THEY SPOKE TRUTH TO POWER AND WERE MURDERED IN COLD BLOOD

ANALYSIS ON THE SITUATION OF ENVIRONMENTAL HUMAN RIGHTS DEFENDERS AND CONCRETE RECOMMENDATIONS TO BETTER PROTECT THEM

UNITED NATIONS SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS
The present report is a adaptation of the official report A/71/281. Its content does not reflect the position of the United Nations.

Manufactured to the most stringent environmental certifications
1. INTRODUCTION

The present report highlights the situation of environmental human rights defenders (EHDRs). In this report, I want to raise alarm about the increasing and intensifying violence against them. I am extremely appalled by the number of killings and attacks and the lack of response from States in front of such situation. I want to make recommendations to various stakeholders in order to reverse this worrying trend and to empower and protect those defenders, for the sake of our common environment and sustainable development.

This report is dedicated to the heroic activists, who have braved the dangers facing them and defended the rights of their communities to a safe and healthy environment, to a future with dignity and respect, and to their traditional land and livelihood. They spoke truth to power, and were murdered in cold blood.

This happens in Honduras, where the renowned environmental campaigner Berta Caceres and her colleague Nelson Garcia from Civic Council of Popular and Indigenous Organisations of Honduras (Copinh) were slain one after another in March 2016, for having opposed hydroelectric dams in the sacred Gualcarque river basin.

The tragedy is common in the Philippines, where indigenous defenders of the Manobo community in Mindanao were murdered in September 2015.
Attacks and killings of environmental and indigenous rights defenders in Mato Grosso Do Sul, Brazil have continued with impunity.

In South Africa, prominent defender Sikhosiphi Rhadebe was assassinated at his home on 22 March, after reportedly being put on a “hit list” of opponents to mining operations in Xolobeni. These are not isolated cases. On average, three environmental activists were murdered each week in 2015.

I wish to convey to Member States that the killing of EHRDs is only the tip of the iceberg. I call on States to address the disturbing trend of increasing violence, intimidation, harassment and demonization of the brave individuals and groups who strive to defend and promote environmental and land rights. My observations and recommendations aim to elicit greater recognition of the role of EHRDs, afford them better protection, and empower them to continue their legitimate human rights activities.

It is the duty of the State to respect the right of everyone to promote and protect a safe, clean, healthy and sustainable environment, necessary for the enjoyment of a vast range of human rights. The State has a parallel duty to protect EHRDs from violations committed by State and non-State actors. Yet, business enterprises, the media and other non-state actors are obliged to respect human rights obligations and refrain from contributing or committing violations.
Despite this clarity in international human rights law, I am seriously concerned about the worrying figures of killings and violence that, without doubt, underestimate the true extent of threats and risks facing EHRDs.

Protecting EHRDs is crucial to the protection of the environment and the human rights that depend on it. In 2015, the international community reached a consensus on the 2030 Agenda for Sustainable Development, with a set of new goals as a roadmap for a more sustainable, prosperous and equitable future. A number of those goals are directly or indirectly related to the environment and land use. Such future and those goals are doomed to failure if those individuals and groups on the front line of defending sustainable development are not protected at the national, regional and international levels.

It is the responsibility of the international community and of States to empower and protect EHRDs, especially as the 2030 Agenda has engendered high hopes among civil society. I hope that this report will guide all stakeholders in their future efforts to implement those and other important objectives, while remembering that empowering EHRDs is crucial to the protection of our environment and all other related human rights.

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Public call for inputs on the subject of EHRDs. The Special Rapporteur received 30 submissions from States, civil society organisations and human rights defenders.

7 regional consultations with defenders held in 2014 and 2015, as well as communications on alleged violations against individual or groups of EHRDs.

Reports on the subject issued by civil society.

Expert meeting on the situation of EHRDs on 4-5 July 2016, in Florence, Italy.

The methodology used for this report draws from primary and secondary sources of information:

Expert meeting held in Italy in July 2016.
2. NORMATIVE FRAMEWORK

**DEFINITION:**
For the purposes of this report, the term “environmental human rights defenders” (or EHRDs) 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”.

This report defines those defenders through an inclusive term of “environmental human rights defenders”, whose rights to exercising such fundamental freedoms as the rights to expression, privacy, association and peaceful assembly have been enshrined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

With regard to exercising the right to protect environmental and land rights, article 1 of the UN Declaration on Human Rights Defenders (DHRD) 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”.
EHRDs 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 acting as EHRDs.

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.
The Declaration on human rights defenders recognizes the legitimacy of the defence of environmental rights by acknowledging their “valuable work” in the elimination of violations including those resulting from “the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources”.

The mandate has consistently held that the protection accorded to defenders by the DHRD is not dependant on whether the focus of their work is on civil and political or economic, social and cultural rights.

As recently as March 2016, the Human Rights Council adopted resolution 31/32 on protecting defenders addressing economic, social and cultural rights, reaffirming “the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues and development”.
ELEMENTS GUARANTEEING A SAFE AND ENABLING ENVIRONMENT FOR DEFENDERS, INCLUDING EHRDs

1. Adoption of a conducive legal and institutional framework
2. Fight against impunity and access to justice
3. Establishment of a strong national human rights institution
4. Effective protection policies and mechanisms
5. Non-state actor’s respect and support of the work of defenders
6. Access to United Nations bodies
7. Special attention to women human rights defenders
8. A robust community of defenders
### 2013 Report of the Special Rapporteur on Human Rights and the Environment:

This report outlined the human rights obligations relating to the environment drawn from international agreements and the bodies charged with interpreting them. The threefold duties include:

1) **Procedural obligations of States** to assess environmental impacts on human rights and to make environmental information public; to facilitate participation in environmental decision-making; and to provide access to remedies for environmental harm.

2) **Substantive obligations of States** to adopt legal and institutional frameworks that protect against environmental harm, including harm caused by private actors.

3) **Non-discrimination** and other obligations of States relating to the protection groups in vulnerable situations, including women, children and indigenous peoples.

### The United Nations Guiding Principles on Business and Human Rights

While States are bound by international human rights law, non-State actors are required to respect human rights, including the right to defend environmental and land rights. Transnational corporations and other business enterprises must respect human rights, as set out in the UN Guiding Principles on Business and Human Rights. The Guiding Principles aim to implement the **“Protect, Respect and Remedy” Framework**, which rests on three pillars: the State duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to respect human rights; and the need for access to effective remedy for victims of business-related human rights abuses.

Furthermore, the Guiding Principles require that companies identify and assess any actual or potential adverse human rights impacts through meaningful consultation with potentially affected groups, as an integral part of their responsibility to respect human rights. Such impact assessments should be carried out not only at the start of a new project, but also throughout the life cycle of the project, prior to any significant changes in the operating context.
The Human Rights Council resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights is encouraging, and such an instrument would be timely. The open-ended intergovernmental working group established pursuant to the resolution should fully consider the heightened risk posed by business activities to environmental human rights defenders in negotiations.

WHAT CAN BE DONE TO END REPRISALS?

The international community and institutions must also act to end threats, intimidation and violence, used to curtail the interaction between EHRDs and the international and regional human rights mechanisms.

The Human Rights Council, in its resolutions 22/6 and 24/24, reaffirmed the right of everyone to unhindered access to and communication with international bodies.

The “San José Guidelines” against Intimidation or Reprisals, issued by the Chairs of the UN human rights treaty bodies, aim to enhance the protection provided by treaty bodies to those who face reprisals for engaging with the international human rights regime. Other relevant international and regional organisations should follow suit and put in place policies and measures to prevent and address reprisals against EHRDs.

In September 2016, Andrew Gilmour was appointed as a focal point to help combat reprisals against human rights defenders who engage with the United Nations. Andrew Gilmour is currently Assistant Secretary-General for Human Rights and Head of the Office of the High Commissioner for Human Rights (OHCHR) in New York.
3. HOSTILE ENVIRONMENT

As the global demand for natural resources grows, the environment is becoming a new frontline for human rights and our common future. In many countries around the world, **activists and communities are raising their voices to prevent harming our environment and promote alternatives to the planet’s devastation through a more sustainable development.** They seek a meaningful and urgent societal dialogue where people can live in prosperity and dignity, and where nature is protected.

To many, **they are heroes defending our planet and our rights.** They are not only environmentalists or land activists, but also human rights defenders. However, they are demonized by their opponents as “anti-development” or “unpatriotic”. This despite the striving by those EHRDs for a more sustainable, prosperous and equitable future, an objective shared by the international community as expressed by the adoption of the 2030 Agenda.

Despite their human rights work, **EHRDs are increasingly facing violence and violations of their rights on a daily basis.** They are often treated as enemies of the state and, all too often, are targeted for assassination. The scale of killings indicates a truly global crisis.

Despite the complexity of quantifying the complete situation, there have been rapid strides in exposing the true picture of attacks against EHRDs:

**ACCORDING TO GLOBAL WITNESS 2015 REPORT:**

- **185** killings of EHRDs across 16 countries in 2015
- **59%** increase from 2014
- **>3** defenders murdered every week
According to Global Witness 2015 report:

- 42 Killings linked to mining and extractive industries
- 15 Killings linked to hydroelectric dams and water rights
- 20 Killings linked to agribusiness
- 15 Killings linked to logging

According to Front Line Defenders report:

- 45% of the 156 defenders killed in 25 countries in 2015 were defenders of environmental, land and indigenous people’s rights.

Both reports, collaborated by numerous others, indicate that the large majority of assassinations occurred in the countries of the global South, especially in Latin America and Asia. This is not to deny serious allegations about abuses of EHRDs in the global North countries, including harassment and strategic lawsuits against public participation (SLAPP) that occur with State complicity or at least disregard.

Geographic Distribution According to Reports of NGOs:

In 2014, three-quarters of the 116 cases of killings of EHRDs in 17 countries – on average more than two victims per week - took place in Central and South America, with South East Asia being the second-most affected region.

- 67% of HRDs murders in Asia were of EHRDs
- 41% of HRD murders in Central and South America concerned environmental human rights defenders
COMMON TRENDS:

- Overall **impunity with which the perpetrators of these crimes can act**
- **The woefully lacking or ineffective protection measures available for EHRDs at risk**
- In almost every affected Latin American country, **Government and corporate actors are involved in the murders of EHRDs**

**TYPE OF THREATS AND ATTACKS FACED BY EHRDs**

The assassination of EHRDs is only part of the overall violence facing EHRDs. The submissions received by the Special Rapporteur show that EHRDs face numerous threats and violations.

**VIOLENT ATTACKS AND THREATS AGAINST THEIR FAMILIES**

- **KILLINGS**
- **TRAVEL BANS**
- **SEXUAL HARASSMENT**
- **BLACKMAIL**
- **ENFORCED DISAPPEARANCE**
- **JUDICIAL HARASSMENT**
- **ILLEGAL SURVEILLANCE**
- **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 EHRDs.
In some countries, violations are intertwined with the overall climate of criminalization of the work of EHRDs, especially in the context of large-scale development projects.

Reports also indicate that **most individuals and groups facing threats are those who opposing land grabbing, extractive industries, industrial timber trade and large-scale development projects. Indigenous communities and ethnic and racial minorities are particularly vulnerable.**

They are the most affected because the resources exploited are usually located in their lands; they lack legal protection while exerting strong and vocal opposition; many indigenous communities do not hold formal title over the land they inhabit; and their access to justice is limited.

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**COMMUNICATIONS SENT BY THE SPECIAL RAPPORTEUR:**

Between 2006 and 2016, 2730 communications sent

243 of which (9%) concerned EHRDs

Proportion of cases involving EHRDs of the total of communications sent by the Special Rapporteur

- 7% 2006-2011
- 11% 2011-2016

**PROFILE OF PERPETRATORS:**

Between June 2011 and July 2016, 433 individual EHRDs have been the subject of communications sent by the Special Rapporteur on violations committed by:

**STATE**
- Security forces, police and local authorities

**NON-STATE ACTORS**
- Companies, paramilitary groups, organized crime, private security and the media
In the last 5 years, of the 137 communications sent by the Special Rapporteur regarding EHRDs, 48% concerned the Americas.

Latin American and Asia have been the most hostile regions for EHRDs. 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), affirming the State duty to respect, protect and fulfil the rights of defenders, as well as to conduct serious and effective investigations of any violations against them, thus preventing impunity.

Asia is the second most dangerous region and has seen an increase in the number of communications.

**ASIA**
- 25 communications during the first period (24%)
- 50 communications during the second period (36%)

- 9 communications from The Phillipines
- 8 communications from India
The most dangerous countries for EHRDs:

- Brazil
- The Philippines
- Colombia
- Honduras
- Mexico
- Peru
- India
- Cambodia
- Thailand
- Guatemala

There are indications that some African countries are facing similar challenges, even if they were not documented and publicized sufficiently.

**Type of communications received by field of industry**

- **Extractive industry**: 54 communications
- **Land rights**: 37 communications
- **Construction projects**: 27 communications

*Lands rights = territorial disputes and the right to ancestral lands
**Construction projects = hydroelectric dams, oil and gas pipelines and aqueducts

Other areas in which EHRDs have faced threats include development policy, fisheries, forced evictions, nuclear power and environmental pollution.
The increased scale of acts of reprisals against EHRDs protesting against the environmental harm of projects funded by international financial institutions (IFIs) is disquieting. The submissions received revealed large gaps between professed commitments to participation and accountability and the situation on the ground, pointing to an overwhelming failure by IFIs to assess risks and respond to reprisals effectively. In one such report, case studies in Cambodia, Ethiopia, India, Uganda and Uzbekistan documented reprisals taking a variety of forms. The critics of World Bank Group-funded projects were reportedly the target of threats, intimidation tactics and baseless criminal charges.

Some women faced sexual harassment or gender-based threats, attacks, or insults when they speak out. Security forces responded violently to peaceful protests, physically assaulting community members and arbitrarily arresting them. In other cases, critics or their family members were threatened with the loss of their jobs or livelihoods. In many countries, such reprisals often occur within a broader effort to demonize critics as unpatriotic or “anti-development”.

It is evident that the situation of EHRDs is alarming. The scope and intensity of violence against EHRDs requires immediate action.
Therefore, it is urgent that the international community, regional communities, States, IFIs, business enterprises and other actors urgently and publicly adopt a zero-tolerance approach to the killings and violent acts against EHRDs, and immediately launch policies and mechanisms to empower and protect them.

The threats and risks facing EHRDs could be effectively prevented only if the causes and contexts underlying the hostile environment where EHRDs operate are fully understood and addressed.

4. ROOT CAUSES UNDERLYING VIOLATIONS

A. EXCLUSION AND POWER IMBALANCE

One of the systemic causes of conflicts around environmental rights is the imbalance of power between States, companies and EHRDs. The increasing conflicts over the environment stems from resource exploitation that fails to address legitimate concerns and demands of local communities. Those communities are extremely vulnerable to exploitation and abuse because they are already marginalized and excluded from decision-making.

Power inequality permeates all decision-making processes; from the upstream phases such as the determination of the advisability of a project, to the design of the project, and onward to its implementation. In many cases, power inequality is aimed at shrinking space for civic participation in order to muzzle opposition to development projects. It also relates to a poor understanding of communities’ specificities and their exclusion. The affected rights-holders often live in rural, isolated areas, with little access to government services and the judiciary.

Many of these communities, particularly indigenous ones, hold the right to free, prior, and informed consent, and all of them have the right to fully participate in consultations around proposed projects that may affect their lands and livelihoods.
Despite their recognition in various international, regional, and domestic laws, those rights are often not meaningfully implemented, or are simply ignored by companies with the complicity of governments. Some governments strategically choose to deny the rights to peoples that have not been “officially” identified as indigenous. The consultation processes also regularly fail to address power inequalities within communities, leaving isolated such groups as women or ethnic groups owing to one-size-fits-all approaches.

Moreover, in many cases, not only state authorities and companies fail to consult with and obtain the consent of the affected communities, but they also stigmatize dissent and retaliate against their critics, instilling mistrust and engendering more conflict in the mid-to long term. A number of testimonies highlighted the lack of support by corporations and states authorities to community-based environmental impact assessments (EIA) and consultations, which could instead de-escalate potential conflicts.

© Goldman environmental Prize

Máxima Acuña, Peruvian land-rights defender and 2016 Goldman Prize Winner
Preventative approaches, ensuring the meaningful participation of EHRDs in the decision-making at all stages, are crucial to overcoming those challenges. Laws, contracts and human rights impact assessments (HRIA) by States and corporations should be developed with the active participation of EHRDs and communities. They should also contain provisions and procedures on the procedural rights of these communities and rights defenders. Such provisions should be included in national action plans on business and human rights, environmental impact assessments (EIAs) and decision-making on business concessions and land tenure.

Another reason for the exacerbated risks facing EHRDs is the range of actors that stand to gain from hindering their work, particularly business actors whose human rights obligations have not been articulated as clearly as those of States. The weak regime concerning the duty of companies to respect the rights of EHRDs is one factor underlying vulnerability of EHRDs to risks. Reports have shown the involvement of businesses in human rights abuses that range from restricting their legitimate activities, curtailing the exercise of their rights, to attacks carried out by private security firms on behalf of companies. National action plans, when established, often fail to advise how States should sanction corporations involved in such abuses.

Affected communities and human rights defenders should be meaningfully engaged regarding:

- **NATIONAL ACTION PLANS**
- **ENVIRONMENTAL IMPACT ASSESSMENTS**
- **HUMAN RIGHTS IMPACT ASSESSMENTS**
- **LAND RIGHTS DECISIONS**
- **BUSINESS CONTRACTS**
- **FREE PRIOR AND INFORMED CONSENT**
- **PROTECTION MEASURES**
- **ENERGY POLICIES**

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.

A range of UN experts, civil society organisations, and business representatives have repeatedly made the ethical and business case for ensuring that defenders are protected and consulted. Business must respect the rights of EHRDs 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 EHRDs to identify, mitigate, and remedy the adverse human rights impact of business operations. **States should communicate clearly the human rights obligations of business enterprises**, incentivise them to uphold those responsibilities also as a matter of good business practice and sanction those companies associated with threats to defenders both at home and abroad.

**B. COMMODIFICATION AND FINANCIALIZATION OF THE ENVIRONMENT**

The intensified competition for natural resources over the last decades has led to multiple social and environmental conflicts all over the world. The recent crisis has exposed the vulnerability of the global South countries, which have prioritized resource-based development models to raise their national income.

Much of the demand for the resources in those countries comes from countries in the global North. In a globalized world, the quest for economic growth has resulted in a neo-colonial environment that exacerbates conflicts between communities and business actors. What underlie these conflicts are **profoundly different approaches to development**.

Recent reports have pointed to a **growing opposition between what could be considered a commodity-based approach, prioritizing economic growth and midterm profits, and rights-based approaches, favouring populations’ interests and sustainability**. Communities protesting against projects that threaten their very livelihood and existence have often faced stigmatization and attacks from States and corporations, labelling them “anti-development”.

Yet, **these defenders often seek to preserve natural resources and to ensure a holistic and long-term approach of development where land, water, air and forests are not reduced to mere marketable goods**. The commodification and financialization of nature often lead to simplifying the real “value” of the environment, ignoring the social or cultural dimensions of it and reducing complex interactions of elements within and between ecosystems.
Corruption and impunity also underlie the growing number of conflicts around natural exploitation and large-scale development projects.

This can be partly explained by the fact that the majority of such projects require vast financial investments, which can fall prey to corruption practices. This situation is particularly patent in States with poor and non-transparent governance processes, which leads to collusion practices at the expense of public goods. In many land-grabbing situations in which businesses, authorities, local suppliers and sometimes the organized crime benefit from legal loopholes regulating these practices.

Corruption is often a consequence of the lack of transparency in such projects. This is exemplified by environmental impact assessments that were not performed with participation of the affected communities, were unavailable to them or inaccessible due to complexity of documentation or its language. Yet, Governments use transparency as a pretext to harass the organisations opposing large-scale projects. Moreover, the complexity of structures and processes of many large-scale development projects also makes it difficult to clearly identify the multiplicity of stakeholders (banks, anonymous companies, international investors, local suppliers, funding institutions etc.) and the chain of responsibilities to ensure accountability for certain violations.

Another cause for concern is the lack of independent and prompt investigations into attacks perpetrated against EHRDs, which is often linked to a lack of resources, corruption and collusion between perpetrators. States have nearly always failed to ensure perpetrators are brought to justice and sanctioned. This has been the case in countries such as Honduras, Guatemala, the Philippines, Brazil and this situation can perpetuate the climate of impunity, sending the message that EHRDs cannot trust the justice system to seek remedy for violations.
As a result, these root causes have long-term effects, contributing to the establishment of a two-tier system, in which the law is excessively applied to small-scale farmers, ethnic minorities or indigenous peoples who are not able to provide property deeds. While human rights violations committed by business interest and allied continue with impunity.

**D. GROUPS OF EHRDs AT HIGHER RISK**

**EHRDs are one of the most heterogeneous groups of defenders.** The category includes a diverse range people, profiles and trajectories, from small-scale farmer with no land deeds to environmental lawyers and journalists, from well-organised NGOs 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. This is also due to the nature of their struggles as human rights defenders. Many become EHRDs by “accident” or “necessity”- taking a stand against injustice or harmful practices to their environment. This may amplify their vulnerabilities as they might not self-identify as EHRDs, and therefore they may be unaware of their rights or existing protection measures, mechanisms or organisations 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 communication access and networks support.
Many violations against EHRDs can be directly linked to patriarchy, sexism, racism, xenophobia and chauvinism. This is important in the case of women EHRDs, 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 EHRDs but they are more likely to face gender-specific violence. Reports have shown that sexual violence is particularly used to silent women human rights defenders. In Latin America, for example, women defenders are one of the most threatened EHRDs owing to the nature of their human rights work and to their gender.

Furthermore, women EHRDs face a number of challenges, including those related to exclusion from participation in the negotiation and decision-making processes; criminalization used as a political strategy to deter resistance and delegitimize their work; smear campaigns against them in the media; and discrimination and violence against them in their families, communities and human rights movements. Women rights defenders from indigenous communities, with ethnic or racial minority origins or with disabilities can also suffer multiple discrimination. Gender, indigenous status, rural location, and other factors can intersect to isolate individuals, groups and 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 agribusiness, extractive industries as well as law enforcement agencies have been regularly observed to commit violations against EHRDs 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 livelihoods and environment. Linguistic barriers, countless obstacles to access basic social services, the imposition of unfavourable models of consultation aggravate the vulnerability of indigenous EHRDs.

In this context, it is critical to develop an intersectional approach, embracing the heterogeneity and diversity of EHRDs and understanding the various root causes and situations exposing them to risks and threats.
5. EMPOWERING ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

The fulfilment of the international community's commitment to the protection of the environment is premised on the empowerment of EHRDs. Existing processes of good governance are similarly premised on the existence of a safe and enabling environment for EHRDs.

Protection practices should contribute to the full respect of the rights of EHRDs and strengthen their security.

SEVEN PRINCIPLES TO PROTECT HUMAN RIGHTS DEFENDERS

- Develop a rights-based approach
- Recognize the diversity of defenders
- Integrate a gender perspective
- Focus on the “holistic security” of defenders
- Recognize the interconnections between defenders
- Ensure active participation of defenders at all stages
- Ensure that protection measures are flexible and adaptable
A. STRENGTHENING RESOURCES AND CAPACITIES

The effective protection of defenders starts with the recognition that everyone has the right to defend human rights. This is particularly important in the case of EHRDs, who may not self-identify as human rights defenders or whose identity may be more clearly tied to their community or to the environmental causes they pursue.

It is crucial to recognize the importance of these other identities and to advocate for a non-exclusive approach to the identification of EHRDs.

Indeed, defenders can and should draw strength from their multiple, overlapping identities. It is also important to recognize that such identities might create risks for particular EHRDs, so the resources and capacities of EHRDs must recognise and seek to address the differences between and amongst EHRDs.

Human rights capacity-building for EHRDs and others outside of the mainstream of the EHRD community is crucial to their protection and rights. Their meaningful participation in decision-making must be premised upon a full understanding of their rights. EHRDs have also expressed appreciation for technical support that helps them to map threats and vulnerabilities more effectively and develop workable security plans to the risks.

Litigation against perpetrators is an important way of ensuring accountability and obtaining redress. Coordinated transnational litigation against perpetrators of violence against EHRDs has helped revealed the complicity of various international businesses and decreased the impunity for such violence. However, the use of legal processes often require technical expertise and familiarity with judicial systems that is foreign to communities of EHRDs, especially when the legal action in question takes place far away from their residence, for example, in the home state of a transnational corporation. In such cases, EHRDs require legal advice, as well as sustained material and psychological support, to pursue these claims. Initiatives supporting EHRDs by connecting local communities with international law firms and overseas lawyers are highly welcomed.
Networks – locally, regionally, and internationally - can effectively support individual EHRDs and communities at risk. They allow good practices to be shared, demonstrate solidarity and muster resources, and facilitate access to safe havens for EHRDs under threat. Networks can take a variety of forms, ranging from informal ad hoc associations, to international confederations of organisations, to global networks of EHRDs working on similar issues. Given the nature of the work of EHRDs, there is a pressing need to develop networks that bring together the overlapping constituencies involved in environmental justice, including environmentalists, conservationists, indigenous communities and the human rights movement.

Solidarity action after Greenpeace India’s society registration has been cancelled by the authorities
EHRDs often face situations of acute risk, when they are threatened with severe harm or their very lives are put in danger. For interventions in these situations to be effective, they need to be timely, accessible and appropriately tailored to the circumstances of defenders. **Legal advice, legal representation, the provision of bail and trial monitoring have been particularly important for EHRDs, criminalised for their activities.** Increasingly, legal fora are being used to silence EHRDs, particularly those who oppose large-scale development projects and the actions of companies.

The use of “strategic litigation against public participation” (SLAPP) lawsuits silences EHRDs, effectively denying them both their rights to freedom of expression and participation in public affairs. EHRDs require support in their defence against such lawsuits, the financial and psychological burdens of which are often so great that they distract and demobilise defenders.

In emergencies, **some EHRDs can benefit from ad hoc and structured relocation initiatives.** A number of actors provide emergency grants to defenders in immediate danger. Emergency grants that have easy and fast application processes, quick response times that allow defenders discretion in using funds, appropriate to their personal situation, have helped many defenders cope with threats and attacks. In both the case of relocation and emergency grants, the particular features of EHRDs may make the traditional delivery of this support inappropriate.

The community-based nature of environmental and land activism may make relocation less of an option, and traditional ideas about who should apply for emergency grants may be unsuitable for such movements. **It is vital to consult EHRDs themselves on the suitability of such interventions to their personal circumstances lest they inadvertently increase the risks that defenders face.** Further work should be done by all actors to ensure EHRDs are aware of the support that is available to them in emergency situations.
B. FOSTERING A SAFE AND ENABLING ENVIRONMENT

MEANINGFUL PARTICIPATION, TRANSPARENCY, AND ACCOUNTABILITY

Individuals and communities should have the right to decide on their own priorities for development and to exercise control over their own economic, social and cultural development. In particular, they should be involved in the design, implementation and evaluation of plans and programmes for development that may have a direct effect on them. Meaningful and early participation is not simply a right but also a key element in a strategy to prevent tensions between different actors and violence against EHRDs, through recognition of their legitimate role in decision-making.

Participation should begin with the involvement of local communities in long-term planning. National action plans on business and human rights, EIAs, and other formal processes should be developed through consultative processes involving broad participation.
State and non-State actors should obtain the free, prior and informed consent of indigenous communities affected by activities on lands that they own, occupy or use. It is true that there is on-going debate about what constitutes such consent and whether it has been fulfilled in particular cases. The Declaration on the Rights of Indigenous Peoples provides guidance on the application of this principle to indigenous peoples. However, further discussion and the setting of international standards on the nature and application of this principle to indigenous peoples and other communities is necessary, coupled with a renewed emphasis on its implementation through monitoring and support to EHRDs.

States should address a key challenge that EHRDs face in exercising their right to participation: the lack of transparency and accountability by state and non-state actors in decision-making. The right of participation requires access to information and EHRDs often struggle to find out information about negotiations and agreements between state authorities and companies, affecting their land, livelihoods and local environment. Confidentiality clauses in agreements between corporations and state actors can also hinder access to information, and therefore should be reviewed.

**IMPUNITY AND ACCESS TO JUSTICE**

Little or no action is usually taken even when EHRDs lodge formal reports about violations they have faced. It is vital for state authorities to investigate such incidents promptly and to bring perpetrators to justice. When these incidents relate to the activities of companies, it is crucial for them to consider them carefully and to conduct their own investigations as to the culpability of their employees, contractors and business partners in such incidents.

**LEGAL FRAMEWORKS**

In order to build an environment conducive for the defence of rights, States need to review regularly the adequacy of laws, policies, regulations and enforcement measures to ensure that businesses respect human rights and that EHRDs are protected. In relation to the latter, civil society developed a model law for the protection of defenders, which provides useful guidance on the features of a comprehensive national protection regime for defenders.
As mentioned above, one of the root causes of abuses suffered by EHRDs is the lack of legal recognition of land rights, in particular for indigenous communities and those affected by post-colonialism, conflict, and other causes of forced displacement. **States should enact laws that recognize the rights of such individuals and communities.** Conversely, States need to review and repeal laws that facilitate the exploitation of natural resources, threatening the rights of those affected.

**BUSINESSES AND HUMAN RIGHTS DUE DILIGENCE**

It is encouraging to see commitments by business enterprises to respect human rights and protect the environment, often expressed in public statements and policies, as well as through the adoption of voluntary guidelines and codes of conduct. The Equator Principles, for example, set out a framework which financial institutions can use to assess and manage the social and environmental risks and impacts of projects, as well as to meet minimum standards for due diligence.

Such commitments, while significant, are insufficient in themselves. We should echo the observations of the Working Group on Business and Human Rights on the importance of measuring the efforts of State and non-State actors to protect rights and remedy abuses, so that gaps in performance and accountability can be tracked, reported, and assessed.

Human rights-based assessments can be a useful tool for human rights due diligence, if structured and implemented appropriately. Such assessments should estimate possible future and actual human rights impacts; involve the participation of affected individuals and communities; assess risks to rights-holders as well as the capacity of duty-bearers to respect, protect and fulfil these rights.

**Businesses should provide clear guidance to employees, contractors and partners that EHRDs and communities have the right to express their views, conduct peaceful protest, and criticize practices, without intimidation or retaliation.** They should have clear procedures for receiving complaints of misconduct and to respond to them in a timely manner. Human rights due diligence should involve tracking responses to communicating about how the impacts are addressed. Businesses need to set up transparent processes that provide remedies for negative human rights impacts.
In some cases, banks and financial institutions have provided funds, services and technical support for companies to rectify and prevent human rights violations, such as the improper acquisition of land. **There is a growing commitment of financial institutions to principles such as responsible financing, lending and investment.** The use of environmental, social and governance (ESG) criteria for risk assessment and the evaluation of the performance of investments can strengthen the accountability of corporations.

**HUMAN RIGHTS EDUCATION**

Environmental education is, laudably, becoming widespread, as expressed both in formal curricula in educational institutions and in public education campaigns. Such education initiatives should recognize the crucial role played by EHRDs in environmental protection. **Building public support for EHRDs through education serves an important preventative and protective function.**

Human rights education must also be available for government officials, journalists, and others working on environmental and development issues. Initiatives such as the UNESCO Global Action Programme on Education for Sustainable Development should be encouraged and we should support their call for inclusive, empowering education about the environment, engaging civil society and local communities as active participants.

Similarly, it is important for different branches of Government to recognize the role of EHRDs in environmental protection, beyond traditional units responsible for law enforcement. State entities responsible other activities, including for the environment, resource development and indigenous peoples, must also be involved in the protection of the environment and EHRDs. **States are encouraged to integrate a human rights-based approach (HRBA) into the work of environmental protection agencies and other relevant institutions.** It is important that such institutions be given the resources and support, required for effective environmental governance.
Awards and prizes for EHRDs are an important means of drawing attention to the work and risks they face. Awards are based on their environmental achievements generally or specific risks. An example of the latter is the Goldman Environmental Prize, awarded annually to EHRDs from around the world.

Awards also help build the profile and legitimacy of defenders, give voice to their security concerns and celebrate their successes. However, awards are not a panacea, and should be supported by robust protection measures for EHRDs at risk. Wherever advisable, they should recognize groups of EHRDs and communities rather than singling out individuals.
C. BOOSTING REGIONAL AND INTERNATIONAL SUPPORT

ROLE OF INDIVIDUAL STATES

Bilateral cooperation between States can build the capacity of institutions engaged in protecting the environment and EHRDs. For example, the Swedish Environmental Protection Agency, in collaboration with the United Nations Development Programme, is working with similar agencies in Mongolia, Kenya, Colombia and Mozambique to integrate a human rights-based approach into environmental institutions and processes.

However, **bilateral and multilateral agreements between States can also increase the risks faced by EHRDs inadvertently.** Clauses such as those on investor-State dispute settlements may hinder State efforts to consult with EHRDs. Similarly, restrictive clauses in contracts may limit the information available to EHRDs and infringe upon their right to participation.

States play a prominent role in monitoring and protecting EHRDs through their diplomatic missions abroad and trained human rights focal points with to respond to the situation of defenders at risk.

**States should keep the situation of EHRDs on the agenda of bilateral and international discussions,** including by raising specific cases of defenders at risk through high-level visits, political dialogue, demarches and through “quiet diplomacy”; using the Universal Periodic Review process to make recommendations to States on the protection of EHRDs; supporting strong Human Rights Council resolutions on the protection of EHRDs; and developing and implementing guidelines for the protection of defenders.

REGIONAL AND INTERNATIONAL FORA

**Regional and international fora provide important mechanisms for the monitoring and responding to the situation of EHRDs.** The Inter-American Commission on Human Rights (IACHR) established the Office of the Rapporteur on human rights defenders, which monitors the situation of defenders, including EHRDs.
The Inter-American Court of Human Rights and the IACHR have provided important relief to EHRDs, through court decisions and “precautionary measures”, requesting states to take action where defenders are at acute risk. It is extremely concerning to see the budget reduction facing the IACHR and its impact on its continuing ability to monitor, support and protect defenders in the region.

The African Commission on Human and Peoples’ Rights has also provided guidance for States in the region, particularly with respect to the risks faced by EHRDs opposing business and development interests. The Commission’s Special Rapporteur on Human Rights Defenders has also provided assistance to defenders at risk and supported the development of regional guidelines on the rights of HRDs, including EHRDs.

**Inter-regional dialogues between regional institutions are an important conduit for raising awareness of the situation of EHRDs.** The expansion of the dialogues should be encouraged, including the new regional regime emerging in the Association of Southeast Asian countries (ASEAN) region in light of the many risks faced by EHRDs in Asia.
INTERNATIONAL COOPERATION IN BRINGING PERPETRATORS TO JUSTICE

It is not only environmental harm that has a transboundary dimension. **Some of the perpetrators of abuses against EHRDs are similarly international in nature.** For example, transnational companies in one State may direct and control the harm that is inflicted upon EHRDs in another State. While national mechanisms must be strengthened to ensure an end to impunity domestically, the international community must also address the transboundary dimension of such violations by setting standards and increasing coordination and mutual legal assistance. It should consider the application of existing international criminal law frameworks, including those related to transnational criminal activity, to the perpetrators of violations committed against EHRDs and affected communities.

**Initiatives by States to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction are very positive.** These include obligations on companies to report on their operations globally, and legal regimes allowing for the prosecution of nationals wherever offences were committed by them.

INTERNATIONAL FINANCIAL INSTITUTIONS

International financial institutions (IFIs) play a significant role in providing financial and technical support to State and non-State actors for economic and social development around the world. They are important actors in ensuring that EHRDs can voice concerns without fear of reprisals. **At a minimum, IFIs have a duty to ensure that their activities do not contribute to, or exacerbate, human rights violations, including those committed by borrowers.** In this regard, we should encourage the call made in March 2016 by over 150 civil society organisations for IFIs to ensure meaningful and effective participation and accountability within their investments and guarantee a systematic analysis of the enabling environment for fundamental freedoms at country and project levels.

**IFIs such as the World Bank Group can play an active role** in influencing actors in the public and private sectors to respect the rights of EHRDs, to act with transparency and accountability for their actions and to seek the meaningful participation and consultation of affected communities in their activities.
The reflection on its practice by the World Bank’s Inspection Panel is encouraging and there are great expectations on its upcoming publications on the emerging lessons in a number of domains of its activities, including environmental assessment, indigenous peoples and the requirements for consultation, participation, and disclosure of information. **Concrete policies and measures should be put in place** to prevent and address acts of reprisals against EHRDs for their cooperation with IFIs.

Good practices among IFIs include **requiring borrowers to communicate to those affected by projects** how their feedback in the design and execution of projects has been followed-up; **denouncing reprisals against defenders** and using their influence to protect EHRDs at risk; and **creating independent oversight mechanisms** for activities and situations where there is a high risk of human rights violations.
A. CONCLUSIONS

EHRDs are at the heart of our future and the future of our planet. They play a critical part in ensuring that development is sustainable, inclusive, non-discriminatory and beneficial for all, and it does not cause harm to the environment. Empowering and protecting EHRDs is part and parcel of the overall protection of the environment.

Upholding human rights for EHRDs is essential to the protection of the environment and environmental rights, and is grounded in international human rights standards. EHRDs cannot properly defend the environment-related rights, without exercising their own rights to access to information, freedom of expression, of peaceful assembly and association, guarantees of non-discrimination, and participation in decision-making. States have the duty to protect those rights as well as their rights to defending human rights and to life, liberty, and security. Despite the clarity in international human rights law in this regard, increased killings and violence against EHRDs point to a situation of global crisis.

The international community and States should urgently assume their responsibility to empower and protect EHRDs. The newly-adopted international agreements such as the 2030 Agenda for Sustainable Development and the Paris Agreement on Climate Change have engendered high expectations among EHRDs around the world. That vision is doomed to fail if those individuals and groups on the front line of defending sustainable development are not protected at the national, regional and international levels.

This report, including the recommendations below, is aimed at guiding all relevant actors in their future efforts to implement their commitments. We should remember that empowering EHRDs is not only crucial to the protection of our environment and our human rights that depend on it, but also a safeguard to ensure that our future development will be less conflict-prone and more inclusive, leaving no one behind.
B. RECOMMENDATIONS

In order to reverse the tide of the worsening situation of EHRDs, we need to put forward a set of recommendations to the attention of various stakeholders. All stakeholders should urgently and publicly adopt a zero-tolerance approach to the killings and violent acts against EHRDs, and to immediately launch policies and mechanisms to empower and protect them.

All actors should also document more systematically information on the situation of EHRDs at risk, especially in countries of concern, with a view to advocating more actionable and effective measures for their protection.

INTERNATIONAL COMMUNITY SHOULD:

a. Ensure that the implementation of the 2030 Agenda for Sustainable Development is guided by Human rights based approaches, guaranteeing meaningful participation of EHRDs and affected communities, as well as empowering and protecting defenders at the international, regional and national levels;

b. General Assembly and Human Rights Council should monitor violations against EHRDs;

c. Publicly scrutinize and condemn violations of the rights of EHRDs, and raise the visibility of their legitimate role in defending the land and environmental rights;

d. Ensure that any future bilateral and multilateral trade agreements involving countries, where EHRDs are under threat, include measures to prevent and address violations against defenders and mechanisms to investigate and remedy violations;

e. Ensure that all development aid and assistance is guided by human rights and the Declaration on Human Rights Defenders, applying them to programming in all sectors and at all stages;

f. Formulate an international treaty to prevent and address human rights violations by transnational and national business enterprises, also considering the heightened risk posed by business activities to EHRDs.
REGIONAL INTERGOVERNMENTAL ORGANISATIONS SHOULD:

a. Urge negotiating parties in Latin America and the Caribbean to expedite the conclusion of the negotiations on the application of Principle 10 of the Rio Declaration on Environment and Development;

b. The United Nations Economic Commission for Africa (ECA) and the United Nations Economic and Social Commission for Asia and the Pacific develop similar legally-binding instruments on access to information, public participation and justice in environmental matters, including measures to protect EHRDs;

c. Encourage more States to accede to the Aarhus Convention, in the absence of other multilateral and regional agreements at this stage;

d. Provide political and financial support to regional human rights mechanisms with a view to reinforcing the protection of EHRDs in the regions;

e. The ASEAN Intergovernmental Commission on Human Rights and the African Commission on Human and People’s Rights should establish a mechanism to provide emergency protection for defenders;

f. Formulate policies and measures to prevent and address reprisals against EHRDs for cooperating with regional mechanisms.

STATES SHOULD:

a. Reaffirm and recognize the role of EHRDs and respect, protect and fulfil their rights;

b. Ratify the International Labour Organisation Convention n° 169 and guarantee the right to consultation and participation of indigenous communities in decisions at every stage of a project’s life-cycle;

c. Ensure a human rights-based approach to development in all relevant legal and policy regulations, including multi-lateral and bilateral agreements or contracts, and establish mechanisms for due diligence concerning the protection of EHRDs and the environment;
d. Ensure a preventative approach to the security of EHRDs through guaranteeing their meaningful participation in decision-making and through developing laws, policies, contracts and assessments by States and businesses;

e. Formulate national action plans on business and human rights and ensure that they, as well as EIAs, are developed in full transparency and meaningful participation, prior to the granting of permission or concessions for the implementation of any business or development project;

f. Guarantee the effective implementation of any precautionary or urgent measures granted to EHRDs by regional human rights mechanisms;

g. Develop protection mechanisms for EHRDs, taking into account the intersectional dimensions of violations against women defenders, indigenous peoples, rural and marginalized communities;

h. Ensure prompt and impartial investigations into alleged threats and violence against EHRDs, and bring to justice direct perpetrators and those that procured crimes;

i. Engage with investors and business enterprises to uphold their human rights responsibilities, and sanction those companies associated with violations against defenders both at home and abroad.

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**UNITED NATIONS ORGANIZATIONS AND AGENCIES SHOULD:**

a. Address the legal gaps that heighten risks for EHRDs, including weak environmental standards and laws protecting the rights of indigenous peoples, their land rights and customary title to territories and resources;

b. Formulate and implement strategies and action plans to strengthen the participation and protection of defenders and to prevent violations against them, including in the framework of the Sustainable Development Goals and the Human Rights Up Front initiative;

c. Monitor, document and respond to the cases of alleged acts of reprisals against EHRDs for cooperating with IFIs, UN agencies and its human rights mechanisms.
INTERNATIONAL FINANCIAL INSTITUTIONS SHOULD:

a. Respect and protect human rights of defenders, and implement their obligations in all activities to ensure an enabling environment for defenders;

b. Integrate HRBA to their policies for fund allocation and management; condition their funds on such an approach in consultation with affected communities and EHRDs and with their continuing support on the implementation of human rights safeguards.

BUSINESS ENTERPRISES SHOULD:

a. Adopt and implement relevant international and regional human rights standards, including the UN Guiding Principles for Business and Human Rights and the Voluntary Principles on Human Rights and Security;

b. Fulfil legal and ethical obligations, including rigorous human rights due diligence, and perform human rights impact assessments for every project, ensuring full participation by and consultation of affected communities and EHRDs;

c. Refrain from physical, verbal or legal attacks against EHRDs and meaningfully consult with them in the design, implementation and evaluation of projects, and in due diligence and human rights impact assessment processes;

d. Disclose information related to planned and ongoing large-scale development projects in a timely and accessible manner to affected communities and EHRDs;

e. Establish the grievance mechanisms necessary to avoid, mitigate and remedy any direct and indirect impact of human rights violations;

f. Ensure that private security companies and other subcontractors respect the rights of EHRDs and affected communities and establish accountability mechanisms for grievances.
Environmental human rights defenders are at the heart of our future and the future of our planet... I call upon all stakeholders to urgently and publicly adopt a zero-tolerance approach to the killings and violent acts against environmental human rights defenders, and to immediately launch policies and mechanisms to empower and protect them.

Michel Forst
The United Nations mandate on the situation of human rights defenders was created in 2000 to guarantee the implementation of the 1998 Declaration on Human Rights Defenders, also known as 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 Special Rapporteur acts in complete and strict independence of any State and any entity involved (civil society, companies, etc.).


**Mission and objectives of the United Nations Special Rapporteur**

- Promote the Declaration on human rights defenders;
- Study trends, developments and challenges;
- Recommend concrete and effective strategies;
- Seek, receive and examine the information on individual cases;
- Integrate gender mainstreaming;
- Work in close coordination with other relevant United Nations bodies;

**His methods of work**

- Contacts with all actors concerned by the situation of human rights defenders;
- Communications on individual cases;
- Country visits;
- Reports to the Human rights Council and to the United Nations General Assembly;
- Thematic and regional consultations with human rights defenders and experts;
- Workshops and conferences to expose the situation of human rights defenders.

**FOR MORE INFORMATION:**

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