

Defending the Defenders

Harassment of Environmental Defenders in Europe and Latin America

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Abbreviations

Aarhus Convention - The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998, Aarhus, Denmark (2001- entry into force)

CSR - Corporate Social Responsibility

ECLAC - Economic Commission for Latin America and the Caribbean

EHRDs - Environmental Human Rights Defenders

Escazu Agreement - Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Adopted on 4 March 2018 in Escazú, Costa Rica

EU - European Union

FoE - Friends of the Earth

FoEI - Friends of the Earth International

IACHR - Inter-American Commission on Human Rights

IUCN - International Union for Conservation of Nature

LAC region - Latin America and the Caribbean

OSCE - Organization for Security and Co-operation in Europe

PACE - Parliamentary Assembly of the Council of Europe

UNECE - United Nations Economic Commission for Europe

UNEP - United Nations Environment Programme

UNGA - United Nations General Assembly

Introduction

Theory of public participation tells that public participation in governance means the direct or indirect involvement of stakeholders in decision-making process about policies, plans or programs in which they have an interest. So, public participation is an essential part of the relationship between government and public in democracies.¹ The environmental democracy implies public participation in decision-making process related to environmental issues. If the public is not included in environment related decision-making processes, one can observe that it produces numerous environmental conflicts all around the globe². These conflicts may bring with them many retributions (like harassment, violence, killing etc.) against those, who are trying to exercise their human rights – the freedom of speech, freedom of association, freedom of assembly, freedom to participate in decision-making and others, to protect the environment – i.e. environmental defenders. The role of the environmental defenders is very important because they are drawing the attention to the environmental issues and are striving to protect the environment, because it is also related to the right to life- the essential human right, as without the safe and healthy environment one cannot speak about life.

Thus, in this research, we will examine **the level of the protection of the defenders and whether it is attributed to legal, economic or cultural factors. We also shall try to analyze different political systems to finally find out where the protection of the defenders is more/less effective and why.**

First of all we will start with definitions. The definitions are playing an important role in the protection of the defenders, because, for the legal subject to be protected it has to be defined first. So, we will provide definition of the environmental defenders who are part of the human rights defenders, and look closely at different types of the defenders. Then, we would need to give definitions of all kind of retributions against the defenders, like the term harassment for example, - the term that is often used but was never defined, though the definition is crucial in the process of finding solutions. Next step is the division of actors involved in retributions against the defenders. And finally we will look closely at the types of retributions against the defenders and the types of conflicts they are connected to.

In this research we will focus on two big geographical regions - Europe and Latin America, because these regions produced two important documents Aarhus Convention and Escazu Agreement (not yet in force). These two accords contain the dispositions related to the protection of the human rights defenders:

Aarhus Convention §3.8

"Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way

¹ Quick, Kathryn & Bryson, John. Theories of public participation in governance. Chapter 12., from : *Handbook on Theories of Governance, Handbook on Theories of Governance*, Edited by Christopher Ansell and Jacob Torfing, (2016), 592 pages.

² See the map of environmental conflicts: Environmental Justice Atlas <https://ejatlas.org/>

for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings."

Escazu Agreement (opened for signature from 27 September 2018, not yet in force). It explicitly protects the defenders in its articles 4, §6 and 9, §§1-3, saying that

"Article 4

§6. Each Party shall guarantee an enabling environment for the work of persons, associations, organizations or groups that promote environmental protection, by recognizing and protecting them.

Article 9

Human rights defenders in environmental matters

§1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.

§2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.

§3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement."

By referring to Latin America and Europe we will understand the ECLAC and the ECE regions. LAC (Latin America and the Caribbean) countries are potential signatories of the Escazu Agreement that was created under the United Nations Economic Commission for Latin America and the Caribbean; and parties or potential parties to the Aarhus Convention made under the United Nations Economic Commission for Europe which implies EU countries, non EU country parties to the Convention (like Belarus, for example) and not yet parties to the Convention (like the USA and Russia for example).

In this research we will not take into account the retributions against the defenders in other regions, first of all because even though there are many cases of harassment and killings of the defenders around the globe, there are no such legal instruments as an Aarhus Convention or an Escazu Agreement.

In the future, of course it would be interesting to compare Aarhus Convention and Escazu Agreement effectiveness related to the protection of the environmental defenders. But for now we will concentrate our research on the following questions: **Who are the environmental defenders and what is their legal status? What are the ways of retributions against them by State and Non-State actors? How existing non-legal legal instruments are used against the defenders in order to stop and discredit their work?**

Definitions

The definitions are playing an important role in the protection of environmental defenders. For the legal subject to be protected it has to be defined first. So, first of all we will give the definitions of the defenders and the harassment - the latter words that are often used but never defined, though the definition is crucial in the process of finding solutions. What is the harassment and what is the border/relationship between the harassment and violence?

Definition of environmental defenders

To give a definition of the environmental defenders it is needed to give the definition of the human rights defenders first of all:

Human rights defenders

The Declaration on Human Rights Defenders does not give explicitly the definition of defenders, but its Article 1 tells that: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."

Human rights defenders act "individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms" ³at the local, national, regional and international levels. They recognize the universality of human rights for all without distinction of any kind, and they defend human rights by peaceful means.⁴

Organization for Security and Co-operation in Europe (OSCE) first refers to Article 1 of the UN Declaration on Human Rights Defenders (§4, page 24) in order to give its definition of defenders after all:

*"Anyone promoting and striving for the realization of human rights is a human rights defender – regardless of profession, age or other status or whether they are carrying out their human rights activities individually or jointly with others, as part of an informal group or a non-governmental organization (NGO), or whether they act in a voluntary capacity or professionally. Lawyers, trade unionists, staff of national human rights institutions (NHRIs), journalists, medical professionals, public servants and students, among others, can be human rights defenders."*⁵

Parliamentary Assembly of the Council of Europe (PACE) gives the following definition in its Resolution 1660 (2009), on Situation of human rights defenders in Council of Europe member states:

³ UN Declaration on Human Rights Defenders, Article 1, <<http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>>.)

⁴ <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders?download=true>

⁵ §7, page 25, OSCE Guidelines on the Protection of Human Rights Defenders, 2014

*"The Assembly considers that human rights defenders are all those persons who, individually or together with others, act to promote or protect human rights. It is their activities in this field that define them as human rights defenders."*⁶

EU definition of the defenders which is based on §1 of 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" is the following:

*"Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence."*⁷

Inter-American Commission on Human Rights (IACHR) definition of human rights defenders in general:

"Human rights defenders are individuals who in any way promote or seek the realization of nationally or internationally recognized human rights and fundamental freedoms. The identifying criteria of who should be considered a human rights defender is the activity of the person as opposed to other qualities, such as whether she or he receives payment for his or her work, or whether he or she belongs to a civil society organization. This concept also covers justice operators as defenders of the access to justice for thousands of victims of violations of their rights. (§19)

"Human rights defenders on the one hand "contribute to the improvement of social, political and economic conditions, the reduction of social and political tensions, the building of peace, domestically and internationally, and the nurturing of national and international awareness of human rights." Also, they "can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights." (§20)

"On the other hand, human rights defenders contribute in a special way to the promotion, respect, and protection of human rights and fundamental freedoms in the Americas and in supporting victims and representing and defending those whose rights are threatened or violated. The defenders' monitoring, reporting dissemination, and education activities are an essential contribution to the observance of human rights, as they seek to combat impunity." (§21)

"The IACHR has emphasized that the work of human rights defenders is fundamental for the universal implementation of human rights, and for the full existence of democracy and the rule of law. Human rights defenders are an essential pillar for the

⁶ §2, Resolution 1660 (2009), Situation of human rights defenders in Council of Europe member states, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17727&lang=en>

⁷ §3, page 2, EUROPEAN UNION GUIDELINES ON HUMAN RIGHTS DEFENDERS, https://eeas.europa.eu/sites/eeas/files/eu_guidelines_hrd_en.pdf

strengthening and consolidation of democracies, since the purpose that motivates their work involves society in general, and seeks to benefit it." (§ 29)⁸

So, a human rights defender is anyone promoting and striving for the realization of human rights. But are the environmental defenders included in the notion of the human rights defenders?

United Nations Environment Programme (UNEP) launched Environmental Defenders Policy on 5 March 2018. The document entitled as "Promoting Greater Protection for Environmental Defenders" gives a definition of environmental defenders:

"Environmental rights can be seen as an extension of basic human rights. Over 100 countries guarantee their citizens a constitutional right to a healthy environment. All people have a stake in protecting the environment and in ensuring respect for environmental rights. Environmental defenders are often ordinary citizens exercising their rights. UN Environment considers an environmental defender to be anyone (including groups of people and women human rights defenders) who is defending (including protecting and promoting human rights relating to the environment, water, air, land, flora, and fauna) environmental rights, including constitutional rights to a clean and healthy environment, when the exercise of those rights is being threatened. (UN Special Rapporteurs have defined environmental human rights defenders as "defenders carrying out a vast range of activities related to land and environmental rights, including those working on issues related to extractive industries, and construction and development projects")⁹

Note by the UN Secretary-General A/71/281 entitled "Situation of human rights defenders", made 3 August 2016 gives the following definition of environmental defenders referring to the Article 1 of the Declaration on Human Rights Defenders:

"For the purposes of the present report, the term "environmental human rights defenders" refers to individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna. Land and environmental rights are interlinked and are often inseparable. As a result, the two broad categories of defenders advocating for the environment and for land rights are often characterized as "land and environmental rights defenders", "environmental rights defenders", or just "environmental activists". The report defines those defenders through the inclusive term "environmental human rights defenders", whose rights to exercise such fundamental freedoms as the rights to expression, privacy, association and peaceful assembly have been enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. With regard to

⁸ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

⁹ <https://www.unenvironment.org/news-and-stories/story/un-environment-launches-environmental-defenders-policy>

See also:

https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y

*exercising the right to protect environmental and land rights, article 1 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 — the Declaration on Human Rights Defenders — further holds that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.*¹⁰

The problem here is the following: even though more than 100 countries recognize the human right to a healthy environment in their constitutions formulated in different ways¹¹, **there is no international agreement that would explicitly recognize the right to the healthy environment.**

What are the consequences? Many countries recognize and include the right to the healthy environment in their constitutions, but the definitions are different and there is no uniformed formulation of this right. Absence of an international agreement with a uniformed formulation of the right to the healthy environment would permit better protection. Without uniformed definitions is the protection weaker?

The important step towards emergence of human right to a healthy environment is the Framework Principles to the UN Human Rights Council presented in March 2018, in the final report (UN Doc. A/HRC/37/59) by John H. Knox- UN Special Rapporteur on Human Rights and the Environment. *"The Principles set out the basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment." "As a result, the Framework Principles should be accepted as a reflection of actual or emerging international human rights law."*¹²

John H. Knox said that *"the exercise of human rights, including rights to freedom of expression and association, to education and information, and to participation and effective remedies, is vital to the protection of the environment."*¹³

¹⁰ §7, page 5, Seventy-first session, Item 69 (b) of the provisional agenda*, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, Situation of human rights defenders, Note by the Secretary-General, 3 August 2016, A/71/281, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>

¹¹ See §11, page 4, HUMAN RIGHTS AND THE ENVIRONMENT: REGIONAL CONSULTATION ON THE RELATIONSHIP BETWEEN HUMAN RIGHTS OBLIGATIONS AND ENVIRONMENTAL PROTECTION, WITH A FOCUS ON CONSTITUTIONAL ENVIRONMENTAL RIGHTS, 23-24 January 2014, Johannesburg, SOUTH AFRICA, Convened by the United Nations Independent Expert on human rights and the environment with the United Nations Environment Programme, the Office of the High Commissioner for Human Rights, and the Legal Resources Centre of South Africa

See also: See David Richard Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2012), p. 59.

¹² page 3, FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT The main human rights obligations relating to the enjoyment 2018 of a safe, clean, healthy and sustainable environment., by John H. Knox- UN Special Rapporteur on Human Rights and the Environment, <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

¹³ page 6, FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT The main human rights obligations relating to the enjoyment 2018 of a safe, clean, healthy and sustainable environment., by John H. Knox- UN Special Rapporteur on Human Rights and the Environment,

Principle 4 says:

"States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence."¹⁴

In its explanation one can find that:

"Human rights defenders include individuals and groups who strive to protect and promote human rights relating to the environment (see UNGA A/71/281, § 7). Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders."¹⁵

Also another definition is given by International Union for Conservation of Nature (IUCN) that says that

"Environmental Defenders are individuals who exercise their human rights – the freedom of speech, freedom of association, freedom of assembly, freedom to participate in decision-making, the right to work – to protect the environment. They are defenders of the environment and defenders of human rights at the same time. After all, the possibility to enjoy basic human rights such as the right to life, the right to health, to water, to education and employment, to freedom of religion, all require the existence of a healthy and safe environment. Without a livable environment, which is the fundament of our existence, we are not able to make use of our human rights. Environmental Defenders are increasingly recognized as being human right defenders. The Special Rapporteur on Human Rights Defenders has acknowledged that those who defend land rights, the right to natural resources and the right to the environment, fall under the protection of the UN Declaration of Human Rights Defenders."¹⁶

So, if we could put together these two definitions we would have the following definition of the environmental defenders:

<https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

¹⁴ page 8, FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT The main human rights obligations relating to the enjoyment 2018 of a safe, clean, healthy and sustainable environment, by John H. Knox- UN Special Rapporteur on Human Rights and the Environment, <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

¹⁵ §10, page 8, FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT The main human rights obligations relating to the enjoyment 2018 of a safe, clean, healthy and sustainable environment, by John H. Knox- UN Special Rapporteur on Human Rights and the Environment, <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>

¹⁶ IUCN NL (IUCN National Committee of The Netherlands) report: ENVIRONMENTAL DEFENDERS AND THEIR RECOGNITION UNDER INTERNATIONAL AND REGIONAL LAW -AN INTRODUCTION

Environmental human rights defender (being part of human rights defenders) is anyone (whether or not they self-identify as human rights defenders) who exercise their human rights – the freedom of speech, freedom of association, freedom of assembly, freedom to participate in decision-making, the right to work – to protect the environment on which the enjoyment of human rights depends.

Types of defenders

From the definition we gave it is clear that the defender is **anyone** who strives to protect and promote human rights relating to the environment. Environmental defenders can be not only NGOs, CSOs, activists, lawyers, indigenous people and journalists but also they are often just ordinary people. Let's see closely at the different types of environmental defenders and how this group is defined.

United Nations insists that **environmental human rights defenders are one of the most heterogeneous groups of defenders:**

*"Environmental human rights defenders are one of the most heterogeneous groups of defenders. The category includes a diverse range of people, profiles and trajectories, from small-scale farmers with no land deeds to environmental lawyers and journalists, from well-organized non-governmental organizations to isolated indigenous communities. In many cases, some of these groups already experience marginalization. In many situations, they do not always have the capacity to challenge decisions in courts or they do not have access to mass media. Their marginalization is also due to the nature of their struggles as human rights defenders. Many become environmental human rights defenders by "accident" or "necessity", taking a **stand against injustice or harm to their environment**. This may amplify their vulnerabilities, as they may not self-identify as environmental human rights defenders and therefore they may be unaware of their rights or existing protection measures, mechanisms or organizations that could support them. The very specific nature of rural communities can also aggravate their vulnerability, as these communities can be located in isolated areas without access to communication and support networks."*¹⁷

*"Environmental human rights defenders are identified above all by what they do. They are characterized as such through their actions to protect environmental and land rights. Although they may work as journalists, activists or lawyers who expose and oppose environmental destruction or land grabbing, **they are often ordinary people living in remote villages, forests or mountains, who may not even be aware that they are acting as environmental human rights defenders**. In many other cases, they are indigenous leaders or community members who defend their traditional lands against the harms of large-scale projects such as mining and dams."*¹⁸

¹⁷ §53, page 15, A/71/281 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>

¹⁸ §8, page 5, Seventy-first session, Item 69 (b) of the provisional agenda*, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, Situation of human rights defenders, Note by the Secretary-General, 3 August 2016, A/71/281,

OSCE gives the definition of journalists as part of human rights defenders, even though the definition is general for all the human rights defenders.

*"Journalists who promote human rights are human rights defenders, regardless of their accreditation status and the media through which they work (print, radio, television or the Internet). Journalists who report on human rights violations, corruption or mismanagement or on the work of whistleblowers should not face prosecution, arbitrary legal actions or other repercussions for doing so. ..."*¹⁹

Women environmental defenders were highlighted as another type of environmental defenders by UN resolution A/71/281:

*"Many violations against environmental human rights defenders can be directly linked to patriarchy, sexism, racism, xenophobia and chauvinism. This is important in the case of **women defenders**, who may oppose large-scale development projects but also challenge the systemic power inequality and discrimination deeply rooted in societies. They usually question patriarchy or misogyny, sometimes within their own communities. As activists, they face the same threats as other defenders but they are more likely to face gender-specific violence. Reports have shown that sexual violence is used to silence women human rights defenders in particular. In Latin America, for example, women defenders are among the most threatened environmental human rights defenders owing to the nature of their human rights work and to their gender.*

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Also UN highlighted in particular one more type of the environmental defenders: indigenous communities.

"Indigenous communities also face multiple forms of aggression and violence. In specific situations, oppression against them is encouraged by institutionalized racism and stigmatization that deny the rights of these communities. Private actors such as agribusinesses and extractive industries as well as law enforcement agencies have been regularly observed to commit violations against environmental human rights defenders from indigenous communities. National development strategies often fail to include specific approaches and processes for indigenous communities that would ensure the conservation of their ancestral lands and recognize their rights to their

¹⁹ §54, page 11, OSCE Guidelines on the Protection of Human Rights Defenders, 2014,

<https://www.osce.org/odhr/guidelines-on-the-protection-of-human-rights-defenders?download=true>

See also: page 15, A/70/217, 30 July 2015 UNGA, Situation of human rights defenders -journalists, layers

²⁰ §54, A/71/281

See also: http://defendingwomen-defendingrights.org/wp-content/uploads/2014/03/Our-Right-ToSafety_FINAL.pdf;

<https://urgentactionfund.org/in-our-bones/>.

See also: Urgent Action Fund of Latin America and the Caribbean and others, Patterns of Criminalization and Limitations on the Effective Participation of Women Who Defend Environmental Rights, Territory, and Nature in the Americas (2015), available from

http://media.wix.com/ugd/b81245_33bf16237c2847e2bb300f664356d424.pdf,

and Women Defending the Territory, available from

http://media.wix.com/ugd/b81245_72106e74f799442f8cca5e1c685700a6.pdf

livelihoods and environment. Linguistic barriers, countless obstacles to accessing basic social services and the imposition of unfavorable models of consultation aggravate the vulnerability of indigenous environmental human rights defenders."²¹

Also the notion of the defenders can include the **whistleblowers** as well. Because, a whistleblower is "any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector;"²² So, a whistleblower- a person who is disclosing the information to protect the environment can be considered as environmental defender, but in this research we exclude the whistleblowers protection, because this issue is very large and requires separate consideration.

So, we can repeat again that environmental defenders is the most heterogeneous groups of defenders that includes **any person** or group of persons that stands against harm to the environment.

Definitions of different types of retributions vis-a-vis the defenders

In this research we will follow the logic of the Aarhus Convention implementation guide comments to the Article 3, §8 of the Convention that says the following: "Paragraph 8 is a broadly worded provision which aims to prevent **retribution of any kind.**" So, we will use the term "retribution" as a general term to describe all kind of actions towards the environmental defenders in order to punish them for their involvement into the protection of the environment.

Then, we need to figure out what kind of retributions the defenders are facing. In all the texts and reports dedicated to the subject, we can clearly see the tendency to divide the retributions mainly into several categories:

1) Harassment:

- a) direct harassment,
- b) cyber harassment,
- c) media harassment,
- d) judicial harassment:
 - criminal charges
 - civil lawsuits
 - administrative proceedings(criminalization, penalization, imprisonment as the result)

2) Violence

3) Killing

4) Excessive use of force

5) Detention and arrest

5) Hostile legislation (criminalization, penalization, imprisonment as the result)

²¹ §56, UNGA, A/71/281

²² Recommendation CM/Rec(2014)7, adopted by the Committee of Ministers of the Council of Europe, on 30 April 2014 and explanatory memorandum

Such a division can be also disputable, because despite the fact of use of those terms it is difficult to find their clear definitions. For instance, the term harassment is not explicitly given by any report connected to the subject.

So first of all, to give a definition to the term "**harassment**" we will use the Black's Law Dictionary, which says that Harassment is "a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose", adding that the term is used "*to describe words, gestures and actions which tend to annoy, alarm and abuse (verbally) another person*".²³ **Thereby, by using a term harassment we would mean any verbal retribution causing emotional distress in order to disturb and prevent the defenders from their work of protecting the environment.** A person can be harassed by State actors via media, like stigmatization and fake news. The ways of harassment by Non-State actors are numerous, like phone calls, threats, media harassment, fake news, harassment in social media etc.

Thus, by using the term "**harassment**" we understand **unlawful actions causing emotional distress**. And the "**violence**" we would define as **unlawful use of physical force**.

Also, we need to clear out the difference between violence and excessive use of force: while **violence** is defined as "**physical force unlawfully exercised**", **excessive use of force** could be defined as "*amount of force which is beyond the need and circumstances of the particular event or which is not justified in the light of all the circumstances*".²⁴

We are not sure whether the killing (which is a deprivation of life) and violence can be put together in one group or not, because violence against the defenders in some cases leads to killings and deaths, so the deprivation of someone's life can be/or not included in the concept of physical abuse.

Criminalization can be defined as the action of turning a person into a criminal by rendering his activity illegal. The Black's Law Dictionary describes criminalization as "*the rendering of an act criminal and hence punishable by the government in a proceeding in its name*".²⁵ So, we understand that criminalization is the consequence/result of hostile legislation and/or judicial harassment.

By **judicial harassment (or we can also call it legal system abuse)** we understand a misuse/abusive application of existing law enforcement, or arbitrary application of existing laws used by State and Non-State actors to obstruct human rights work of the defenders. Or in other words it is a **use of judicial system to silence the defenders**.

The relation between criminalization and judicial harassment is complicated, because they are interrelated.

Despite the fact that OSCE gives the following definition of judicial harassment:

"The term "**judicial harassment**" is understood as the application of unwarranted legal and administrative proceedings or any other forms of misuse of administrative and

²³ page 717, Black's Law Dictionary by H.C. Black, 6th edition, St Paul, Minn. West Publishing, 1990

²⁴ page 562, Black's Law Dictionary by H.C. Black, 6th edition, St Paul, Minn. West Publishing, 1990

²⁵ page 374, Black's Law Dictionary by H.C. Black, 6th edition, St Paul, Minn. West Publishing, 1990

judicial authority, including **arbitrary and abusive application of legislation** with the purpose or effect of obstructing or stigmatizing human rights work."²⁶

"The **judicial harassment of human rights defenders and the criminalization** of their work take a number of forms, including the following: the prosecution of human rights defenders under vague laws allowing for the arbitrary application of laws that criminalize legitimate human rights activities; fabricated criminal charges, spurious lawsuits or false civil claims; disproportionate sanctions for minor offences; and the abuse of administrative procedures and regulations (for example, concerning the operation of NGOs, financial and tax matters or road traffic regulations). In some participating States, such incidents of harassment by law enforcement and security services and judicial and other state officials are reported frequently, with family members of at-risk human rights defenders of also being targeted. Non-state actors may also initiate intimidation and harassment, with the state either condoning or actively supporting such actions. Judicial harassment and criminalization can result in human rights defenders facing arbitrary arrest and detention, (The UN Special Rapporteur on the situation of human rights in Belarus, for example, has noted reports of "persistent acts of intimidation and the judicial harassment of human rights defenders, at times resulting in prison sentences and heavy fines amid reports of due process irregularities in trials", UN Doc. A/HRC/23/52, 18 April 2013, para. 92.), long prison terms [...]."²⁷

It should be noted, that we disagree with the existing definition of judicial harassment given by OSCE because giving the definition of judicial harassment and then saying about judicial harassment and criminalization (whose definition is not given) can be viewed as unclear definition, which as a consequence can disturb the efficient protection of the defenders.

Nonetheless United Nations report on the situation of human rights defenders notes that **judicial harassment is part of criminalization** among other existing forms.²⁸ But at the same time it is used as follows: "*along with 18 concerning other kinds of judicial harassment **and criminalization***" (§78) - which makes unclear whether the judicial harassment is part of criminalization or not.

Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico, A/HRC/37/51/Add.2, from 12 February 2018²⁹ on the subject of Criminalization of human rights work says the following (§22):

"The activities of human rights defenders [...] have been criminalized through the **deliberate misuse of criminal legislation and the manipulation of the punitive powers of the authorities by both State and non-State actors**, in order to hinder and

²⁶ page 55, §94, OSCE Guidelines on the Protection of Human Rights Defenders, 2014

²⁷ page 55, §95, OSCE Guidelines on the Protection of Human Rights Defenders, 2014

²⁸ §76, UNGA, A/HRC/16/44, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, 20 December 2010, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44.pdf>

²⁹ A/HRC/37/51/Add.2, Human Rights Council, Thirty-seventh session, 26 February–23 March 2018, Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico, 12 February 2018

even halt efforts to exercise the legitimate right to promote and protect human rights.”

Then in the following paragraph (§23) says:

"Such criminalization usually begins with the filing of unfounded allegations or complaints against human rights defenders that relate to criminal offences and that may not be in line with the principle of legality or comply with international human rights standards. **Multiple forms of human rights violations then follow, including judicial harassment**, prosecution on trumped-up charges, double jeopardy, detention without a court order and inhuman conditions of detention. "

So, we suppose and will use the following logic in this report:

Criminalization is a process and a result.

Criminalization= process of rendering an act criminal by:

->1) misuse of law = judicial harassment

->2) creation of new laws = hostile legislation

Result of judicial harassment and hostile legislation is the criminalization of the defenders and obstruction and repression of their work.

Once defenders are criminalized, it can lead to increase of judicial harassment cases by State and Non-State actors.

Actors

Two types of actors are involved in retributions of the defenders: State actors and Non-State actors. Global Witness 2014 report uses the term "perpetrators"³⁰ to generalize these two types of actors.

The retributions from State and Non-State actors take different forms

State actors involved: legislators, judges, prosecutors, ministers, police, and military officers.³¹

Non-State actors involved: national and transnational private companies, private security guards, personnel working in mega-projects, and landowners. "³²

³⁰ page 16, Deadly environment, the dramatic raise in killings the environmental and land defenders, 2002-2013, Global witness report, 2014

<https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>

³¹ IACHR report Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015 says :

ON lawmakers: "While lawmakers generally are not directly involved in the processes of criminalization, the formulation of offenses contrary to the rule of law contributes to the criminalization. An example of this is the enactment of laws that unduly punish the right to freedom of assembly and expression such as the criminal offenses that sanction the conduction of demonstrations without prior permission, and the laws that define the criminal offense in a very vague or ambiguous manner, such as some of the laws to combat terrorism." (§§55-57)

ON Judges : §63. For their part, judges also participate in criminalizing defenders when they accept processes without evidence or with claims from false witnesses, accelerate processes with the goal to repress the accused defender, (UDEFEQUA Guatemala, Guide For Human Right Defenders Against Criminalization (Spanish only), 2009, p. 5.) issue arrest warrants against defenders without sufficient basis, (PBI, Informe de la misión de corto plazo en Honduras: La situación de los defensores y las defensoras de derechos humanos (Spanish only), 2011, p. 14.) do not respect the guarantee of reasonable time and subject defenders to lengthy proceedings, and issue resolutions contrary to domestic legislation. Likewise, judges contribute to the processes of criminalization when they improperly interpret the law and fail to take into account international instruments that protect human rights defenders, actions which result in the obstruction of the latter's work. (INREDH, Criminalización de los Defensores y Defensoras de Derechos Humanos en Ecuador, (Spanish only) 2011, p. 145.)

ON Police: §67. The police and military officials are also active participants in the processes of criminalization. Both actors, in certain situations, conduct research, present unjustified complaints against defenders, participate as witnesses in illegitimate allegations that companies present against human rights defenders, and often carry out the arrest of defenders using excessive force.

³² §§55-57, IACHR report Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

See also Ibid, §68: Regarding the intervention of business owners, as the IACHR documented in its 2011 Report, "Often, the owners who manage these megaprojects or the staff who work on them are the ones lodging criminal complaints against defenders for the purpose of reducing their activities of defense of their rights." (IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OAS/Ser.L/V/II.Doc. 66, December 31, 2011. Para. 94.) It has been reported that private companies not only file complaints within unfounded criminal prosecutions, but sometimes conduct smear campaigns against human rights defenders in order to affect their credibility, and materialize alliances with military and police officers to obtain the arrests of human rights defenders. (INREDH, Criminalización de los Defensores y Defensoras de Derechos Humanos en Ecuador, (Spanish only) 2011, p. 90.)

Types of retributions by State actors and Non-State actors:

Retributions:	Non-State actors (business)	State actors
1) Hostile environment and restrictions	✓ media harassment	✓ media harassment (or stigmatization), hostile legislation,
2) Lack of action	✓ lack of business ethics	✓ lack of due diligence
3) Direct action	✓ harassment (direct harassment, cyber harassment, judicial harassment), violence, killing	✓ excessive use of force, arrests and detentions, judicial harassment

1) Hostile environment and restrictions

Hostile environment by State and Non-State actors starts with media harassment and stigmatization of the defenders and continues with criminalization and hostile legislation.

Media harassment

In the '70s Greenpeace started its movement with saving the whales. They wanted to act, they wanted go there and really make a change, and not just speculating about the environment. So, the first Greenpeace campaign was "Save the whales". The Greenpeace ships were going close to the factory ships trying to prevent the whale capture and their acting tactics was as they called it - launching "*Mind bombs*". "*Mind Bombs*' – an idea that our greatest tool for revolution is our own consciousness."³³ The actions of Greenpeace shook the world and people started to support them, so the situation with the whales led to the 1982 IWC (International Whaling Commission) meeting, a proposal for a moratorium on all commercial whaling that came into force in 1986.³⁴

The idea of "Mind bombs" by using the media was seen as the best thing to change consciousness of the people. But what do we see now? We are living in the "*Era of Fake*

³³ Greenpeace, Then & Now: Launching a "Mind Bomb" to save the Arctic, 2015, <https://www.greenpeace.org/archive-international/en/news/Blogs/makingwaves/save-the-arctic-mind-bomb/blog/53301/>
See also: <https://www.thestar.com/news/gta/2015/04/03/environmentalist-used-mind-bombs-to-create-change.html>

See also a documentary How to change the world, 2015, by Jerry Rothwell

³⁴ See: History of Greenpeace campaign to save the whales, <http://www.greenpeace.org/seasia/ph/What-we-do/oceans/whaling/campaign-history/>

News", and fake news is what changing people's consciousness. Probably a lot of people think about environmental activists as some crazy people, and it happens because the politicians and the media treat them like that.

We can take a recent example of stigmatization of the environmental defenders: Slovenian NGO's are facing a very hostile environment, because they are opposing the building of a paint producing facility³⁵. First of all, Minister of economic development and technology of Slovenia - Zdravko Počivalšek called environmental NGOs "eco-terrorists"³⁶. Then NGO members received many threats in the social media that they had to ask for police protection.³⁷ After, people protested in front of the office of the NGO to support the paint producing factory construction.³⁸

Another example of the harassment of an NGO in mass media is the case of a Spanish NGO "Plataforma Contra la Contaminación del Almendralejo" which was insulted by the Mayor of the town. The Mayor "published articles in a newspaper describing local environmental activists as "new inquisitors", "manipulators", "ignorant" and "promoting scandal"³⁹. The NGO submitted a communication to the Aarhus Convention Compliance Committee alleging the failure by Spain to comply with its obligations under article 3, paragraph 8, article 4, paragraphs 1 and 2, article 6, paragraphs 4 and 5, and article 9, paragraphs 1 and 5, of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

The Committee, with regard to communication ACCC/C/2009/36 (ECE/MP.PP/C.1/2010/4/Add.2), found that: "Local authority officials insulted the communicant publicly in the local mass media for its interest in activities with potentially negative effects on the environment, and thus that the Party concerned failed to comply with article 3, paragraph 8;"⁴⁰ Also, "The Committee finds that by insulting the communicant

³⁵ The Slovenia Times, Magna obtains environmental approval for Hoče operation <http://www.sloveniatimes.com/magna-obtains-environmental-approval-for-hoce-operation>
See also: The Slovenia Times, Počivalšek convinced Magna paint shop environmentally sound <http://www.sloveniatimes.com/pocivalsek-convinced-magna-paint-shop-environmentally-sound>
See also: The Slovenia Times, Environmental NGOs skeptical, Magna optimistic, 24 July 2017, <http://www.sloveniatimes.com/environmental-ngos-sceptical-magna-optimistic>

See also: Magna promises ind.rail track to assuage environmental concerns, 28 August 2017, <http://www.sloveniatimes.com/magna-promises-ind-rail-track-to-assuage-environmental-concerns>

³⁶ Delo, *Omejiti ekoteroriste in državne bedarije*, <http://www.delo.si/gospodarstvo/podjetja/omejiti-ekoteroriste-in-drzavne-bedarije.html>

³⁷ Dnevnik, Primer Magna Steyr: Okoljevarstvenik zaradi groženj prosi za policijsko varstvo, <https://www.dnevnik.si/1042783031>

³⁸ Štajerci s protestom v podporo Magni, <http://www.delo.si/novice/slovenija/stajerci-s-protestom-v-podporo-magni.html>

³⁹ Page 25, Case law of the Aarhus Convention Compliance Committee, 2004-2014, https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC_Publication/ACCC_Case_Law_3rd_editon_eng.pdf

⁴⁰ p. 2 , §2(e) Economic Commission for Europe Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Fourth session, Chisinau, 29 June–1 July 2011, Excerpt from the addendum to the report of the fourth session of the Meeting of the Parties (ECE/MP.PP/2011/2/Add.1)*, Decision IV/9f on compliance by Spain with its obligations under the Convention

publicly in the local press and mass media for its interest in activities with potentially negative effects on the environment and health of the local population, the public authorities, and thus the Party concerned, failed to comply with article 3, paragraph 8, of the Convention."⁴¹

As far as American region is concerned: the IACHR report says that in some Latin American states the human rights defenders are often harassed by public officials and State media that describe human rights defenders as “terrorists”, “enemies of the State”, “political opponents”, “criminals,” “conspirators,” “enemies of development,” “eco-terrorist,” etc.⁴²

Consequences of media harassment

First of all, the media harassment and stigmatization statements against defenders "can **violate the right to humane treatment**, the right to honor and dignity, and the presumption of innocence."⁴³

Also, media harassment and stigmatization of the defenders by public authorities **intended to delegitimize the work** of human rights defenders, discredits their work in the eyes of society, thereby affecting their activities in defense of human rights.

As well as it can **contribute to aggravate the climate of hostility**, intolerance and rejection from the population. Further it could also "constitute the prelude to the initiation of unfounded criminal accusations and judicial proceedings against them"⁴⁴, as well as it could lead to "an impairment to life and physical integrity of the human rights defender, increasing his or her vulnerability".⁴⁵

In the Era of Media Wars the media harassment of the defenders by State and Non-State actors is present in every region. Media harassment is the easiest and quite effective way to discredit the work of the environmental defenders and to contribute to an implantation of a hostile environment. For example, media harassment and criminalization of the defenders is successfully implemented in Russia: on one of the press conferences President Vladimir Putin

https://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/Excerpts/Decision_IV-9f_Compliance_by_Spain_e.pdf

⁴¹ Page 25, Case law of the Aarhus Convention Compliance Committee, 2004-2014, **(Spain ACCC/C/2009/36, ECE/MP.PP/C.1/2010/4/Add.2, 08 February 2011, para. 64,** https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC_Publication/ACCC_Case_Law_3rd_editon_eng.pdf

See also: §§29, 36, 63, 64.

⁴² §80, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

See also: IACHR, 143 Period of Sessions. Public Hearing on the “Situation of Human Rights in Venezuela”. Held at Headquarters on October 25, 2011.

⁴³ §84-85, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

⁴⁴ §80, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

⁴⁵ §84-85, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

told about the environmental activists trying to blackmail a company, but he refrained from labeling⁴⁶.

Plus, Russian media discrediting the work of Greenpeace, stated:

„And, most interestingly, such a reluctance to offer local residents a real alternative way of existence is characteristic of almost all "Greenpeace" events. I recall an example of a protest against the construction of a nuclear power plant on the Kola Peninsula in 1998. Then hundreds of young people from the electrified Russian megacities went to protest against attempts by residents of a remote region to ensure their uninterrupted supply of electricity.

At the same time, when I talked with some of the departing, I found out that all of them absolutely do not think about what alternative could be offered to the local population. The most ridiculous thing was that the "green" protested against the construction of the most environmentally safe power station (as confirmed by the research of many scientists), whereas at that time the inhabitants of the peninsula received electricity with the help of TPPs (Thermal Power Plants), which, according to many environmentalists, are far more destructive for nature.

So, "Greenpeace" first of all, is struggling to ban everything that, in their opinion, leads to pollution of the environment. As a result, whole industries are being closed down. This entails an increase in unemployment, deterioration in the living conditions of the population and, as a result, an even greater destruction of the natural environment. And so it happens with all the inhabitants of those places where Greenpeace managed to get noticed, whether it's Norwegian whalers, Karelian woodcutters or Japanese refrigerators' workers.

However, this organization does not propose any real projects for the creation of alternative production (it can hardly be considered a real alternative to the Greenpeace call for the world to use solar energy - in the moderate latitudes it is simply, for example, impossible). It seems that they are not at all worried about the fate of those who, because of their activities, lost their jobs and livelihoods.

[...] Even their notorious biodiversity program has not yet saved any of the species of living beings under threat of complete destruction from extinction."⁴⁷

⁴⁶ See the press conference 19 December 2013, Putin: protection of nature should not become an instrument of blackmail, (Путин: защита природы не должна становиться инструментом шантажа) Translated from Russian: **"Often, unfortunately, this activity so-called environmental, used for ignoble purposes of blackmail, pumping money from companies"** ("Часто, к сожалению, эта деятельность экологическая, используется в неблагородных целях шантажа, выкачивания денег из компаний"), <https://www.vesti.ru/doc.html?id=1169025#>

⁴⁷ Translated from Russian: "И, самое интересное, что подобное нежелание предложить местным жителям реальный альтернативный способ существования является характерным практически для всех "гринписовских" мероприятий. Вспоминается пример с протестом против строительства АЭС на Кольском полуострове в 1998 году. Тогда сотни молодых людей из электрифицированных российских мегаполисов поехали протестовать против попытки жителей отдаленного региона обеспечить себе бесперебойное снабжение электроэнергией. При этом я, когда беседовал с некоторыми из отъезжающих, выяснил, что все они абсолютно не задумываются над тем, какую альтернативу можно было бы предложить местному населению. Самым смешным было то, что "зеленые" протестовали против строительства самой безопасной для окружающей среды электростанции (что подтверждается исследованиями многих ученых), тогда как в то время жители полуострова получали электричество с помощью ТЭС, которые, по заключениям многих экологов, являются куда более губительными для природы. Итак, "Гринпис" прежде всего,

Also, according to a sociological survey of the Levada Center, despite the fact that Russians are convinced that the extraction activities of Russian oil and gas companies in the Arctic waters can cause an ecological catastrophe, they approve the arrest of Greenpeace activists, who were on board the Arctic Sunrise ship and tried to penetrate the drilling platform "Prirazlomnaya" in Russian Arctic.⁴⁸

According to the survey, **56% of the residents of the country** who are aware of the latest news developments around Prirazlomnaya drilling platform **approve the detention of Greenpeace activists**, believing that the actions of environmentalists created a real threat to production activities on the platform and violated Russian sovereignty.

26% of respondents were against their detention and criminal prosecution, believing that activists are trying to call attention to possible pollution of the Arctic waters, and the Investigative Committee does not protect the interests of Russians, but it protects oil oligarchs.

Nevertheless, the majority of study participants (54%) consider Greenpeace to be an environmental organization, using controversial methods in their struggle. And 28% are sure that this is a lobbying business structure, which, under the cover of environmental slogans, is trying to eliminate competitors from its sponsors. Half of the respondents follow and approve Greenpeace actions, and 22% of them condemn them.

So the conclusion is that media harassment does work in practice.

Restrictions imposed by government (hostile legislation)

Hostile legislation

Hostile legislation implies the legislation that was modified in order to limit the actions of defenders and/or to lower environmental standards.

Latin America

борется за то, чтобы запретить все, что, по их мнению, приводит к загрязнению окружающей среды. В результате происходит закрытие целых отраслей производства. Это влечет за собой рост безработицы, ухудшение условий жизни населения и, как следствие, еще большее уничтожение природной среды. И так происходит со всеми жителями тех мест, где "Гринпис" успел отметить, будь то норвежские китобои, карельские дровосеки или рабочие холодильных заводов Японии. Однако никаких реальных проектов по созданию альтернативного производства эта организация не предлагает (вряд ли можно считать реальной альтернативой призыв "гринписовцев" переходить всем миром на использование солнечной энергии — в умеренных широтах это просто, например, невозможно). Похоже, их вообще не волнует судьба тех, кто из-за их деятельности лишился работы и средств к существованию. [...] Даже их пресловутая программа по сохранению биоразнообразия еще не спасла от исчезновения ни один из видов живых существ, находящихся под угрозой полного уничтожения.

Article: "Greenpeace" harms the protection of nature? "Гринпис" вредит охране природы?

<https://zoo.pravda.ru/zooevents/15-09-2010/1049598-greenpeace-0/>

⁴⁸ Russians support the arrest of Greenpeace activists, Россияне поддерживают арест активистов Greenpeace, 11 November 2013, <http://newsland.com/user/4297733314/content/rossiiane-podderzhivaiut-arest-aktivistov-greenpeace/4541243>

For example, in 2014 Peruvian government introduced the Law 30230⁴⁹ that lowers the environmental standards and weakens environmental auditing. In order to promote the investment in the country, it simplifies the procedure and permissions, it limits the power of Assessment and Environmental Control Agency (OEFA) to impose penalties (article 19, law 30230), reduces the time designated for environmental impact assessments (article 21, law 30230), etc.⁵⁰

Another example is the Peruvian Law 30151 (2014) that modifies the Penal Code's article 20 and reduces the criminal liability of the police and armed forces if they cause injury or death on duty⁵¹.

According to Global Witness, „on 28 September 2015, highland farmers in Apurimac launched a protest against the massive Las Bambas copper mine, run by the Chinese company MMG Limited, due to changes in the environmental impact plan that they believed would cause pollution. Four protesters were killed and another 15 wounded by police gunshots, while eight police officers were injured. The passing of Law 30151 in 2014 also made it easier for the police and army to get away with killings by reducing their criminal responsibility if they cause injury or death on duty. Mining activities operating with the corrupt support of local authorities have also generated conflict globally.“⁵²

Europe

European example of hostile legislation is Russian legislation concerning **freedom of assemblies**. Amendments to Federal Law "On Assemblies, Rallies, Demonstrations, Processions and Picketing" were made in 2012 and 2014. The amendments contain many dispositions, applicable to the simple protesters, which restrict freedom of assembly including environmental protests as well. We can make a comparison with French legislation on the subject. (See the Annex I).⁵³

Another example of hostile legislation that restricts environmental defenders is Danish Act no. 1608. The act approved by the Danish Parliament concerns differentiated fees for appeals to the Nature and Environment Appeal Board, and it was signed December 22nd, 2010. "This act is effective from January 1st 2011 and imposes fees on nearly all kinds of appeals on public authority decisions within nature and environmental affairs. One of the **main arguments for**

⁴⁹ Law 20320, Peru,

<http://www.minem.gob.pe/minem/archivos/file/Mineria/LEGISLACION/2014/JULIO/LEY30230.pdf>

⁵⁰ See :

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=12295>

See also: OECD Environmental Performance Reviews: Peru 2017

<http://www.oecd.org/countries/peru/oecd-environmental-performance-reviews-peru-9789264283138-en.htm>

See also: page 16 , Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmental defenders worldwide, Global Witness, June 2016,

⁵¹Law 30151, 2014, Peru <http://www.leyes.congreso.gob.pe/Documentos/Leyes/30151.pdf>

⁵² page 16 , Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmental defenders worldwide, Global Witness, June 2016,

⁵³ See the Annex I.

the new legal act – stated openly by the government – was to diminish the number of complaints from environmental NGOs. This act imposes a new fee of 403 € on every appeal sent by NGOs to the Appeal Board, which is six times the fee charged on appeals from individual citizens. In most affairs the appeals were free of charge until January 1st 2011. So, "the very purpose of this new fee is to set up an economical barrier that restricts us from using our legal rights to appeal in cases, where the protection of nature and environment is violated. It is DOF's opinion that this law is not in compliance with article 9, paragraph 2, 3, 4 and 5 of the Aarhus Convention."⁵⁴

Eventually the case (ACCC/C/2011/57, 26.01.2011) was submitted by Dansk Ornitologisk Forening – BirdLife Denmark (DOF) (Danish Ornithological Society) to the Aarhus Convention Compliance Committee, on the reason of lack of compliance with the Aarhus Convention in the State of Denmark.

The legislative restriction of the NGO activities "combined with a campaign to discredit them by using the "foreign agents" label"⁵⁵ is another trend in EECCA countries (especially in Russia that introduced "**foreign agent" law**"⁵⁶ and others such as Kyrgyzstan and Kazakhstan).

In Russia, along with the Foreign Agent Law was introduced the "**undesirable organizations" law** (officially Federal Law of 23.05.2015 N 129-FZ "On amendments of some legislative acts of the Russian Federation"; Федеральный закон от 23.05.2015 № 129-ФЗ "О внесении изменений в отдельные законодательные акты Российской Федерации").

The law says that foreign agent NGOs can be declared "undesirable". The direction of the NGO that was declared undesirable is punished by imprisonment to up to 6 years. (art. 284)⁵⁷. Person who voluntarily ceased to participate in activities of an undesirable NGO can be free from criminal liability. The undesirable NGOs are banned from creating the subsidiaries; there is also a ban on implementation of projects, information dissemination and organization of protests and assemblies (which is understandable, if the government wants to be protected from a "fifth column"). For example, many countries in the world (including the USA, for example) have similar laws, but the difference in implementation of the law. (See further: the interview with nuclear activist Andrey Ozharovskiy who says that the reasons for an environmental NGO to be proclaimed a "foreign agent" could include :

- participation in public discussions,
- participation in public councils,

⁵⁴ Aarhus Compliance Committee, Communication ACCC/C/2011/57, Lack of compliance with the Aarhus Convention in the State of Denmark, 26.01.2011
<https://www.unece.org/env/pp/compliance/Compliancecommittee/57TableDK.html>
ACCC/C/2011/57

⁵⁵ Page 54-56, Crude accountability, Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S.
http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf

⁵⁶ Federal Law No 121-FZ of 20 June 2012, on Amending Certain Federal Laws in Regard of Regulating the Activities of Nonprofit Organisations Performing the Functions of Foreign Agents

⁵⁷ Federal Law of 23.05.2015 N 129-FZ "On amendments of some legislative acts of the Russian Federation"; Федеральный закон от 23.05.2015 № 129-ФЗ "О внесении изменений в отдельные законодательные акты Российской Федерации"
<http://publication.pravo.gov.ru/Document/View/0001201505230001?index=1&rangeSize=1>

- writing letters, etc.⁵⁸).

Consequences of the enforcement/creation of the hostile legislation

One can observe not only "an increase in the lack of legal protection for the most at-risk groups, the absence of specific legislation regarding them and sometimes even the effects of discriminatory laws. The defenders pointed out the high level of impunity for perpetrators of the attacks carried out, which is an insidious way of legitimizing acts of violence against them."⁵⁹ So, the hostile legislation not only **blocks and discredits the work of environmental human rights defenders**, but also could create a hostile environment as well as legitimize the violence against them.

Another consequence of the hostile legislation is criminalization of the defenders that most often takes place in the context of:

Freedom of expression and peaceful protests. The defenders are detained for holding peaceful protests, and could be criminally charged for lack of authorization and carrying out peaceful demonstrations.

Foreign funding

In Russia there is a Foreign Agent Law, and in Latin America the NGOs are also criminalized for receiving foreign funding⁶⁰, while **"Any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations."**⁶¹

§136. While among the reasons for a government to restrict foreign funding are preventing money laundering, terrorism financing, or increasing the effectiveness of foreign aid, the UN Rapporteur on the situation of human rights defenders has noted that it is concerning that in many cases "the real intention of governments is to restrict the ability of human rights organizations to carry out their legitimate work in defense of human rights." (UN General Assembly, A/64/226, Report of the Special Rapporteur on the Situation of Human Rights Defenders, August 4, 2009, para. 91.)

"States have a responsibility to address money-laundering and terrorism, but this should never be used as a justification to undermine the credibility of the concerned association, nor to unduly impede its legitimate work." (UN General Assembly, Human

⁵⁸ Read the following example of NGO "Za Prirodu" that was closed by the court decision and proclaimed a foreign agent because the counteraction to the construction of Tomsk Ore Mining and Processing facility by Russian Copper Company is considered to be a political activity of an NGO that gets found from abroad.

⁵⁹ §58, UNGA, A/70/217

⁶⁰ §132, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

⁶¹ UN General Assembly, Human Rights Council of the United Nations A/HRC/20/27, Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, May 21, 2012, §.68. https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

Rights Council, A/HRC/20/27, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, May 21, 2012, para. 70.)⁶²

Counter-Terrorism Laws

IACHR gives an example of application of the Chilean anti-terrorism legislation to individuals belonging to the Mapuche indigenous people in the context of land grabbing and logging.⁶³

2) Lack of action

Lack of action by Non-State actors takes the form of lack of business ethic

Lack of business ethics is represented for example by failure to implement Corporate Social Responsibility (CSR) – that is a form of private business self-regulation. It is a non-state based, normative rule system, usually codified in a code of conduct, which is voluntarily adopted by a group of enterprises and which does not imply any sanctions in case of violation, because of its legally non-binding nature.⁶⁴ Two major instruments are: *The United Nations Guiding Principles on Businesses and Human Rights*, that elaborate guidance with regards to the obligations of businesses to respect human rights and the *Organization for Economic Co-*

⁶² OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders

⁶³ OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders

§150: "The Commission and other international organizations for the protection of human rights have expressed concern about the existence of a pattern of selective application of the Chilean anti-terrorism legislation to individuals belonging to the Mapuche indigenous people, in the frame of their processes of mobilization and political and social protest. This pattern has been enabled by the breadth of the definition of terrorist offenses: under Article 1 of Law 18.314 of 1984 (the "Counter-Terrorism Act"), the act is defined as "[an] offense [] committed to force decisions from the authorities or to impose demands, and the intent being "to instill [...] fear in the general population." Under Article 1(1), the intent is presumed when the offense is committed using explosive or incendiary devices. Due to these provisions, a significant number of cases have been prosecuted under Law 18.314, especially between 2000-2005. In its report on the visit to Chile, presented in 2003, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people noted that leaders and members of the Mapuche indigenous people, perceived the State's reaction in applying the Act against their protest activities as persecution designed to curb their mobilization and protest processes through the courts. He recommended to the State that "Under no circumstances should legitimate protest activities or social demands by indigenous organizations and communities be outlawed or penalized," and that "Charges for offences in other contexts ("terrorist threat", "criminal association") should not be applied to acts related to the social struggle for land and legitimate indigenous claims".

See also an article in The Guardian, Indigenous Chileans defend their land against loggers with radical tactics

<https://www.theguardian.com/world/2018/jun/14/chile-mapuche-indigenous-arson-radical-environmental-protest>

See also: Inter-American Court of Human Rights, Case of Norín Catrimán et al. v. Chile, Judgment of May 29, 2014 (holding that Chile had violated the human rights of indigenous leaders by improperly applying antiterrorism legislation to them). - use 'national security' arguments and 'antiterrorism' laws

⁶⁴ Sheehy, Benedict (2015-10-01). "Defining CSR: Problems and Solutions". Journal of Business Ethics.

Monash University Law Review (Vol 38, No 2), pages 104-127

<http://www.austlii.edu.au/au/journals/MonashULawRw/2012/16.pdf>

operation and Development (OECD) Guidelines for Multinational Enterprises which cover business ethics on a range of issues, including human rights and environment guidelines, but again, they are not binding.

There are many initiatives of CSR, for example: *UN Global Compact* that contains 10 principles on human rights, labor, environment and anti-corruption⁶⁵ and many others that companies could join.

The lack of business ethics takes the form of CSR absence, malfunctioning of CSR or in a lot of cases - green washing.

Green washing is a form of green marketing when social responsibility strategies are being used as publicity tools to whitewash the company's public image.

For example Colombian company ECOPETROL made an advertisement saying that it is producing "clean barrels of oil" because they support nature and society.⁶⁶ While the company is still using fracking (short for hydraulic fracturing) - a dangerous method of oil and gas extraction, which is already banned in some countries. "It uses intense water, air or chemical pressure to fracture rock formations and release trapped fossil fuels. Studies however have found that the practice can trigger medium-sized earthquakes, can affect the quality of surface and groundwater, and can lead to elevated emissions of methane, a potent greenhouse gas." The fracking by ECOPETROL is the cause of many conflicts and protests.⁶⁷ As well as the company is facing criminal charges after the neglect which caused a major oil spill. The spill killed more than 2,500 animals and polluted more than 20 miles of river.⁶⁸

On the subject of social responsibility the UNGA resolution A/71/281 on the Situation of human rights defenders says the following:

*"Some corporations have developed social responsibility strategies or mechanisms, which either lack teeth to prevent violations or have been used as publicity tools to whitewash the company's public image. [...] Business must respect the rights of defenders to express dissent and oppose their activities. This responsibility extends to ensuring that their subsidiaries — as well as private security firms and contractors acting on their behalf — refrain from harming defenders and restricting their rights, are not involved in threats or attacks, and consult to identify, mitigate and remedy the adverse human rights impact of business operations. States should communicate clearly the human rights obligations of business enterprises, incentivize them to uphold those responsibilities as a matter of good business practice and sanction those companies associated with threats to defenders both at home and abroad."*⁶⁹

⁶⁵ <https://www.unglobalcompact.org/>

⁶⁶ See the add : Greenwashing index, *Clean petrol barrels – from Colombia's leading oil company* , <http://www.greenwashingindex.com/clean-petrol-barrels-from-colombias-leading-oil-company/>

⁶⁷ War on want, *Colombia's fracking boom risks deepening environmental conflicts* , <https://waronwant.org/media/colombias-fracking-boom-risks-deepening-environmental-conflicts>

⁶⁸ Colombia reports, *Colombia's state-run oil company could face criminal charges over environmental disaster* , by Frank Cardona March 29, 2018

⁶⁹ §§45-46, UNGA resolution A/71/281, 3 August 2016, 71 session, Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of

Lack of action from the State actors is defined by lack of due diligence

In recent years we observe the growing number of resolutions made by Inter-American Commission on Human Rights concerning the adoption of the necessary measures to protect the life and physical integrity of many environmental defenders in the Latin American countries⁷⁰ which means that the defenders are not protected well enough and the lack of action from the Governments can be considered as lack of due diligence.

So, lack of due diligence and the failure to investigate the crimes against the defenders is the most common type of retributions from the States.

If we take an example of recent decision of the IACHR Court on the Case 12.492, CARLOS ESCALERAS MEJÍA AND FAMILY, HONDURAS, JULY 17, 2014 , REPORT NO. 43/14 ⁷¹ , which says that : "international responsibility of the Republic of Honduras arising from the murder of the environmental activist Carlos Escaleras Mejía on October 18, 1997, and from the failure to investigate, prosecute, and punish all the individuals involved therein."

There are many killings of the defenders occurring because of lack of protection from the State. According to the report "*On dangerous Ground*, by Global Witness":

*"Many authorities either turn a blind eye or actively impede investigations into these killings due to the collusion between corporate and state interests – the principal suspects in these murders. However, in 2015, we found partial information on suspected perpetrators in 97 cases. The information strongly suggests state and company involvement in the killings of land and environmental defenders. Paramilitary groups were suspected to have carried out 16 extrajudicial killings in Colombia and the Philippines, where they are alleged to operate with the backing of the army and business interests. The army itself was implicated in 13 killings, also mainly in Colombia and the Philippines, where internal armed conflicts are used as a pretext for land-grabbing by business interests with military support. Further suspected killings by the army were reported in Myanmar and Indonesia. Last year ten protesters were shot dead by the police during peaceful actions to defend their environmental and land rights. Nine of these occurred in anti-mining demonstrations in Peru which recently weakened its environmental laws to encourage increased mining investment. Gunmen employed by companies and large landowners for private security were also suspected in 11 killings, mainly for ranches and plantations in Brazil and the Philippines. In 13 other cases we found information that land-grabbers in Brazil were suspected of killing off community activists."*⁷²

human rights and fundamental freedoms, *Situation of human rights defenders*, Note by the Secretary-General

⁷⁰ See the resolutions of Inter-American Commission on Human Rights in Annex II

⁷¹ Inter-American Commission on Human Rights, Case 12.492, CARLOS ESCALERAS MEJÍA AND FAMILY, HONDURAS, JULY 17, 2014 , REPORT NO. 43/14

<http://www.oas.org/en/iachr/decisions/court/2017/12492FondoEn.pdf>

⁷² page 10, Report *On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmental defenders worldwide*, Global Witness, June 2016,

<https://www.globalwitness.org/en/campaigns/environmental-activists/dangerous-ground/>

An important decision for the protection of the defenders against lack of action from the State is the decision of the Inter-American Court of Human Rights **Kawas-Fernández v. Honduras, 4 February 2008.**⁷³ In this decision, the IACHR Court affirms the **States duty to "Take measures to prevent a recurrence of acts similar to those recounted in the present case. In particular: i. Adopt, as a matter of priority, a policy of eradicating violence against defenders of natural resources, including preventive and protective measures. ii. Adopt a public policy of combating impunity in cases of violations of the human rights of human rights defenders."** (§6 d, page 2)

§77. of the Fernández v. Honduras case, the Inter-American Court has also established that "States can, by attribution, incur international responsibility for human rights violations committed by third parties or individuals, in terms of the State's obligations to ensure respect for these rights among individuals. On this point the Court has held that:

"International responsibility may also be engaged for acts of private individuals that are, in principle, not attributable to the State. The effects [of the obligations erga omnes to respect and enforce respect for standards of protection, which is the responsibility of the States Parties to the Convention,] extend well beyond the relationship between the agents of a State and the persons subject to its jurisdiction; those effects are also manifest in the positive obligation that the State has to adopt the necessary measures to ensure effective protection of human rights in inter-personal relationships. The State can be held responsible for the acts of private parties when, by either the action or omission of its agents serving as guarantors, it fails to honor those obligations erga omnes undertaken with articles 1(1) and 2 of the Convention. (I-A Court, Mapiripán Massacre Case. Judgment of September 15, 2005. Series C No. 134, paragraph 111.)"

In the §78 the Court gives a citation from Pueblo Bello Massacre Case. Judgment of January 31, 2006, paragraph 123 reminding the standard for attribution of responsibility, the Court has held that:

*"A State cannot be held responsible for any and every human rights violation committed between private parties within its jurisdiction. The erga omnes nature of a State's Convention-based obligation to ensure respect for Convention-protected rights does not mean that a State bears unlimited responsibility for any act or deed of private parties; in effect, a State has a **duty to take measures to prevent crime and protect private parties in their relations with one another when it is cognizant of a real and immediate risk to an individual or certain group of individuals and when the prevention or avoidance of that risk falls within the realm of what the State can reasonably do. In other words, although the juridical consequence of a private individual's action, omission or deed may be a violation of the human rights of another private individual, that violation is not automatically attributable to the State; attribution will depend on the circumstances of the case and whether the obligation to ensure is being fulfilled.***

⁷³ Blanca Jeannette Kawas-Fernández, (Case 12.507), Against the Republic of Honduras, \$ February 2008, <http://www.cidh.oas.org/demandas/12.507%20B%20J%20Kawas%20Honduras%204%20febrero%202008%20ENG.pdf>

(I-A Court, Pueblo Bello Massacre Case. Judgment of January 31, 2006, paragraph 123)" (§78, page 15)

Consequences of the lack of action

The lack of due diligence and failure to protect and investigate crimes - in other words, the impunity for which the State is responsible could provoke more violence and more crimes vis-a-vis the environmental defenders.

Eventually, isn't the protection included in the theory of the social contract developed by Thomas Hobbes whose idea was that people give up some liberty to gain the security? Which does not mean giving up essential liberties that could not be taken from people (like liberty of speech or freedom of assembly). Unfortunately it is not the case for some States, who are just taking more and more essential liberties and not providing the security nor any protection and in the worst case harassing the defenders. Even more than the harassment: in the §80 of the Fernández v. Honduras case the Court says that:

"In light of previous findings and those indicated in this application, as well as the material contained in the file, there are strong indications for concluding that **there is direct State responsibility in the death of the presumed victim**. As well, the internal file from the criminal proceeding provides many indications to suggest a **cover up of the responsibility of officials in the murder of Blanca Jeannette Kawas-Fernández**, which were not seriously investigated by the Honduran justice authorities."

The cited statement of the Court shows the implication of the States agents in the violence against the defenders. So the lack of action is also related to the direct actions of harassment and violence.

3) Direct actions

*"The submissions received by the Special Rapporteur show that environmental human rights defenders confront numerous threats and violations, including violent attacks and threats to their families, enforced disappearances, illegal surveillance, travel bans, blackmail, sexual harassment, judicial harassment and use of force to dispel peaceful protests. Such violations are committed by State and non-State actors, and take place in the context of the overall stigmatization, demonization and delegitimization of environmental human rights defenders. In some countries, violations are intertwined with the overall climate of criminalization of their work, especially in the context of large-scale development projects (see UNGA resolution A/68/262)."*⁷⁴

Non-State actors

Harassment

⁷⁴ §30, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>

Direct actions from Non-State actors such as harassment (including threats and intimidation) were recorded by the organization *Friends of the Earth International* (FoEI): "twenty one incidents of threats, intimidation, and harassment in Argentina, Colombia, Guatemala, Honduras, Liberia, Mexico, Mozambique, Nigeria, Papua New Guinea, the Philippines, Poland, and Romania. These include seven death threats to prominent environmental and peasant leaders, including two directors of FoE groups."⁷⁵

We can distinguish 3 types of harassment that are used by Non-State actors in order to deteriorate the living conditions of the victim, to frighten, to suppress the defenders and to discredit their work:

- 1) Harassment stricto sensu** / direct harassment (includes: insults or vexations, threats, obscene words, phone calls, SMS, home visits or work-place visits, etc.)
- 2) Cyber harassment** (includes: cyber stalking, identity theft, threats, sending viruses by e-mail; spreading rumors, false accusations, defamation, slander and libel; sending negative messages directly to the victim or leaving abusive messages online, including social media sites. Sending the victim pornography or other offensive graphic material, creating online content that depicts the victim in negative ways. It may also include solicitation for sex, or gathering information that may be used to threaten, embarrass or harass.)
- 3) Judicial harassment** (includes: lawsuits, investigation, etc.)

Commenting on cyber harassment UNGA resolution A/70/217 underlines the sophistication of **new different forms of harassment and repression to restrict the work done by all the human defenders in general:**

"The Special Rapporteur was struck by the sophistication of the new techniques and forms of repression, especially via the media, mentioned by the defenders interviewed. According to accounts from defenders in several dozen countries, defamation campaigns in the written press or on the radio are routinely conducted by governments or radical groups in numerous countries with a view to stigmatizing defender. In addition, digital communications are also now being used to hamper the work of defenders. The Internet and, more broadly, new technology, which until recently provided a formidable tool for voicing opinions, accessing information, and forging networks of individuals and organizations, are today being used by States to monitor and curb the work of defenders. That is particularly worrying, given that numerous defenders use the Internet on a daily basis to promote and protect human rights, thereby exposing themselves to multiple threats. Defenders in Africa, Latin America, the Middle East and Asia have reported instances of harassment and defamation campaigns against social networks and blogs. E-mails are also intercepted and telephone calls recorded. Several women defenders have described how pirated pornographic images purporting to depict them have been disseminated on certain social media, in a serious attack on their dignity.

⁷⁵ FOEI, We defend the environment, we defend human right, 2014 page 15 <https://www.foei.org/wp-content/uploads/2014/06/We-defend-the-environment-we-defend-human-rights.pdf>
See also: Kenya's 'Erin Brockovich' defies harassment to bring anti-pollution case to courts <https://www.theguardian.com/world/2018/feb/14/kenyas-erin-brockovich-defies-harassment-to-bring-anti-pollution-case-to-courts>

*Defenders also underscored the growing use of laws to punish and discredit their work. A recurrent concern emerging during the consultations was the use of the law by certain States today to restrict or even criminalize the activities of defenders: a development already highlighted by the previous Special Rapporteur on the situation of human rights defenders in 2012. [...] Finally, defenders cited numerous cases of judicial harassment, arrests, arbitrary detentions and convictions accompanied by often disproportionately harsh penalties. Certain States attempt to silence defenders by handing down long prison sentences after fake trials on charges of tax evasion or illegal possession of weapons or drugs."*⁷⁶

Killings

United Nations Secretary General says that *"environmental human rights defenders faced a high risk of threat to their physical integrity (more than 151 killings were documented during the same period), while a further 57 individuals and 5 communities were physically attacked. They have also been intimidated (54 individuals, 17 organizations and 1 community) and harassed (more than 31 individuals, 8 families, 5 communities and 3 groups). More than 91 environmental human rights defenders have been imprisoned and arbitrarily detained, while more than 82 have been arrested for their rights work."*⁷⁷

Global Witness' report *Deadly environment, the dramatic rise in killings of the environmental and land defenders, 2002-2013*, shows that between 2002 and 2013, *"908 citizens were killed protecting rights to their land and environment. [...] the death rate rising in the past four years to an average of two activists a week."* In June 2012, Global Witness' report, *A Hidden Crisis*, was released at the Rio+20 Summit.⁷⁸ Nearly 25 years after the assassination of Brazilian activist Chico Mendes, the report warned that killings were rising *"as protection of the environment emerged as a key battleground for human rights."*⁷⁹

So, according to the report, between 2002 and 2013, 908 people were killed: 448 in Brazil, 109 in Honduras, 67 in Philippines, 58 in Peru, 52 in Colombia, 40 in Mexico.⁸⁰

*"The problem is particularly prevalent in Central and South America. The death toll in Brazil accounts for just under half of the recorded killings, with a regular annual rate of between 30 and 40 deaths, while in Honduras, 93 known killings relate to the live conflict in the Bajo Aguán valley over palm oil and land redistribution."*⁸¹

⁷⁶ §45-47, 49, UNGA resolution A/70/217

⁷⁷ §38. UNGA resolution A/71/281, Situation of human rights defenders

⁷⁸ see the report <https://www.globalwitness.org/fr/campaigns/environmental-activists/hidden-crisis/>

⁷⁹ page 4, *Deadly environment, the dramatic rise in killings the environmental and land defenders, 2002-2013*, Global witness report, 2014

<https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>

⁸⁰ See annual number of deaths of land and environmental defenders by country (page 11) *Deadly environment, the dramatic rise in killings the environmental and land defenders, 2002-2013*, Global witness report, 2014

<https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>

⁸¹ page 12, *Deadly environment, the dramatic rise in killings the environmental and land defenders, 2002-2013*, Global witness report, 2014

<https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>

In 2014 the number of killings was 116. Among the countries with the highest death toll are: Brazil - 29, Colombia - 25, Philippines - 15, Honduras - 12, Peru - 9, Guatemala - 5 killings.⁸²

The record number of killings was documented in 2015. Global Witness documented 185 killings of land and environmental defenders from 16 countries: Brazil- 50, the Philippines - 33, Colombia - 26, Peru -12, Nicaragua - 12 and Democratic Republic of Congo -11 killings. According to the report, 67 of the environmental defenders killed last year belonged to indigenous communities.⁸³

*"On average, more than three people were killed every week in 2015 - more than double the number of journalists killed in the same period. [...] Mining was the industry most linked to killings of land and environmental defenders with 42 deaths in 2015. Agribusiness, hydroelectric dams and logging were also key drivers of violence. [...] Almost 40% of victims were indigenous. Global Witness documented 185 killings in total across 16 countries, a 59% increase from 2014 and the largest total since we started collecting data going back to 2002. Land and environmental defenders are now being killed at a shocking rate of more than 3 a week."*⁸⁴

The most recent report of Global Witness and the Guardian recorded deaths of the environmental defenders in 2017.⁸⁵ 197 defenders were killed in 2017, among them 46 people killed in Brazil, 41 in Philippines, 32 in Colombia, 13 in Democratic Republic of Congo. In 2017, 37 deaths were related to agribusiness, 36 to mining, 23 to poaching, 19 to logging, 3 to water and dams.⁸⁶

So, 40-50% of all victims come from **indigenous communities**. The number of the defenders killed are the following:

2002-2013: 908 killings

2014: 116 killings

2015: 185 killings

2016: 201 killings

2017:197 killings

2018: already 66 killings (last data update: 17 July 2018)⁸⁷

⁸² Global Witness report, *How many more?*

<https://www.globalwitness.org/en/campaigns/environmental-activists/how-many-more/>

⁸³ page 8, Global Witness, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June

2016,<https://www.globalwitness.org/en/campaigns/environmental-activists/dangerous-ground/>

⁸⁴ page 4-5, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

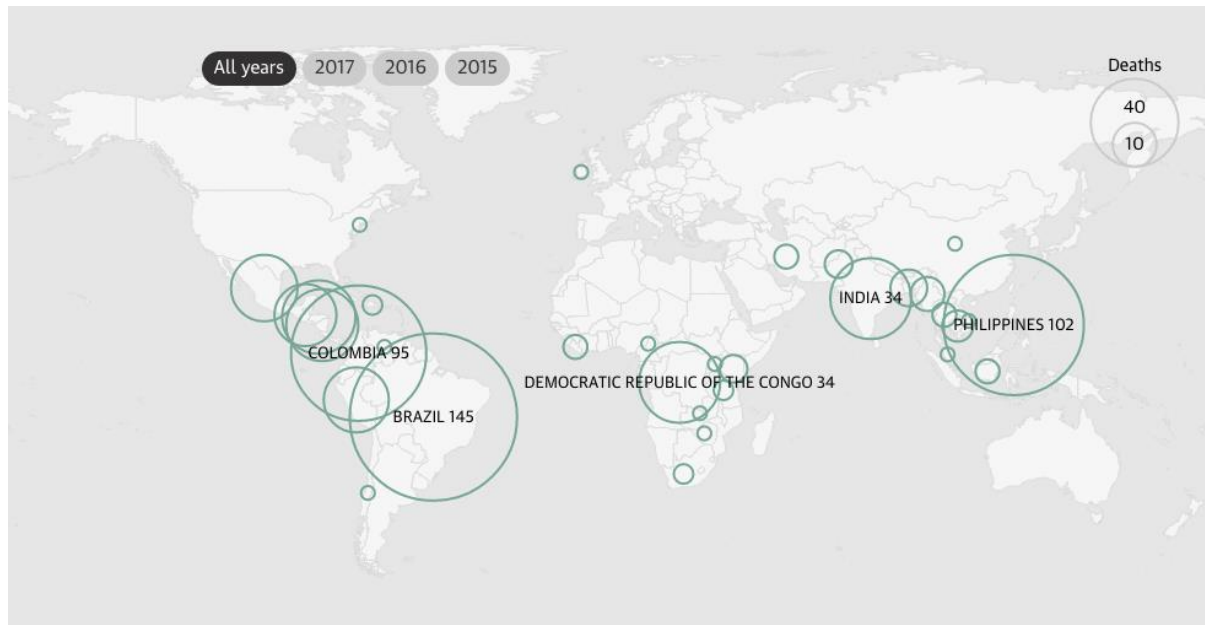
<https://www.globalwitness.org/en/campaigns/environmental-activists/dangerous-ground/>

⁸⁵ <https://www.theguardian.com/environment/ng-interactive/2017/jul/13/the-defenders-tracker>

⁸⁶ Defenders tracker, The Guardian, <https://www.theguardian.com/environment/ng-interactive/2017/jul/13/the-defenders-tracker>

⁸⁷ <https://www.theguardian.com/environment/ng-interactive/2018/feb/27/the-defenders-recording-the-deaths-of-environmental-defenders-around-the-world>

The Guardian keeps tracking all the victims showing that the highest amount of killings occurred in Latin American countries, like Brasil - 145, Colombia - 95, and others.⁸⁸ Also we observe clearly the North - South divide. Nonetheless, in the developed countries with high level of democracy, in the countries parties to the Aarhus Convention one can find an example of an environmental defender who was beaten to death: Michael McCoy from Dublin was found dead at Blackhill Forest in the Dublin Mountains on the 30th of September 2016.⁸⁹



Visualization by The Guardian, <https://www.theguardian.com/environment/ng-interactive/2018/feb/27/the-defenders-recording-the-deaths-of-environmental-defenders-around-the-world>

State actors' actions

Actions from State actors usually take forms of:

- **Excessive use of force**
- **Arrests and detentions**
- **Judicial harassment** (criminal charges, administrative proceedings)⁹⁰

⁸⁸ See all the cases of environmental defenders being killed:

<https://www.theguardian.com/environment/ng-interactive/2018/feb/27/the-defenders-recording-the-deaths-of-environmental-defenders-around-the-world>

⁸⁹ *As an environmentalist and serial objector, Michael McCoy had his enemies... but who would have wanted him dead?*, by Kim Bielenberg

February 4 2017, <https://www.independent.ie/irish-news/as-an-environmentalist-and-serial-objector-michael-mccoy-had-his-enemies-but-who-would-have-wanted-him-dead-35422751.html>

See also : *No prosecution in case of environmentalist found dead in the Dublin Mountains*, by Louise Roseingrave, June 15, 2017 , <https://www.independent.ie/irish-news/courts/no-prosecution-in-case-of-environmentalist-found-dead-in-the-dublin-mountains-35830085.html>

⁹⁰ See the examples: 1) Only the Brave Talk About Oil, pp. 6-7, 11-13 (describing examples of detentions and confiscations in **Tanzania and Uganda** in 2010-2012);

All 3 actions are interrelated in different ways: that either excessive use of force is followed by the arrests, detentions and consequent judicial harassment. Or arrests without excessive use of force are followed by judicial harassment. In some cases arrests and detentions are

2) A Dangerous Shade of Green, 2014, pp. 33-34 (**describing examples of the excessive use of force during peaceful demonstrations, including in Romania, Armenia, Macedonia, Ireland, UK and Turkey**);

3) A Deadly Shade of Green, 2016, pp. 46- 47 (describing examples of the excessive use of force in **Argentina, Guatemala and Peru**)

4) Dakota Access pipeline activists say police have used 'excessive' force, The Guardian, (example of excessive use of force and arrests during peaceful demonstrations in **USA.**) <https://www.theguardian.com/us-news/2017/jan/18/dakota-access-pipeline-protesters-police-used-excessive-force>

See also: Sam Levin, Judge rejects riot charges for journalist Amy Goodman after oil pipeline protest, The Guardian (17 October 2016)(example arrest and charges with participating in a 'riot' of Amy Goodman, a journalist reporting on the Standing Rock protests in 2016 against an oil pipeline)

5) Aarhus Compliance Committee: Belarus ACCC/C/2009/44; and ECE.MP.PP/C.1/2011/6/Add.1, and Decision VI/8c Compliance by Belarus with its obligations under the Convention (example of harassment, detention and penalization of the defenders by **Belarus**)

6) ITLOS case 22: The Arctic Sunrise Case (Kingdom of the Netherlands v. Russian Federation) <https://www.itlos.org/cases/list-of-cases/case-no-22/#c1488> (example of detention of the activists and piracy charges, by **Russian Federation**)

See another example A Dangerous Shade of Green, p. 19; Andrew E. Kramer, Russian Environmentalist, and Critic of Olympics, Gets 3-Year Prison Sentence, New York Times (12 February 2014). Vitishko was released after serving two years. Charles Digges, Newly freed from prison, ecologist Vitishko says he wouldn't have changed a thing, Bellona (6 January 2016), available at: <http://bellona.org/news/russian-human-rightsissues/2016-01-newly-freed-from-prison-ecologist-vitishko-says-hewouldnt-have-changed-a-thing.>]

7) FOEI, We defend the environment, we defend human right, page 13-15 (**Examples of Violence and harassment: Sri Lanka, Guatemala, Mozambique, Czech Republic, Romania. Arbitrary detentions and arrests in :Belarus, Colombia, Honduras, Indonesia, Mozambique, Palestine, Paraguay, Peru, and Romania. Criminalization in : Colombia, Ecuador, Guatemala, Honduras, Indonesia, Mexico, Paraguay, the Philippines, and Romania**) <https://www.foei.org/wp-content/uploads/2014/06/We-defend-the-environment-we-defend-human-rights.pdf>

8) We are not afraid, pp. 81-83; A Deadly Shade of Green, pp. 52-53.] [See, e.g., Gleason and Mitchell, pp. 281-287; A Dangerous Shade of Green, pp. 29-30 (giving examples from Denmark, Italy, and Russia); A Deadly Shade of Green, pp. 42-43 (examples from Chile, El Salvador, and Peru); Inter-American Court of Human Rights, Case of Norín Catrimán et al. v. Chile, Judgment of May 29, 2014 (holding that Chile had violated the human rights of indigenous leaders by improperly **applying antiterrorism legislation** to them). - use 'national security' arguments and 'antiterrorism' laws

9) Mike Ives, Vietnam Arrests Mother Mushroom, a Top Blogger, for Criticizing Government, New York Times (11 October 2016) (example of arrest and charges with 'distorting the truth and spreading propaganda against the State.', and prison term of 12 years. **Vietnam**)

10) Crude accountability, Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S. (examples of harassment, violence imprisonment in the **countries of the Former Soviet Union and US.**) http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf

11) BELLONA, (examples of harassment, killings and imprisonment of activists in **Russia**) http://network.bellona.org/content/uploads/sites/4/2016/01/fil_regiony_2015_OBL_BLOK.pdf

12) Iran urged by UN to respect environment activists after wildlife campaigner death. (example of arrest, detention, espionage charges and death in custody in **Iran**) <https://www.theguardian.com/world/2018/feb/15/iran-urged-by-un-to-respect-environment-activists-after-wildlife-campaigner-death>

13) Amnesty international, Americas: Activists in Peru and Paraguay criminalized for defending the environment, (Examples of criminalization of the defenders in Peru and Paraguay, <https://www.amnesty.org/en/latest/news/2018/04/americas-activists-in-peru-and-paraguay-criminalized-for-defending-the-environment/>

only present as an action to stop the defenders, without prior excessive use of force and with no judicial harassment that follows (see the interview with Andrey Ozharovskiy).

Excessive use of force

Excessive use of force is the most common action from the State actors to stop the activists and defenders from opposing the dangerous development projects. Excessive use of force is present everywhere even in the countries where there is minimum of Human Rights violations.

Latin America

There are quite a few examples of excessive use of force in Latin American countries. Furthermore, according to the article *Policing Economic Growth: Mining, Protest, and State Discourse in Peru and Argentina* by A. Taylor and M D. Bonner the police using the force excessively are the primary perpetrators of repression of mining protests in Latin America.⁹¹ In our research we took as well the examples of Argentina and Peru, because these two countries are very rich in resources, mining and protests opposing the mining. Also, here is the biggest amount of examples of protests opposing mining where the police used the excessive force against the protesters. Let's take a look at just a couple of examples:

In Argentina there are many cases of excessive use of force against the defenders opposing mining projects. For example, in Argentinean Province of La Rioja, provincial police opened fire with rubber bullets on 15th of October 2015 against the local residents that included several provincial legislative representatives and a mayor-elect, opposing to a mining project.⁹² The repression against communities resisting mining projects in the Province of La Rioja, takes place in the context of the danger that mining can cause to the glaciers and because the mining project was contrary to the Glacier Protection Law (2010) that forbids mining operations near the glaciers and permafrost.

The good news in this situation is that on 16 May 2018, 8 years after the adoption of the world's first Glacier Protection Law, "Argentina's Glacier Institute (the IANIGLA) finally released the official version of Argentina's first complete glacier inventory. The IANIGLA has registered 16,968 glaciers, which are now precisely identified and fully protected by Argentina's Glacier Law, the first of its kind anywhere on the planet."⁹³

But that is not the complete victory; anyway, there are many other dangerous mining projects in Argentina that are being opposed. Another example is anti-mining protest near a Barrick

⁹¹ Page 4, Taylor, A and Bonner, M D. *Policing Economic Growth: Mining, Protest, and State Discourse in Peru and Argentina*. Latin American Research Review. 2017; 52(1), pp. 112–126. DOI: <https://doi.org/10.25222/larr.63>

⁹² CHRE, *Argentine Police Fire at Peaceful Protesters Against Mining Operations*, <http://center-hre.org/argentine-police-fire-at-peaceful-protesters-against-mining-operations/>
See also: *A Deadly Shade of Green*, 2016, pp. 46- 47 (describing examples of the excessive use of force in **Argentina, Guatemala and Peru**)

⁹³ CHRE, *Argentina Finally Publishes Official Glacier Inventory and It's Bad News for the Mining Sector*, May 17, 2018, <http://center-hre.org/16520/>

Gold⁹⁴ operated Veladero mine in the northwestern Argentine province of San Juan, where a cyanide spill occurred in September 2015. First, people were just ignored, and after the court order to stop blocking the access to the gold mine the violence took place. In October 2015 several people were injured and subsequently arrested after police broke up an anti-mining protest.⁹⁵

Another example is excessive use of force in Peru, where according to CIEL report *A deadly shade of green* 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.“⁹⁶

Parties to the Aarhus Convention

Among the EU countries parties to the Aarhus convention, where the level of democracy is high, cases of harassment are not numerous, nonetheless there are several examples of an excessive use of force, arbitrary detentions and arrests in Romania (December 2013: in the village of Pungesti, the police used excessive force during demonstrations against Chevron's drilling for shale gas.; UK (November 2012: arrests during demonstration against building of a power station), Ireland (2005: excessive use of force and detention of the defenders opposing Gorrib Gas project - construction of a gas pipeline)⁹⁷; Czech Republic (300 people joined a blockade in 2011 to stop illegal logging in the Czech Republic's Šumava National Park, they were attacked by loggers and subsequently arrested by the police).⁹⁸

USA

In the USA the most frequent type of harassment is excessive use of force and arrests like it was the case of Dakota Access pipeline activists.⁹⁹

⁹⁴ Barrick Gold Corporation is one of the largest gold mining companies in the world. The private corporation headquarters is in Toronto, Canada.

⁹⁵ Protestbarrick, *Several injured in break-up of anti-mining protest in Argentina* October 23rd, 2015, <http://protestbarrick.net/article.php?id=1030.html>

⁹⁶ CIEL, *A Deadly Shade of Green*, 2016, page 47 (describing examples of the excessive use of force in **Argentina, Guatemala and Peru**)

⁹⁷ See : *A Dangerous Shade of Green*, 2014, See also : FOEI, *We defend the environment, we defend human right*, <https://www.foei.org/wp-content/uploads/2014/06/We-defend-the-environment-we-defend-human-rights.pdf>

⁹⁸ FOEI, *We defend the environment, we defend human right*, <https://www.foei.org/wp-content/uploads/2014/06/We-defend-the-environment-we-defend-human-rights.pdf>

⁹⁹ Crude accountability, *Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S.*

http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf

See also: Dakota Access pipeline activists say police have used 'excessive' force, *The Guardian*, (example of excessive use of force and arrests during peaceful demonstrations in USA.)

<https://www.theguardian.com/us-news/2017/jan/18/dakota-access-pipeline-protesters-police-used-excessive-force>

The Dakota Access Pipeline (DAPL) is a 1,172-mile-long (1,886 km) underground oil pipeline that begins in the Bakken, North Dakota and continues through South Dakota and Iowa to Patoka, Illinois. It will transport approximately 470,000 barrel of crude oil per day.¹⁰⁰ "The pipeline will cross the confluence of the Cannonball and Missouri rivers, where it threatens to contaminate our primary source of drinking water and damage the bordering Indigenous burial grounds, historic villages and sundance sites that surround the area in all directions."¹⁰¹ So, the pipeline threatens water supply and sacred sites of the Standing Rock Sioux tribe. "The Standing Rock movement is the largest and most high-profile Native protest in the United States in four decades. Thousands of people, led by Native American water protectors, and including climate activists and indigenous rights advocates, protested and physically obstructed pipeline construction on the Standing Rock reservation in 2016-2017. The protests, which lasted for 10 months, resulted in extreme violence against those who protected the land..."¹⁰²

During the Standing Rock demonstrations the guards were pepper spraying people and shot activists with rubber bullets, with further arrests.¹⁰³ In June 2017, the Standing Rock Sioux won the case in federal court. The Court said that US Army Corps of Engineers not conducted an adequate study of the environmental consequences of the pipeline when it first approved the project¹⁰⁴ After all; President Barack Obama revoked the permit entirely in December 2016. But, on his fifth day in office, President Donald Trump reversed Obama's order and told the US Army Corps of Engineers to approve the pipeline as quickly as possible.¹⁰⁵

Russia

After the adoption of the amendments to Federal Law "On Assemblies, Rallies, Demonstrations, Processions and Picketing" made in 2012 and 2014, there are less and less demonstrations. The amendments contain many dispositions, applicable to the simple

See also: Sam Levin, Judge rejects riot charges for journalist Amy Goodman after oil pipeline protest, The Guardian (17 October 2016)(example arrest and charges with participating in a 'riot' of Amy Goodman, a journalist reporting on the Standing Rock protests in 2016 against an oil pipeline)

¹⁰⁰ Dakota Access LLC, factsheet, August 2016,
https://web.archive.org/web/20161223183437/http://www.daplpipelinefacts.com/docs-dapl/08092016/DAPL_FactSheet33-8_09_16.pdf

¹⁰¹ The Guardian, *We are protectors, not protesters': why I'm fighting the North Dakota pipeline*,
<https://www.theguardian.com/us-news/2016/aug/18/north-dakota-pipeline-activists-bakken-oil-fields>

¹⁰² Crude Accountability, *Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S.*, <http://crudeaccountability.org/dangerous-work-report/>

¹⁰³ Dakota Access pipeline activists say police have used 'excessive' force,
<https://www.theguardian.com/us-news/2017/jan/18/dakota-access-pipeline-protesters-police-used-excessive-force>

See also: *The Standing Rock Sioux Claim 'Victory and Vindication' in Court*, 2017,
<https://www.theatlantic.com/science/archive/2017/06/dakota-access-standing-rock-sioux-victory-court/530427/>

¹⁰⁴ See: *The Standing Rock Sioux Claim 'Victory and Vindication' in Court*, 2017,
<https://www.theatlantic.com/science/archive/2017/06/dakota-access-standing-rock-sioux-victory-court/530427/>

¹⁰⁵ See: *The Standing Rock Sioux Claim 'Victory and Vindication' in Court*, 2017,
<https://www.theatlantic.com/science/archive/2017/06/dakota-access-standing-rock-sioux-victory-court/530427/>

protesters, which restrict freedom of assembly including environmental protests as well. Protesters (mostly political ones) are arrested not without excessive use of force; they get very big fines and sometimes even imprisonment (see Annex I). So, there are less and less demonstrations, but instead there are single-person pickets, but even one person with a placard can be jailed in Russia (mostly is the case for political oppositioners¹⁰⁶, but also there are some examples of environmental activists being detained: the most recent detention had taken place in Kurgan, where the participants of the single-person pickets demanded to install cleaning filters on the factory "Technoceramics"¹⁰⁷. There is no information on excessive use of force against environmental defenders, because, as there is no freedom of assemblies, there are no assemblies and demonstrations and there is no need to use force excessively to stop the protesters.

Arrests and detentions, judicial harassment

„The misuse of criminal law most often occurs in contexts where there are tensions or conflicts of interest with State and non-State actors. One example is the case of communities occupying lands of interest for the development of mega-projects and the exploitation of natural resources, where criminal law can be improperly applied to impede the advancement of causes contrary to the economic interests involved. „ (§4) "There have also been reports of arbitrary detentions of defenders for the same purpose of restricting their work and discouraging them from continuing to promote their causes. (§7) ¹⁰⁸

Parties to the Aarhus Convention

Regarding the non-EU countries parties of the Aarhus Convention the tendency is the following: excessive use of force, arbitrary detentions and persecutions in such countries as Armenia, Macedonia, Uzbekistan, Kazakhstan, Turkmenistan and Belarus.¹⁰⁹ Take but one example of the persecution by Belarus of an anti-nuclear environmental defender Andrey Ozharovskiy was detained for 10 days, sentenced with false accusation and expelled from

¹⁰⁶ Amnesty International UK, Press releases, Russia: one-person picket protesters locked up after Bolotnaya demo, 8 may 2015, <https://www.amnesty.org.uk/press-releases/russia-one-person-picket-protesters-locked-after-bolotnaya-demo>

See also: One man banned: *Russia's treatment of solo protests scrutinised in Novikova v Russia*, by Daniel Simons and Dirk Voorhoof, 9 May 2016, <https://strasbourgobservers.com/2016/05/09/one-man-banned-russias-treatment-of-solo-protests-scrutinised-in-novikova-v-russia/>

¹⁰⁷ Kommersant, *Participants of the single pickets against harmful emissions detained in Kurgan*, 21 September 2018, (available only in Russian) *В Кургане задержали участников одиночных пикетов против вредных выбросов*, <https://www.kommersant.ru/doc/3746680>

¹⁰⁸ §1, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II, Doc. 49/15, 31 December 2015

¹⁰⁹ See the report: *Crude accountability, Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S.*

http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf

See also: *A Dangerous Shade of Green*, 2014,

See also : FOEI, *We defend the environment, we defend human right*, <https://www.foei.org/wp-content/uploads/2014/06/We-defend-the-environment-we-defend-human-rights.pdf>

Belarus without the right to return for 10 years.¹¹⁰ This case was brought before the Aarhus Convention Compliance Committee.¹¹¹

Russia

Detentions, prosecution, and criminal charges are the most frequent types of judicial harassment from the State actors in Russian Federation.

"Russia has also been witnessing an extremely high degree of violence against environmentalists and their vulnerability to arbitrary administrative and criminal sanctions. Hostile actions targeting environmentalists in Russia include killings and death threats, assaults and criminal prosecution, alongside somewhat less violent methods of intimidation, such as searches, intrusive document checks, obstruction of independent environmental monitoring and public events, and others. Arrests, detention, and intimidation are an integral part of the government's treatment of environmentalists trying to exercise independent civic monitoring, which is essential to effective implementation of the right to a favorable environment guaranteed by the Russian Constitution."¹¹²

Criminal charges are quite frequent and severe, and to illustrate that we take an example of well-known Arctic Sunrise case where activists were charged with piracy offences¹¹³ or the case of Yevgeny Vitishko and Suren Gazaryan: "Their prosecution was intended as revenge for Gazaryan's and Vitishko's work to oppose the unlawful seizure of public forests and the Black Sea coastline to build what the environmentalists believed to be a residence for former Krasnodar Governor Alexander Tkachyov (the so-called "Tkachyov's Dacha"). Following unsuccessful attempts to bring the violators to justice and force the Russian supervisory authorities to intervene, a group of activists held a peaceful protest and spray-painted the illegally installed fence. The purpose was to demonstrate that the fence actually existed, as the prosecutor's office had earlier responded to the environmentalists' appeals by denying the existence of any fence around "Tkachyov's Dacha" or any environmental violation, despite convincing evidence that the illegally constructed fence was physically there. In June 2012, a Russian court sentenced Yevgeny Vitishko and Suren Gazaryan for their exercise of freedom of expression and protest against a cynical violation of citizens' rights each to suspended three-year prison terms, with two years of probation, under Article 167, part 2, of the Russian Criminal Code. Their verdict read as follows: "S. V. Gazaryan and Ye. G. Vitishko intentionally caused significant damage to other's property out of hooligan motives."¹¹⁴

¹¹⁰ Как и за что меня задержали на 10 суток, а потом выслали из Беларуси Я, гражданин России был задержан, осуждён на 10 суток по лживому обвинению и выслан из Беларуси без права возвращения в течение 10 лет не за участие в акции или демонстрации, а за попытку передать антиядерную петицию в посольство своей страны., August 5, 2012 by Андрей Ожаровский, <http://bellona.ru/2012/08/05/kak-i-za-chto-menya-zaderzhali-na-10-sutok-a-p/>

¹¹¹ Case C/44 (2009), Belarus ACCC/C/2009/44

¹¹² Page 18, Crude accountability, Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S. http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf

¹¹³ ITLOS case 22: The Arctic Sunrise Case (Kingdom of the Netherlands v. Russian Federation) <https://www.itlos.org/cases/list-of-cases/case-no-22/#c1488>

¹¹⁴ Page 24, Crude accountability, Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S.

http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf
See also the Court decision on the case: <http://www.ewnc.org/node/13314>

Interview with a Russian anti-nuclear activist

Andrey Ozharovskiy - Engineering Physicist

About the general context

-> I can only say about nuclear industry, not environment in general. I have been doing this for a long time: 15 years. There is less freedom now. Access to information is complicated. Most of the Russians are influenced by the governmental media who says that environmental activists are "foreign agents": if you are an activist of non-governmental organization you are a foreign agent.

On one of the press conferences V. Putin told about the environmental activists trying to blackmail a company, but he refrained from labeling¹¹⁵. This myth is the most frightening one. I suppose there could be not very good people, but I don't think that they can be environmental activists.

-> Rosatom - is a State Nuclear Energy Corporation that deals with all types of nuclear power use, like medical, military and also contracts for construction of the nuclear power plants abroad. It is just business. And as Rosatom is a part of the State, for them any critics against the company means the critics against the State politics.

Is it easier to criticize the private companies - that's another question. They can be also very sensitive to criticism. For example, Nornickel¹¹⁶ - they do not like being criticized for poisoning people in Monchegorsk and Norilsk ¹¹⁷, but they are open for a dialogue. But there are other companies that hire bullies to beat you. Rosatom is not like this. But we all know the story of Nadezhda Kutepova ¹¹⁸ (read below).

-> "Foreign agent" law¹¹⁹ says that an NGO is a foreign agent if it:

- 1) receives "monetary funds and other property from foreign states, international and foreign organizations, foreign citizens and stateless persons" **and**
- 2) engaged in "political activities" on the territory of Russia

The reasons to be proclaimed "foreign agents" are absurd:

- Participation in public discussions,
- Participation in public councils,
- Writing letters (if you are writing letters you are trying to influence the politics) - complete madness.¹²⁰

-> There was more freedom before than nowadays. In the end of '90s - beginning of 2000 the country was closer to democracy than today. There was more attention paid to the opinion of the citizens and inhabitants. So, there are no methods of influence now. We are working more mechanically, but I cannot say in vain. Before there were more possibilities of defending one's position.

About ways of harassment

-> A lot of environmental NGO's were proclaimed "foreign agents" and had to stop their activity or re-register. I do not know any environmental NGO that did not suffer from this law. For example Andrey Talevin from Chelyabinsk¹²¹ and his NGO "Za Prirodu" was closed by the court decision.¹²²

¹¹⁵ See the press conference 19 December 2013, Putin: protection of nature should not become an instrument of blackmail, (Путин: защита природы не должна становиться инструментом шантажа) Translated from russian: **"Often, unfortunately, this activity so-called environmental, used for ignoble purposes of blackmail, pumping money from companies"** ("Часто, к сожалению, эта деятельность экологическая, используется в неблагородных целях шантажа, выкачивания денег из компаний"), <https://www.vesti.ru/doc.html?id=1169025#>

¹¹⁶ Nornikel is a Russian nickel and palladium mining and smelting company.

¹¹⁷ See the article: **«Buy gas masks!» Such was the advice given by local officials to the residents of Monchegorsk who are being poisoned with sulfur dioxide emissions.** April 30, 2018, Text by Tatyana Britskaya, Novaya Gazeta, <https://thebarentsobserver.com/en/ecology/2018/04/buy-gas-masks>
See also a **documentary film about Norilsk : A Moon of Nickel and Ice (2017) by François Jacob**, <https://www.imdb.com/title/tt6436254/>

See also: **Smog over Monchegorsk: when silence - not gold. Concentration of sulfur dioxide exceeded permissible standards: who is to blame and what to do?** (Смог над Мончегорском: когда молчание — не золото. Концентрация сернистого газа превысила допустимые нормы: кто виноват и что делать?) <https://regnum.ru/news/2388766.html>

¹¹⁸ Nadezhda Kutepova: **Life in Russia's secret nuclear city Activist Kutepova on growing up in a city that saw the world's third-worst nuclear accident and being exiled as traitor.** 16 Dec 2017, <https://www.aljazeera.com/programmes/talktojazeera/2017/12/nadezhda-kutepova-life-russia-secret-nuclear-city-171214121737252.html>

See also: Надежда Кутепова: Смерть внучки ликвидатора – последствие аварии 1957 года 2 June 2014, by Andrey Ozharovskiy, <http://bellona.ru/2014/06/02/nadezhda-kutepova-smert-vnuchki-likvi/>
See also: Гражданская пассивность – хуже радиации, October 28, 2016 by Sofia Rusova <http://bellona.ru/2016/10/28/nadezhda-kutepova/>

¹¹⁹ Federal Law No 121-FZ of 20 June 2012, on Amending Certain Federal Laws in Regard of Regulating the Activities of Nonprofit Organisations Performing the Functions of Foreign Agents

¹²⁰ **Read the following example of NGO "Za Prirodu" that was closed by the court decision and proclaimed a foreign agent because the counteraction to the construction of Tomsk Ore Mining and Processing facility by Russian Copper Company is considered to be a political activity of an NGO that gets found from abroad.**

¹²¹ **How Chelyabinsk became synonymous with pollution: Situated more than 900 miles south-east of Moscow close to Russia's border with Kazakhstan, the Chelyabinsk region is synonymous with the Soviet Union's nuclear weapons programme and deadly pollution.** Article by Andrew Osborn, 27 Jul 2011

<https://www.telegraph.co.uk/news/worldnews/europe/russia/8663862/How-Chelyabinsk-became-synonymous-with-pollution.html>

Lake Karachay - the lake in Chelyabinsk region. This lake is the most polluted place on the earth, because Mayak nuclear facility (subordinated to Rosatom) was dumping the nuclear wastes there since 1950-s.

See: <https://grist.org/article/meet-the-lake-so-polluted-that-spending-an-hour-there-would-kill-you/>

See also: **RADIOACTIVE CONTAMINATION AT CHELYABINSK-65, RUSSIA**, Thomas B. Cochran, Robert Standish Norris, and Kristen L. Suokko, Natural Resources Defense Council, Washington, DC, AM". Rev. Energy Environment. 1993. /8:507-28,

https://web.archive.org/web/20081209055500/http://docs.nrdc.org/nuclear/files/nuc_01009302a_112b.pdf

¹²² Translated from Russian: "For Nature" began having problems after opposing the project of the Tominsky Ore Mining and Processing facility by *Russian Copper Company*. This large copper mining facility is supposed to be built 20 kilometers from Chelyabinsk and its only drinking water source. [...] The initiator of the process was the Federal Security Service, they twice appealed to the Justice Department with a request to recognize us as "foreign agents." It was in March 2015. [...] **Political activities - and they wrote it in the protocol - is counteraction to the construction of Tomsk Ore Mining and Processing facility"**

-> We all know the story of Nadezhda Kutepova¹²³, who lived in a closed city Ozyorsk where in 1957 there was a Kyshtym disaster on Mayak nuclear facility¹²⁴ and a lot of people (especially pregnant women) became victims of irradiation. She gave legal consultations to people and helped them to get compensation for health damage from Mayak¹²⁵. Mayak did not want to pay. So, someone ordered her harassment, so she was harassed by one of the State's TV channel first: They tapped at her door, and she has 3 children. The channel tried to interview her children at school. Then, her NGO was labeled a foreign agent and a lawsuit was filed against her. So she fled to Paris. Her elimination was in Rosatom's interests. Same with harassment of other anti-nuclear activists.

-> My example is not the usual one, it's an exception. Recently I don't feel harassed. Maybe because I am well known internationally¹²⁶. Moreover, I am an expert and I don't participate in street protests. Before we participated in the street protests, and for example we blocked the German embassy while protesting against the fact that they paid Rosatom to import and to store German depleted uranium in Russia.¹²⁷ If you pay someone to store it that means it's a waste.

But still, for example, I come to Navashino town for public hearings and police detains me to verify my documents for 4 hours until the hearing is over.

-> Or sometimes when I come to a city for a public hearing, I inform the local media about it, in case they would like to meet and to talk. Turned out, that someone (acting in Rosatom interest) sending them mails telling that I am allegedly in the opposition of Putin as well as

See: "Вместо экологической экспертизы" <https://www.svoboda.org/a/28176551.html>

¹²³ Nadezhda Kutepova: **Life in Russia's secret nuclear city Activist Kutepova on growing up in a city that saw the world's third-worst nuclear accident and being exiled as traitor**. 16 Dec 2017, <https://www.aljazeera.com/programmes/talktojazeera/2017/12/nadezhda-kutepova-life-russia-secret-nuclear-city-171214121737252.html>

See also: Nadezhda Kutepova: The death of the liquidator's granddaughter is a consequence of the 1957 accident (Надежда Кутепова: Смерть внучки ликвидатора – последствие аварии 1957 года), 2 June 2014, by Andrey Ozharovskiy, <http://bellona.ru/2014/06/02/nadezhda-kutepova-smert-vnuchki-likvi/>
See also: Гражданская пассивность – хуже радиации, October 28, 2016 by Sofia Rusova <http://bellona.ru/2016/10/28/nadezhda-kutepova/>

See also a film: "City 40" by Samira Goetschel, <https://www.imdb.com/title/tt2721744/>

¹²⁴ See the **profile of Mayak nuclear facility subordinate to Rosatom** <https://www.nti.org/learn/facilities/894/>

¹²⁵ Kyshtym disaster began with the explosion of the storage of liquid radioactive waste. Radioactive contamination affected the Techa River and the area of about 23 thousand square km. About 17 000 people were evacuated, many died of irradiation and cancer. The chemical factory "Mayak" in the first years of operation dumped radioactive waste into the Techa River, then - into the Techa Cascade of reservoirs. The river actually became a depository of radioactive waste from the nuclear industry. The river is not isolated from the environment and the people, and the water is used by residents.

See the Article: Nadezhda Kutepova: The death of the liquidator's granddaughter is a consequence of the 1957 accident (Надежда Кутепова: Смерть внучки ликвидатора – последствие аварии 1957 года), 2 June 2014, by Andrey Ozharovskiy, <http://bellona.ru/2014/06/02/nadezhda-kutepova-smert-vnuchki-likvi/>

¹²⁶ See the case of Ozharovskiy detention in Belarus, whose case was brought before the Aarhus Compliance Committee : Case C/44 (2009), Belarus ACCC/C/2009/44

¹²⁷ See also the article: Transformation of Russia into an international nuclear waste repository.

(Превращение России в международный ядерный могильник)

<http://www.greenpeace.org/russia/ru/campaigns/nuclear/nuclear-waste/foreign-nuclear-waste/>

they are trying to question my education as a nuclear physicist. Also my colleagues are accused of being against the interests of Russia. But we do not think that the interests of Russia are the same as those of Rosatom. We think that the realization of some projects in Turkey or Finland for example are not in the interests of Russia, because the State have to help in their realization, so it is more profitable for Russia not to do that.

-> Sometimes happens that after visiting some regions, the Federal Security Service - FSB becomes interested in me. Once, when I went to Turkey to tell why it is not profitable for Russia to build a nuclear plant there and that it is only profitable to Rosatom, I was told that FSB is trying to find out who paid my travel. I did it myself. Turkey is very popular tourist destination, so the tickets are very cheap. So, I wrote a letter to FSB saying that if they are interested, why not to ask me directly about that.

-> What are the perspectives? I suppose only worsening of the situation. The discourse we hear now looks like the one during the late Soviet Union times.

USA

In the USA the most frequent type of judicial harassment along with excessive use of force are arrests and charges like it was the case of Dakota Access pipeline activists. 750 people have been arrested in dozens of confrontations with police¹²⁸ a lot of people faced charges¹²⁹ as well as authorities had issued a warrant for arrest of a journalist Amy Goodman after Democracy Now! host filmed guards for the Dakota access pipeline setting dogs and pepper spray on protesters¹³⁰

Amy Goodman interviewed Nick Tilsen - executive director of the Thunder Valley Community Development Corporation and a citizen of the Oglala Lakota Nation on Pine Ridge Reservation in South Dakota, who was detained and charged.

"AMY GOODMAN: What were you charged with?"

NICK TILSEN: I was charged with four different charges. Three misdemeanors—disorderly conduct, obstruction of a government function—disorderly conduct, obstruction of a government function. The felony charge was reckless endangerment.

¹²⁸ Taxpayer-Funded Horror at Standing Rock

Police brutality against protesters is reminiscent of civil-rights battles like Selma. And the state has borrowed millions to fund it, by Sandy Tolan, 02.22.17 <https://www.thedailybeast.com/taxpayer-funded-horror-at-standing-rock>

See also: https://www.democracynow.org/2017/6/16/standing_rock_sioux_chair_on_militarized

¹²⁹ **Democracy now, *Standing Rock Sioux Chair on Militarized Repression & Ongoing Lawsuit to Stop Dakota Access Pipeline, Amy Goodman,***

https://www.democracynow.org/2017/6/16/standing_rock_sioux_chair_on_militarized

See also: page 58, Crude accountability, Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S.

http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf

¹³⁰ The Guardian, *Judge rejects riot charges for journalist Amy Goodman after oil pipeline protest*, Sam Levin, 17 October 2016, <https://www.theguardian.com/us-news/2016/oct/17/amy-goodman-north-dakota-oil-access-pipeline-protest-arrest-riot>

See the video where the guards set dogs on protesters:

<https://www.facebook.com/democracynow/videos/10154446432358279/>

And it was a felony charge. This is one of the first felonies that they—one of the first felony charges that they did in Standing Rock was on the day that I was arrested and with the folks that I was taking the action with.

*And it was a pretty important thing, because they were trying to use it as a tactic. They were going to—**they were trying to use it as a tactic to overcharge people, essentially, to use the political and the legal system to discourage people.** And I think I was probably about the 40th person arrested. So their strategy to discourage people didn't work. I think there was **over 700 people, you know, after I was arrested, that were arrested.***

But the disorderly conduct charge is a serious charge. I'm still facing that charge. I'm set to go to trial on August 17th. The difference between a misdemeanor disorderly—or reckless endangerment charge and a felony is that they're basically saying I had extreme indifference for human life, for locking myself to a piece of machinery to protect water.

AMY GOODMAN: How many people are still facing trials, facing charges?

*NICK TILSEN: Hundreds. I mean, I think—yeah, I was on the Water Protector Legal Collective email chain recently, and I think there's still, you know, between **400 and 600 people facing charges.**"¹³¹*

Again, questioning the democracy in the United States as well which looks more like Plutocracy, we take an example of Amy Goodman interview with Standing Rock Sioux Chair Dave Archambault II, that shows that President Donald Trump has his own interests in building the pipeline:

"AMY GOODMAN: Can you respond to what President Trump said? He just closed his eyes and signed it.

*DAVE ARCHAMBAULT II: Yeah, when President Trump comes out with statements like that, it just is revealing his true character. It tells America what kind of person he is, when we all know that his first agenda was to sign this presidential memorandum. He was actually calling it an executive order, and then they switched it to a presidential memorandum. **But it's because he has his own interest in this pipeline. He was sponsored, with his campaign, by Kelcy Warren. He had shares for Energy Transfer Partners. He had political interests.** All the people who support him are saying this has to be done. So, for him to say, "I blindly did this," it's a complete lie, and it tells what kind of character this man really has."¹³²*

Another example are Moriah Stephenson and Stefan Warner - Oklahoma activists in the Great Plains Tar Sands Resistance who were **criminally charged with terrorism** (that can be accompanied with up to 10 years in prison) in 2013. The activists were detained by the police

¹³¹ See full interview: **Democracy now!, Standing Rock Sioux Chair on Militarized Repression & Ongoing Lawsuit to Stop Dakota Access Pipeline, Amy Goodman,**
https://www.democracynow.org/2017/6/16/standing_rock_sioux_chair_on_militarized

¹³² **Democracy now, Standing Rock Sioux Chair on Militarized Repression & Ongoing Lawsuit to Stop Dakota Access Pipeline, Amy Goodman,**
https://www.democracynow.org/2017/6/16/standing_rock_sioux_chair_on_militarized

and criminally charged because of the fact of opposing fracking when the activists opened a banner and dropped glitter at oil and gas company's office in Oklahoma.¹³³

Latin America

According to IACHR, the defenders are mostly legally abused in the context of social protests, and after filing the complaints against corruption.¹³⁴ In Latin American countries we can find many examples of the legal abuse of the defenders, like detentions, arrests, bans and imprisonment.

According to the FOEI report "We defend the environment, we defend human right": "In July 2012, protests against the Conga mining project in Cajamarca, Peru were violently repressed, leaving at least five people dead and dozens injured. Former priest Marco Arana, one of the leaders of the resistance against Conga, was violently attacked and arrested by the police in Cajamarca, while sitting in a public square holding a sign protesting mining. Mr. Arana offered no resistance and only asked the police officers not to beat him; he was taken to the local police station and released the following day. Social organizations from different parts of the world denounced the violent response to demonstrations against the copper extraction project of Swiss company Xstrata. Mr. Arana is a member of the environmentalist organization Grufides, one of the community spokespeople in the resistance to mining and a leader of the political group "Tierra y Dignidad."¹³⁵

Another example is misuse of arrest warrants that could stop the defenders from performing their activities for fear of exposure to arrests. IACHR gives an example:

"According to information presented before the Commission, as of December 2013, at least 10 people belonging to the 12 communities Kaqchikeles of San Juan Sacatepequez, Guatemala, who were involved in processes in defense of territory and natural resources against the installation of a cement project in that region, had unexecuted warrants for their arrest, including two orders that had not been executed or dismissed since 2009. According to representatives of the community, for that reason those affected felt "prisoners in their own territories." "¹³⁶

IACHR gives an example:

¹³³ Crude accountability, *Dangerous Work: Increasing Pressure on Environmental NGOs and Activists in the Countries of the Former Soviet Union and the U.S.*

http://crudeaccountability.org/wp-content/uploads/CA_Report_Dangerous_Work-compressed.pdf
See also: <https://www.theguardian.com/environment/2014/jan/10/terror-charges-oklahoma-fossil-fuel-protest>

¹³⁴ §§45-47 INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

¹³⁵ See the examples of arbitrary detention: FOEI, *We defend the environment, we defend human right*, page 13-15 (Arbitrary detentions and arrests in: Colombia, Honduras, Paraguay, and Peru. *Criminalization in : Colombia, Ecuador, Guatemala, Honduras, Mexico, Paraguay, the Philippines,*)
<https://www.foei.org/wp-content/uploads/2014/06/We-defend-the-environment-we-defend-human-rights.pdf>

¹³⁶ §185, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015
See also: PBI, *Peace Brigades International Guatemala Project, Second Bulletin 2013-No. 30*, p. 10.

*"The Commission was aware of the criminal proceedings against three executive members of the Comité Ambientalista del Valle de Siria in Honduras, an organization working on the defense of human rights and the environment, who have focused much of their work on the impacts of mining in the country. According to the information provided to the IACHR, three of the directors of the organization, along with 14 other environmentalists, were reportedly accused of "obstructing the implementation of a forest management plan", punishable with 4-6 years of prison, based on events that occurred in April 7, 2010 when around 600 members of the municipality prevented the cutting of trees that protect the micro basin "Quebrada Guayabo" which supplies drinking water to six communities. On July 5, 2011, the accused had the first hearing and alternative measures were issued including **banning the defendants from visiting the hill they defend**. Subsequently, on February 20, 2013, the 17 environmentalists were acquitted of the charges against them."*¹³⁷

An example on the subject is the case brought before IACHR Court where a Mexican activist Rodolfo Montiel Flores was **illegally detained, imprisoned and tortured** by his own government for helping to save forest lands in southern Mexico. (Teodoro Cabrera García and Rodolfo Montiel Flores (Case 12.449) against the United Mexican States, June 24, 2009).¹³⁸

One more example is the criminal prosecution of Darwin Javier Ramírez Piedra, a defender of land rights and President of the Junín community, in Ecuador. As part of his work and on behalf of the community, he has opposed a joint development project between the Ecuadorian national mining company (ENAMI) and the Chilean State mining company, Codelco, as this project involves indigenous territory, among other reasons. On April 10, 2014, Javier Ramírez was arrested by the National Police without a judicial order or warrant, when he and other community leaders were returning from an attempt to attend a meeting organized by the Interior Ministry in Quito on issues relating to land rights. He was first charged with assault on a public servant ("lesiones a funcionario público") and later with terrorism, sabotage, and rebellion, for an alleged attack against a delegation of ENAMI that took place in April 2014. Although Javier Ramírez denied participating in the attack, and several witnesses confirmed that he was not at the scene, he was placed into pre-trial detention and remained there for 10 months. On September 15, 2014, a judge found that there was sufficient evidence to determine his guilt, on a charge of attacking and resisting authority ("ataque y resistencia"), and he was sentenced to 10 months in prison, a sentence that was already completed by his pre-trial detention.¹³⁹

¹³⁷ §210, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

¹³⁸ Cabrera García and Rodolfo Montiel Flores (Case 12.449) against the United Mexican States, June 24, 2009

<http://www.cidh.oas.org/demandas/12.449%20Teodoro%20Cabrera%20Garcia%20y%20Rodolfo%20Montiel%20Flores%20Mexico%2024jun09%20ENG.pdf>

See also: DOWN TO EARTH: ENTREVISTA A RODOLFO MONTIEL FLORES,

<https://earthjustice.org/features/the-docket-interview-with-rodolfo-montiel-flores>

¹³⁹ §50, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015

For example, criminal charges with false allegations and imprisonment took place in 2010 in Mexico, José Ramón Aniceto Gómez and Pascual Agustín Cruz, two Nahuatl indigenous authorities dedicated to promoting the right of access to water in the community of Atla, municipality of Pahuatlán, were detained and subjected to criminal proceedings for the fabricated car theft, despite the fact that they could not defend themselves because they did not speak Spanish (and translation was not provided).¹⁴⁰

¹⁴⁰ See §180 OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, Criminalization of the Work of Human Rights Defenders
See also Mexico must free indigenous activists jailed on trumped-up charges, Amnesty Int., <https://www.amnesty.org/en/latest/news/2012/06/mexico-must-free-indigenous-activists-jailed-trumped-charges/>

C.C. from Bolivia

About the general context

-> Despite the Mother Earth Law (law 071) governmental policy is extractivism and exploiting to become middle-income country. The law looks good from outside, it is a good propaganda, but from inside it's not working, neither the new Constitution. The reason is that national policies do not allow that to happen. As a developing country Bolivia has a right to develop, which is used as a justification to look for oil in the protected areas.

-> As the government is contrary to the imperialism, they don't want to work with USA, but they work with China. Concessions for Chinese enterprises connected to road building, trains, mining and oil. Chinese living in Bolivia are poaching jaguars.¹⁴¹ But only a couple of Chinese were detained and the trial was postponed for 1 year. Chinese are under the protection by the government.

-> As Bolivia is a socialist State, there is no private sector and they take measures to reduce private sector, like persecuting private enterprises. So either the company exists illegally, or government will control it or they will compete with it.
So, there are no jobs unless you are working for government = no private sector.

-> State controls 90% of the mass media. 10% is independent, but has no resources.

About the ways of harassment

-> I used to work for government and they decided not to pay to force me to quit my job. But if you quit, you won't be able to work for State for 2 years. But as there is no private sector = no jobs. So, if you are not with the government you are the enemy, and they are killing you in a civil way, not physically.
They don't pay me for my job, they have all the power. There is no private sector, only government and Chinese enterprises.

-> Some journalists, like Amalia Pando were harassed. Now she is doing that in an independent way, she has her YouTube channel.

-> State controls the income and they can decapitalize you, for example: some NGOs' bank accounts were closed. So, the NGOs have to be aligned to the governmental policy, which means you cannot criticize it. CEDIB is an NGO whose bank account was closed because they did a research on extractivists and criticized exploitation.¹⁴²

-> I believe that Bolivia is going to sign Escazu Agreement; they want to have an image of the defenders of Mother Earth.

But no one cares about indigenous opposition. In some cases people are forced to say yes to get at least something, otherwise they get nothing (no compensation). So you cannot oppose projects.

-> So, there is no violence and no killings, but the harassment. They simply want to make them afraid. They do not arrest people during marches, they do not put activists in jail, because the international organizations would ask them why they do that. So the government knows, that internationally they will be asked.

Honduras

In Latin America we do not see so many cases of detentions or other types of harassment by State actors. So the question is why? In Bolivia people are just afraid. In some cases, like Honduras, where the killing rate of the defenders is the highest and the State fails to investigate those cases, we find that the IACHR affirms that the threats, violence and probably eventual killings comes from State actors (like Carlos Antonio Luna López Case n. 12.472, v. Honduras, November 17, 2011, or Kawas-Fernández v. Honduras, 4 February 2008)¹⁴³ which is not common in Europe for example. Is it related to the corruption in the country or Honduras is simply a Mafia State - where the government is tied with organized crime?

We take but one example of Berta Caceres. Berta Caceres - Honduran environmental and indigenous rights activist, and head of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), opposing the dam construction. She was murdered in March 2016. After Caceres death followed many other murders of the COPINH members¹⁴⁴. The murders of the COPINH members are connected to the Honduran military as well as it has political connections and international investors implication: "international investors and development banks are implicated in the corruption and human rights abuses that take place in Honduras. The Dutch development bank FMO, together with Finnish government-owned Finnfund, and the Central American Bank for Economic Integration (CABEI) are financing DESA's construction of the Agua Zarca dam. FMO is the lead international investor with US\$15

¹⁴¹ See also the article: Fang trafficking to China is putting Bolivia's jaguars in jeopardy, by Roberto Navia on 26 January 2018 <https://news.mongabay.com/2018/01/fang-trafficking-to-china-is-putting-bolivias-jaguars-in-jeopardy/>

¹⁴² See also an article in the Guardian: Top Bolivian NGO facing eviction - given just days to move archive <https://www.theguardian.com/environment/andes-to-the-amazon/2017/apr/08/top-bolivian-ngo-faces-forced-eviction>

¹⁴³ Carlos Antonio Luna López Case n. 12.472, v. Honduras, November 17, 2011. The case is related to the assassination of Carlos Antonio Luna López, "environmentalist who made public acts of corruption in the Municipal Corporation regarding logging permits and alleged illegal logging. In this context, Luna López publicly and repeatedly expressed that he had received threats from different sectors, **including some from public officials**, and filed a complaint before the Office of the Attorney General." He was eventually killed on May 18, 1998, and the competent authorities did not adopt the immediate actions necessary to protect the crime scene, nor did they conduct an adequate autopsy.

Another example is the decision of the Inter-American Court of Human Rights in Kawas-Fernández v. Honduras, 4 February 2008 ¹⁴³ where the Court says that: "[...] there are strong indications for concluding that **there is direct State responsibility in the death of the presumed victim**. As well, the internal file from the criminal proceeding provides many indications to suggest a cover up of the responsibility of officials in the murder of Blanca Jeannette Kawas Fernández, which were not seriously investigated by the Honduran justice authorities." (§80)

¹⁴⁴ See: Page 14, Global Witness, HONDURAS: THE DEADLIEST COUNTRY IN THE WORLD FOR ENVIRONMENTAL ACTIVISM, Rapport / 31 Janvier 2017, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

million committed of the US\$64million total project costs. After the killing of Berta Cáceres, financing to the dam was suspended and FMO and Finnfund announced they were 'seeking to exit the project'. In spite of the public nature of Cáceres' opposition to the dam, and the resulting threats against her and COPINH, Cáceres told Global Witness in November 2015 that FMO had never attempted to contact her or any of her colleagues."¹⁴⁵

Another example of the link of the government and the organized crime, who are involved in the killings of the environmental defenders because of the land conflicts, was described as well by Global Witness¹⁴⁶. The activists claim that Honduran military and the police and private security are behind the violence in the region. According to the report, Miguel Facussé - wealthiest businessman and the uncle of former Honduran president Carlos Flores Facussé was accused of ordering the murder of an environmentalist Carlos Escaleras (the IACHR Court pronounced a decision on the case in 2014 where it states the Honduran failure to investigate, prosecute, and punish all the individuals involved in the murder of the environmentalist)¹⁴⁷. "Escaleras participated "in the struggle against the opening of Miguel Facussé's new African palm processing plant, which played a major role in the cancellation of an enormous World Bank loan to the Cressida company; (...) the coalition of eight environmental organizations (...) influenced the cancellation of the loan." Mr. Marchetti said that it "was common knowledge throughout Tocoa (...) that Carlos Escaleras Mejía was a thorn in the sides of Miguel Facussé and the leaders of the Liberal Party."¹⁴⁸

¹⁴⁵ Page 14, Global Witness, HONDURAS: THE DEADLIEST COUNTRY IN THE WORLD FOR ENVIRONMENTAL ACTIVISM, Rapport / 31 Janvier 2017, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

See also: FMO's website at <https://www.fmo.nl/page/1712> ; and 'FAQs on Agua Zarca dam' at <https://www.fmo.nl/k/n1771/news/view/27260/20819/faq-agua-zarca-project-honduras.html> (accessed 14 September 2016); Finnfund's website at http://www.finnfund.fi/yritys/en_GB/brief/; and CABEI's website at <http://www.bcie.org/index.php?id=19>

See also: FMO's FAQs on Agua Zarca dam at <https://www.fmo.nl/k/n1771/news/view/27260/20819/faq-agua-zarca-project-honduras.html>

See also: Bank Track, 'Agua Zarca hydro project Honduras'. Available at:

http://www.banktrack.org/show/dodgydeals/agua_zarca_dam#popover=financiers

See: Finnfund press release (9 May 2016), 'Finnfund seeks to exit Agua Zarca'. Available from:

http://www.finnfund.fi/ajankohtaista/uutiset16/en_GB/agua_zarca_honduras/ (accessed 14 September 2016); and: FMO press release (9 May 2016),

'FMO seeks to exit Agua Zarca'. Available from:

<https://www.fmo.nl/k/n1771/news/view/28688/20819/fmo-seeks-to-exit-agua-zarca.html> (accessed 14 September 2016)

¹⁴⁶ Page 19, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

¹⁴⁷ See also the recent IACHR Court decision: REPORT NO. 43/14, CASE 12.492, CARLOS ESCALERAS MEJÍA AND FAMILY, HONDURAS, JULY 17, 2014

<http://www.oas.org/en/iachr/decisions/court/2017/12492FondoEn.pdf>

-> "international responsibility of the Republic of Honduras (hereinafter "the Honduran State," "Honduras," or "the State") arising from the murder of the environmental activist Carlos Escaleras Mejía on October 18, 1997, and from the failure to investigate, prosecute, and punish all the individuals involved therein."

¹⁴⁸ § 58, page 11, REPORT NO. 43/14, CASE 12.492, CARLOS ESCALERAS MEJÍA AND FAMILY, HONDURAS, JULY 17, 2014

<http://www.oas.org/en/iachr/decisions/court/2017/12492FondoEn.pdf>

See also: Audit slams World Bank agency: Investigation says loan to Honduran palm oil magnate, alleged to be linked to activist deaths, violated bank's rules. Aljazeera

Facussé owned Dinant, an agribusiness and biofuels giant accused of serious human rights violations, including the murder of scores of small scale farmers opposed to palm oil plantations in Bajo Aguán, Honduras.¹⁴⁹ Also Facussé might be involved in cocaine trafficking, according to the report,¹⁵⁰ which makes think about the existence of the links between land disputes, business-government-organized crime relations and the cocaine trafficking.

We can find some more examples of the same nature, like:

"Tolupan indigenous peoples from northern Honduras have been threatened, criminalized and killed for taking a stand against illegal logging and mining operations which have pillaged their resources without consulting communities. [...] illegal mining permits were given out by a former local mayor for the ruling National Party, Arnaldo Ubina Soto, who is currently in jail accused of leading a gang of hit men involved in drug trafficking, murder and money laundering."¹⁵¹

Following the report on Honduras by Global Witness shows the connections of the corrupted Honduran State actors and the development projects that are causing human rights violations against the defenders, naming corruption and impunity as the main factors¹⁵². *"Five principal methods of corruption reoccur throughout the cases investigated by Global Witness, which are used to acquire official access to land, to buy or silence opposition, and ultimately to get away with murdering those who get in the way.[...] Firstly, political influence is used by the elites to land lucrative contracts, gain official licenses and get projects underway.[...] Secondly, legally-established processes are routinely ignored without consequence.", as well as bribes, military support and impunity."¹⁵³*

Plus, according to the same report, *„Money funneled into Honduras from the US and other countries, through aid packages or via International Financial Institutions (IFIs) is used to fund illegally imposed projects, to develop the policy and infrastructure they need, and to train and equip police and military institutions that are attacking land and environmental defenders. [...] The US is the biggest aid donor to Honduras, and also funds key IFIs, including the International Finance Corporation (IFC) and the Inter-American Development Bank (IDB), which are both financing hydroelectric dams and their infrastructure in Honduras"¹⁵⁴*

<https://www.aljazeera.com/indepth/features/2014/01/audit-slams-world-bank-agency-201411274722345113.html>

See also CAO cases, Honduras / Dinant-01/CAO Vice President Request, 2012,

¹⁴⁹ See also: International Criminal Court, Report on the Situation in Honduras, page 43 and the following, https://www.icc-cpi.int/iccdocs/otp/SAS-HON-Article_5_Report-Oct2015-ENG.PDF

¹⁵⁰ Page 19, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

¹⁵¹ Page 21, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

¹⁵² Page 26-27, Who is pulling the string?, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

¹⁵³ Page 29, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

¹⁵⁴ Page 34-36, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

See also:

As the Report says "impunity is the norm" in Honduras.¹⁵⁵ So, maybe Honduras is not yet a mafia state, like Venezuela has all the indicators to be called a mafia state: starting with the lack of transparency and question of the state legitimacy based on criminal activity and finishing simply with well known "Cartel of the Suns" and "narco nephews". And Honduras is serving the route of drug trafficking to USA:

„What is clear is that the ouster of Zelaya led to the creation of one of the main cocaine routes from South America to the United States. This route depended on sophisticated drug trafficking structures in Venezuela, and a path of minimal resistance through Honduras.“¹⁵⁶

Nonetheless, another report¹⁵⁷ by InSight Crime shows the close links between the Honduran political elites and organized crime:

*First of all, "the **country's economy dominated by multinational companies**: the original Banana Republic. Instead, the country's most powerful economic elites have emerged from the service, banking, media, and telecommunications sectors. They are called **transnational elites** since many of them are first or second generation immigrants from the Middle East and Eastern Europe and depend on international business dealings to accumulate capital." "**Honduras' principal export industries — first mining and then bananas — were almost wholly foreign owned.**" So, "Honduras, meanwhile, has become one of the poorest, most unequal and indebted countries in the world. Any attempts to change this system have been met with stern and often unified opposition from elites of all stripes. And attempts to exert more regulatory control over the activities of the elites are smothered before they begin."*

"For the transnational elites, the state's role was simple: to create and enforce rules that favor their continued power over key industries and the capital accumulation that accompanies it. Along the way, they managed public discourse as well: they bought newspapers, radio and television stations, and have steered popular sentiments and political messages towards their favored candidates and in support of their modus vivendi."

There are three basic categories of criminal groups present in Honduras: 1) transnational criminal organizations (TCOs), "*such as those from Colombia or Mexico, who use the country as a transport bridge and as a storage facility for cocaine that they are moving wholesale to the US or other markets*". 2) local transport groups (transportistas), and 3) local criminal groups and street gangs. "*The criminal groups that have the most interaction with elites in Honduras are the transportistas and the TCOs. [...], these organizations need authorities to help them move illicit goods through a difficult terrain. They interact with security forces to*

¹⁵⁵ Page 8, <https://www.globalwitness.org/fr/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/>

¹⁵⁶ InSight Crime, Investigation and analysis of Organized Crime, "Venezuela: A Mafia State?, Venezuela has become a hub of organized crime in the region", <https://es.insightcrime.org/wp-content/uploads/2018/05/Venezuela-a-Mafia-State-InSight-Crime-2018.pdf>

¹⁵⁷ Honduras Elites and Organized Crime: Introduction, by Steven Dudley - APRIL 9, 2016, <https://www.insightcrime.org/investigations/honduras-elites-and-organized-crime-introduction/>

ensure safe passage, and interact with powerful businessmen to launder proceeds and legitimize their illicit capital. Throughout, they establish political contacts, funding candidates for public office in an effort to obtain high-level protection and more business opportunities."

Also, the report cites Rachel Sieder ("Honduras: The Politics of Exception and Military Reformism (1972-1978)"¹⁵⁸) who says: "The root ... of Honduran exception was the country's insertion into the world market and the development of its domestic political apparatus under the aegis not of a national agro-exporting oligarchy, but of US monopoly capital,"

*And second, "an **ineffective justice system and corrupt security forces**, long exploited by these elites, opens the way for large criminal groups to operate with impunity. On the other side, an impoverished populace — which sees and understands exactly how elites abuse a broken system — seeks to get its share by working directly with criminals in the illegal and legal enterprises these criminals operate. Crime, as it turns out, is one of the few forms of social mobility."*

"This type of connection between criminals and political actors has become commonplace over the years. In 1987, congressman Félix Cerna Salgado admitted having a close relationship with Matta Ballesteros. In the early 2000s, three congressmen were captured for transporting drugs. In July 2014, Honduran authorities arrested Arnaldo Urbina, the mayor of Yoro, and charged him and numerous others of running a drug trafficking and assassination ring that was responsible for the murder of 137 people and the disappearance of 45 others."

To conclude with, seems like Honduras has 2 major problems: 1) multinational companies and transnational criminal organizations and 2) ineffective justice system and corrupt security forces. Those two issues are closely connected, because multinational companies are operating in the poorer countries where the production is cheaper and the legal system is weaker. The lack of transparency makes us think about the difficulties of the responsibility assumption. The countries like France found a method of responsibility assumption for the companies by introducing the law N° 2017-399 of March 27th, 2017¹⁵⁹ relating to the duty of vigilance of the parent companies and the companies giving order. The law introduces the civil penalties for failure to develop a vigilance plan and makes the parent company responsible for its branches in case of the violation of human rights and the environment. The law introduces the obligation to elaborate a vigilance plan and to implement it in the context of the activities of the parent company, to all the subsidiaries and companies it controls.

But not all the countries have developed the legal system similar to the French one. So it makes the multinational corporations register in the countries with more favorable legal system and also open the subsidiaries in the countries like Honduras where the justice system is weak and the corruption is high. Which leads again to the question of poor and rich countries and their level of legal protection that should be revised. The developed countries'

¹⁵⁸ Rachel Sieder, "Honduras: The Politics of Exception and Military Reformism (1972-1978)," *Journal of Latin American Studies*, vol. 27, no. 1 (1995), p. 106.)

¹⁵⁹ LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre
<https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte>

demand and multinational companies operations involved into the Honduran political and economic system contribute in the crime spread in the country.

Consequences of the direct actions by State and Non- State actors

When Non-State actors are concerned we can observe a lot of harassment against the defenders in both regions, Latin America and Europe. As well as "Legal forums are increasingly being used to silence defenders, particularly those who oppose large-scale development projects and the actions of companies. The use of strategic litigation against public participation lawsuits silences defenders, effectively denying them their rights to freedom of expression and participation in public affairs. Defenders require support in their defense against such lawsuits, the financial and psychological burdens of which are often so great that they **distract and demobilize defenders**."¹⁶⁰

Conclusions on the retributions by State and Non-State actors against the defenders

Hostile environment against the defenders like media harassment, marginalization, criminalization by introduction of hostile legislation and introduction to silence the defenders, especially with low level of protection leads to more cases of violence against the defenders and their judicial harassment.

In other words, if a government stigmatizing and criminalizing the defenders by laws can cause more critics and violence coming from the citizens of the country, because people would not trust the activists and despise them (as it is the case in Russia). Then, judicial harassment of the defenders can lead to the bigger indifference and even bigger amount of inaction to protect the defenders accompanied with more violence.

To cut a long story short, all the 3: hostile environment, lack of actions and harassment, violence are interrelated:

Hostile environment + no protection = more violence and more judicial harassment -> even more hostile environment and even less protection and even more legal abuse and violence. More violence -> the last step before murders

In Europe the cases of killings and violence are quite rare. Nonetheless, media harassment of the defenders is present quite often. Especially in countries not being parties to Aarhus Convention, like Russia, for example.

Stigmatization and criminalization of the defenders by new laws is very efficient in Russia. Russian government¹⁶¹, Russian media are discrediting the defenders, by stigmatizing them,

¹⁶⁰ §64, UNGA, A/71/281

¹⁶¹ See the press conference 19 December 2013, Putin: protection of nature should not become an instrument of blackmail, (Путин: защита природы не должна становиться инструментом шантажа) Translated from russian: "**Often, unfortunately, this activity so-called environmental, used for ignoble purposes of blackmail, pumping money from companies**" ("Часто, к сожалению, эта деятельность экологическая, используется в неблагородных целях шантажа, выкачивания денег из компаний"), <https://www.vesti.ru/doc.html?id=1169025#>

so people are as minimum skeptical about the defenders, which can lead to violence. As it was previously mentioned, the effect from hostile legislation related to the right of assembly is that there are no assemblies and demonstrations and consequently there is no need to use force excessively to stop the protesters because there are no protesters, except for single-person pickets. Detentions and judicial harassment are the most common forms of retribution in Russia.

In America, it seems the most common retribution types in the USA are excessive use of force arrests and charges. We did not find cases of killings and violence against the defenders from Non-State actors. Nonetheless, in Latin America: all kinds of retributions are broadly present, from both Non-State and State actors who sometimes are interrelated. Thus, Latin America is the most dangerous region for environmental defenders. Hopefully, with entering into force of the Escazu Agreement, the degrading situation of non-protection of the defenders can be improved. But for now:

"Latin American and Asia have been the most hostile regions for environmental human rights defenders. In the last five years, of the 137 communications, 48 per cent concerned the Americas, the most dangerous area. Those promoting rights in relation to the extractive and mining industries, palm oil cultivation and deforestation proved to be most at risk (27 communications). The largest number of communications concerned Honduras (11), Mexico (10), Brazil (9) and Peru (8). In the vast majority of the fatal cases, the victims had previously reported threats and intimidation, but they received no adequate protection despite a prominent decision by the Inter-American Court of Human Rights (Kawas-Fernández v. Honduras, judgment of 3 April 2009) [the judgment dates 4 February 2008]¹⁶² affirming the State duty to respect, protect and fulfill the rights of defenders, as well as to conduct serious and effective investigations of any violations against them, thus preventing impunity"¹⁶³

So, the lack of due diligence and failure to protect the life of the environmental defenders is the most frequent case scenario in Latin American region. And one can see it clearly by looking at the number of Inter American Human Rights Commission Resolutions connected to precautionary measures of the States to protect the defenders from 2014 to 2017. All the 15 resolutions call the States to take the necessary measures to protect the life and personal integrity of environmental defenders, because they have been targets of threats and acts of harassment and violence by Non-State actors. Most of the resolutions are addressed to the Nicaragua (3), Honduras (3), Mexico (3), Peru (2), Colombia, Paraguay and Chile. The resolutions are connected to opposition by indigenous communities, journalists, members of NGOs and civil society of mining, land disputes and construction projects, deforestation, hydroelectric projects and waste dumping from oil exploration.¹⁶⁴

On the subject of judicial harassment of the defenders by States, Inter-American Commission on Human Rights in its report about Criminalization of the Work of Human Rights Defenders

¹⁶² IACHR, *Kawas-Fernández v. Honduras*, judgment of 4 February 2008, <http://www.cidh.oas.org/demandas/12.507%20B%20J%20Kawas%20Honduras%204%20febrero%202008%20ENG.pdf>

¹⁶³ §34, UNGA, A/71/281,

¹⁶⁴ See the resolutions in the Annex II.

says that the misuse of criminal law "not only interferes with their work in defending and promoting human rights, but also **affects the leading role they have in the consolidation of democracy and the rule of law.**" ¹⁶⁵

*"The obligation of States to protect includes both negative and positive aspects. On the one hand, States must refrain from violating human rights. On the other hand, States should act with due diligence to prevent, investigate and punish any violation of the rights enshrined in the Declaration. In other words, States should prevent violations of the rights of defenders under their jurisdiction by taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators; and providing defenders with remedies and reparation."*¹⁶⁶

¹⁶⁵ §1, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, OEA/Ser.L/V/II., Doc. 49/15, 31 December 2015,

¹⁶⁶ 2011 Report of the Special Rapporteur on HRDs, para. 10.

See also 2016 Report of the Special Rapporteur on HRDs, para. 11; Inter-American Court of Human Rights, Case of Kawas-Fernández v. Honduras, Judgment of April 3, 2009, para. 74, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

Types of conflicts

If we look at the number of environmental conflicts in the world on the **Map of Conflicts**¹⁶⁷ we can definitely say that the majority of conflicts are connected to different types of energy production, like nuclear plants, fossil fuels extraction and mining, and also conflicts related to the agriculture and industries. Not all of them lead to killings of the defenders. But still one can see clearly the correlation between the number of harassments and other violations against defenders and the areas of their activities:

First of all, based on the number of communications to the Special Rapporteur sent in the last five years, one can see, that "the extractive industry was the sector with the most violations (54 communications), while 37 communications referred to land rights, such as territorial disputes and the right to ancestral lands; 27 communications referred to construction projects such as hydroelectric dams, oil and gas pipelines and aqueducts. Other areas in which environmental human rights defenders faced threats included development policy, fisheries, forced evictions, nuclear power and environmental pollution."¹⁶⁸

Environmental conflicts that caused harassment, violence and killings of environmental defenders could be divided into 3 main categories proportionate to the numbers of violations: 1) Energy (including extraction, mining and dam construction) 2) Agribusiness 3) Logging, poaching and others.

It should be mentioned, that between 2002 and 2013 "At least 661 – over two thirds – of the known killings took place in the context of conflicts over the ownership, control and use of land, in combination with other factors. In the remainder of cases, land conflicts were linked to other issues such as mining operations, pollution or deforestation."¹⁶⁹ "Globally, competition for land is rapidly intensifying. The World Bank has reported a fourfold increase in global large-scale farmland investments between 2001 and 2009"¹⁷⁰.

1) Energy production (Mining and extractive industries, nuclear and dam construction)

According to the Global Witness, the increase in mining activities in and around areas of indigenous communities was the reason of many land related conflicts. "*At least 150 killings have taken place in the context of struggles with mining and extractive projects. Many of these have taken place during protests. In Peru, for example, between 2002 and 2013 there were 46*

¹⁶⁷ See the map of conflicts on Environmental Justice Atlas <https://ejatlas.org/>
Among 2518 cases reported [7 August 2018], 1406 conflicts took form of street protests, and 1115 took a form of law suits.

¹⁶⁸ §37. A/71/281 , 3 August 2016, UNGA Situation of Human Rights Defenders, Note by Secretary General, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf>

¹⁶⁹ page 13, Deadly environment, the dramatic rise in killings the environmental and land defenders, 2002-2013, Global witness report, 2014

<https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>

¹⁷⁰ page 13, Deadly environment, the dramatic rise in killings the environmental and land defenders, 2002-2013, Global witness report, 2014

<https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>

See also: Deininger, K. and Byerlee, D. (2011). Rising global interest in farmland: can it yield sustainable and equitable benefits? Washington, DC: World Bank. Available from:

http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf

extrajudicial killings of demonstrators at mining sites around the country. [...] In Colombia in 2012 and 2013, seven anti-mining activists were killed in connection with their resistance to mining and extractive companies operating on indigenous lands."¹⁷¹

In 2015 Global Witness documented 185 killings of land and environmental defenders. Mining and extractive industries were linked to the most killings in 2015 with 42 cases across 10 countries, which represents an almost 70% increase from 2014. The deadliest countries for anti-mining activists and the defenders are Peru (11), Philippines (11) and Colombia (7).¹⁷² Also, human rights organizations in Peru have documented hundreds of social conflicts and cases of criminalization against activists related to such operations.¹⁷³

There is no data on killings related to dams' construction conflicts from 2002 -2013 in the report of Global Witness. But in 2015 *"The growth in energy demand has driven the construction of large hydroelectric dam projects in developing countries, leading to conflicts with local communities. They were opposing the threat of hydroelectric dams displacing villages, disrupting farmers' irrigation, and drowning fertile valleys."*¹⁷⁴ But in 2015 among 185 killings 15 killings were linked to the construction of hydroelectric dams and irrigation projects in Honduras and Guatemala and Mexico¹⁷⁵.

2) Agribusiness

In 2015, among 185 killings 20 were linked to land grabbing for agribusiness (especially in Asia) but also in Latin America, for example, 7 of them took place in Brazil.¹⁷⁶ *"The expansion of agribusiness across developing countries is being supported by governments, donors and investors claiming that it can drive economic growth and food production. [...] Large ranches for breeding livestock were also linked to several cases in Brazil where gunmen hired by*

¹⁷¹ page 14, Deadly environment, the dramatic rise in killings the environmental and land defenders, 2002-2013, Global witness report, 2014

<https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>

¹⁷² page 8, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

¹⁷³ page 16, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

¹⁷⁴ page 16-17, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

¹⁷⁵ page 8, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

<https://www.globalwitness.org/en/campaigns/environmental-activists/dangerous-ground/>

"For example, last year in Honduras three indigenous activists were killed related to their opposition to the Los Encinos dam whose concession was fraudulently approved. Guatemala has seen serious conflicts in recent years because of the construction of hydroelectric dams. In Barillas, northern Huehuetenango, indigenous Mayan leaders have been killed, threatened and criminalized because of their opposition to numerous dams planned in the region 118 On 24 March 2015, community leader Pascual Pablo Francisco, disappeared from his home in Barillas. Three days later, his body was found in a ditch with signs of torture 120 The same day as Pascual's disappearance two other leaders, who actively opposed the dams, were detained in Guatemala City."

page 16-17, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

¹⁷⁶ page 8, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

landowners were suspected of killing land and environmental defenders.¹⁷⁷ By the year of 2017 the number of killings related to agribusiness increased to 46, which is even more than number of killings related to energy (40 killings - mining and extractives and 4 killings are related to dams construction).

3) Illegal logging, deforestation, poaching and others

Globally, from 2002-2013, 94 known killings and four enforced disappearances were connected to deforestation and illegal logging. The Global Witness says that "*In 2013, Interpol announced it had arrested nearly 200 people and seized around US\$8 million worth of illegal timber in a major international crackdown on illegal logging and timber trafficking in Central and South America.*"¹⁷⁸

Plus, in 2015, 15 killings environmental defenders were linked to the logging industry: "*The logging trade operates in remote areas with weak law enforcement and often works hand in hand with corrupt local officials. Loggers are encroaching into previously untouched areas in the search for high-value timber and coming into conflict with local communities. Rates of deforestation increased last year in key countries, notably Brazil, with illegal logging a main driver in forest loss.*"¹⁷⁹ While in 2017 the number of killings increases even more: 23 killings related to logging and 23 related to poaching.¹⁸⁰

¹⁷⁷ page 18, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

¹⁷⁸ page 14, Deadly environment, the dramatic rise in killings the environmental and land defenders, 2002-2013, Global witness report, 2014

<https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/>

See also Interpol Latin American countries in first INTERPOL operation against illegal logging, [online] (2013), available at <http://www.interpol.int/News-and-media/News/2013/PR017>

¹⁷⁹ Page 18-19, Report On dangerous Ground: 2015's deadly environment: The killing and criminalization of land and environmentaldefenders worldwide, Global Witness, June 2016,

¹⁸⁰ <https://www.globalwitness.org/en/campaigns/environmental-activists/their-faces-defenders-frontline/#chapter-1/section-1>

Conclusions

What are the reasons behind the retributions?

1) Legal reasons

First of all, the absence of clear definitions can disturb the efficient protection of the defenders. For example, the term harassment is used in many documents, but definition of harassment remains unclear. In this study we tried to give the clear definitions of all the subjects, but we faced such difficulties as for example: The existing definition of judicial harassment given by OSCE is unclear. Because giving the definition of judicial harassment and then saying about judicial harassment and criminalization (whose definition is not given) in the next paragraph can be viewed as unclear definition, which as a consequence can disturb the efficient protection of the defenders.

-> So, the first reason is lack of clarity and coherence of the definitions.

Also, there is no model law on the recognition and protection of the human rights defenders by neither United Nations nor other international organizations. Because, for the defenders to be protected they have to be recognized as such by the States, instead of being stigmatized as eco-terrorists and criminalized in every possible way. For the recognition we need clear definitions of the defenders, especially environmental defenders. We found only the 'Model National Law on the Recognition and Protection of Human Rights Defenders' that ISHR (International Service for Human Rights) organization developed in 2016 in collaboration with over 500 defenders from every region.¹⁸¹ Actually, Special Rapporteur on human rights and the environment refers to this model law in §11 of the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59¹⁸².

Nonetheless, there is no global instrument addressing the protection of the defenders. There are only 2 regional instruments: Aarhus Convention and Escazu Agreement (not yet in force). All other existing instruments are the soft law and case law - which play a big role in recognition of the defenders, but not in their protection (as we see only the growing amount of court decisions about lack of due diligence of the States to protect the defenders and investigate crimes against them). So, looking at growing amount of killings and other types of harassment of the defenders (especially in Latin America) it seems like existing legal mechanisms cannot effectively protect the defenders. Hopefully the entry into force of the Escazu Agreement could make a change.

¹⁸¹ The 'Model National Law on the Recognition and Protection of Human Rights Defenders', ISHR <http://www.ishr.ch/news/model-law>

¹⁸² page 9, §11, Annex, Framework principles on human rights and the environment, Human Rights Council, Thirty-seventh session, 26 February–23 March 2018, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59

-> **No global instrument on the protection of the defenders. Only 2 regional instruments (only 1 into force).**

Also, the effectiveness of the existing legal instruments seems to be low. Of course, we do not know about national legislative mechanisms of protection, but again, growing numbers of harassments and killings show that the effectiveness of existing legislation and protection instruments is low.

-> **Low effectiveness of the existing legal instruments of protection.**

And of course, probably prior to the recognition of the environmental human rights defenders there is a **need in recognition of the human right to a safe, healthy and ecologically-balanced environment** first of all. Because the recognition of this right would influence the recognition of the environmental human rights defenders and change their status. Even though more than 100 countries recognize the human right to a healthy environment in their constitutions formulated in different ways¹⁸³, there is no international agreement that would explicitly recognize the right to the healthy environment. For example, the African Charter on Human and Peoples' Rights recognizes the right of peoples to "a general **satisfactory environment** favorable to their development." (art. 24), but not a safe, healthy and ecologically-balanced environment. So, the definitions are different and there is no uniformed formulation of this right. Though a uniformed formulation and formal recognition of the right to the healthy environment would permit the better protection of the defenders. And not only John H. Knox tells about that, but also the media and the civil society tell about the need in the recognition of the human right to a safe, healthy and ecologically-balanced environment.¹⁸⁴

-> **No recognition of the human right to a safe, healthy and ecologically-balanced environment and as consequence no recognition of the environmental defenders.**

2) Economic reasons

Demand

Level of protection of the defenders in Europe is obviously higher than in other regions. And the harassment level is lower, as well as there is less violence and less killings. Is the reason the Aarhus Convention? But for some countries like Romania or Belarus it is not really working well enough.

¹⁸³ See §11, page 4, HUMAN RIGHTS AND THE ENVIRONMENT: REGIONAL CONSULTATION ON THE RELATIONSHIP BETWEEN HUMAN RIGHTS OBLIGATIONS AND ENVIRONMENTAL PROTECTION, WITH A FOCUS ON CONSTITUTIONAL ENVIRONMENTAL RIGHTS, 23-24 January 2014, Johannesburg, SOUTH AFRICA, Convened by the United Nations Independent Expert on human rights and the environment with the United Nations Environment Programme, the Office of the High Commissioner for Human Rights, and the Legal Resources Centre of South Africa

See also: See David Richard Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press 2012), p. 59.

¹⁸⁴ The Guardian, *UN moves towards recognizing human right to a healthy environment*, by Jonathan Watts, 9 March 2018 <https://www.theguardian.com/environment/2018/mar/09/un-moves-towards-recognising-human-right-to-a-healthy-environment>

The reason is also the high demand on resources and energy. Plus, the production that moved from Europe to other countries causing the environmental conflicts there.

Illegal logging is related to the demand in the timber. While Europe is protecting their forests and creating the protected areas, they import the timber from the conflict countries.¹⁸⁵ To reduce the risks of the illegal timber imports, EU introduced the European Union's timber regulation¹⁸⁶, but at the same time, to import the timber legally and accordingly to the regulation, they ask poor countries like Ukraine to abandon their ban on rare and not worked wood export as a condition for financial help¹⁸⁷, because Ukrainian protectionism of their forest (which is disappearing very fast¹⁸⁸ from Carpathian mountains that is actually a protected area), is contrary to free trade agreement. The more there is European demand in Ukrainian forest (legal and illegal which brings even more profit), the more logging there will be in Ukraine and the more protests will take place¹⁸⁹, then it can lead to harassment and further violence.

Thus we go back to the problem of the delocalization of the pollution and other environmental issues like demand for resources from rich countries towards the poor countries instead of solving the problems. Rob Nixon discussed this problem in his book "Slow violence and the environmentalism of the poor": *"offloading rich-nation toxins onto the world's poorest continent would help ease the growing pressure from rich-nation environmentalists who were campaigning against garbage dumps and industrial effluent that they condemned as health threats and found aesthetically offensive."*¹⁹⁰

While Nixon was talking about "slow violence" that comes from the spread of doubts and "scientific uncertainty" as an issue of the debate in order to influence the public opinion and to stop the decision making and maintain inaction¹⁹¹, environmental defenders around the world do act and they are facing not a "slow violence", but the real one. While the legal system in the rich countries protects the environment as well as the defenders much more efficiently, the weak implementation legal system of the developing countries as well as poverty,

¹⁸⁵ <https://www.forest-trends.org/blog/timber-imports-conflict-countries-eu-increasing/>

¹⁸⁶ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0995>

See also: http://ec.europa.eu/environment/forests/timber_regulation.htm

¹⁸⁷ REPORT on the proposal for a decision of the European Parliament and of the Council providing further macro-financial assistance to Ukraine (COM(2018)0127 – C8-0108/2018 –

2018/0058(COD))<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2018-0183+0+DOC+XML+V0//EN&language=en>

See also: Brussels, 9.3.2018, COM(2018) 127 final 2018/0058 (COD), Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL providing further macro-financial assistance to Ukraine {SWD(2018) 66 final}

¹⁸⁸ <https://strana.ua/news/108811-les-kruhljak-pochemu-evropa-ne-dala-nam-kredit-i-trebuetsnjamoratorij-na-eksport-kruhljaka.html>

¹⁸⁹ <https://ru.tsn.ua/kyiv/protest-protiv-vyrubki-lesa-kievlyane-zablokirovali-dorogu-na-vyshgorod-896568.html>

¹⁹⁰ page 2, Rob Nixon, "Slow violence and the environmentalism of the poor" Harvard University Press, Cambridge, Massachusetts, and London, England 2011, 341 pages

¹⁹¹ page 39, Rob Nixon, "Slow violence and the environmentalism of the poor" Harvard University Press, Cambridge, Massachusetts, and London, England 2011, 341 pages

corruption and other related issues made the harassment related to the consumption move towards the poorer countries.

So, EU must review their investment policy in the developing countries to reduce crimes against environment and the defenders. As well as the investors and International Financial Institutions should stop investments in the projects leading to violence¹⁹².

Which leads us to another question of corporate social responsibility (CSR) which seems to be good in theory, but on practice it is mostly about "green washing" and not about ethics and respect of human rights.

There are a lot of CSR models like UN Global Compact, Montreal Carbon Pledge, the Equator Principles, the OSCE Principles etc. that companies can join under a voluntary commitment, so there is no punishment planned on international level.

The engagement of the responsibility of the companies and banks investing in dirty projects that violates human rights is another big problem.¹⁹³ Let's take an example of the World Bank investments. There are many that are connected to the human rights violations¹⁹⁴. For example in the case of the murder of an environmentalist Carlos Escaleras¹⁹⁵ the Bank gave the loan to the Miguel Facussé's new African palm processing plant - Corporacion Dinant.

¹⁹² See the report on investments in dirty fossil fuel projects: Sierra Club, Major Banks Continue to Invest in Dirty Fossil Fuel Projects Despite Clean Energy Pledge

<https://www.sierraclub.org/press-releases/2017/09/major-banks-continue-invest-dirty-fossil-fuel-projects-despite-clean-energy>

See also: Banking on Climate Change report, http://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/19540/attachments/original/1525099181/Banking_on_Climate_Change_2018_vWEB.pdf?1525099181

¹⁹³ For ex: What is CSR is concerned, the French law of March 27, 2017 introduces the civil penalties for failure to develop a vigilance plan. The law responds to the need to repair the damage done to individuals as a result of the violation of human rights and the environment. The law introduces, in Article L.225-102-4 of the French Commercial Code, the obligation to elaborate a vigilance plan and to implement it in the context of the activities of the parent company, to all the subsidiaries and companies it controls.

The Article L. 225-102-4.-I. of French Commercial Code says that any company that employs, at the end of two consecutive financial years, at least five thousand employees within it and in its direct or indirect subsidiaries whose head office is located in France, or at least ten thousand employees in France. Within its direct and indirect subsidiaries, whose head office is located in France or abroad, draws up and effectively implements a vigilance plan.

(Article L. 225-102-4.-I. Code de Commerce "Toute société qui emploie, à la clôture de deux exercices consécutifs, au moins cinq mille salariés en son sein et dans ses filiales directes ou indirectes dont le siège social est fixé sur le territoire français, ou au moins dix mille salariés en son sein et dans ses filiales directes ou indirectes dont le siège social est fixé sur le territoire français ou à l'étranger, établit et met en œuvre de manière effective un plan de vigilance.")

The causal link between the failure to apply the Vigilance Plan and the damage is difficult to demonstrate, especially if the parent company is located on a different country than its subsidiaries and the victim.

¹⁹⁴ See : annual reports of the World Bank Compliance Mechanism

<http://www.worldbank.org/en/projects-operations/products-and-services/grievance-redress-service>

¹⁹⁵ See also the recent IACHR Court decision: REPORT NO. 43/14, CASE 12.492, CARLOS ESCALERAS MEJÍA AND FAMILY, HONDURAS, JULY 17, 2014

<http://www.oas.org/en/iachr/decisions/court/2017/12492FondoEn.pdf>

-> "international responsibility of the Republic of Honduras (hereinafter "the Honduran State," "Honduras," or "the State") arising from the murder of the environmental activist Carlos Escaleras Mejía on October 18, 1997, and from the failure to investigate, prosecute, and punish all the individuals involved therein."

After an internal World Bank investigation that says the Bank violated its own social and environmental rules in approving a \$30m loan to a Honduran palm oil magnate allegedly related to the deaths of dozens of land activists.¹⁹⁶ The loan was cancelled. But the problem remains: first the banks invest in the potentially conflict project and after several murders and compliances they start to investigate.

-> Investment policy of the developed countries and multinational corporations and financial institutions contribute to augmentation of environmental conflicts and increase in crimes against environment and the defenders in developed countries.

Land grabbing is mostly connected either to fossil fuels or to cocaine production. As far as cocaine production is concerned, the article titled "*The role of land property rights in the war on illicit crops: Evidence from Colombia*"¹⁹⁷, by taking an example of Colombia shows the link between land related conflicts and cocaine production:

*"The 1980s witnessed the rise of coca cartels, in a country torn by political conflict with unresolved historical land issues. Although Colombian drug dealers were initially drug intermediaries rather than producers, during 1990s, coca crops rapidly spread across all Colombian territories. Several facts explain this expansion. First, due to the effective policies to counter drug production in Peru and Bolivia, Colombian drug dealers were left with no other option than to find new locations for their coca growing and producing activities. Second, as demand for cocaine grew, which increased potential profits of this illicit industry, illegal groups began participating actively in the production of coca crops. The strategy of these groups was to use most of the territories under their control for coca production, where small-scale coca growers were obliged to sell their output to these groups exclusively in return for protection and technical support. The expansion of coca crop fields occurred primarily on the agricultural frontier, where the lack of law enforcement, the weak definition of land property rights, the abundant natural resources and the high prevalence of poverty generated a perfect environment to establish the coca production industry, which is based principally on small coca growers."*¹⁹⁸

¹⁹⁶ CAO Cases, Honduras / Dinant-01/CAO Vice President Request, 2012

https://web.archive.org/web/20140116003745/http://www.cao-ombudsman.org:80/cases/case_detail.aspx?id=188

See also: Audit slams World Bank agency: Investigation says loan to Honduran palm oil magnate, alleged to be linked to activist deaths, violated bank's rules.

Aljazeera<https://web.archive.org/web/20140112230828/http://www.aljazeera.com/indepth/features/2014/01/audit-slams-world-bank-agency-201411274722345113.html>

¹⁹⁷ Juan Carlos Muñoz-Mora, Santiago Tobón, Jesse Willem d'Anjou, **The role of land property rights in the war on illicit crops: Evidence from Colombia** *World Development*, Volume 103, March 2018, Pages 268-283, <https://www.sciencedirect.com/science/article/pii/S0305750X17303455>

See also: **Peruvian villagers face murder and intimidation from land traffickers**, *The Guardian*, <https://www.theguardian.com/environment/2018/sep/03/peruvian-villagers-face-and-intimidation-from-land-traffickers>

¹⁹⁸ Page 271, Juan Carlos Muñoz-Mora, Santiago Tobón, Jesse Willem d'Anjou, **The role of land property rights in the war on illicit crops: Evidence from Colombia** *World Development*, Volume 103, March 2018, Pages 268-283, <https://www.sciencedirect.com/science/article/pii/S0305750X17303455>

As the demand for cocaine is growing, who is consuming it? Consumption of cocaine in Europe: according to the European Monitoring Centre for Drugs and Drug addiction, that published a study on drugs in wastewater in European cities¹⁹⁹ the top 10 cities with the highest rate of cocaine consumption are:

- 1) Barcelona, Spain,
- 2) Zurich, Switzerland,
- 3) Antwerp, Belgium,
- 4) St. Gallen, Switzerland,²⁰⁰
- 5) Geneva, Switzerland,
- 6) Bristol, UK
- 7) Amsterdam, Netherlands,
- 8) Basel, Switzerland,
- 9) Bern, Switzerland
- 10) Dortmund, Germany

So, either rich port cities like Amsterdam, Antwerp, Bristol and Barcelona or just rich cities, like St. Gallen, Bern, Zurich and Geneva.

At the end of the day it is all about basic economic concepts: supply and demand. And as Evo Morales said:

*"The best way to fight drug trafficking is to engage the people. Then there will not be zero coca, but neither can there be unfettered coca cultivation, because a problem does exist. As long as there is market demand for cocaine, the sacred, natural leaf, the medicinal coca leaf will always be associated with this illegal problem. **The root cause of drug trafficking is demand, because the developed countries are not stopping the demand for cocaine.**"²⁰¹*

-> **Delocalization of the pollution to developing countries.**

-> **High demand on resources, energy and cocaine by developed countries causing the conflicts in developing countries.**

2) Political reasons

¹⁹⁹ European Monitoring Centre for Drugs and Drug addiction, Wastewater analysis and drugs — a European multi-city study (Perspectives on drugs), EMCDDA, Lisbon, March 2018, http://www.emcdda.europa.eu/system/files/publications/2757/POD_Wastewater%20analysis.pdf
See also: <http://www.emcdda.europa.eu/topics/pods/waste-water-analysis>
<https://www.rts.ch/info/suisse/9395866-la-cocaine-dans-les-eaux-usees-a-augmente-de-60-en-un-an-a-geneve.html>

²⁰⁰ M. Vikaridis, A Saint-Gall, l'usine qui forme **l'élite de la nation**, <http://www.bilan.ch/economie-les-plus-de-la-redaction/saint-gall-lusine-qui-forme-lelite-de-la-nation>

²⁰¹ Al Jazeera 18 Oct 2014 Evo Morales: A Bolivian idol, Bolivia's president talks about the country's ongoing socio-economic transformation and his third term in office.

<https://www.aljazeera.com/programmes/talktojazeera/2014/10/evo-morales-bolivian-idol-201410171100284921.html>

See also: MARCELO ALZAMORA, Bolivian President Evo Morales' Crusade: De-Vilifying the Coca Leaf <http://www.drugpolicy.org/blog/bolivian-president-evo-morales-crusade-de-vilifying-coca-leaf>

Democracy

Citizens have their democratic rights to protest and the right to public protest is fundamental to democracy and it can be criteria for democracy. So, we suppose, that in the countries with the higher level of democracy there are less cases of the harassment, excessive use of force and criminalization of the defenders. In more democratically developed countries there is less harassment or the harassment is more subtle: media, stigmatization, excessive use of force during the peaceful manifestations. But not many detentions, arrests, imprisonment and of course killings.

A. Taylor and M. D. Bonner are also highlighting the link between the democracy and the level of harassment of the defenders: "...how they [the State actors] manage protests and how their actions are held to account are important indicators of the quality of democracy."²⁰²

Thus environmental democracy (and the level of general democracy in a country) is the key factor to the problem. Because, as we could see, the rich countries with higher level of democracy are able to provide better protection of the defenders (as it is the case of EU countries) than developing countries (whose economic development level is dependent on resources) and/or countries with low level of democracy.

Or one might argue, that in case of developed countries the democracy level does not mean anything, because as it was mentioned above, some people suppose that in the USA is rather a plutocracy State than a democratic one, or it might be called kleptocracy State as well, along with Russia. In this assumption, but considering other factors (like higher and efficient crime investigation level, than in Latin America where impunity is nearly a norm, considering IACHR resolutions and Court decisions on lack of protection and failure to investigate the crimes) the ways of silencing the defenders is less straightforward than violence and killings, but more sophisticated as judicial harassment, like in USA. In Latin American countries the level of the democracy is different, and the types of retributions are different, depend on the political system.

If we take an example of socialist Bolivia, we can see that the level of violence and killings from Non-State actors is low, just because there is no private sector in their economy. But in other countries, like Honduras, that could be even called a Mafia State, the State actors are involved in violence and killings of the defenders and one cannot expect the justice to protect the defenders.

Thus:

-> parties to Aarhus Convention: in the EU - high level of democracy, better implementation of the rule of law, less harassment and less violence, only sometimes sophisticated media harassment. Outside of EU the situation is different, like Belarus - there is low level of democracy in general and a lot of detentions and judicial harassment.

²⁰² Page 4, Taylor, A and Bonner, M D. Policing Economic Growth: Mining, Protest, and State Discourse in Peru and Argentina. Latin American Research Review. 2017; 52(1), pp. 112-126. DOI: <https://doi.org/10.25222/larr.63>

-> Russia: low level of democracy and no right to assembly, the corruption level is important: no excessive use of force, but more media harassment, more violence, arrests and detentions and judicial harassment.

-> USA: high level of democracy in words, but in fact there is increase in business lobbying²⁰³: a lot of excessive use of force, arrests, detentions, and more sophisticated judicial harassment.

-> Latin America: low level of democracy and bad implementation of the rule of law or unwillingness: all types of retributions present, especially violence and killings (depends on a country).

After entry into force of Escazu Agreement -> hopefully less harassment and more environmental democracy, but considering the Mafia States or kleptocracy states cases where there is no democracy in general, may be the first step is general democracy establishment.

-> The lower the level of democracy, the higher the level of harassment, violence and killings.

So, after all this, the question arises if there is real democracy in the countries with lower level of harassment or there is only "simulative democracy"²⁰⁴ and the more sophisticated judicial harassment of the defenders?

Reasons of resignation of French Minister of Environment Nicolas Hulot are the following:

"It's symptomatic of the presence of lobbyists inside the circles of power. A problem inherent to democracy. Who has the power? Who governs?"²⁰⁵

At the end of the day is it the capitalism and free trade agreements that are the roots of all evil? At some point it might be and some authors say that. *"In the 1970s, intellectuals like Jürgen Habermas and Claus Offe still conceptualized the then perceived crisis of democracy as a legitimacy crisis of capitalism. They assumed that capitalism, being unable to reconcile its logic of profit maximization with the democratic pressure for social justice, participation and inclusion, would – by draining the redistributive welfare state of resources – incrementally destroy its own basis of social legitimacy and eventually collapse."*²⁰⁶ While the capitalism is blamed for the increasing development, are there other political models that are better? Is the socialist model better and are there no violations of human rights? If we look at the Bolivian example, we will see that the poverty and need for economic growth anyway

²⁰³ The Atlantic, **How Corporate Lobbyists Conquered American Democracy**, by LEE DRUTMAN, April 20, 2015, <https://www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/>

²⁰⁴ *Erosion Or Exhaustion Of Democracy? The Challenge For Social Europe*, by Ingolfur Blühdorn on 18 November 2014, <https://www.socialeurope.eu/exhaustion-of-democracy>

²⁰⁵ "C'est symptomatique de la présence des lobbyistes dans les cercles du pouvoir. C'est un problème de démocratie. Qui a le pouvoir ? Qui gouverne ?" https://www.lemonde.fr/politique/article/2018/08/28/demission-de-nicolas-hulot-c-est-un-probleme-de-democratie-qui-a-le-pouvoir_5346956_823448.html

²⁰⁶ *Erosion or Exhaustion of Democracy? The Challenge For Social Europe*, by Ingolfur Blühdorn on 18 November 2014, <https://www.socialeurope.eu/exhaustion-of-democracy>

contributes to the increasing development controlled by the State, and this development contributes to the violations of their own Mother Earth law and violations of human rights as well.

So, at the end of the day, the problem here is not capitalism vs. socialism, but the way we perceive development and that we make it equal with a higher level of production and consumption that requires a higher level of natural resources extraction and exploitation.

-> Business lobbying involvement in politics

4) Socio-economic reasons

Consumerism

The word "consume" actually means "to destroy" or "use up". In 1891 the economist George Gunton explained the connection of the "consumer society" and the social control.²⁰⁷ Later, during the Great Depression times in the USA, John Keynes made a link of the decrease in consumer demand and the unemployment that leads to a decrease in the incomes of the population. And this, in return, accelerates the further decline in consumer demand for goods and services. So, to have a stable economy there is a need for spending money, which basically means constant consumerism, or at least spare time could be a better alternative to consumerism. Here we are talking not only about consumption of goods, but also excessive food consumption (cause of obesity) - especially sugar and beef: *The consumption of these have not historically been as high as they are today. Yet, sugar plantations during colonial times, for example, was a major employer of slaves and continues to be a major contributor to environmental degradation, poverty, health costs and all manner of wasted and diverted wealth. Cattle raising has often led to clearing of rainforests, such as parts of the Amazon — not to feed local people however, but for fast food restaurants, such as McDonalds. Such demands then serve to meet the needs of producers.*"²⁰⁸

Since the '70s we observe the critics of consumerism. As Jimmy Carter said in his famous speech "A Crisis of Confidence" made in 1979, "We can't go on consuming forty percent more energy than we produce." [...] "We've discovered that owning things and consuming things does not satisfy our longing for meaning. We've learned that piling up material goods cannot fill the emptiness of lives which have no confidence or purpose." But it seems like since the '70s people are successfully filling the emptiness with things. "Although most consumption activities have an indirect effect on the environment, environmental problems in developed countries have been associated mostly with production in the industry, agriculture, or energy sector"²⁰⁹.

²⁰⁷ George Gunton "Principles of Social Economics: Inductively Considered and Practically Applied, with Criticisms On Correct Theories", 1891

²⁰⁸ Effects of Consumerism, by Anup Shah, Global Issues, August 10, 2005, <http://www.globalissues.org/article/238/effects-of-consumerism>

²⁰⁹ p. 554, Bradley A. Harsch, Consumerism and Environmental Policy: Moving Past Consumer Culture, 26 Ecology L. Q. 543 (1999).

A recent study shows that "consumption is contributing to more than 60% of global Greenhouse gas (GHG) emissions and between 50% and 80% of total land, material, and water use."²¹⁰

If we follow the logic of sociologist and economist Thorstein Veblen "Conspicuous consumption" theory²¹¹, *"With the growth of settled industry, therefore, the possession of wealth gains in relative importance and effectiveness as a customary basis of repute and esteem [...] And it is even more to the point that property now becomes the most easily recognized evidence of a reputable degree of success as distinguished from heroic or signal achievement [...] The possession of goods, whether acquired aggressively by one's own exertion or passively by transmission through inheritance from others, becomes a conventional basis of reputability."*²¹² So, Veblen says that *"since the usual basis of self-respect is the respect accorded by one's neighbors. [...] So as soon as the possession of property becomes the basis of popular esteem, therefore, it becomes also a requisite to the complacency which we call self-respect."*

Seems like for many people in many countries "keeping up with Jones" and gaining self-respect by consuming luxury or popular goods is still the issue, otherwise how to explain the demand in all kind of status symbols starting with jaguar teeth or ivory in China and finishing with brand new phones and luxury goods all around the world.

If since 19th century nothing changed and Veblen theory is still applicable to our society, is environmental consumerism the answer? According to a study, *"acting environmentally-friendly itself may feel good because this behavior can signal something positive about who you are"* because *"acting this way can be seen as moral behavior"* and *"acting environmentally-friendly feels good because it positively affects people's self-image"*²¹³. Even if some people are living according to the principle "keeping up with the Joneses" and they are more likely to buy eco-friendly products to foster a personal image of superiority, rather than because they actually care about the environment - it can be better than consumption of status symbols.

-> More consumption-> more energy production -> more conflicts -> more killings

So, can sustainable development be an answer? What is sustainable development? According to the Brundtland report:

²¹⁰ Diana Ivanova Konstantin Stadler Kjartan Steen-Olsen Richard Wood Gibran Vita Arnold Tukker Edgar G. Hertwich, Environmental Impact Assessment of Household Consumption, RESEARCH AND ANALYSIS, Volume 20, Issue 3, Special Issue: Linking Local Consumption to Global Impacts, June 2016, Pages 526-536,

First published: 18 December 2015 <https://doi.org/10.1111/jiec.12371>

²¹¹ Veblen, Thorstein (1899). The Theory of the Leisure Class. Project Gutenberg.

(available at: <http://moglen.law.columbia.edu/LCS/theoryleisureclass.pdf>)

²¹² Page 16, Veblen, Thorstein (1899). The Theory of the Leisure Class. Project Gutenberg.

(available at: <http://moglen.law.columbia.edu/LCS/theoryleisureclass.pdf>)

²¹³ Leonie A. Venhoeven, Jan Willem Bolderdijk, and Linda Steg, Why Acting Environmentally-Friendly Feels Good: Exploring the Role of Self-Image, Front Psychol. 2016; 7: 1846. Published online 2016 Nov 24. doi: 10.3389/fpsyg.2016.01846

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5121119/>

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

The Commission is sure that *"technology and social organization can be both managed and improved to make way for a new era of economic growth"*.²¹⁴ But are the economic growth and sustainable development really compatible? Economic growth means the increase in quantity (increase in GDP - sum of goods and services produced), and the development means the increase in quality of life.

The famous report *The limits to growth* by The Club of Rome distinguished five major trends of global concern: accelerating industrialization, rapid population growth, widespread malnutrition, depletion of nonrenewable resources, and a deteriorating environment. They made the conclusions that *"If the present growth trends in world population, industrialization, pollution, food production, and resource depletion continue unchanged, the limits to growth on this planet will be reached sometime within the next one hundred years."* (p. 23) As well as it highlights that *"the process of economic growth, as it is occurring today, is inexorably widening the absolute gap between the rich and the poor nations of the world."* (p. 44) Thus, the report urges about the need in transition from growth to *"sustainable state of global equilibrium"* (p. 180).

Many authors criticize the sustainable development concept saying that environmental protection and economic expansion contradict each other. Plus, *"one of the greatest failures of sustainable development is its lack of attention to excessive consumption in the West"*.²¹⁵ In the context of reduction of excessive consumption there is one interesting trend that appeared: Japanese minimalism. Influenced by the aesthetic of Japan's traditional Zen Buddhism, these minimalists oppose the consumerist society by decreasing the number of their possessions.²¹⁶ There are many other good initiatives like: Buy Nothing Day, Collaborative Consumption Ecovillages, Ethical Consumerism, Green Consumption, Simple Living, Slow Food Movement, Sustainable Consumption, Local Purchasing, Bioregionalism, Community-based Economics, Community Gardens, Farmers' Markets, Transition Town Movement etc.

²¹⁴ Report of the World Commission on Environment and Development: Our Common Future, Brundtland Commission

²¹⁵ See: Hilary Hove, Critiquing Sustainable Development: A Meaningful Way of Mediating the Development Impasse?, Undercurrent Volume I, No 1, 2004 <https://pdfs.semanticscholar.org/d3c4/8aa3a38490aa20844791e901af20c6185896.pdf>
See also: Escobar, A. (1995). Encountering development: The making and unmaking of the Third World. Princeton: Princeton University Press.

²¹⁶ Megumi Lim, Less is more as Japanese minimalist movement grows, LIFESTYLE, JUNE 20, 2016, <https://www.reuters.com/article/us-japan-minimalism/less-is-more-as-japanese-minimalist-movement-grows-idUSKCN0Z50VP>

At the end it is worth repeating John H. Knox, who says that three main contributory factors are behind the growing vulnerability of EHRDs:

- 1. Growing demand for the extraction and exploitation of natural resources;**
- 2. The lack of political power and legal recognition of the groups that are often most affected by this increasing demand; and**
- 3. Weak or corrupt legal institutions that create a culture of impunity.²¹⁷**

²¹⁷ John H. Knox, Environmental Human Rights Defenders: A global crisis, feb. 2017
<http://www.universal-rights.org/wp-content/uploads/2017/03/EHRDs.pdf>

Annex I

Comparison of the amendments to the Russian legislation concerning freedom of assembly with the French legislation

Amendments to Federal Law "On Assemblies, Rallies, Demonstrations, Processions and Picketing" were made in 2012 and 2014.

limitations to the right to manifest	France	Russia
<p>Illegal assembly:</p> <p>Organizations</p>	<p>Violation of the established procedure for organizing or holding an assembly:</p> <ul style="list-style-type: none"> - the fact of having organized a demonstration on the public road not having been the subject of a preliminary declaration; - the fact of having organized a demonstration on the public road having been prohibited under the conditions fixed by the law; - the fact of having made an incomplete or inaccurate declaration likely to deceive the object or the conditions of the projected event : <p>-> Article 431-9 Criminal Code : 6 months of imprisonment and 7500 Euros fine.</p>	<p>Violation of established procedure:</p> <p>Law 258-FZ 21 July 2014 amended Code on administrative offences art 20.2 :</p> <p>-> 10-20 thousand rubles fine or compulsory work for up to forty hours; on officials - from fifteen thousand to thirty thousand rubles; on legal entities - from fifty thousand to one hundred thousand rubles.</p> <p>Violation of notification procedure:</p> <p>Law 258-FZ 21 July 2014 amended Code on administrative offences art 20.2 :</p> <p>-> fine on citizens in the amount of twenty thousand to thirty thousand rubles, or compulsory work for up to fifty hours, or administrative arrest for up to ten days; on officials - from twenty thousand to forty thousand rubles; on legal entities - from seventy thousand to two hundred thousand rubles.</p> <p>Repeated commission of an administrative offense:</p> <p>Imposition of an administrative fine on citizens in the amount of one hundred</p>

		<p>and fifty thousand to three hundred thousand rubles [around 3700 Euros], or compulsory work for up to two hundred hours, or administrative arrest for up to thirty days; on officials - from three hundred thousand to six hundred thousand rubles; on legal entities - from five hundred thousand to one million rubles [around 12.500 Euros].</p> <p>Article 212.1 of the Criminal Code : Violation of the established procedure for organizing or holding an assembly rally, demonstration, procession or picketing, if this act was committed more than once, is punishable by a fine in the amount of 600 000 to 1 million rubles [around 12 500 Euros] or in the amount of the wage or other income of the convicted person for a period of 2 to 3 years , or compulsory work for up to four hundred and eighty hours, or corrective labor for a period of one to two years, or forced labor or imprisonment for a period of up to 5 years.²¹⁸</p>
Simple protesters	<p>As for the protesters, participating in an undeclared or even prohibited demonstration is not the subject of an offense until the police order them to disperse.</p> <p>However, participants in an illegal, even prohibited demonstration incur the sanctions of Article R610-</p>	<p>Amendments to Federal Laws number 258 FZ 2012 and 65-FZ, "On Assemblies, Rallies, Demonstrations, Processions and Picketing"</p> <p>Participants in public events are not entitled to:</p> <p>1) Hide one's face, including using masks, means of camouflage, other</p>

²¹⁸ Статья 212.1 УК РФ: "Нарушение установленного порядка организации либо проведения собрания, митинга, демонстрации, шествия или пикетирования, если это деяние совершено неоднократно, - наказывается штрафом в размере от шестисот тысяч до одного миллиона рублей или в размере заработной платы или иного дохода осужденного за период от двух до трех лет, либо обязательными работами на срок до четырехсот восьмидесяти часов, либо исправительными работами на срок от одного года до двух лет, либо принудительными работами на срок до пяти лет, либо лишением свободы на тот же срок."

	<p>5 of the Penal Code: "the violation of prohibitions or breaches of obligations enacted by the decrees and orders of police are punishable by the fine provided for first class contraventions "²¹⁹.</p> <p>Code penal Article R610-5: Violation of the prohibitions or failure to comply with the decrees and orders of the police are punishable by the fine for first-class offenses. -> up to 33 euro fine.²²⁰</p>	<p>items specifically designed to impede the identification of the person;</p> <p>2) Carry weapons, ammunition, piercing or cutting objects, other items that can be used as weapons, explosive devices, explosive, poisonous, poisonous, caustic, flammable substances, flammable and pyrotechnic substances or articles (except for matches and pocket lighters), objects (chemical materials) that can be used to make pyrotechnic products or fumes, combustible materials and substances, other substances, objects, products, including self-made and (clause 2 in the redaction of the Federal Law of July 21, 2014 No. 258-FZ)</p> <p>3) be in a state of intoxication. (Part 4 introduced by the Federal Law of 08.06.2012 N 65-FZ)</p> <p>-> 10-20 thousand rubles fine or obligatory work for the term up to forty hours.</p> <p>Amendments to Federal Law 65-FZ, 2012 "On Assemblies, Rallies, Demonstrations, Processions and Picketing" art 20.2 §7:</p> <p>The organization or holding of unauthorized demonstration on the territory of the nuclear installation, the radiation source or a storage facility for nuclear materials and radioactive substances, or actively participating in such public events, if this made it more difficult for employees to perform the said facility, the source or point of their</p>
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²¹⁹ «la violation des interdictions ou le manquements aux obligations édictées par les décrets et arrêtés de police sont punis de l'amende prévue pour les contraventions de 1ère classe».

²²⁰ La violation des interdictions ou le manquement aux obligations édictées par les décrets et arrêtés de police sont punis de l'amende prévue pour les contraventions de la 1re classe. Les montants des amendes forfaitaires pour les contraventions de 1ère classe sont les suivants: Amende forfaitaire simple : 11 Euros (et 17 Euros pour certaines infractions relatives aux stationnements depuis le 1er Août 2011). Amende forfaitaire majorée (après 45 jours) : 33 Euros

		<p>official duties, or created a threat to the safety of the population and the environment -</p> <p>-> 150- 300 thousand rubles fine or administrative arrest for a period of up to fifteen days; on officials - from two hundred thousand to six hundred thousand rubles; on legal entities - from five hundred thousand to one million rubles.²²¹</p> <p>Law 258-FZ 21 July 2014 amended Code on administrative offences: Art 6.1.</p> <p>Participation in an unauthorized assemblies, rally, demonstration, procession or picketing, which caused interference with the functioning of life support facilities, transport or social infrastructure, communications, pedestrian and / or vehicle traffic or citizens' access to living quarters or objects of transport or social infrastructure</p> <p>-> entails the imposition of an administrative fine up to three hundred thousand rubles [about 3700 Euros].²²²</p>
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²²¹ "Организация либо проведение несанкционированных собрания, митинга, демонстрации, шествия или пикетирования в непосредственной близости от территории ядерной установки, радиационного источника или пункта хранения ядерных материалов и радиоактивных веществ **либо активное участие** в таких публичных мероприятиях, если это осложнило выполнение работниками указанных установки, источника или пункта своих служебных обязанностей или создало угрозу безопасности населения и окружающей среды, - влечет наложение административного штрафа в размере от ста пятидесяти тысяч до трехсот тысяч рублей или административный арест на срок до пятнадцати суток; на должностных лиц - от двухсот тысяч до шестисот тысяч рублей; на юридических лиц - от пятисот тысяч до одного миллиона рублей.";

²²² "Участие в несанкционированных собраниях, митингах, демонстрациях, шествиях или пикетировании, повлекших создание помех функционированию объектов жизнеобеспечения, транспортной или социальной инфраструктуры, связи, движению пешеходов и (или) транспортных средств либо доступу граждан к жилым помещениям или объектам транспортной или социальной инфраструктуры, - влечет наложение административного штрафа на граждан в размере от десяти тысяч до двадцати тысяч рублей, или обязательные работы на срок до ста часов, или административный арест на срок до пятнадцати суток; на должностных лиц - от пятидесяти тысяч до ста тысяч рублей; на юридических лиц - от двухсот тысяч до трехсот тысяч рублей."

		<p>Law 258-FZ 21 July 2014 amended Code on administrative offences , Art 3:</p> <p>Assemblies, demonstrations etc. on the territories immediately adjacent to hazardous production facilities or to other facilities, the operation of which requires compliance with special safety regulations, overpasses, railways, railroad, oil and gas - and product pipelines, high-voltage transmission lines, in the border zone, without special permit</p> <p>-> 150-300 thousands rubles fine or compulsory work for up to two hundred hours, or administrative arrest for up to twenty days; on officials - from three hundred thousand to six hundred thousand rubles; on legal entities - from five hundred thousand to one million rubles. ²²³</p> <p>Law 258-FZ 21 July 2014 amended Code on administrative offences , Art.8 :</p> <p>Repeated participation in illegal assembly (if this action does not contain a criminal offense (which is up to 5 years of imprisonment))</p> <p>-> 150-300 thousand rubles fine, or compulsory work for a period of forty to two hundred hours, or administrative arrest for up to 30 days; on officials - from two hundred thousand to six hundred thousand rubles; on legal entities - from five</p>
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²²³ "Действия (бездействие), предусмотренные частью 1 настоящей статьи, совершенные на территориях, непосредственно прилегающих к опасным производственным объектам или к иным объектам, эксплуатация которых требует соблюдения специальных правил техники безопасности, на путепроводах, железнодорожных магистралях, полосах отвода железных дорог, нефте-, газо- и продуктопроводов, высоковольтных линий электропередачи, в пограничной зоне, если отсутствует специальное разрешение уполномоченных на то пограничных органов, либо на территориях, непосредственно прилегающих к резиденциям Президента Российской Федерации, зданиям, занимаемым судами, или территориям и зданиям учреждений, исполняющих наказания в виде лишения свободы, влекут наложение административного штрафа на граждан в размере от ста пятидесяти тысяч до трехсот тысяч рублей, или обязательные работы на срок до двухсот часов, или административный арест на срок до двадцати суток; на должностных лиц - от трехсот тысяч до шестисот тысяч рублей; на юридических лиц - от пятисот тысяч до одного миллиона рублей."

		hundred thousand to one million rubles.
links:	(http://www.legadroit.com/droit-de-manifester.html) (https://droit-finances.commentcamarche.com/faq/5266-contravention-de-1ere-classe-amende-forfaitaire)	http://kremlin.ru/events/president/news/15608 http://kremlin.ru/acts/bank/35458/page/1

Annex II

Inter-American Human Rights Commission

2017:

Resolution 33/17

PM 331/17 – Francisca Ramírez and Family Members, Nicaragua

"On August 22, 2017, the IACHR decided to request that precautionary measures be adopted for Francisca Ramírez and the members of her immediate family, in Nicaragua. The request for precautionary measures alleges that the beneficiary faces a situation of serious risk due to her work as a human rights defender, especially as it relates to representing people whose territories could end up being affected by the **construction of the transoceanic canal**. After analyzing the allegations of fact and law, the Commission believes that the information presented shows, prima facie, that the beneficiary is in a serious and urgent situation. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission asked Nicaragua to take the necessary steps to protect the life and personal integrity of Francisca Ramírez and the members of her immediate family and that it adopt the necessary measures to ensure that she can carry out her activities as a human rights defender without being the target of threats or acts of harassment or violence for doing her work. The Commission also requested that Nicaragua reach agreement with the beneficiary and her representatives on the measures to be adopted and that it report on the actions taken to investigate the allegations that led to the adoption of this precautionary measure, so as to avoid a recurrence."²²⁴

2016:

Resolution 65/2016

PM 382/12 – Members of the Community Action Board of the Village of Rubiales, Colombia

"On December 17, 2016, the IACHR decided to request precautionary measures for Héctor Sánchez, Alexander Castrillón Cubides, Hugo Mejía, Claudia Fierro Camacho, and Neiret Escobar Vela, members of the Community Action Board of the village of Rubiales, Colombia. The request for precautionary measures alleges that the proposed beneficiaries have been targets of threats and acts of harassment and violence on the part of security officers hired by a private company that reportedly controls the area, police officers, and illegal groups. After analyzing the allegations of fact and law, the Commission believes that the information presented shows that Héctor Sánchez, Alexander Castrillón Cubides, Hugo Mejía, Claudia Fierro Camacho, and Neiret Escobar Vela are in a serious and urgent situation. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission asked Colombia to adopt the necessary measures to ensure that the beneficiaries can carry out their

²²⁴ Precautionary measures <http://www.oas.org/en/iachr/decisions/precautionary.asp>
+ Resolution 33/17, PM 331/17 (in Spanish)
<http://www.oas.org/es/cidh/decisiones/pdf/2017/33-17MC331-17-NI.pdf>

work as human rights defenders and to protect their life and personal integrity. It also requested that the State come to an agreement with the beneficiaries and their representatives on the measures to be adopted, and report on the steps taken to investigate the allegations that led to the adoption of this precautionary measure, so as to avoid a recurrence."²²⁵

-> In 2002, the state oil company Ecopetrol delivered a concession to a transnational company for the exploration and exploitation of existing oil reserves in the towns of Rubiales, Puerto Triunfo, Santa Helena, El Tigre and Kiosks belonging to the jurisdiction from the municipality of Puerto Gaitán, department of Meta. According to the applicants, as a result of the actions of this company, the water sources for human consumption are permanently contaminated by the **dumping of waste derived from oil exploitation**. The community of Vereda Rubiales decided to hold an act of protest to demand from the transnational company solutions on the environmental damages caused by oil exploitation.²²⁶

-> Esneider Lozano Castro, President of the Community Action Board, was the subject of a search on March 24, 2012, at 3:30 am, by agents of the Criminal Investigation Section of the Police. He was captured without a warrant.

-> Luz Angélica Sánchez Reyes, Prosecutor of the Community Action Board, has been the target of threats and harassment by agents of a security company, following the "Roadmap" agreements. On October 3, 2012, a van from the security company followed her and took pictures of her and her residence.

-> Ricardo Prieto Contreras, member of the Community Action Board, has been detained, on several occasions and presumably arbitrarily, at the checkpoint carried out by the security agents of the transnational company, preventing him from traveling to his residence for several hours.²²⁷

Resolution 16/2016, PM 112/16 – Members of COPINH, Berta Cáceres' relatives and other, Honduras, EXTENSION

"On March 23, 2016, the IACHR decided to extend the scope of the Precautionary Measure 112/16, originally granted on May 18th of 2015 in favor of the members of COPINH, Berta Cáceres's relatives and Gustavo Castro in Honduras. Through this extension, the IACHR requested protection for the life and physical integrity of Víctor Fernández, Arnold Guifarro, Carlos Jiménez, as well as A, B y C, persons whom the IACHR has identified as A, B and C to protect their identity upon request. The information provided by the beneficiaries indicates that these individuals are at risk considering they constitute the legal team that represents Berta Cáceres' family in the processes of investigating her murder. Through its decision to extend this precautionary measure, the Commission asked Honduras to adopt the necessary measures to protect the life and personal integrity of Víctor Fernández, Arnold Guifarro, Carlos Jiménez, A, B and C, and to adopt the necessary measures for these persons to develop their activities as human right's defendants without being objects of violence and harassment

²²⁵ IACHR Resolution 65/2016, **PM 382/12 – Members of the Community Action Board of the Village of Rubiales, Colombia**

<http://www.oas.org/es/cidh/decisiones/pdf/2016/MC382-12-ES.pdf>

²²⁶ page 2-3, IACHR Resolution 65/2016, **PM 382/12 – Members of the Community Action Board of the Village of Rubiales, Colombia**

<http://www.oas.org/es/cidh/decisiones/pdf/2016/MC382-12-ES.pdf>

²²⁷ Ibid, page 3, § F, i, ii iii,

in the exercise of their functions; to agree upon measures to be adopted with the beneficiaries and their representatives and to provide information on the actions adopted to investigate the alleged facts that resulted on the adoption of a precautionary measure in order to avoid repetition."²²⁸

-> **Berta Cáceres and Gustavo Castro: activities in the defense of human rights, the environment and natural resources in Honduras**

-> **The life and personal integrity of the family of Berta Cáceres due to the recent murder of the activist member of COPINH; and Gustavo Castro for having witnessed the murder would be threatened and at risk.**

-> **March 15, 2016 - the murder of Nelson Noé García, leader and member of COPINH, who was approached by two unknown persons who shot him several times.**²²⁹

Resolution 8/2016 , PM 112/16 – Members of COPINH, Berta Cáceres’ relatives and other, Honduras²³⁰

->"COPINH is an organization for the defense and promotion of human rights that was founded on March 27, 1993 in the department of Intibucá, with the intention of claiming the political, social, cultural and economic rights of indigenous peoples in the State of Honduras, particularly the Lenca indigenous people. „In 2013, the Lenca indigenous people of the Río Blanco area, organized around the COPINH and under the leadership of Mrs. Berta Isabel Cáceres, undertook several movements to recover their right to own and own the lands near the Ulúa River. Since that date, members of COPINH, in a peaceful manner, have taken several actions against the construction of the Agua Zarca **hydroelectric dam**, because this project would affect their right to territory, natural resources and a healthy environment."²³¹

-> "During the months of January and February of 2015, the indigenous leader Berta Cáceres received multiple calls and text messages of anonymous origin to her cell phone [,] in which she was informed of the risk she would face if she went to the communities affected by the

²²⁸ **Resolution 16/2016, PM 112/16 – Members of COPINH, Berta Cáceres’ relatives and other, Honduras, EXTENSION**

<http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es-ampliacion.pdf>

²²⁹ page 2 , **Resolution 16/2016, PM 112/16 – Members of COPINH, Berta Cáceres’ relatives and other, Honduras, EXTENSION**

<http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es-ampliacion.pdf>

²³⁰ <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>

²³¹ “El COPINH es una organización de defensa y promoción de los derechos humanos que se fundó el 27 de marzo de 1993 en el departamento de Intibucá, con la intención de reivindicar los derechos políticos, sociales, culturales y económicos de los pueblos indígenas en el Estado de Honduras, particularmente del pueblo indígena Lenca”. En el 2013, el pueblo indígena Lenca de la zona de Río Blanco, organizado en torno al COPINH y bajo el liderazgo de la señora Berta Isabel Cáceres, emprendió varios movimientos de recuperación de su derecho de posesión y propiedad sobre las tierras cercanas al río Ulúa. Desde esa fecha, los integrantes de COPINH, en forma pacífica, han realizado varias acciones en contra de la construcción de la represa hidroeléctrica Agua Zarca, debido a que dicho proyecto afectaría su derecho al territorio, a los recursos naturales y a un medio ambiente saludable.”, page 1, §A, Resolution 8/2016 , **PM 112/16 – Members of COPINH, Berta Cáceres’ relatives and other, Honduras**
<http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>

project h as well as the possibility of being kidnapped or even disappeared by people close to the **hydroelectric projects** in the area."²³²

Resolution 7/2016, PM 452/13 – Lauro Baumea Mora et al, México, EXTENSION

"On March 2, 2016, the IACHR decided to extend the scope of the Precautionary Measure 452/13, originally granted on May 18th of 2015 in favor of Lauro Baumea Mora, Miguel Ángel Cota Tórtola and Aurelia Butimena, leaders of the Yaqui People in México. Through this extension, the IACHR requested protection for the life and physical integrity of Librado Valenzuela Valencia, Esteban Cecilio Valenzuela Butimea, Arturo Matas Gonzáles, Gilberto Gálvez Palma and Gregorio Valdez Molina, members of the Yaqui communities in Vicam, Bélem, Cócorit, Bácum and Pótam. The information provided by the petitioners alleges that the beneficiaries are at risk given they have been subjected to acts of violence, harassments, surveillance, and dead threats because of their work **as water and human rights defenders**. Through the decision of extending the scope of this Precautionary Measure, the Commission requested Mexico to adopt the necessary measures to guaranteeing Librado Valenzuela Valencia, Esteban Cecilio Valenzuela Butimea, Arturo Matas Gonzáles, Gilberto Gálvez Palma and Gregorio Valdez Molina the ability to develop their activities as human rights defenders without being subjected to acts of violence and harassments for their work; to agree upon measures to be adopted with the beneficiaries and their representatives; and to provide information on the actions adopted to investigate the alleged facts that resulted on the adoption of a precautionary measure in order to avoid repetition."²³³

-> **defending the Yaqui River**

Resolution 4/2016, PM 54/13 – Matter of communities in voluntary isolation of the Ayoreo Totobiegosode People, Paraguay

"On February 3 of 2016, the IACHR decided to request the adoption of precautionary measures in favor of the rights of the Ayoreo Totobiegosode People, especially of the communities in voluntary isolation, known as the Jonoine-Urasade. According to the request, there have been a series of third persons' entries to territory recognized in favor of the Ayoreo Totobiegosode People, as well as deforestation activities. This could result on damages to their lives and personal integrity within the framework of their physical and cultural survival as indigenous people. After analyzing the allegations of fact and law, the Commission considers that the information presented demonstrates, prima facie, that the communities in voluntary isolation of the Ayoreo Totobiegosode People are in a serious and urgent situation given that their rights to life and personal integrity are allegedly threatened and at risk. Consequently, in accordance with Article 25 of its Rules of Procedures, the Commission required the State of Paraguay to adopt the necessary measures to protect the communities

²³² "Durante los meses de enero y febrero del año 2015, la lideresa indígena Berta Cáceres recibió múltiples llamadas y mensajes de texto de origen anónimo a su teléfono celular[,] en los que se le informaba del riesgo que corría si acudía a las comunidades afectadas por el proyecto h así como de la posibilidad de ser secuestrada o incluso desaparecida por gente cercana a los proyectos hidroeléctricos de la zona" page 2, §D, Resolution 8/2016 , **PM 112/16 – Members of COPINH, Berta Cáceres' relatives and other, Honduras** <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC112-16-Es.pdf>

²³³ Resolution 7/2016, PM 452/13 – Lauro Baumea Mora et al, México, EXTENSION <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC452-13-Es.pdf>

in voluntary isolation of the “Jonoine-Urasade” of the Ayoreo Totobiegosode People, protecting their ancestral lands. Additionally, the IACHR requested Paraguay to avoid deforestation in the territory recognized in favor of the Ayoreo Totobiegosode People; to create a mechanism to protect and prevent third parties from entering their territory; and to create protocols specific for protection from sighting or unwanted contact based on applicable international standards; among other measures.”²³⁴

Resolution 2/2016, PM 505/15 – Miskitu Indigenous Peoples of Wangki Twi-Tasba Raya, Nicaragua, EXTENSION

"On January 16, 2016, the IACHR extended the scope of Precautionary Measure 505/15, which was originally granted on October 14, 2015, in favor of the indigenous communities of La Esperanza, Santa Clara, Wisconsin and Francia Sirpi, of the Miskitu indigenous peoples of Wangki Twi-Tasba Raya, who live in the Autonomous Region of the Costa Caribe Norte, in Nicaragua. Through this extension, the IACHR requested protection for the life and physical integrity of the members of the indigenous communities of Santa Fe, Esperanza Río Coco, San Jerónimo, Polo Paiwas, Klisnak of the Miskitu indigenous territory Wanki Li Aubra and Wiwinak of Mhe Miskitu indigenous territory Li Lamni Tasbaika Kum. The information provided by the petitioners indicates that the members of these indigenous communities are in a risk situation due to acts of violence, kidnappings, death threats, killings and forced displacement. Through its decision to extend the scope of this precautionary measure, the Commission requested that Nicaragua adopt the necessary measures to safeguard the life and physical integrity of the members of the indigenous communities mentioned above; that it reach agreement with the beneficiaries and their representatives on the measures to be adopted; and that it inform the Commission regarding the actions taken to investigate the alleged incidents that led to the extension of this precautionary measure, so as to avoid a recurrence.”²³⁵

-> deforestation of rainforest

Resolution 1/2016, PM 388/12 – Edgar Ismael Solorio Solís and others, Mexico

"On January 13, 2016, the IACHR extended the scope of Precautionary Measure 388/12, which was originally granted on November 6, 2012, for the three sons of Ismael Urrutia and Manuela Marta Solís, who were reportedly leaders of the organization "El Barzón," as well as for the members of that organization, in Mexico. Through this extension, the IACHR requested protection for the life and physical integrity of Irving Rodríguez Renova. The information provided by the petitioners indicates that Irving Rodríguez Renova is at risk because he is the son of Heraclio Rodríguez, an environmentalist and member of the organization “El Barzón,” and therefore a beneficiary of this precautionary measure. Through its decision to extend the scope of this precautionary measure, the Commission requested that Mexico adopt the

²³⁴ **Resolution 4/2016, PM 54/13 – Matter of communities in voluntary isolation of the Ayoreo Totobiegosode People, Paraguay**

<http://www.oas.org/es/cidh/decisiones/pdf/2016/MC54-13-Es.pdf>

²³⁵ **Resolution 2/2016, PM 505/15 – Miskitu Indigenous Peoples of Wangki Twi-Tasba Raya, Nicaragua, EXTENSION**

<http://www.oas.org/es/cidh/decisiones/pdf/2016/MC505-15-Es.pdf>

necessary measures to safeguard the life and physical integrity of Irving Rodriguez Renova; that it reach agreement with the beneficiary and his representatives on the measures to be adopted; and that it inform the Commission regarding the actions taken to investigate the alleged incidents that led to the extension of this precautionary measure, so as to avoid a recurrence."²³⁶

Resolution 46/2015, PM 589/15 - Ana Miran Romero and Others, Honduras²³⁷

"On November 24, 2015, the Commission decided to request the adoption of precautionary measures in favor of Ana Mirian Romero and the 13 identified leaders of the Indigenous Council San Isidro (Consejo Indígena San Isidro) and the Independent Lenca Indigenous Movement of La Paz (Movimiento Indígena Lenca Independiente de la Paz, MILPAH), as well as the family members of Rosario Vasquez Pineda and Ana Mirian Romero, in Honduras. The request for precautionary measures alleges that the beneficiaries are at risk and that they were victims of threats and acts of violence, allegedly because of the actions undertaken to obtain legal recognition of their right to their lands and due to their opposition to the development of projects in the area. After analyzing the allegations of fact and law, the Commission considers that the information demonstrates, prima facie, that the proposed beneficiaries are in a serious and urgent situation, since their lives and personal integrity are allegedly at risk. Consequently, in accordance with Article 25 of its Rules of Procedures, the Commission requested the State of Honduras to adopt the necessary measures to guarantee that the life and physical integrity of Ana Mirian Romero and the 13 identified leaders as well as the family members of Rosario Vasquez Pineda and Ana Mirian Romero; to adopt the necessary measures so that the beneficiaries may develop their activities as human rights defenders without being victims of acts of violence, threats and harassment; to agree on the measures to be adopted with the beneficiary and their representatives; and to report on the actions taken to investigate the alleged facts that gave rise to the adoption of this precautionary measure, in order to prevent its repetition."

Resolution 39/2015, PM 46/14 Juana Calfunao et al., Chile²³⁸

"On October 26, 2015, the IACHR requested that precautionary measures be adopted for Juana Calfunao and her family members. According to the request, the proposed beneficiaries are facing alleged acts of violence, threats, and harassment on the part of public security agents of the State, due to their activities in defense of the rights to the territory where they live. After analyzing the allegations of fact and law presented by the parties, the Commission believes that the information shows that Juana Calfunao and the members of her family are in a serious and urgent situation, as their lives and physical integrity are at risk. Consequently, in accordance with Article 25 of the IACHR Rules of Procedure, the Commission requests that Chile adopt the necessary measures to guarantee the life and physical integrity of Juana Calfunao and her family. The Commission also asks the State to come to an agreement with the beneficiaries and their representatives concerning the measures to be taken, and to

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²³⁷ **Resolution 46/2015, PM 589/15 - Ana Miran Romero and Others, Honduras**

<http://www.oas.org/es/cidh/decisiones/pdf/2015/MC589-15-Es.pdf>

²³⁸ **Resolution 39/2015, PM 46/14 Juana Calfunao et al., Chile,**

<http://www.oas.org/es/cidh/decisiones/pdf/2015/MC46-14-ES.pdf>

inform the Commission about the actions taken to investigate the alleged incidents that gave rise to the adoption of this precautionary measure, so as to avoid a recurrence."

-> road construction

Resolution 37/15, PM 505/15 - Members of the communities "Esperanza, Santa Clara, Wisconsin y Francia Sirpi" in the territory of the Miskitu indigenous people²³⁹

On October 14, 2015, the IACHR decided to request precautionary measures to be adopted for the indigenous communities of la Esperanza, Santa Clara, Wisconsin and Francia Sirpi of the Miskitu indigenous people of Wangki Twi-Tasba Raya, who live in the Autonomous Region of the Southern Caribbean Coast, in the Municipality of Waspam. According to the request, members of these indigenous communities are subjected to ongoing cycles of violence, murder, threats and acts of harassment, as a result of the presence of the so-called settlers (colonos) within their territories of the indigenous communities and acts of violence, in the context of a territorial dispute and land title claims on said territories. After examining the allegations of fact and law submitted by the requesting parties, the Commission believes that the information provided to it shows prima facie that the members of the indigenous communities of la Esperanza, Santa Clara, Wisconsin and Francia Sirpi of the Miskitu Indigenous people of Wangki Twi-Tasba Raya are facing a serious and dire situation, inasmuch as their lives and personal integrity are under threat and in jeopardy. Consequently, in keeping with Article 25 of the IACHR Rules of Procedure, the Commission requests Nicaragua to adopt the necessary measures to ensure the lives and personal integrity of the members of the indigenous communities of la Esperanza, Santa Clara, Wisconsin and Francia Sirpi, of the Miskitu Indigenous peoples of Wangki Twi-Tasba Raya; to work out with the beneficiaries and their representatives an agreement on the measures that must be implemented; and to report on actions taken to investigate the alleged facts, which gave rise to the instant precautionary measure and thus prevent them from happening again.

Resolution 18/2015, PM 530/14 - Gregorio Santos Guerrero, Peru²⁴⁰

"On May 14, 2015, the IACHR decided to request that precautionary measures be adopted for Gregorio Santos Guerrero, in Peru. The request for precautionary measures alleges that the beneficiary is at risk. He is from an indigenous community in San Juan de Chirinos and is reportedly a leader of the peasant civil defense patrols (called rondas campesinas) in Cajamarca. Specifically, the petitioners indicated that this individual is being held at the Piedras Gordas Prison, in a cell block with someone who had reportedly confessed to participating in an alleged massacre of ronderos, or members of these patrols, in the past and who had evidently participated in the creation of so-called Self-Defense Committees (Comités de Autodefensa), which oppose the existence of the indigenous civil defense patrols to which Mr. Gregorio Santos belongs. After analyzing the allegations of fact and law, the Commission believes that the information shows, prima facie, that the beneficiary is in a serious and urgent situation, as his life and physical integrity are said to be at imminent risk. Consequently, in accordance with Article 25 of its Rules of Procedure, the Commission asked the State of Peru to adopt the necessary measures to protect the life and physical integrity of

²³⁹ <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC505-15-ES.pdf>

²⁴⁰ <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC530-14-ES.pdf>

Gregorio Santos Guerrero; ensure that the conditions of his detention are brought into line with applicable international standards; reach an agreement with the beneficiary and his representatives as to the measures to be adopted; and inform the Commission regarding the actions taken to investigate the alleged incidents that gave rise to the adoption of this precautionary measure, so as to avoid a recurrence."

Resolution 15/2015, PM 106/15 - Cruz Sánchez Lagarda and others, México²⁴¹

"On April 27, 2015, the Commission decided to request the adoption of precautionary measures in favor of Cruz Sánchez Lagarda and other members of the indigenous community of "El Manzano", in Mexico. The request for precautionary measures alleges that, the beneficiaries would be at risk because they would be subjected of alleged series of acts of violence against them, because of the alleged presence of alleged illegal groups in the area who try to exert territorial control over the same. After analyzing the allegations of fact and law, the Commission considers that information in principle shows that the member of the identified indigenous community of "El Manzano" are in a serious and urgent situation, since their lives and personal integrity are allegedly at risk. Consequently, in accordance with Article 25 of its Rules of Procedures, the Commission requested the State of Mexico to adopt necessary measures to ensure that the life and physical integrity of Cruz Sánchez Lagarda and the identified members of the indigenous community "El Manzano"; adopt the necessary measures to ensure that Cruz Sánchez Lagarda can participate in activities as human rights defenders, without being subjected to acts of violence and harassment in the exercise of their work; to consult with the beneficiaries and their representatives; and to report on the actions taken to investigate the alleged facts that led to the adoption of the present precautionary measures and thus prevent possible repetition."

2014:

PM 452/11 - Leaders of Campesino Communities and Campesino Patrols in Cajamarca, Peru, Resolutio 9/2014, 5 May 2014, <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC452-11-ES.pdf>

"On May 5, 2014, the IACHR asked that precautionary measures be adopted for 46 leaders of campesino communities and patrols, the members of the Chaupe family, patrolman Luis Mayta, and journalist César Estrada, in Cajamarca, Peru. The request for precautionary measures alleges that the campesino communities and patrols from the provinces of Cajamarca, Celendín, and Hualgayoc-Bambamarca that are opposed to the "Conga" project have been targets of threats, harassment, and violence. Pursuant to Article 25 of the IACHR Rules of Procedure, the Commission asked the State of Peru to adopt the necessary measures to guarantee the life and physical integrity of the identified beneficiaries; reach agreement with the beneficiaries and their representatives on the measures to be adopted; and inform the Commission as to the steps taken to investigate the incidents that gave rise to the adoption of this precautionary measure so that such incidents do not happen again."

-> opposition to the execution of a mining project

²⁴¹ <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC106-15-ES.pdf>

Inter-American Court of Human Rights decisions

- **CARLOS ESCALERAS MEJÍA AND FAMILY / HONDURAS, CASE 12.492, JULY 17, 2014,**
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§1 "international responsibility of the Republic of Honduras (hereinafter "the Honduran State," "Honduras," or "the State") arising from the murder of the environmental activist Carlos Escaleras Mejía on October 18, 1997, and from the failure to investigate, prosecute, and punish all the individuals involved therein."

§43. Honduras has a vast environmental wealth and great biodiversity. Over recent years, those resources have been illegally exploited, causing a serious deterioration in Honduran ecosystems.

§44. Since the early 1990s, groups of individuals and some leaders launched private initiatives calling on society to defend its resources and to halt indiscriminate logging in forests and natural watersheds. In reprisal for their work, environmental defenders and activists have been the victims of acts of harassment, threats, persecution, and killings. (IACHR, Application to the Inter-American Court of Human Rights, Case No. 12.507, Blanca Jeannette Kawas-Fernández v. Honduras, February 4, 2008, para. 40; I/A Court H. R., Case of Kawas-Fernández v. Honduras, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, paras. 69 and 70. See also: Expert testimony on "the situation in Honduras of defenders of the environment and natural resources, and of human rights defenders," given by Rigoberto Ochoa Peralta in the case of Kawas-Fernández v. Honduras.) Specifically, in the cases of Kawas-Fernández v. Honduras and Luna López v. Honduras, the Inter-American Court found that between 1995 and 2005 there were reports of "acts of aggression, threats and execution of various individuals devoted to the defense of the environment in Honduras. „In its analyses, the Court spoke about a series of specific cases that were common knowledge, including that of Carlos Escaleras Mejía. (I/A Court H. R., Case of Kawas-Fernández v. Honduras, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 69; Case of Luna López v. Honduras, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 18.)

§58. Mr. Pedro Marchetti, a witness in the domestic criminal proceedings and one of Carlos Escaleras Mejía's colleagues, said that Escaleras participated "in the struggle against the opening of **Miguel Facussé's new African palm processing plant, which played a major role in the cancellation of an enormous World Bank loan to the Cressida company;** (...) the coalition of eight environmental organizations (...) influenced the cancellation of the loan."

§149. The Commission notes that as of the first statements given during the judicial proceedings, different witnesses gave the names of persons who had threatened, persecuted, and intimidated Carlos Escaleras Mejía in the weeks before his death. In addition, information

²⁴² REPORT NO. 43/14, CASE 12.492, CARLOS ESCALERAS MEJÍA AND FAMILY, HONDURAS, JULY 17, 2014 <http://www.oas.org/en/iachr/decisions/court/2017/12492FondoEn.pdf>

was obtained about **people who had participated in his murder, some of whom were state agents.**

§150. Thus, the IACHR notes that according to the testimony received, Mr. Escaleras had been both threatened and offered money at the orders of Congressman Salomón Martínez to withdraw his candidacy in the Tocoa mayoral election. The Commission also notes that during the proceedings, an officer of the DGIC identified Congressman Salomón Martínez as a suspected mastermind behind the death of Carlos Escaleras. During the proceedings reference was also made to the ties between both individuals and another suspected mastermind: Miguel Facussé, who wanted Mr. Escaleras dead because his environmental advocacy had prevented the construction of a processing plant on the Tocoa River (see paras. 57-60 below). Similarly, the established facts indicate that the perpetrator who was convicted told the authorities in charge of the investigation that both Congressman Martínez and Congressman Juan Ramón Salgado paid a group of individuals to have Carlos Escaleras killed.

§159. The Commission has identified fundamental omissions that contributed to the failure to identify the responsibility for planning the murder; nevertheless, as noted above, there are indications of those responsibilities that, pursuant to the State's obligation to conduct an investigation in accordance with inter-American standards, should have led to lines of investigation and the exhaustion thereof through all available means prior to being discarded. [...]

§163. On this point, in the cases of *Kawas-Fernández v. Honduras* and *López Luna v. Honduras*, the **Court ruled that threats against trial witnesses can have an intimidating and discouraging effect on those in charge of investigations and potential witnesses, seriously affecting the effectiveness of the investigation.** For that reason, **States are under the obligation to “provide all necessary measures to protect the (...) investigators, witnesses and families of the victims from harassment and threats aimed at obstructing the proceeding and preventing elucidation of the facts, as well as covering up those responsible.”** (I/A Court H. R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 107; Case of *Luna López v. Honduras*, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 173.)

§166. In light of all the above considerations, the Commission finds that in the later stages of the investigation there was a serious **lack of diligence in preserving, securing, and assessing evidence that linked various individuals, including state officials, to the crime.** Moreover, the Commission notes that during the investigation there were serious incidents of possible reprisals and pressure against people involved in the proceedings, in spite of which no investigation into those facts was conducted.

§183. The Court has ruled that the duty of prevention covers “all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.”(I/A Court H. R., Case of *Luna López v. Honduras*, Merits, Reparations, and Costs,

Judgment of October 10, 2013, Series C No. 269, para. 118; Case of González et al. (“Cotton Field”) v. Mexico, Judgment of November 16, 2009, para. 252.)

§184. The Court has also ruled that the **State’s responsibility to act with due diligence in cases of human rights violations extends to the actions of non state agents, third parties, and private citizens.** (I/A Court H. R., Case of the “Mapiripán Massacre” v. Colombia, Merits, Reparations, and Costs, Judgment of September 15, 2005, Series C No. 134, para. 111.) Notwithstanding, the Court has established that a State may not be held responsible for “all the human rights violations committed between individuals within its jurisdiction.”(I/A Court H. R., Case of the Massacre of Pueblo Bello v. Colombia, Merits, Reparations, and Costs, Judgment of 31 January 2006, Series C No. 140, para. 123.) It has set out, in the following terms, the criteria to be taken into account in assessing compliance with the obligation of prevention and protection as a means to uphold a right:

The treaty-based guarantee obligations of the States [do] not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed of an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered.(I/A Court H. R., Case of González et al. (“Cotton Field”) v. Mexico, Judgment of November 16, 2009, para. 280; and Case of the Massacre of Pueblo Bello v. Colombia, Judgment of January 31, 2006, Series C No. 140, para. 123.)

§187. The Commission finds there are a number of factors to take into account. First of all, note must be taken of Carlos Escaleras’s status as a human rights defender: from his position as director of COPA and Tocoa mayoral candidate to his recognition by the State as one of the foremost leaders and human rights defenders in the area. Second, as described in the proven facts section, at the time of Mr. Escaleras Mejía’s murder, **environmental defenders in Honduras were facing a grave situation of violations and impunity. In its 2013 judgment in the case of Luna López v. Honduras, the Court “confirm[ed] that [in 1998] environmentalists in Honduras faced a situation of particular risk, which grew worse in the years following.”**(I/A Court H. R., Case of Luna López v. Honduras, Merits, Reparations, and Costs, Judgment of October 10, 2013, Series C No. 269, para. 21.)

§188. Third, the IACHR notes the **threats and acts of intimidation** suffered by Carlos Escaleras Mejía prior to his murder. In addition, at no point in the proceedings before the IACHR did Honduras present any information to indicate the adoption of specific preventive measures to curtail the violence against human rights defenders during that time.

§189. Nevertheless, the IACHR believes that in an individual case, that **general noncompliance and the failure to report the threats made against Carlos Escaleras to the state authorities before his death cannot alone form the basis for attributing international responsibility to the State of Honduras for failing to prevent Carlos Escaleras’s homicide.**

§190. **Regardless of the foregoing, the fact the State did not adopt a comprehensive prevention strategy to prevent the risk factors and strengthen its institutions so they could provide an effective response in cases involving environmental activists** (See, *mutatis mutandis*: I/A Court H. R., Case of González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment of November 16, 2009, Series C No. 205, para. 258.) will be addressed in the recommendations at the end of this report.

§192. **The Court has also said that the duty of conducting an investigation is heightened when there are indications that state agents were involved.** (I/A Court H. R., Case of Castillo González et al. v. Venezuela, Merits, Judgment of November 27, 2012, Series C No. 256, para. 127) On this point, the European Court of Human Rights has ruled that:

The State’s obligation of protecting the right to life requires by implication that there must be some form of effective official investigation when an individual has been killed by the use of force. Those investigations must be carried out [...] regardless of whether the perpetrators are state agents or third parties. However, when the involvement of state agents or agencies is alleged, specific requirements may be imposed on the effectiveness of the investigation. (...) The essential purpose of such an investigation is to ensure the effective enforcement of the domestic laws that protect the right to life, and to ensure, in those cases involving state agents, their accountability for the deaths under their responsibility (unofficial translation).(ECHR, *Khaindrava and Dzamashvili v. Georgia*, Judgment of September 8, 2010, para. 58; *McCann and Others v. the United Kingdom*, Judgment of September 27, 1995, paras. 49 and 161; and *Mastromatteo v. Italy*, Judgment of October 24, 2002, para. 89.)

§194. The Commission again states that given such indications, which would appear to directly engage the State’s international responsibility by acquiescence, collaboration, or participation, the authorities in charge of the investigation should have made every effort to clarify any possible responsibility or involvement on the part of state authorities in a violation of the right to life.(IACHR, Report No. 120/10, Case 12.605, Merits, *Joe Luis Castillo González (Venezuela)*, October 22, 2010, para. 109.) It therefore falls to the State to conduct a detailed, serious, and diligent investigation to verify or disprove the claims of state agents’ involvement.

§195. In connection with this duty, the **Court has ruled that in cases of violent deaths where there are indications of the participation of state agents, the State must take all the measures necessary to determine the corresponding individual responsibilities.** (I/A Court H. R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 97.) The Court has ruled that in cases where this does not take place, it is (...) reasonable to assess as evidence the indications contained in the case file (...) that point to the involvement of state agents in these events, particularly those handled by the very state agencies that were in charge of the investigation which have not been disproved by the State. Reaching any other conclusion would entail allowing the State to resort to its own negligence or inefficacy for the criminal investigation to release itself from responsibility for the violation of Article 4.1 of the Convention. (I/A Court H. R., Case of *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 97)

- **CARLOS ANTONIO LUNA LÓPEZ CASE 12.472, HONDURAS, NOVEMBER 17, 2011.** ²⁴³

The assassination of Carlos Antonio Luna López, environmentalist and alderman (regidor), and with the lack of investigation, prosecution and conviction against those responsible. He made public acts of corruption in the Municipal Corporation regarding logging permits and alleged illegal logging. In this context, Luna López publicly and repeatedly expressed that he had received threats from different sectors, including some from public officials, and filed a complaint before the Office of the Attorney General. He was killed on May 18, 1998, and the competent authorities did not adopt the immediate actions necessary to protect the crime scene, nor did they conduct an adequate autopsy.

§110. "The Commission pointed out that the **States have a positive obligation to adopt specific measures to protect an individual whose life is in danger due to criminal acts by private persons, provided that the State is aware of or has knowledge of this danger.** In this regard, the Commission indicated that the State of Honduras was aware, at the time of events of this case, of a pattern of violations and impunity against the defenders of the environment. Consequently, the position held by Carlos Luna López as an environmentalist and City Councilman, placed him in a situation of particular risk that meant the State had an increased responsibility to protect him. In addition, the State knew of the specific death threats received by Carlos Luna López because he had publically complained and had informed the Public Prosecutor and the Catacamas Municipality about them. Despite being aware of the situation, the State did not adopt any specific measure to counter the death threats received by Mr. Luna López. Specifically, the Public Prosecutor conducted a conciliation meeting without consulting Mr. Carlos Luna López on the choice of this alternative measure or the reasons for selecting conciliation as a sufficient and effective measure of protection for addressing the death threat. The Commission noted that conciliation was not an appropriate response given the threats made; on the contrary, no record or complaint was issued, no allegations were investigated and no monitoring took place, all in breach of the **State's responsibility for prevention, thus making it internationally responsible for the violation of the right to life** to the detriment of Carlos Luna López."

In the §127. Court says:

"Regarding the measures adopted by the State, the Court believes it necessary to recall that **state authorities have a responsibility to be aware of a situation of special risk, to identify or determine whether the person being threatened or harassed requires protection measures or to refer the matter to the competent authority for that purpose and to offer the person at risk pertinent information on the measures available.** The assessment of whether a person requires protection measures and what **those measures should be is the State's obligation, and this must not be limited to requiring the victim to apply to "the competent authorities," without knowing which authority can best address the situation, since it is the State's responsibility to establish measures of coordination between its institutions and officials for this purpose.** (Cf. Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012. Series

²⁴³ **Carlos Antonio Luna López Case 12.472, Honduras, November 17, 2011,**
http://www.oas.org/en/iachr/media_center/PReleases/2011/121.asp

C, No. 248, para. 201.) In this case, the Court notes that Mr. Luna López reported the death threat he received to the Public Prosecutor's Office, thereby fulfilling his obligation to activate the bodies responsible for providing a response to the risk he was facing."

In the § 123.

"The Court recalls that **there is an undeniable link between the protection of the environment and the protection of other human rights** (Cf. Case of the Mayagna Community (Sumo) Awas Tingni v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C, No. 79, paras. 144 and 149 and Case of Kawas-Fernández, supra, para. 148. Cf. Organization of American States, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), Article 11. Similarly, the European Court of Human Rights has recognized the link existing between the protection of the environment and the fulfillment of human rights. Cf., European Court of Human Rights (ECHR), Case of Guerra et al. v. Italy. No. 116/1996/735/932. Judgment of February 19, 1998, para. 60; Case of López Ostra v. Spain. No. 16798/90. Judgment of December 9, 1994, para. 51 and Case of Fadeyeva v. Russia. No. 55723/00. First Section. Judgment of June 9, 2005, paras. 68 to 79.) and that the **"recognition of work undertaken in defense of the environment and its relationship to human rights is even greater in the countries of the region, where a growing number of threats, acts of violence and murders of environmentalists have been denounced."**(Cf. Case of Kawas-Fernández, supra, para. 149.) In this regard, the Court considers that **States have the obligation to adopt all necessary and reasonable measures to guarantee the right to life of those persons who find themselves in situations of special vulnerability,**(Cf. Case of the Pueblo Bello Massacre, supra, para. 123 and Case of Castillo González et al., supra, para. 128. Similarly, Cf. ECHR, Case of Kiliç v. Turkey, No. 22492/93. Judgment of March 28, 2000, paras. 62 and 63, and Case of Osman v. United Kingdom, No. 87/1997/871/1038. Judgment of October 28, 1998, paras. 115 and 116; UN, Committee on Human Rights, Case of Delgado Páez v. Colombia, Communication No. 195/1985, UN Doc. CCPR/C/39/D/195/1985(1990), July 12, 1990, paras. 5(5) and 5(6).) **particularly as a consequence of their work,**(Cf. UN, Committee on Human Rights, Case of Orly Marcellana and Daniel Gumanoy, representing Eden Marcellana and Eddie Gumanoy v. Phillipines, Communication No. 1560/2007, UN Doc. CCPR/C/94/D/1560/2007, October 30, 2008, paras. 7(6) and 7(7). Also, Cf. Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C, No. 161, para. 77 and Case of García and Family v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012. Series C, No. 258, para. 179.) **whenever the State is "aware of a situation of real and imminent danger for a specific individual or a group of individuals and has reasonable possibilities of preventing or avoiding that danger."** (Case of the Pueblo Bello Massacre, supra, para. 123 and Case of Castillo González et al., supra, para. 128.) **Furthermore, States should provide the necessary means for persons who are defenders of human rights, or who perform a public function, so that when they encounter threats or situations of risk or report violations of human rights, they can "freely carry out their activities; protect them when they receive threats so as to prevent attacks on their lives and integrity; create the conditions to eradicate violations by State agents or other individuals; refrain from hindering their work and seriously and effectively investigating violations committed against them, combating impunity."** (Cf. Case of Nogueira de Cavalho, supra, para. 77 and Case of García and Family, supra, para. 179. Cf. United Nations working group on Arbitrary Detention, Opinion No.

39/2012 (Belarus), UN Doc. A/HRC/WGAD/2012/39, August 31, 2012, para. 45. Cf. 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, Supra, Article 12(2): "The State shall take all necessary measures to ensure the protection by competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration;" and Resolutions 1818/01 and 1842/02 of the General Assembly of the Organization of American States, Human Rights Defenders in the Americas: Support for the Work of Individuals, Groups and Civil Society Organizations for the Promotion and Protection of Human Rights in the Americas, of June 4, 2010, which resolved, "To exhort Member States to intensify their efforts to adopt the necessary measures to guarantee life, humane treatment and freedom of expression to themselves, according to the national legislation and in agreement with internationally recognized principles and standards.")".

Court says that the State should:

"Adopt legislative, institutional and legal measures in order to reduce the risks to which human rights defenders are exposed, when in situations of vulnerability. In this regard, the State should:

1. strengthen its institutional capacity to combat the pattern of impunity in cases of threats and deaths of human rights defenders, through the formulation of investigation protocols that take into account the risks inherent to human rights work, and in particular the right to a healthy environment, leading to the sanction of those responsible and to appropriate reparation for the victims. Furthermore, the State must ensure that when public officials are involved in investigations on human rights violations, such investigations are conducted efficiently and independently;
2. strengthen the mechanisms to effectively protect witnesses, victims and their families who are at risk as a result of their connection to the investigation, and
3. develop appropriate and timely measures for institutional response to ensure effective protection for human rights advocates in situations of risk." (§2,c,b iv., page 5)

§136. says:

"As to the meeting held between Carlos Luna López and José Ángel Rosa in the presence of the Prosecutor of the Public Prosecutor's Office, the Court takes note of the expert opinion rendered by Luis Enrique Eguren Fernández, in which he stated that:

"a pardon or desire for conciliation on the part of a defender who has been attacked cannot detain the State's proper action to provide protection, if it is determined that the risk is objective and linked to the activity of the [human rights defender] and related to the interests (direct or indirect) of the potential or de facto aggressor. Even in cases where the aggression does not constitute a crime (as sometimes occurs with threats), a policy of protection should initiate actions of protection based on a determination of the level of risk which, by its own rationale, is independent of an expression of conciliation by a potential perpetrator: if an aggression has been conceived by this perpetrator, his verbal expression of conciliation cannot be taken as a true guarantee that he will not subsequently act against the [defender of human rights]." (Expert testimony of Mr. Luis Enrique Eguren Fernández rendered by affidavit on January 28, 2013 (Merits file, page 646).)

§137:

"In consideration of the criteria that define the State's positive obligation to prevent human rights violations, the State had the obligation to act with due diligence in the face of Mr. Luna López's situation of special risk, taking into account that in this specific case there were sufficient reasons to conclude that the motive of the threat against him was related to his actions as a public official defending the environment."

In the Conclusion the Court states the failure of the due diligence from the State of Honduras (§§159-167) and confirms the existence of the situations of the special risk for the environmental defenders, by saying the following in its §138:

"Therefore, the Court considers that in this case, it can confirm the existence of a situation of special risk for defenders of the environment at the time of the events."

- **TEODORO CABRERA GARCÍA AND RODOLFO MONTIEL FLORES (CASE 12.449) AGAINST THE UNITED MEXICAN STATES, JUNE 24, 2009** ²⁴⁴

"In 1998 Teodoro Cabrera García and Rodolfo Montiel Flores joined with other campesinos to form the civil association known as the Campesino Environmentalist Organization of the Sierra of Petatlán and Coyuca de Catalán [Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán] (OCESP) in order to put a stop to the logging operations in the mountain forests of the state of Guerrero, which in their view threatened the environment and the livelihood of the local campesino communities.[...] According to the testimonies in the record for criminal case 61/99, soldiers fired a series of shots at Mr. Cabrera García's house, whereupon the individuals attending the meeting, including the victims, were said to have fled and hidden in a ravine for several hours. Eventually, the soldiers discovered their hiding place and set fire to it, flushing out Mr. Cabrera and Mr. Montiel Flores who were forced to leave their hiding place."²⁴⁵

Also, the victims were accused in illegal firearm possession and marijuana cultivation (§76).

So, the §1 says: "the victims were subjected when detained by and in the custody of members of the Mexican Army, the failure to bring them without delay before a judge or other officer authorized by law to exercise judicial power in order to verify the lawfulness of the arrest, and the irregularities that occurred in the course of the criminal case prosecuted against them."

"The application also deals with the lack of due diligence in investigating and sanctioning those responsible for the incidents and, in particular, the failure to properly investigate the allegations of torture; the failure to make proper reparations to the victims, and the use of the military system of justice to investigate and try human rights violations.(§2.)

In the conclusion the Court stated:

§ 212." The cruel, inhuman and degrading treatment to which Messrs. Teodoro Cabrera García and Rodolfo Montiel Flores were subjected when detained by and while in the custody of

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<http://www.cidh.oas.org/demandas/12.449%20Teodoro%20Cabrera%20Garcia%20y%20Rodolfo%20Montiel%20Flores%20Mexico%2024jun09%20ENG.pdf>

²⁴⁵ See the §§ 42, 43, 46, 49

members of the Mexican Army; the failure to bring them without delay before a judge or other officer authorized by law to exercise judicial power, in order to verify the lawfulness of the arrest; the irregularities that occurred in the course of the criminal case prosecuted against them; **the lack of diligence in investigating and sanctioning those responsible for the events and, in particular, the failure to properly investigate the allegations of torture; the failure to make adequate reparations to the victims; and the use of the system of military justice to investigate and prosecute violations of human rights, [..]**"

- **KAWAS-FERNÁNDEZ V. HONDURAS, 4 February 2008** ²⁴⁶

It is a very important decision of the Inter-American Court of Human Rights which affirms the State duty to respect, protect and fulfill the rights of defenders, as well as to conduct serious and effective investigations of any violations against them, thus preventing impunity

First of all, in the §4. "The Commission considers it justified to submit this case to the Court, in light of the need to obtain justice and reparations for the victim's next of kin. In addition, the Commission considers that the case reflects the situation of the defenders of the environment and natural resources in Honduras, the attacks against those persons, and the obstacles placed in the way of investigating acts of harassment and persecution."

Then, " The Inter-American Commission requests the Court to find the Honduran State internationally responsible for having breached its international obligations through violation of article 4 (right to life) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation with the general obligation to respect and guarantee human rights established in article 1.1 of that instrument, to the detriment of Blanca Jeannette Kawas-Fernández. The IACHR also asks the Court to declare the State responsible for violating articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation with the general obligation to respect and guarantee human rights established in article 1.1 and the obligation established in article 2 of the treaty to adopt internal legal provisions, to the detriment of the victim's next of kin."

And then, the Court affirms the States duty to „Take measures to prevent a recurrence of acts similar to those recounted in the present case. In particular: i. Adopt, as a matter of priority, a policy of eradicating violence against defenders of natural resources, including preventive and protective measures. ii. Adopt a public policy of combating impunity in cases of violations of the human rights of human rights defenders." (§6 d, page 2)

§77. of the Fernández v. Honduras case, The Inter-American Court has also established that "States can, by attribution, incur international responsibility for human rights violations committed by third parties or individuals, in terms of the State's obligations to ensure respect for these rights among individuals. On this point the Court has held that:

International responsibility may also be engaged for acts of private individuals that are, in principle, not attributable to the State. The effects [of the obligations erga omnes to respect

²⁴⁶ Blanca Jeannette Kawas Fernández, (Case 12.507), Against the Republic of Honduras, 4 February 2008, <http://www.cidh.oas.org/demandas/12.507%20B%20J%20Kawas%20Honduras%204%20febrero%202008%20ENG.pdf>

and enforce respect for standards of protection, which is the responsibility of the States Parties to the Convention,] extend well beyond the relationship between the agents of a State and the persons subject to its jurisdiction; those effects are also manifest in the positive obligation that the State has to adopt the necessary measures to ensure effective protection of human rights in inter-personal relationships. The State can be held responsible for the acts of private parties when, by either the action or omission of its agents serving as guarantors, it fails to honor those obligations erga omnes undertaken with articles 1(1) and 2 of the Convention. (I-A Court, Mapiripán Massacre Case. Judgment of September 15, 2005. Series C No. 134, paragraph 111.)"

In the §78 the Court gives a citation from Pueblo Bello Massacre Case. Judgment of January 31, 2006, paragraph 123 reminding the standard for attribution of responsibility, the Court has held that:

"A State cannot be held responsible for any and every human rights violation committed between private parties within its jurisdiction. The erga omnes nature of a State's Convention-based obligation to ensure respect for Convention-protected rights does not mean that a State bears unlimited responsibility for any act or deed of private parties; in effect, a State has a **duty to take measures to prevent crime and protect** private parties in their relations with one another when it is cognizant of a real and immediate risk to an individual or certain group of individuals and when the prevention or avoidance of that risk falls within the realm of what the State can reasonably do. In other words, although the juridical consequence of a private individual's action, omission or deed may be a violation of the human rights of another private individual, that violation is not automatically attributable to the State; attribution will depend on the circumstances of the case and whether the obligation to ensure is being fulfilled. (I-A Court, Pueblo Bello Massacre Case. Judgment of January 31, 2006, paragraph 123)" (§78, page 15)

§147:

"The Commission also considers that the State is obliged to prevent the recurrence of human rights violations such as those that now concern us, and consequently it asks the Court to order Honduras to adopt, on a priority basis, a policy to eradicate violence against defenders of the environment and natural resources, which policy must include measures of prevention and protection."

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