campaigners peacefully defending the environment, the right to land and the rights of indigenous peoples. This situation is not limited to Honduras, but can be seen throughout the continent, in Colombia, Brazil, Peru, Mexico, Guatemala, and Ecuador. This long list is being added to by an increasing number of countries that seem willing to put economic interests before those of people and territories. Reports from numerous organizations confirm a steady deterioration of the situation, highlighting the fact that Latin America has become the most dangerous region in the world for environmental activists.

Various types of attack have been committed against campaigners and their organizations. They range from surveillance campaigns, harassment, and being discredited in the media and social networks, to physical assaults, acts of torture, enforced disappearances and assassinations. In addition, there is widespread corruption and impunity in many countries where relations between state and non-state actors are often ambiguous. We should note, in particular, the attacks against female human rights defenders, who face threats of sexual violence and smear campaigns based on their gender. All of this is exacerbated by the context of increasing criminalization of social protest, and use of the law to suppress dissent in Latin American and Caribbean societies.

Despite the grim outlook, there are reasons to remain optimistic. Civil society has never looked so strong, organized and determined. International solidarity strengthened by the globalization of exchanges between people and organizations makes it possible to bring these struggles out of isolation, and demand accountability to ensure the effective implementation of human rights commitments.

The United Nations Guiding Principles on Business and Human Rights represent promising progress towards building bridges between sectors that once saw one another as antagonists. Similarly, the steps taken by the UN Human Rights Council to draft a binding instrument on human rights and transnational corporations offer an important platform from which

to propose paradigms for accountability which might challenge the impunity to which environmental human rights defenders so often fall victim.

In Latin America and the Caribbean, the negotiation of a regional instrument on rights of access to information, participation, and justice constitutes a decisive steps towards strengthening democracy and the rule of law. It is hoped that this instrument will reduce the environmental disputes that frequently descend into violence and attacks on environmental leaders, indigenous peoples and other local communities. It is also hoped that this instrument will be robust and legally binding, establishing specific effective mechanisms to provide protection to environmental human rights defenders.

We must not forget that these activists risk their safety to defend the environment on which we all depend for our health and wellbeing.

We must escape false debate that presents a dichotomy between national security and respect for fundamental freedoms, moving beyond supposed impossibility of reconciling development on the one hand, and respect for people and the environment on the other. Far from the anti-progressive image that various governments, media outlets and companies promote, many human rights campaigners have a clear vision of sustainable development that can meet the needs of millions of people.

Environmental campaigners demonstrate that states' economic development cannot be addressed without integrating respect for human rights, particularly economic, social and cultural rights. In order to fulfil human rights, we must combine perspectives and develop an all-encompassing vision. For example, the rights of indigenous peoples, the right to health, and the right to water are not isolated rights but form a complex and complementary whole.

Now, more than ever, we must listen to campaigners and advocate for a positive, holistic, participatory vision of these people's work and their contribution to upholding human rights around the world, for all people.

I. Introduction

Latin America is, by far, the most dangerous region of the world for environmental human rights defenders (EHRDs). The lack of effective guarantees of human rights protection in Latin American States has created this dire situation. The absence of effective safeguards is worsened by the weak rule of law in most Latin American countries, by worrying trends of impunity that corrode the fabric of society, and by the fact that environmental movements usually concern major development projects involving powerful governmental and corporate interests.

This report illustrates the severe human rights violations in Latin America against environmental defenders, who engage in lawful activities that bring to light environmental damage and human rights abuses. Though not exhaustive, this report provides an overview of recent incidents throughout Latin America. The incidents cited cover a range of human rights violations, including violent attacks, torture, disappearances, and killings.

Indigenous peoples are the most vulnerable because many development projects are located on their land. When States disregard appropriate consultation procedures, the result is often conflict, forceful displacement, environmental degradation, and human rights violations. Killings of environmental activists and journalists are increasing and members of indigenous communities comprise over 40% of the deaths.[1] Of the recorded killings globally in 2014, 75% were in Latin America; the most dangerous country for environmental defenders is currently Honduras.

The persistent human rights violations targeting EHRDs are caused by resource exploitation, and increasing numbers of large-scale and mega-development projects in Latin American countries. For example, Honduras currently has 837 mining concessions, of which 411 have already been granted covering an area of 6,630 km^2. In Colombia, coal extraction between 2000 and 2010 nearly doubled and the number of mining concessions has similarly maintained an accelerated pace. This has resulted in a substantial increase in attacks across the region. According to the Guatemalan Human Rights Commission/USA, in the decade between 2000 and 2010, 118 environmental human rights defenders in Guatemala were murdered and over 2,000 assaults occurred against groups of protesters. The November 2014 Global Witness report, Peru's Deadly Environment, revealed that the majority of environmental killings in Peru were being perpetrated by the State and private security forces, and most were related to extractive sector projects.[3]

Photo: Ivan Kashinksy / Panos

International and regional human rights organisations have been reporting regularly on the critical situation of EHRDs in Latin America. The Organisation of American States (OAS) General Assembly has been issuing annual resolutions since 1999, calling on member States to guarantee defenders' rights. The Inter-American Court of Human Rights has ruled, in numerous cases, that EHRDs must be protected. These have had little effect.

New measures which are implemented and enforced by the States themselves with strong oversight are needed.

To successfully protect EHRDs, Latin American countries must adopt a strong, legally binding instrument that ensures the full implementation of the access rights enshrined in Principle 10 of the Rio Declaration.[4] The three fundamental "access rights" set out in Principle 10 are directly associated with problems faced by environmental defenders: (a) access to information, (b) access to public participation, and (c) access to justice. Effective recognition and enforcement of these human rights will reduce the number of human rights violations against environmental defenders and provide remedies for them. In addition, the regional instrument should include specific protections for EHRDs, in order to guarantee their rights.

This report explores, in turn, the various human rights currently denied to EHRDs in Latin America. It first assesses how the Inter-American human rights mechanisms respond to human rights violations against environmental defenders. Next, the report explains the special situation of indigenous peoples in Latin America, focusing on their particular vulnerability to human rights violations. The report then discusses how the rights to life and physical integrity are not being ensured for EHRDs. These rights are violated by persistent threats of killings, violent attacks, forced disappearances, and other crimes. The report then explores how Latin American States fail to protect the right to freedom from arbitrary arrest and detention by often criminalising and stigmatising the lawful activities of EHRDs.

Next, the report addresses violations of the right to freedom of expression and access to information. Latin American States limit these rights by using anti-terrorism legislation as well as libel threats and injunctions against EHRDs who oppose powerful governmental or corporate interests. Additionally, the report discusses how the rights to freedom of assembly and association are undermined by Latin American States when they limit where protests can occur, decide which non-governmental and civil society organisations are valid in their country, and restrict how such organisations may be funded. Brief case studies from different Latin American countries illustrate the human rights violations occurring throughout the region. The final section provides specific recommendations to address the human rights violations of EHRDs in Latin America.

II. The United Nations

In March 1999, the UN General Assembly adopted the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms ("Declaration on Human Rights Defenders"). The Declaration on Human Rights Defenders speaks directly to the obligation of States to support and protect fundamental freedoms that otherwise provide human rights defenders the right to peacefully assemble, protest and associate with others. Though the Declaration on Human Rights Defenders is not legally binding, the UN General Assembly adopted it by consensus (without a formal vote), indicating strong State support.

Article 2 of the Declaration on Human Rights Defenders creates a positive obligation on States to adopt legislative and judicial mechanisms to provide for the fundamental freedoms of human rights defenders. Additionally, Article 12 obliges States to take "all necessary measures" to ensure everyone's protection under the law. In the 2000 Implementation Document, Colombia appears as the only Latin American State (out of five states) to have put forth a plan to protect human rights defenders – creating witness protection programs and allowing gubernatorial and mayoral review over situations that pose a threat to defenders. In addition, Brazil has had a national mechanism of protection for human rights defenders since 2005, which faces structural and financial problems but is an important public policy reached in the country.

The UN General Assembly reiterated this in its 2015 resolution on "Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", specifically mentioning environmental and land issues as important ones that are hindered by attacks.[5]

Though a State may in some strictly limited cases (such as during a crisis) not apply all of its obligations under international human rights law, it must always protect the fundamental rights of human rights defenders. The International Covenant on Civil and Political Rights provides in Article 4(1) for derogation "[i]n times of public emergency which threatens the life of the nation" when that emergency is "officially proclaimed," but it specifies that no derogation is permitted from the right to life or the prohibition of torture. In addition, any measures limiting rights during a proclaimed state of emergency must be limited "to the

extent strictly required by the exigencies of the situation", and that no measures taken may conflict with other international obligations. The Human Rights Committee has explained in its General Comment No. 29 on States of Emergency that these obligations would include prohibitions on taking hostages, imposing collective punishments, arbitrary deprivations of liberty, and "deviating from fundamental principles of fair trial, including the presumption of innocence."

The Human Rights Council has addressed the specific situation of environmental human rights defenders, including through the adoption of several resolutions.[6] The Human Rights Council also created[7] and extended[8] the mandate of the Special Rapporteur on the Situation of Human Rights Defenders. The mandate requires the Special Rapporteur to present annual reports to the Human Rights Council and General Assembly on topics and special situations involving the capacity to promote and protect the rights of human rights defenders.[9] Additionally, the Special Rapporteur engages in country visits and submits complaints to Governments when appropriate.[10] The current Special Rapporteur, Michel Forst, presented his most recent report on the situation of human rights defenders to the Human Rights Council on March 3, 2016. In his address, he complained of not being able to secure country visits with the Governments of Mexico and Peru, among others, in 2015, though he maintained that he is in close consultation with the Mexican Government to plan a visit in 2016.

The Special Rapporteur's 2015 report highlights seven principles of good practice for the protection of human rights defenders:

- Good practices should adopt a rights-based approach to protection, empowering defenders to know and claim their rights and increasing the ability and accountability of those responsible for respecting, protecting and fulfilling rights.
- Such practices should recognise the diversity of defenders.
- They should be gender-sensitive, apply an intersectional lens to risk assessment and protection initiatives, and recognise that some defenders are in greater risk than others because of who they are or because of what they do.
- Measures to protect defenders should focus on 'holistic security', including physical security, digital security, and psychosocial wellbeing.
- Good practices would accept that defenders are inter-connected, and also focus on the rights and security of groups and family members who share the risks of defenders.
- They should be participatory and involve defenders in the development, implementation, and evaluation of strategies and tactics for their protection.
- Finally, good protection practices should be flexible, adaptable, and tailored to the specific needs and circumstances of defenders.[11]

The Special Rapporteur seeks to promote a more holistic security among defenders.[12] He proposes national, regional and international networks for defenders and supporters to collaborate and improve upon advocacy skills and the conceptualisation of rights.[13] In his 2014 report, Forst averred that wider dissemination of the Declaration on Human Rights Defenders is needed to inform governments of their responsibility, and to inform defenders of their rights when being attacked.[14]

Margaret Sekaggya, predecessor to Forst as Special Rapporteur, reported in December 2011 that EHRDs in particular have been subjected to threats against their physical integrity, physical attacks including killings, ill-treatment in detention, imprisonment, and attacks on psychological integrity through stigmatisation and criminal accusations.[15] In his most recent report, Forst expressed particular concern over the attacks on and killings of human rights defenders and members of indigenous communities.[16]

In 2012, The Human Rights Council also established a mandate on human rights and environment and appointed John Knox as the Special Rapporteur on human rights and the environment.[17] Among other things, the mandate is to "identify challenges and obstacles to the full realisation of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment."[18] From the beginning of his mandate, Knox has stressed the need for states to respect the human rights of environmental human rights defenders, and fairly investigate alleged violation of those human rights.[19]

The Special Rapporteur on Human Rights and the Environment has made EHRDs a central focus of his mandate. For instance, in his mapping report, Knox noted many reports of States.[20] Furthermore, in keeping with his undertaking in 2014 to examine ‘the problems facing environmental human rights defenders’, Knox has participated in three meetings with environmental human rights defenders from Africa, Europe and South-East Asia.[21] Additionally, he organised a meeting which identified challenges and good practices for protecting environmental defenders.[22]

The efforts to protect environmental human rights defenders have been further advanced by the Human Rights Council which, in its resolution on Human Rights Defenders in February 2016, expressed “grave concern” on the situation for human rights defenders addressing environmental and land issues, calling on states to promote a safe and enabling environment for those working on human rights and these issues.[23]

III. The Inter-American Human Rights System

The Organization of American States (OAS) is a regional intergovernmental organisation created in 1948 on the basis of democracy, human rights, security and development. In 1999, the Organization recognised the importance of the work being done by human rights defenders in a resolution entitled Human Rights Defenders: Support for the individuals, groups and civil society organisations for the promotion and protection of human rights in the Americas. This resolution calls upon States in the region to continue their efforts to provide human rights defenders the guarantees and facilities necessary to carry out their work freely. After issuing this resolution, OAS has not only continued to address this issue, but has also recognised the importance of the link between environmental protection and the enjoyment of human rights.

Over the last two decades, the Inter-American Human Rights System has increased its attention to the situation of environmental human rights defenders. Both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights (IACHR), within their respective mandates and spheres of authority, have helped clarify the links between human rights and the environment in regard to the physical, emotional and political vulnerability of EHRDs that result from their work of exposing injustice or corruption. The Inter-American human rights system has also explained the duties of States to secure the conditions in which EHRDs may carry out their work. This section analyses the key developments in these two human rights bodies.

A. Inter-American Court of Human Rights

In the 2009 case of Kawas-Fernández v. Honduras, the Inter-American Court of Human Rights analysed the work of environmentalists and NGOs in connection with the right to freedom of association and, significantly, pointed out that persons working on rights other than civil and political rights, such as environmentalists, are in fact human rights defenders, and that their work is key in democratic societies.

The Court also noted that efforts towards safeguarding the environment and protecting the environment's relation to human rights were particularly important in the region, which has witnessed an increasing number of threats, violence and murders of environmentalists. The Court declared that the State has the duty to create the legal and factual conditions in which environmental defenders may carry out their work.

Kawas Fernández v. Honduras

Background
In February 2005, Blanca Kawas Fernández was murdered by gunshot in her home. Shortly afterwards, a police unit arrived at the scene, but took no measures to apprehend the suspects. Later that month, the Criminal Tribunal in the city of Tela initiated an investigation of Kawas's murder. However, a police official actively frustrated this investigation by threatening witnesses, and it was later discovered that the police unit at the scene had anticipated the murder.

At the time of her murder, Kawas was president of the Foundation for Environmental Protection of Lancetilla, Punta Sal, Punta Izopo and Texiguat, a non-governmental organisation in Honduras. The NGO had been working to improve the environment and quality of life in the watershed of the Tela Bay, including through environmental education programs. The organisation had successfully established the Punta Sal National Park. It had also denounced environmental contamination and illegal logging and forest degradation, as well as several economic development projects that threatened the Punta Sal National Park.

Judgment
The Court noted that during the years following Kawas's murder, environmental advocates in Honduras had been targeted with numerous aggressive actions, threats and murders, and that the effect of violence against environmentalists has been aggravated by impunity. In 2007, the government created a specialised unit to investigate murders of environmentalists, but did not implement a policy to ensure the safety of those advocates.

The Court held that governmental agents had been involved in Kawas's murder and its ineffective investigation. The Court found that the State had not undertaken a serious, complete, and effective investigation of the murder of Kawas, in violation of the right to life, a standard for investigation required by the State's duty to guarantee the rights established in the American Convention.

With respect to freedom of association, the Court stated that this freedom entails positive duties on the part of the State, noting the close link between the violation of freedom of association and the work of human rights defenders in the promotion and defence of human rights. In this connection, the Court highlighted the "undeniable linkage" between environmental protection and the realisation of other human rights, recalling that the General Assembly of the Organization of American States and the United Nations had discussed the ways in which environmental degradation and the adverse effects of climate change have affected the effective enjoyment of human rights. The Court also noted the considerable number of State Parties to the American Convention which have expressly recognised the right to a healthy environment, as well as the inclusion of this right in the Protocol of San Salvador. Given these linkages, as well as the pattern of violence against environmentalists, the Court concluded that the State had interfered with the freedom of association with respect to the murder of Blanca Kawas Fernández.

Source: UNEP Compendium on Human Rights and the Environment (2014)

B. Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights (IACHR) is an organ of the Organisation of American States and part of the Inter-American system of human rights protection. The IACHR is mandated by the OAS Charter and the American Convention on Human Rights to promote the observance and protection of human rights in the Americas. In 2001, the Commission created the Unit for Human Rights Defenders, in order to monitor the situation of HRDs in the region.

The Commission expressly acknowledged the right to defend human rights in its 2006 Report on the Situation of Defenders of Human Rights in the Americas. In 2011, the Commission published its Second Report on the Situation of Human Rights Defenders in the Americas, identifying defenders of the right to a healthy environment as a group particularly at risk in the region. The Commission declared that EHRDs are essential to ensuring a balance between environmental protection and the economic development of countries. EHRDs also ensure the enjoyment of rights, such as the right to life and physical integrity of human beings in the face of exposure to pollutants that may affect the quality of air, water, soil and subsoil, and impair the enjoyment of human rights.

In its second report, the Commission identified the reason for the attacks, assaults, and harassment of EHRDs. It found that these attacks predominantly occur when there is tension between people who support industrial activities – such as mining or forestry – and those who oppose projects involving the relocation of communities or contamination of vital natural resources. The Commission also highlighted situations in which private companies hire security groups in order to attack, assault, and harass EHRDs.

The Commission indicates that in Brazil, 125 environmental activists and farmworkers were threatened at the time the Commission's report was being prepared, and in May 2011 four activists were killed. In El Salvador, at least three were killed in 2009 and one more in 2011. From January to February 2010, four defenders were killed in Guatemala. At least 12 were killed in Mexico from 2006 to 2012, including public officials of federal environmental agencies.

In addition, EHRDs in the region are being defamed by the media and by public authorities, as well as facing legal obstacles, such as the lack of effective recourse to request protection as well as remediation of the environment and appropriate legal remedies. Moreover, companies that develop mining projects in the region often abuse the criminal justice system against EHRDs. The Inter-American Commission on Human Rights has identified that in countries where the rights of EHRDs are violated, adequate legislative measures to ensure the effective enjoyment of human rights affected by extractive industries are lacking, and legislation on environmental protection is not being complied with.

In March 2011, the IACHR Unit for Human Rights Defenders was transformed into the role of Special Rapporteur on Human Rights Defenders, in order to give greater visibility to the importance of the role of human rights defenders. The main functions of the Special Rapporteur are (1) to advise the Commission regarding individual petitions and requests for precautionary measures; (2) to receive and analyse communications, complaints, urgent actions and press releases that human rights organisations sent to the Executive Secretary; (3) to monitor public hearings related to the protection of human rights defenders; and (4) to report on the situation of human rights defenders in the region.

The IACHR continues to condemn rights violations targeting human rights defenders. Most recently, the Rapporteur on Human Rights Defenders, Commissioner José de Jesús Orozco Henríquez, expressed profound concern over the killings and threats against human rights defenders in Colombia, pointing to the murder of 25 Colombian human rights defenders in 2015 and additional killings this year.[24] Over the past year, the IACHR has issued numerous other condemnations of violence against human rights defenders in Argentina,[25] Mexico,[26] El Salvador,[27] Brazil,[28] and Honduras.[29] Notably, on International Human Rights Defenders' Day, 15 December 2015, the IACHR highlighted the increase in the stigmatisation and criminalisation" of human rights defenders by both State and non-state actors.[30]

IV. Indigenous Peoples in Latin America

Following the demise of colonial power structures, States acquired sovereignty over natural resources in their territory,[31] often granting concessions for the exploration and extraction of natural resources. In Latin America, these economic operations often took place in lands and territories already occupied by indigenous peoples.

More often than not, the extraction of natural resources has been conducted without regard to environmental impacts, or the rights of indigenous inhabitants of the territories where the resources were found.[32] Further, many face a lack of legal recognition of their lands. The near-absence (in contexts such as Brazil) of legal processes which would demarcate indigenous lands is a problem which arguably leads to further human rights violations related to indigenous rights.

In this context, human rights law has developed certain guarantees to ensure protection of the rights of indigenous peoples affected by exploration of natural resources in their territories, and consequently to ensure their survival as peoples.

A. Legal Standards in the Inter-American Human Rights System

Over the past two decades, human rights law has clarified the duties incumbent upon States with respect to indigenous peoples' rights.[33] These protections can be found in specialised treaties and instruments dealing with the rights of indigenous peoples, as well as in the decisions of the supervisory mechanisms established to oversee the basic documents of the Inter-American Human Rights System.

Currently, Convention 169 of the International Labour Organization (ILO) is the only international treaty dealing specifically with indigenous and tribal peoples. Convention 169 was concluded in 1989, replacing ILO Convention 107, which had focused on the goal of integration and assimilation rather than on the protection of indigenous peoples' lands, culture, and distinctiveness. Among the Latin American and Caribbean countries, the following states are party to Convention 169: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, and Venezuela.[34]

Among other provisions, the treaty establishes the right to consultation and the effective participation of indigenous and tribal peoples in decisions that affect them. Article 6 states that consultation with indigenous and tribal peoples should be undertaken through appropriate procedures, in good faith, through the representative institutions of these peoples, and with the objective of achieving agreement or consent to the proposed measures. This provision requires that indigenous and tribal peoples are given the opportunity to participate freely, and at all levels, in measures, programs, and policies that concern them. Article 15 requires governments to establish or maintain procedures to consult with indigenous and tribal peoples, before undertaking or permitting any activity for the exploration or exploitation of natural resources which affects their land. This applies even when the State retains the ownership of mineral or sub-surface resources or rights to other resources.

The UN Declaration on the Rights of Indigenous People, adopted by the UN General Assembly in 2007, is also critical to access rights. The Declaration contemplates the right of indigenous peoples to participate in decision-making in matters that would affect their rights, and recognises the duty of the State to consult and cooperate in good faith with indigenous peoples in order to obtain their free and prior informed consent before adopting and implementing legislative or administrative measures that may affect them.

In the landmark 2001 decision, Awas Tingni v. Nicaragua, the Inter-American Court of Human Rights determined that the Mayagna people have a right, as indigenous people, to their collective land. Following this decision, the Inter-American human rights system has consistently recognised indigenous peoples' right to ownership of the lands and territories they have traditionally used or occupied.[35] This recognition carries important State duties regarding economic activities in indigenous and tribal peoples' lands and territories, particularly in connection with the exploration and extraction of natural resources, including the obligation to consult with indigenous peoples prior to issuing concessions over natural resources located within their territories.

The case of the Saramaka People v. Suriname,[36] decided by the Inter-American Court of Human Rights in 2007, elaborates on these issues in depth. This case concerned logging and mining concessions awarded by Suriname on territory, possessed by the Saramaka people, without consulting or obtaining consent from them. The Court examined the rights of tribal peoples in international law and concluded that the Saramaka have a right to use and enjoy the natural resources that lie on and within their traditionally owned territory.

The heart of this case concerns whether, and to what extent, the state may grant concessions for exploring and extracting such natural resources. In approaching these questions, the Court recalled its jurisprudence on indigenous peoples' rights: "Members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake."[37]

The Court reasoned that the right to property is not absolute, but is subject to certain limitations and restrictions, declaring that "the State will be able to restrict, under certain circumstances, the Saramakas' property rights, including their rights to natural resources found on and within the territory."[38] However, Court noted that a permissible restriction on the right to property must comply with the requirements established in its case law,[39] and any restriction on the Saramakas' right to use and enjoy their traditional lands and natural resources may not "deny their survival as a tribal people."[40] In this regard, the Court stated that the State must use safeguards, in order "to guarantee that restrictions to the property rights of the members of the Saramaka people by the issuance of concessions within their territory does [sic] not amount to a denial of their survival as a tribal people."

The Court clarified the scope of the guarantees concerning consultations and the sharing of benefits by declaring that consultations must be culturally appropriate, taking into account traditional methods of decision-making, and in order to enable internal discussion within communities, must take place at the early stages of an investment plan. The State must also ensure that communities are aware of environmental and health risks.

Additionally, the Court distinguished between "consultations" and "consent" as follows: "Regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent, according to their customs and traditions."[41]

Addressing indigenous and tribal peoples' rights, the Court emphasised the importance of the linkages between land, territory, and natural resources in connection with collective property rights. Applying the treaty interpretation rules set out in Article 29(b) of the American Convention on Human Rights, the Court used such instruments as ILO Convention 169 and the International Covenant on Civil and Political Rights to inform its reading of procedural and substantive safeguards in the American Convention.

As shown by these landmark cases, the Inter-American human rights system recognises that a system of safeguards grounded in meaningful consultations and free and prior informed consent is necessary to ensure the survival and development of indigenous peoples. These special measures of protection anchored on access rights thus form the centrepiece of the jurisprudence on indigenous rights in Latin America and the Caribbean.

B. Ongoing Challenges Faced by Indigenous Peoples in Latin America

Despite their distinct characteristics, circumstances and particular issues, many Latin American indigenous peoples experience common problems and challenges. Although there are many cases that exemplify current challenges faced by indigenous and tribal peoples, this report includes only a small number of illustrative examples.

According to the Economic Commission for Latin America and the Caribbean, due to an increased demand for goods such as minerals and hydrocarbons, many governments in the region are competing to attract new investments to exploit their natural resources and export raw materials. The Latin American governments encourage these corporate activities by providing incentives for extractive projects and other industries.[42] The economic growth that such industries have produced, however, has come at a cost for many indigenous communities in Latin America and the Caribbean.[43] Frequently, extractive project areas overlap with indigenous territories, causing dispossession of indigenous land and natural resources, as well as the threat or disappearance of indigenous ways of life. This situation, in turn, leads to social conflict, and in many cases, contamination, deforestation, land degradation, and health problems for the indigenous communities. In short, the Latin American and Caribbean governments' desire for domestic economic development often conflicts with, and impinges upon, indigenous peoples' fundamental rights.

In addition to the case of the Saramaka people (see above), the conflict between indigenous peoples and mining in the region is seen in the Yanacocha and Conga gold mines in the Cajamarca region of Peru. The Yanacocha and Conga projects, which are considered the largest gold mines in Latin America, are a joint venture between an American company (Newmont Mining Corporation), a Peruvian company (Minas Buenaventura), and the International Finance Corporation.[44] An example of community opposition to this gold mine project was the legal fight regarding the ownership of a property between the mining company and Máxima Acuña, an indigenous Peruvian woman. Despite harassment, physical beatings, and a lawsuit brought to expel her for residing on the company's alleged property, which she had bought from the township several years before, in 2014, the court ruled in favour of Acuña, recognizing her as the legitimate owner of the property. However she still faces attacks. The IACHR has issued a request for precautionary measures to protect her.

Large-scale infrastructure construction projects, such as mega-roads, railroads and ports, also pose serious risks for indigenous populations in Latin America. For example, a proposed transcontinental railway project which China has agreed to finance could pose a threat for indigenous territories and biodiversity hotspots of mammals, birds, amphibians, and plants. Although this project is still in its planning stage, some of the possible routes may affect indigenous territories and environmentally sensitive regions in countries such as Peru and Brazil.[45] Furthermore, in Mexico, the violence and harassment associated with mega-projects has been particularly targeted at indigenous people who occupy lands where projects have been established without consultation or free, prior and informed consent.[46]

Hydroelectric power projects are also a common threat for several indigenous populations in Latin America. The Xalalá Hydroelectric Dam in the Ixcán region of northern Guatemala faces strong opposition from the indigenous communities (Q'eqchi' Mayans). The proposed dam would be the second largest hydroelectric dam in the country and would flood the Q'eqchi' Mayans' ancestral land, displacing up to 15,000 people, whilst also affecting the water flow and biodiversity of the area. Two community referendums have found over 90% of the local population opposed. Additionally, organisations such as Amnesty International have denounced the militarisation and criminalisation of communities and local leaders who oppose the construction of this project.[47] While the government argues that the hydroelectric dam will bring economic development, indigenous leaders argue that the Xalalá Hydroelectric Dam will cause the disappearance of entire communities.[48]

Photo: Eduardo Martino / Panos

In other cases, the survival and wellbeing of indigenous peoples is threatened by invasion of settlers. The Cofán people located in the Putumayo province, Colombia, are threatened by the occupation of their territories by settlers (non-indigenous people in the region), which has led to the loss of crops and traditional areas used for hunting, fishing, harvesting medicinal plants, such as yagé, which is prepared by the curacas (traditional authorities). Additionally, the internal armed conflict in Colombia has caused displacement, death, torture, and the forced disappearances of several leaders and members of the indigenous community. Likewise, the aerial spraying of glyphosate to eradicate coca fields has contaminated soils, waters, and crops, compromising the food security and health of the population. Finally, oil drilling activities and forest logging are other factors that also affect the survival of these indigenous people.[49]

The safety of indigenous organisations, indigenous leaders, and human rights defenders is often threatened by acts of violence by the police, military forces, or private parties. Recently, the IACHR reported the murders of indigenous human rights defenders in the states of Maranhão and Bahia, Brazil. One of them, Eusébio Ka'apor, was an indigenous leader shot in the back by hooded individuals in the indigenous territory of Alto Turiaçu, in the state of Maranhão. He had participated in the movement against the presence of illegal loggers in the indigenous peoples' territories, which in March 2015 resulted in the closure of all operations of illegal logging in the region.[50]

Another common concern of indigenous peoples in Latin America is the protection of sectors of the population such as the traditional authorities, women, and indigenous children.[51] The elderly indigenous individuals often possess the traditional and ancestral knowledge and practices which is passed down to future generations. Women play a key role in the preservation of the knowledge these communities.

Data from the Mesoamerican Women Human Rights Defenders Initiative indicates that the greatest number of attacks on women human rights defenders were against those who defended land and territory.[52] In 2012, 157 women (38% of all attacks on women human rights defenders) were attacked; in 2013, 81 women (or 15%); and in 2014, 287 women (or 38%).[53] Alarmingly, between 2012 and 2014, 1,688 attacks on women human rights defenders were reported in just El Salvador, Guatemala, Honduras, and Mexico – with the frequency of the attacks doubling between 2012 and 2014.[54]

Indigenous children are among the most discriminated against and vulnerable indigenous subgroups. The data of several Latin American countries show a pattern of inequality regarding extreme poverty, access to education, safe drinking water and housing and, in particular, chronic under-nutrition of indigenous children.[55] Some of these problems are related to environmental harm, making the work of environmental human rights defenders all the more important.

Climate change is another serious threat to the subsistence of indigenous communities, due to their dependence on the environment and its resources. Climate change impacts are more severe for communities that "live on marginal lands and in fragile ecosystems that are particularly sensitive to changes in the physical environment."[56] Moreover, this situation may be exacerbated by the lack of economic resources in most Latin America countries necessary to adapt to the negative impacts of climate change.[57] Climate change will likely have many negative impacts, including forced displacement, and threats to communities' food security.[58]

In the context of these ongoing challenges, environmental human rights defenders play a key role in supporting, empowering, promoting, and advocating for the full implementation of, and respect for, the fundamental rights of indigenous and tribal peoples in Latin America.

V. Particular Threats to Environmental Human Rights Defenders in the Americas

A. Industries and Violation of Defenders' Rights

The Special Rapporteur on the situation of human rights defenders has received a large number of communications concerning violations against land and environmental defenders. In most of these communications, the defenders were working on issues related to extractive industries, and construction and development projects. Furthermore, indigenous peoples and minority communities are most often the people whose rights are being violated. The Special Rapporteur also indicated that most of the violations concerned land disputes, either with State authorities, including both local authorities and public officials; non-State actors, such as transnational companies, the media, paramilitary groups, and private security guards; and unidentified groups or individual, local actors.

In Brazil, most of the violations reported were connected to hydroelectric projects, cement factories, and the logging industry, with the major actors including paramilitary groups and private security guards. The situation in Brazil illustrates what has been happening throughout Latin America as a result of an extraordinary number of large-scale infrastructure projects, which are developing at the expense of the environment, as well as local communities' social rights.

For over four decades, Brazil has carried out massive transportation and energy projects in the Amazon without adequately considering factors beyond the economic and commercial outcome of the project. The Brazilian development model lacks meaningful planning and generally disregards the needs and rights of local communities affected by these projects. For example, many indigenous people have been forcefully displaced due to a crisis in the lack of access to safe water and other means of subsistence. Besides the absence of meaningful planning, these projects share other common traits, such as disrespect for the legal constraints controlling licensing rights and disregard for the legal territorial rights of the indigenous people.

Furthermore, Brazil's Ten Year Plan for Energy Expansion 2023 was completed without considering the objections submitted and documented with evidence even though this plan covers federal environmental licenses. This energy expansion plan envisages a 28,000MW increase for the 2014–2023 period, mostly through energy generation from new large-scale hydroelectric plants. According to the legal definition of "impact of interference" and the government's way of measuring impact, this plan does not report a significant number of

Photo: Marcos Santilli / Panos

affected indigenous populations. Yet, the impact indicator fails to account for human or social elements as well as indirect impact on indigenous territories. A 2015 study of the situation underlines two major causes of the environmental and human rights violations in the development of Brazilian hydroelectric projects:

1. The State failure to implement best-practice procedures that include consultation of all stakeholders; and

2. Companies' power to influence the political decision process in the development of policies and practices.[59]

B. Militarisation and Criminalisation of Defender Activities around Mining Projects

The mining sector in Latin America has been confronting increased resistance from local communities and has dealt with this social opposition using various approaches. Although some mines promote corporate social responsibility and are creating foundations on behalf of the local populations by using "good neighbour" policies, many other mining companies react with attempts at corruption and division, promoting social breakdown and by criminalising protests. Human rights defenders are also vilified by media outlets, which stigmatise these activists in order to effectively eliminate the right to the presumption of innocence and the right to a fair trial in State justice systems.[60]

In Chile, during a community protest the Chilean police impeded the protestors' activities by closing access roads to the mining facilities owned by the company Los Pelambres. Additionally, the government militarised the area by moving Special Forces into the region. The protesters' goal was to require the mine to comply with the Chilean Supreme Court ruling ordering the restitution of the waters used by Los Pelambres. The company has persistently refused to obey the judicial mandate, and has been successful in creating division within the community.

In Peru, the government has been institutionalising the criminalisation of social protests. Peruvian authorities have increased penalties for offenses against public order, relaxed requirements for military intervention in social conflicts, and supported impunity for official abuses and excesses. In July 2012, due to confrontations between local communities and Newmont Mining Corporation, a U.S. based company, the Peruvian Government declared a 30-day state of emergency, and Marco Arana, an anti-mining protester, was repeatedly beaten without warning by the riot police while he was sitting in the main square of the City of Cajamarca, wearing a placard reading, "Yes to Life, No to Gold." Arana was held in police custody for 24 hours.

In Guatemala, Alberto Rotondo, chief of security for the Escobal mine, is currently under arrest and awaiting trial, for allegedly ordering the assassination of seven community leaders during a protest against Tahoe Resources in San Rafael Las Flores. Despite these charges, the Tahoe project has continued to operate without any judicial sanction. The mining corporation started its silver production in January 2014.[61]

In Colombia, the American mining corporations, Drummond Company Inc. & Drummond Ltd. have started a RICO[62] civil action in a federal court in Alabama (United States) against Terrence Collingsworth and other human rights lawyers working with the Dutch NGO, PAX. These human rights lawyers and the PAX NGO have been involved in denouncing and bringing legal actions regarding environmental and human rights abuses at Drummond's coalmine in Colombia. Drummond alleges that the lawyers constitute an associated-in-fact enterprise that has conspired to damage Drummond.

This lawsuit has prompted a group of organisations and trade unions to issue a declaration in support of human rights in the coalmining region of Cesar, Colombia, on behalf of PAX, in an effort to support the legitimate defender and NGO activities, and to condemn the defamatory statement Drummond has made against them. PAX activities are driven by two central values: human dignity and solidarity with peace activists and victims of war violence. In June 2014, PAX released The Dark Side of Coal report, documenting violence in Cesar.[63] Drummond and Prodeco/Glencore, another corporation connected to human rights violations in Cesar, responded strongly to the report. The corporations denied the allegations of support and collaboration with paramilitaries; disputed the facts listed in the report; and notified PAX of their intention to seek legal action against them.

In Argentina, police forces are reported to have beaten and arrested peaceful protestors unifying against a massive cyanide-lead spill, which happened due to failed environmental management at Barrick Gold's Veladero mine near the town of Tudcum in the Province of San Juan.[64] Twenty-three protesting residents were arrested, and two were hospitalised by the police response.[65] Further reports of brutal repression of protestors in opposition to mining operations have come from the communities in Andalgalá, Filo Colorado, Bajo La Alumbrera, and Pascua Lama against the mining corporations of Yamana Gold, Xstrata and Glencore Xstrata.[66] Indigenous communities in the Neuquén province have also reported physical attacks as they marched against hydrofracturing exploration in Patagonia.[67] Police tactics against protesters have been defended by the Security Minister in charge of police operations and security in La Rioja, Claudio Saúl, as "necessary to guarantee the rule of law."[68]

The Inter-American Commission on Human Rights reports that in Mexico, certain companies have strategically identified defenders of the environment who oppose extractive projects and used the criminal justice system to prosecute indigenous leaders, campesinos (rural farmers), and others for ordinary crimes.[69] Many of the charged offenses appear to be groundless, but have effectively stifled movements in opposition to mining practices.[70]

VI. The Right to Life and Physical Integrity

All environmental human rights defenders in Latin America are entitled to enjoy the right to life and the right to physical integrity. These rights are protected in Articles 5 and 6 of the Inter-American Convention on Human Rights and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Despite international acknowledgment and agreement to protect the right to life and the right to physical integrity, EHRDs in Latin America experience ongoing violations of these fundamental human rights.

A. Killings

Environmental defenders in Latin America are targets of many forms of fundamental human rights violations, including violations of the right to life. According to the Global Witness report How Many More?, an overwhelming number of environmental defenders killed since 1990 have been from Latin America, with 477 deaths from 2002 to 2014 occurring in Brazil alone.[71] In 2014, 87 of the 116 EHRDs killed were in Latin American countries, 29 in Brazil, 25 in Colombia, 12 in Honduras, 9 in Peru, and 5 in Guatemala. These statistics represent a 20% increase from the previous year. Moreover, according to Global Witness, the number of journalists murdered doubled in 2014 compared to 2013. The UN High Commissioner for Human Rights recorded 40 killings of human rights defenders in Latin America just in the first nine months of 2014.[72]

In the vast majority of fatal cases, the victims had previously reported threats and intimidation but little or no attention was paid, or no protection was received. Indigenous people were the most affected for several reasons: the fact that the resources exploited were located in their lands and territories; the lack of legal protection, as many indigenous communities do not hold formal, recorded title over the land they inhabit; and reduced access to justice. Other common characteristics of these killings are the impunity with which the perpetrators of these crimes act, and the lack of, or ineffective, protection mechanisms for people at risk. In almost every Latin American State, government and corporate actors are involved in the murder of EHRDs.

In Brazil, the situation of human rights and land defenders has been critical for a long time. In 2006, Hina Jilani, the then Special Representative of the UN Secretary-General of the situation of human rights defenders stated that she was "deeply perturbed" by the frequent assassinations, attempts and threats against the lives of human rights defenders.[73] She observed, "in most cases land rights activists are murdered by hired gunmen or private militias commissioned by powerful landowners. Generally, the violence is committed in order to punish the leaders for their protest against illegal acquisition of land, or for their support of landless poor people occupying vacant and non-productive land."[74]

Ten years on, the same motives perpetuate killings in Brazil. During the first part of 2015, 23 EHRDs were killed in land conflicts; 22 of these land conflicts occurred in the Amazon region.[75] For example, on 25 August 2015, Raimundo dos Santos Rodrigues was killed in Maranhão while returning to his home with his wife, who was also attacked. Dos Santos, a member of the Advisory Council of the Biological Reserve of Gurupi and of the Chico Mendes Institute for Biodiversity Conservation, reported a series of death threats he was receiving to the National Agrarian Ombudsman. He was being threatened for reporting environmental crimes by local landowners and logging industries in Brazil, one of which focused on the illegal logging of Pindare Valley. However, the authorities took no action to protect him.

In 2016, 13 human rights defenders have been killed to date in Brazil, according to the Brazilian Committee of Human Rights Defenders. In April 2016, military police and private security guards attacked the Tomas Balduíno camp, occupied by the Movimento dos Trabalhadores Rurais Sem Terra, in the municipality of Quedas do Iguaçu, Paraná state, killing two and injuring seven. Also in April 2016, the land reform activist Ivanildo Francisco da Silva, municipal president of the Workers' Party (PT) and city councilman surrogate in the town of Mogeiro, in Paraíba, was shot dead in front of his one year old daughter.

In Peru on 29 September 2015, a violent clash between protesters against the US$7.4 billion Las Bambas copper mine project, instigated by China Minmetals Corporation and the police, resulted in four fatalities and 16 serious injuries. In 2014, Edwin Chota, leader of the Alto Tamaya-Saweto community in the Amazon region and a defender of indigenous and forest rights, and three other indigenous environmentalists were assassinated just a few months before the United Nations climate summit in Lima (COP 20).[76] Chota had been challenging local authorities in order to secure legal title for indigenous communities. Furthermore, Chota fought against illegal loggers who were destroying the forest. Chota's legal work angered many of the illegal loggers, and as a result he received numerous death threats. Despite his repeated requests, Peruvian authorities provided no protection to this environmental and human rights leader. He was preparing a case to the Inter-American Commission of Human Rights against illegal loggers when he was killed.

In Guatemala on 18 September 2015, Rigoberto Lima Choc, a 28-year old indigenous activist and community leader, was shot outside a courthouse.[77] Lima Choc had successfully documented the catastrophic ecological destruction from a toxic spill in the Passion River caused by a palm oil plant owned by Resforestadora de Palmas de Petén. Based on his

documentation of the spill, Choc filed a legal complaint, which prompted a judicial decision ordering the suspension of all the company's operations. The day after the court issued its ruling, Lima Choc was shot dead. Workers from the palm oil plant responded to the temporary closure with outrage; they took over the streets and temporarily kidnapped three other human rights defenders.

In Colombia, Fernando Salazar Calvo was killed on 7 April 2015, outside of his home.[78] Salazar Calvo was an indigenous leader and a representative of the Reserve's Ancestral Mining Association as well as President of the Miners Association Union. He had received multiple death threats because of his role in monitoring artisanal mining operations, and helping close down mining operations that did not operate in line with the ancestral practice and recommendations of the Indigenous Cabildo, the highest indigenous political authority in that area of Colombia.

Throughout September and November 2013, four other environmentalists were murdered. Nelson Giraldo Posada, leader of the group Rios Vivos and an opponent of the Hidroituago mega-project, was killed on 17 September 2013.[79] His case is particularly noteworthy because the killing occurred less than two weeks after a court in Medellín ruled in favour of members of Ríos Vivos (Living Rivers), due to threats to their life and physical integrity. Court protection was insufficient to protect the lives of these EHRDs: Adelinda Gómez Gaviria who played an important role in the Mining and Environmental Forum, was killed on 30 September 2013;[80] On 2 November 2013, César García, a member of the Environment and Peasant Committee in Cajamarca and the Tolima Network of Environmental and Peasant Committees and an opponent of the gold mining project "La Colosa" was killed; just weeks later, on 30 November 2013, Robinson David Mazo, a member of the Living Rivers Movement against the Hidroituango Hydroelectric Project, was also killed.[81]

In Mexico, Noé Vazquez Ortiz, a 30 year old craftsman who worked to enhance awareness about environmental degradation, was stoned to death in August 2013 during his preparation for the 10th meeting of the Mexican Movement of People affected by Dams and in Defence of Rivers, in the state of Veracruz. Government authorities failed to provide adequate protection at the event, even though the movement's organisers had requested protection.

In Honduras, at least 109 environmental activists were murdered between 2010 and 2015.[82] The UN Special Rapporteur on the situation of human rights defenders has expressed concern at the government's failure to provide effective protective measures to prevent defenders from being killed, attacked or threatened.[83] Among those killed was a leader in the Council of Indigenous Peoples of Honduras (COPINH), Tomás García, who was shot dead by a military officer during a protest in 2013.[84] Of the eight killings publicly reported in 2015, six were of members of indigenous groups. Moisés Durón Sánchez was one of these six. An active member of an indigenous rights group, he was murdered in May 2015 for his role in defending his community's right to their land.[85]

The Inter-American Commission on Human Rights received information on 21 February 2016 that five members of the Tolupán indigenous peoples had been killed. Nahún Alberto Morazán, Roberto Carlos Palencia, José Alvarenga, Elvin Joel Alvarenga and Santos Matute were all assassinated in their home community of San Francisco de Locomapa. The killings arose from the EHRDs' activities protesting the mining and hydroelectric projects in the Tolupán indigenous peoples' territories without their free, prior, and informed consent.

An Inter-American Commission report had already noted that 17 members of the Tolupán peoples had been killed in the past years without their killings having been properly investigated.[86] In response to these most recent killings, therefore, the IACHR is urging Honduras to investigate the killings and to prosecute and punish those responsible. The IACHR reiterated that "acts of violence and other attacks against human rights defenders not only affect the basic guarantees owed to every human being, but also undermine the fundamental role that human rights defenders play in society and leave defenceless all those for whom they fight."

Women environmental human rights defenders in Honduras are particularly vulnerable. Figures from 2012 indicate that 119 women human rights defenders were subject to attack, and 95 of such cases were against defenders of land and natural resources.[87] Of reported aggression, 62% is said to have come from state actors, and the rest from private companies.[88] One example of this extreme violence targeting women EHRDs in Honduras occurred in March 2016 in a killing which reverberated around the world: the murder of Berta Cáceres.

Photo: Goldman Environmental Prize

Renowned indigenous and environmental rights defender Berta Cáceres was assassinated on 3 March 2016 in her hometown of La Esperanza, Intibuca. According to reports, gunmen broke down the door and shot her.[89] A co-founder of COPINH, Cáceres had been active in opposing one of the largest hydropower projects in Central America, a series of four giant dams in the Gualcarque river basin. She continued in this work despite numerous threats of kidnapping, rape and death, and her campaign has succeeded in delaying the project. For these efforts, in 2015 Cáceres was awarded the Goldman Environmental Prize, a highly prestigious award that has been likened to a Nobel for environmental work. The Inter-American Commission on Human Rights had called on the government to apply "precautionary measures" for her protection due to death threats, and the Pope had met with her in the Vatican.[90]

In response to her assassination, the police told local media that her killing occurred during an attempted robbery, but her family has said that they have "no doubt it was an assassination prompted by Cáceres's high profile campaigns against dams, illegal loggers and plantation owners."[91]

Another example of extreme violence targeting women EHRDs includes Margarita Murillo, a leader of the peasant land movement for decades. In August 2014, she was shot dead by three men in Villanueva, a remote location in northern Honduras. At the time of her killing, she was President of the Asociativa Campesinos de Producción Las Ventanas and co-founder and main coordinator for the National Front for Popular Resistance (FNRP). Murillo had been subjected to death threats and physical harm inflicted by military forces on her family. Her husband was shot in the leg during a protest in the city of Choloma, and one of her children, Samuel, was kidnapped in July 2014.

In El Salvador, three EHRDs were killed in 2009 in connection with mining activities in the Cabañas region. The manner and timing of these events illustrate the scale of the power which environmental defenders are confronting. Gustavo Marcelo Rivera, a member of the Association of Friends of San Isidro Cabañas and one of the community leaders of the opposition to the Canadian company Pacific Rim's mining operations in Cabañas, disappeared on 18 June 2009. His body was found 12 days later, showing signs of torture. On 20 December 2009, Ramiro Rivera, Vice-President of the Comité Ambiental de Cabañas, an organisation dedicated to educating the community about the environmental and health risks associated with mining company operations, was killed, despite being under 24-hour police protection. The assailants used automatic weapons to commit the crime while his bodyguards had only side arms. Ramiro Rivera had been previously attacked on 9 August 2009, and shot eight times. A few days after Rivera's assassination, on 26 December 2009, another leader of the same organisation and an outspoken opponent of the El Dorado Mining operation in Cabañas, Dora ("Alicia") Recinos Sorto, was murdered. The two previous killings were followed by new death threats to environmentalists and journalists opposing the mining operation in Cabañas.

Killings of Environmental and Land Defenders in Latin America in 2014[92]

Country	Total Victims	Indigenous Victims
Brazil	29	4
Colombia	25	15
Honduras	12	4
Peru	9	7
Guatemala	5	4
Paraguay	3	3
Mexico	3	1
Ecuador	1	1
Costa Rica	1	0
Total	88	39

B. Violent Attacks

In Guatemala, Yolanda Oquelí, a community leader, anti-mining activist, and member of the Frente Norte del Área Metropolitana, has been working against the expansion of extractive mining operations in order to protect drinking water, farmland, and the local environment. On 13 June 2012, she was shot after participating in a protest against a gold mine in her community. She has also received many threats against herself and her family, as well as having repeatedly been subjected to harassment and had her home vandalised.

In El Salvador, Father Neftalí Ruiz, a defender of the environment, was a victim of robbery and personal attack in his house on 20 January 2012. He was tied up and interrogated at gunpoint by two men. The men were looking for information and left the house with his laptop computer, desktop computer, hard drive, USB memory keys, and cell phone. Since 2008, he has been reporting death threats due to his defender activities, yet he has never received protection of any kind from Salvadoran authorities.

Brazil has been a centre of violent attacks against environmental and indigenous rights defenders. The case of Rosivaldo Ferreira da Silva, known as Cacique Babau Tupinambá, is just one example. He has been subjected to acts of violence for many years, including arrests and accusations of several offences. On 10 March 2010, he was severely beaten, imprisoned, and threatened with death. In April 2016, he and his brother were arrested by military police for opposing the commercial exploitation of their territory. The United Nations Special Rapporteur on Human Rights of Indigenous Peoples visited in March 2016 to investigate the violence.

In August 2015, Maria da Conceição Chaves, wife of Raimundo dos Santos Rodrigues (see above), was a victim of attempted killing in the same attack where her husband was shot to death. She is a member of the Advisory Council of the Biological Reserve of Gurupi. In April 2016, there was another attack against an MST camp in Cacaulândia in the Jamari valley, Rondônia. A group of unidentified people set the Hugo Chaves camp on fire. Earlier that month, approximately 300 people, including elders and children had been forced to leave the camp by gunmen.

C. Forced Disappearances

"Forced disappearances" are defined as a crime "depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorisation, support or acquiescence of the state…" in the Inter-American Convention on Forced Disappearance of Persons of 1994. The International Convention for the Protection of All Persons from Forced Disappearance of 2006 uses a similar definition. Forced disappearances are used to eliminate opposition to government or corporate interests. This type of violence is another risk environmental defenders face in Latin America.

Colombia has one of the highest rates of forced disappearance in the region, and the world, though its constitution and laws prohibit the crime. This human rights violation has been a persistent practice in Colombia for over five decades. In the Chocó region of Colombia during the late 1990's, 140 members of the Jiguamaidó-Gurvaradóu community were disappeared and/or murdered. Moreover, the remaining population of was forcibly displaced.

More recently, on 19 February 2011, the Colombian environmentalist Sandra Viviana Cuellar, director of the NGO Surviviendo, was disappeared in the city of Cali, where she was to participate in a forum on water issues. Sandra Viviana Cuellar was a 26-year old engineer well-known for her work in defence of the environment and the rights of local communities in the Valle del Cauca region. Her identity documents and mobile phone were found, but no information on her whereabouts has since emerged.

D. Torture

Torture is an illegal practice often used against human rights defenders in Latin America. A well-known case of torture against EHRDs, and a rare case documented with photography, involved the Minera Majaz (the Río Blanco project) in Peru, owned by Río Blanco Copper SA, subsidiary of British mining company Monterrico Metals. In 2005, hundreds of people protested at the mine site and were attacked by the Peruvian police; 28 protesters were detained and tortured for three days at the mining installations. The protesters sought damages for the detention and torture at the mine by the Peruvian police, who were allegedly acting under the direction of the mine's managers. Protesters claimed they were shot, hooded, sprayed with noxious substance, beaten, and in the cases of two women, detained, sexually assaulted and threatened with rape. One protester lost an eye because of gunshot wounds, and another protestor, a 41-year-old farmer, died from gunshot wounds at the mine site without receiving medical attention. The High Court of London issued an injunction against Monterrico and a trial was scheduled for 2011, but the case was settled. This is the first case successfully brought before a court in the U.K. where victims sued a private, multinational company for its role in acts of torture.

VII. Freedom from False Charges and Arbitrary Arrests

Unfounded charges and prosecution for criminal conduct are a recurrent issue in Latin America. Complicit governments, and the lack of an independent judiciary system, work to further the interests of large corporations in the area, often favouring this tactic of abuse as means of targeting environmental defenders.

In Mexico, Bettina Cruz Velázquez has faced unfounded criminal charges and illegal detention by public officials since 2012. Cruz Velázquez is an environmental and human rights activist and member of both the Assembly of Istmo of Tehuantepec Indigenous Peoples in Defense of Land and Territory, and of the National Network of Women Human Rights Defenders in Mexico. Most of her work has been on behalf of communities in Tehuantepec that have been impacted by private company wind farm projects that operate without the due consent of the indigenous people of those areas. The charges were based on alleged incidents that occurred during a peaceful protest in 2011.In February 2015, after a long trial, she was acquitted by the District Court of the State of Oaxaca, Mexico. According to International Service for Human Rights, there is a pattern of judicial harassment against environmental human rights defenders in Mexico.

In Peru, the use of force and other human rights violations by private corporations gained worldwide attention with the Yanacocha mining company case. The case of Máxima Acuña illustrates how the mining company that claims ownership of the lands in the Celendín town, Cajamarca, has successfully disregarded multiple court rulings granting Máxima's family the ownership of these lands. The company has dealt with this situation by using its private guards, 'Forza', and by influencing local government practices. At the mining company's request, Máxima was prosecuted, sentenced to prison, and ordered to pay compensation to the mining company. On appeal, she was acquitted of all charges and her land rights were recognised. The Yanacocha Company is owned by Newmont Mining Corporation, Cia., National Buenaventura, a Peruvian national group, and by the International Finance Corporation of the World Bank.

In Ecuador, the situation surrounding arbitrary arrest and detention became so grave that in 2008 the National Constituent Assembly recognised abuses of the justice system against environmental leaders, and granted amnesty to over 350 EHRDs who were facing judicial proceedings related to natural resource protests.

Illegal arrests are common in Guatemala. In 2013, 61 spurious charges were brought against EHRDs before the Guatemalan courts. These charges were brought by state and non-state actors, and in many cases the charges were accompanied by illegal detentions. Furthermore, in 2014 under a declaration of state of emergency, 43 people were illegally arrested and detained for months in connection to a long-lasting public conflict with the cement San Juan Project. The people arrested were members of twelve indigenous communities in San Juan Sacatepéquez, Guatemala, who had been resisting the large cement plant project for more than a decade in defence of their land and the right to a healthy environment. On 19 September 2014, armed employees of the company Cementos Progreso killed eight members of the Pajoques community. A few days later, the Guatemalan government declared a state of emergency and military forces were sent to four villages. More than thirty community leaders are facing arrest warrants charging them with crimes, without due process and meaningful investigation of the facts.

VIII. The Right to Freedom of Expression and Access to Information

The right to freedom of expression is set out in Article 19 of the Universal Declaration of Human Rights, Article 13 of the American Convention on Human Rights, and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The Convention and the Covenant allow restrictions on freedom of expression, but only if the restrictions are provided by law and the measures taken are to protect: the rights or reputations of others, national security, public order, public health, or morals.

Nonetheless, arbitrary and disproportional enforcement of defamation, terrorism and national security laws, as well as judicial intimidation, obstruct the exercise of this right.

A Joint Declaration on Universality and the Right to Freedom of Expression was adopted in 2014 by the United Nations Special Rapporteur on freedom of opinion and expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. The joint declaration includes recommendations for States and other actors, including international, regional, and national human rights bodies, the media, and the international community, in order to ensure that this right is adequately protected.

Despite numerous examples of State recognition of human rights, ongoing violations of the rights to freedom of expression, as well as assembly, have been documented in Latin America, particularly in the Alianza Bolivariana para los Pueblos de Nuestra América (ALBA) countries: Venezuela, Nicaragua, Bolivia, Cuba, and Ecuador.[93] Freedom of thought and expression is being restricted through violence against individuals, and through larger public restrictions on information. Individual EHRDs exercising their right to freedom of thought and expression face intimidation, harassment, arbitrary arrests, disappearances, torture, and killings. The larger public suffers from these violations because they, too, experience the consequences of barriers on free speech, the right to information, and to take part in public affairs.

In Bolivia, Venezuela, and Cuba, publications are often censored. These States appoint officials to supervise the production of print materials and make sure the content adheres to the government's guidelines and wishes.

In Nicaragua, defamation laws are used to restrict the right to freedom of expression and access to information. Nicaragua treats defamation as a criminal offence, penalised with fines and imprisonment. In Venezuela, defamation laws were enacted between 2005 and 2007 and several journalists reporting on environmental human rights issues have already been sued under these laws.

Access to information is also restricted by other mechanisms, including government control or ownership of media, mandatory broadcasting of messages, and strict legal restrictions on independent media. In Ecuador, the government created the Superintendence of Telecommunications and Media, under the new Organic Law of Communication. This law authorises the government to monitor, audit, intervene and control the media. Moreover, in Nicaragua and Venezuela, only the official media has access to official information.

A. Anti-Terrorism Legislation

The use of anti-terrorism legislation is an ongoing concern. Repeatedly, EHRDs have been threatened with anti-terrorism measures and national security laws in an effort to silence them. State abuse of anti-terrorism laws violates EHRDs' right to freedom of expression, and their right to access and disseminate information.

Chile, El Salvador, and Peru have all been criticised for their inappropriate application of anti-terrorism laws. In Chile, the government used anti-terrorism laws against the Mapuche indigenous people during their struggle over land: despite acts by the Mapuche not being comparable to terrorism, Chile's law includes arson as a terrorist offence. In 2003, the Supreme Court of Chile affirmed the lower court's decision which had sentenced eight members of the Mapuche community to terms in prison ranging from five to ten years for arson, under the anti-terrorism law. Their cases were challenged and eventually reached the Inter-American Commission on Human Rights. In November 2010, the Commission concluded that Chile's abuse of the anti-terrorism law violated several articles of the American Convention on Human Rights: including the principles of legality, individual criminal responsibility, the presumption of innocence, the right to equality before the law and non-discrimination, the right to freedom of expression, and the right to an impartial judge.[94]

In August 2011, the IACHR sent the case to the Inter-American Court of Human Rights' jurisdiction because Chile had not complied with the Commission's recommendations to "review the sentence, provide reparations to the victims and align the Anti-Terrorist law with the rights established in the Convention." On 29 July 2014 the Court ruled that Chile must "adopt all judicial, administrative or any other measures necessary to vacate the criminal sentences levied against defendants." The Court also ordered the Government to compensate the Mapuche victims for material damages, by paying each victim damages of USD 50,000. The monetary damages were awarded to provide education to the victim's children and psychological assistance to their families, as well as to pay for the legal costs incurred during this unlawful prosecution.

In El Salvador, the government enacted the Special Law Against Terrorism Acts in 2006. Since its adoption, the statute has been widely criticised because it is too vague, which permits its abuse against social movements. Indeed, in July 2007, the Government charged 14 people with acts of terrorism, because they had participated in a demonstration against privatisation of the nation's water system.

In Peru, the anti-terrorism laws enacted in 1992 have resulted in numerous unfair trials. The 2002 Amnesty International report reported that hundreds of political prisoners have been charged with treason under the anti-terrorism laws, and tried by military courts.[95]

B. Libel Threats and Injunctions

Libel threats are another tactic employed by governments and private corporations in the Latin America region against environmental and human rights defenders. In Brazil, José Huerta, a Franco-Spanish filmmaker, was charged with criminal defamation based on his creation of a documentary film which catalogued the negative environmental effects of an Austrian mass tourism investment project in Ecuador.

Throughout the State, Ecuador has experienced ever-growing legal harassment against journalists in recent years, with 118 cases of legal sanctions brought against journalists and media outlets since 2013. The NGO Fundamedios has been threatened with fines and potential closure for legitimate activities.

Despite recent reforms of the press laws against censorship in some Latin American countries, including Brazil, México, Argentina, and Uruguay, the Latin America region average press freedom score fell to its lowest level in the past five years, according to Freedom of the Press report.[96]

Ecuador, Honduras, México, Perú and Venezuela received their worst scores in over a decade; Honduras and Ecuador were also among those countries with the biggest declines globally in the 2010-2014 period. Only three Latin America countries, accounting for 2% of the region's population, were rated "Free"; the majority of Latin American countries were rated "Partly Free", while México (63/100), Ecuador (64/100), Honduras (68/100), Venezuela (81/100), and Cuba (91/100) are in the "Not Free" press category.

In the 2010 investigative report on journalism and the environment by Reporters Without Borders, deforestation and pollution were identified as high-risk subjects and "complicity between the private sector (such as companies and involved in logging and mining) and local authorities" was recognised as the cause of this problem.[97] The report includes cases of human rights violations against environmental defenders in Argentina, such as the violent attacks against journalists Nicolás Ziggioto and Lucas Olaz, who were also stripped of their equipment in February 2010, and threats to María Márquez, a radio critic of the copper mining project in Catamarca province. The Canadian Yamana Gold Corporation owns the Agua Rica Company, and it is the developer of the copper mining project in that location. Likewise, Saúl Reynoso was fired from his employment in television, because, in a radio program, he covered a demonstration where opponents to the Agua Rica mining project were arrested.

IX. The Right to Freedom of Assembly

At the international level, the rights of peaceful assembly and association are recognised in Article 20 of the Universal Declaration of Human Rights, Articles 21 and 22 of the International Covenant on Civil and Political Rights, Article 8 of the International Covenant on Economic, Social and Cultural Rights, and Articles 15 and 16 of the American Convention on Human Rights.

The right to freedom of assembly is violated when government officials implement laws, rules, and regulations making it difficult or illegal for groups to meet. According to a Peace Brigades International 2015 submission to the UN,[98] environmental defenders in the Americas are facing challenges to their right to assembly and association in the form of:

- Lack of consultation;
- Criminalisation of peaceful demonstrations;
- Violent eviction in response to social protest; and
- Persecution.

In Bolivia and Nicaragua, the government has used or funded violent groups to intimidate environmental and other human rights defenders. The violent groups limit freedom of assembly though harassment and violence against of civil society organisations, as well as other demonstrators.[99]

In Colombia, vague provisions in the 2011 amended Criminal Code, Code of Criminal Procedures, and Juvenile Criminal Code regarding the obstruction of public roads during civil protests, criminalises otherwise lawful activities carried out in the exercise of the right to freedom of assembly, which is guaranteed by the Colombian Constitution.

In Ecuador, the right to freedom of assembly is limited, as organisers of protests are required to secure permission for their protest from the municipality and the Police Superintendent. Not only does this requirement prohibit spontaneous demonstrations, but it also discourages planned protests because the regulatory framework lacks both precise deadlines for application and for government response, as well as failing to indicate what information must be submitted when seeking permission for an organised protest. Article 153 of the Ecuadorian Penal Code criminalises demonstrations that occur without permits, and violations are punishable with imprisonment and monetary fines.

A. Excessive Use of Force

In Argentina, communities that resist mining operations are often victims of government repression. For example, on 15 October 2015, in the Province of La Rioja, local residents marched peacefully to the MIDAIS mine. In response, the provincial police accosted the protesters with tear gas and rubber bullets in the town of Fatamina. The police shot rubber bullets at the protesters indiscriminately and unexpectedly. Ultimately, five people were injured from the rubber bullets, many others were affected by the tear gas, and five organisers of the protest were arrested.

A few days later, on 22 October 2015, in the north-western province of San Juan, Argentina, residents of San Juan Jáchal overtook an access road leading to Barrick Gold's Veladero mine. The protestors were protesting against the mining corporation and a cyanide spill which had occurred at the mine in September. In response, the army violently broke up the protest, and many of the protesters were imprisoned. The spill had resulted in 1.5 million litres of cyanide-contaminated water, but the corporation continues to deny that the local river was affected by the spill.

In Guatemala, the government has a history of responding aggressively toward peaceful environmental demonstrations. For example, on 27 April 2013, the security personnel of the Canadian mining company, Tahoe Resources Inc., opened fire on demonstrators.[100] On 23 May 2014, members of the La Puya Peaceful Resistance were aggressively evicted from their protest camp in a mining project in San José del Golfo, in the Guatemalan Department of Guatemala;[101] seven people ended up in the hospital in Guatemala City, and at least 20 more were injured.

In Peru, the number of anti-mining conflicts tripled between 2006 and 2010, and excessive use of force has been a common government practice to deal with protesters. Peru has invoked a state of emergency in many of these mining conflicts, allowing the government extraordinary powers to restrict civil liberties. Peru also commonly combats civil demonstrations with riot police and the army. As a result of excessive use of force, between 2006 and 2010, over 2,400 environmental defenders were injured and over 200 were killed in clashes with enforcement bodies.

Peru has used several legislative decrees as instruments to criminalise and control peaceful protests. For example, Decree No. 982 amends the criminal code to allow the armed forces to intervene in protests and exonerates the enforcement bodies of all criminal liability for injuries or deaths resulting from their use of weapons. In 2008, this legal decree was used against three community leaders who were accused of inciting people to protest against the mining royalty structure. Their conviction carried the risk of up to 35 years in prison. Similarly, Decree 1095, adopted in September 2010, was cited as the basis for the armed forces' intervention in the protests against the Conga mining project in November 2011. This decree authorises the intervention of armed forces in protests, even in the absence of a state of emergency declaration.

Photo: Alfredo Caliz / Panos

X. The Right to Freedom of Association

The right to freedom of association is an individual and collective right, to freely join or leave groups of persons in order to pursue common interests. This right is recognised in Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights, and Article 16 of the American Convention on Human Rights.

Nevertheless, in several countries of the Americas, governments impose barriers to the creation of networks or formal groups, including government refusal to register umbrella groups, or blocking these organisations from being established. Intimidation is also used to restrict this right. In Ecuador, for example, the Executive branch has intimidated NGOs by threatening to sue them for their participation in protests led by indigenous people against a new water law.[102]

Blanca Jeannette Kawas Fernández had denounced illegal appropriation of land, contamination and depredation of waters and forests by private individuals, and was murdered on 06 February 1995. In the landmark case of Blanca Jeannette Kawas Fernández v. Honduras the Inter-American Court of Human Rights ruled in its judgment of 3 April 2009, that the State was responsible for Kawas Fernández's death and found it had violated, among others, Articles 16 and 16(1) (right to freedom of association) of the American Convention on Human Rights. Kawas Fernández was president of the Foundation for the protection of Lancetilla, Puntal Sal, Punta Izopo, and Textiguat, an organisation created to defend the environment and quality of life of the community in the Bahía Tela region.

A. Restriction of Registration

Governments use registration laws to restrict the right to freedom of association of NGOs and civil society. These registration laws require NGOs to register with the government before initiating their activities. To prevent these organisations gaining legal status, governments impose delay tactics, inflict complicated requirements, and make the process time-consuming and costly. In Bolivia, for example, under a new law adopted in 2013, all NGOs must renew their registration with the government. This registration process requires NGOs to reveal all of their funding sources and conform their mission statements to official, government-approved purposes. Furthermore, under this law the government has the power to dissolve any NGO without using judicial process.

So far, no NGO has lost its legal standing under this new law, but the law has created an atmosphere of fear and self-censorship. As of September 2015, only 250 of Bolivia's 2,176 NGOs had completed the lengthy registration process. The use of this new NGO registration law is especially alarming because recently the Vice President, Álvaro García Linera, argued that NGOs have become less and less relevant under the current government, because the government sufficiently represents and incorporates indigenous and peasant sectors at all levels, and thus obviates the need for any NGO intermediaries.[103]

Governments also restrict NGOs by prohibiting approval of new programs and by dissolving existing organisations. In Ecuador, Executive Decree 16, which has been in force since 20 June 2013, is one tool used by the government to restrict civil society. The National Secretary of Politics Management, who is the authority in charge of regulating the objectives and activities of CSOs, created it. Under Article 26 of this Presidential Decree, social organisations can be dissolved if they deviate from their original goals and objectives. Using Article 26, on 17 July 2014 the government dissolved and shut down the Pachamama Foundation, an NGO working on the defence of the rights of indigenous people and the Amazon rainforest, after the Ministry of Environment dismissed Pachamama's appeal in February 2014. The government justified its actions by alleging that the organisation was interfering with public policies and was affecting public peace and State security.

In July 2014, the Ecuadorian Government issued Executive Decree 355, which required all CSOs to update information on their activities within 180 days, or be shut down. More recently, in July 2015, the CSO Fundamedios was threatened with dissolution because of allegations concerning its political conduct.

The broad range of reasons used to justify dissolution under Executive Decree 16 grants the Ecuadorian authorities immense discretion over CSO operations. Furthermore, this decree authorises the government to impose a wide range of restrictions on social organisations, including taxes, creation and sharing of financial reports, control over the organisation's foreign transactions, and more.

Executive Decree 16 also contains an entire section that governs foreign CSOs, which are under the Technical Secretary of International Cooperation. In this section of the decree, foreign CSOs are expressly prohibited from pursuing any activities that are incompatible with their approved program.

In Honduras, new fiscal and legislative measures were announced under the Act to Promote Development NGOs.104 All civil associations that fail to register their boards and do not provide financial statements will be shut down: it is anticipated that 4,000 civil associations may be shut down because of these new requirements.

In Mexico, the Federal Telecommunications and Broadcasting Act was passed in 2014 to allow greater competition in the media outlet sector, but it also grants controversial new powers to the government to deal with civil demonstrations, and creates an onerous registration process for all organisations that operate in the communication sector.

B. Restrictions on Foreign Funds

Governments undermine the right to freedom of association by imposing restrictions on foreign funds. These restrictions are usually aimed at limiting NGO activities.

Honduras, for example, has been considering adopting laws that, in addition to prohibiting financing of terrorism, would also control the development of NGOs. These laws and regulations raise concerns because they can be used to limit the ability to hold social protests. Indeed, comments by public officials indicate that one of the intended aims of these laws and regulations is to require NGOs to demonstrate that their funds are used for social development, and not for protests. Moreover, in 2011 the government questioned the capacity of Peace Brigades International to represent human rights defenders in legal processes in the Inter-American system.

C. Surveillance

Public authorities and private corporations are undermining the right to freedom of association by spying on and infiltrating EHRDs groups. While comprehensive statistics and studies do not exist, press releases and news articles indicate that the use of impermissible surveillance techniques by private corporations and government actors is widespread throughout Latin America. This surveillance hinders the work of EHRDs by undermining their right to freedom of association.

In Peru, for example, the security firm, C & G Investigaciones, was caught spying on and filming the staff and supporters of the NGO Grufides in 2006.[105] Grufides is a non-governmental environmental organisation whose mission is to promote sustainable development. The security firm kept files on the different members of Grufides, including on the Catholic priest and Grufides leader, Marco Arana, whom the security firm referred to as "el diablo" or "the devil." According to Arana, the surveillance was aimed at defaming and intimidating the EHRDs.

Other EHRD groups have reported being subjected to similar surveillance techniques in response to their work to support the right to work and the right to a clean environment. In Peru, according to Pablo Rojas, executive secretary of the National Coordinating Committee of Human Rights, there is a pattern of corporations in Peru contracting with private security companies to investigate environmental organisations. Moreover, the government refuses to address the surveillance techniques employed by the private corporations. No protection system exists for these EHRD groups. Rojas explains that "[t]he authorities play into the mining companies' hands." Governmental complacency is highlighted by the fact that a judge dismissed a lawsuit brought by Marco Arana, declaring that the alleged spying was in fact journalistic investigation.

In Ecuador, the government illegally spied on environmentalists who were campaigning for the protection of the Yasuní rainforest. In 2015, leaked documents from the National Intelligence Service contained information collected on the EHRDs from 2010 to 2013. The information included emails, photos, financial information, and international travel plans. The National Intelligence Service was particularly interested in collecting information on the political and financial information of different environmental organisations, as well as the groups connections to foreign sources of funding.[106] Participants in the protests against the 2014 water law were photographed by police to intimidate them.[107]

In Brazil, members of the Brazilian Xingu Alive Forever Movement (MXVPS) discovered an informant in their group who was claiming to be an activist. The informant was caught recording the group's annual strategic planning meeting with a pen-shaped camera. Once the informant was found out, he immediately confessed that the Belo Monte Construction Consortium had hired him in order to collect information on the group's leaders and activities. According to the informant, the Belo Monte Construction Consortium planned on sharing the information it collected with the government's national intelligence agency, ABIN. The informant admitted that he had been hired to spy on the organisation throughout 2012 and 2013.[108]

XI. Recommendations

Recommendations to Governments

General Recommendations

- Put an end to impunity for attacks on EHRDs.
- Create an enabling environment in which EHRDs can operate safely and unhindered.
- Ensure that development projects on indigenous lands and territories proceed only when the affected community has given its free, prior and informed consent.
- Ensure that all stakeholders are able to take an effective part in environmental impact assessments, and in the decision-making on projects that may affect the environment. This should include holding public hearings on environmental projects and providing sufficient advance notice and information on the projects and on the public meetings.
- Ensure indigenous peoples are not impaired in the exercise of their rights to access their lands and territories, including in regard to environmental projects undertaken or funded by private businesses.
- Require business enterprises and lending institutions to perform comprehensive human rights due diligence as a condition of operating in the country, and incorporate this requirement into binding legal and administrative measures.
- Firmly acknowledge the importance of the activities of EHRDs by providing impartial information on environmental issues to the public and by facilitating the free flow of information.
- Establish mechanisms to protect whistleblowers.

On the Right to Life and Physical Integrity:

- Ensure that any misconduct or criminal behaviour by law enforcement officers or other public officials – including killings, use of excessive force, threats and intimidation– is promptly, thoroughly, and impartially investigated and remedied and appropriate sanctions imposed.
- Provide the utmost protection for the life and physical integrity of EHRDs; conduct thorough and impartial investigations when killings and physical attacks occur; hold the perpetrators accountable; and guarantee a right to an effective remedy for the victims and their families.
- Reform legislation in order to stop the improper use of lawsuits as a method to silence EHRDs.

- Coordinate with other State governments and inter-governmental organisations to comprehensively monitor killings, attacks, and other intimidation by non-state actors against EHRDs, especially by transnational corporations, with a view to publicly exposing such conduct when it occurs.
- Publicly denounce all verbal attacks aimed at discrediting EHRDs and their organisations.

On the Freedom from False Charges and Arbitrary Arrests

- Guarantee fair trials to EHRDs and ensure that false charges are quickly dismissed.
- Ensure that EHRDs are not subjected to arbitrary detention or imprisonment for peacefully voicing their opinions, participating in peaceful demonstrations, or for simply disseminating information to the public.
- Ensure EHRDs are not subjected to arbitrary detention or prolonged pre-trial detention.
- Identify and stop abuse of the judicial process to harass EHRDs.
- Ensure all law enforcement officers are properly trained and accountable for all arrests they make, in order to prevent illegal arrests and other violations of EHRDs.

On the Right to Freedom of Expression and Access to Information

- Ensure that EHRDs are not charged and prosecuted under anti-terrorism legislation for peaceful activities.
- Ensure that EHRDs are not threatened with libel prosecutions and injunctions by state or private actors for disseminating information to the public.
- Instruct public authorities to regularly gather and disseminate information on any of their activities that may affect the environment.

On the Right to Freedom of Assembly

- Ensure that any restrictions on peaceful protests, including on prior authorisation, registration and notification, are in conformity with international standards.
- Ensure that people are never charged with criminal offenses for engaging in peaceful protests.
- Ensure that all law enforcement officers are properly trained and accountable in the use of police powers, including during demonstrations.

On the Right to Freedom of Association

- Repeal any law that illicitly restricts EHRDs from operating through their non-governmental or civil society organisations.
- Ensure that all laws guiding the organisation of non-governmental and civil society organisations are in conformity with the internationally recognized right to freedom of association.
- Refrain from intimidating actions, including heightened, unlawful surveillance of non-governmental and civil society organisations.
- Amend all legislation that provides severe penalties for minor offenses, such as holding demonstrations without prior authorisation or registration.
- Ensure that environmental organisations and indigenous groups are able to operate without unreasonable restrictions, by enabling their legal registration and fundraising activities without barriers.
- Investigate all instances of surveillance of EHRDs, with a view to eradicating the practice.

Recommendations to Financial Institutions, Developers and Businesses

- Perform comprehensive human rights due diligence to identify, prevent, remedy and account for how the institution, enterprise or business addresses the adverse human rights impacts of its activities.
- Refrain from providing financial support for or engaging in projects lacking free, prior and informed consent by the affected communities.
- Withdraw financial and other support for projects where lack of free, prior and informed consent comes to light, and withdraw from projects that are the source of human rights abuses.

Recommendations to the Inter-American Human Rights System

- Survey member States to identify and evaluate good practices and to specify challenges in protecting EHRDs; solicit participation and input from non-governmental and civil society organisations in the survey as well.
- Consider adopting shared principles ensuring the adequate protection of EHRDs in Latin America and the Caribbean.
- Create detailed guidelines for member States on their obligations to protect EHRDs.
- Create a binding mechanism for receiving, reviewing, and acting on complaints of human rights violations against EHRDs.

Recommendations to the Negotiating Committee of the Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean

Adopt a legally binding and robust regional agreement on access rights and environmental democracy that:

- Recognises the critical role of EHRDs in the effective implementation of access rights, democracy and the environmental rule of law.
- Establishes a mechanism that affords real protection to EHRDs at risk.
- Publicises human rights violations suffered by EHRDs.

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