



# **DEFENDING THEIR RIGHTS, RISKING THEIR LIVES**

Shrinking civic space and  
extractive industries





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Cover photo: Members of the building and wood workers union demanding better working conditions in Cambodia.  
Photographer: LICADHO, Cambodia.

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Photographer: Carlos Cardenas, Forum Syd.



Homestead close to Colombia's largest coal mine Cerrejón.



# INTRODUCTION

Democracy and human rights have been strengthened in many parts of the world in recent decades. Today, however, we see a global setback where democratic principles are violated and human rights threatened. The democratic space for civil society, including human rights and natural resource defenders, is shrinking at an alarming rate in many countries around the world. More than 300 human rights defenders were murdered in 2017, and thousands of people defending their rights were threatened, attacked, detained and sentenced to long prison terms.<sup>1</sup> According to Civicus, 3.2 billion people live in countries where civic space is either repressed or closed. Community leaders, lawyers, journalists and indigenous groups are facing persecution, intimidation and violence at an escalating scale by states and non-state actors, including business. More than 120 pieces of legislation that limit the democratic space have been introduced in 60 countries in recent years.

Natural resource extraction in developing countries is intensifying, in many cases threatening livelihoods of local and indigenous communities as well as already fragile ecosystems. In the general trend of shrinking civic space, people defending their rights linked to natural resources and extractive industries are particularly threatened. Mining is a sector that stands out in this regard. There are many cases where communities, who have stood up to protest against mining companies, have suffered threats and attacks aimed at silencing them. These are communities that have protested against pollution of water sources, air pollution that causes health problems, a lack of consultations or forced resettlements resulting in difficulties to sustain their livelihoods.

The UN Special Rapporteur on the situation of human rights defenders has identified defenders working on the issue of business and human rights as one of the most vulnerable groups of defenders. He has highlighted that business interests are often one of the key challenges faced by human rights defenders on the ground. He has also noted the complicity of companies with states in various human rights violations against defenders and communities working to protect fundamental rights and freedoms.<sup>2</sup>

This report examines the links between extractive industries and shrinking civic space. It discusses measures used to silence environmental and human rights defenders and the responsibility and role of states as well as companies. The report illustrates the hostile environment, risks and challenges faced by human rights defenders through cases from different countries. The report also contains examples of how businesses can play a positive role towards supporting human rights defenders. The report concludes with a set of recommendations for state and non-state actors.



# METHODOLOGY

The research in this report combines desk studies of global trends in relation to shrinking civic space and the role of extractive industries with interviews with representatives of civil society organisations, human rights defenders and companies. The report also includes cases from Latin America, Africa and Asia.

The interviews and cases illustrate the challenges that human rights and environmental defenders in particular face in relation to extractive industries at a macro and micro level. It also sheds light on opportunities that defenders may provide to companies.

The desk study, cases and interviews provide the basis for a set of recommendations to companies and state actors on how to protect and strengthen the work of human rights and environmental defenders. The research touches upon the components illustrated in the figure below.

The research draws on reported cases as described in publicly available sources, primarily on international websites. The cases are selected based on a set of criteria:

- Cases are from the period 2014-2017 and clearly related to extractive industries.
- Reports must be reliable and show that human rights defenders have been subject to direct or indirect pressure/intimidation by companies.
- Reports must have been confirmed by an international or national body, an internationally recognised NGO or confirmed by the company itself, e.g. through court proceedings against the human rights defenders.

The focus of the report is global and the intention is not to investigate the Swedish government's actions or policies, nor Swedish companies. Hence the recommendations are directed at states and companies globally.

Finally, the research does not include any company names, unless the company has admitted the incidents or there are court records showing that the company has started court procedures against human rights defenders.

## Methodology used for the research







Photographer: Roland Brockmann/MISEREOR.

Small scale mining in The Democratic Republic of Congo.



Photographie: Roland Brockmann/MISEREOR.



Artisanal mining in The Democratic Republic of Congo.



# SHRINKING CIVIC SPACE AND NATURAL RESOURCES

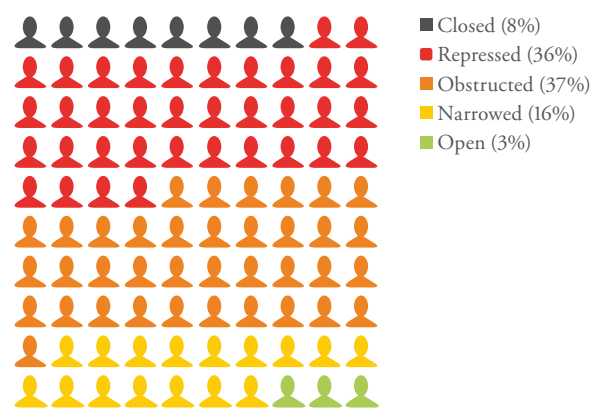
The democratic space for civil society is shrinking, and threats and violence towards human rights defenders who speak out is escalating, particularly in relation to the extraction of natural resources.

## Shrinking civic space

In many countries around the world, the civic space to organise and foster the fundamental civic rights of freedom of peaceful assembly and association and freedom of expression has been shrinking for some years.<sup>3</sup> This shrinking civic space refers to “actions by governments and others that, intentionally or otherwise, result in the prevention, limitation or eradication of civil society activities”. Historically, civil society actors have led efforts to tackle global challenges such as promoting transparent governance and respect for human rights.<sup>4</sup>

Since restrictions and impacts are different in each country, shrinking space is difficult to quantify.<sup>5</sup> According to Civicus’ monitoring database, 3.2 billion people, representing around 40 per cent of the global population, live in countries where the civic space is repressed or closed (see figure).<sup>6</sup> This situation poses many challenges for civil society actors to speak out. While in many countries governments are responsible for implementing restrictions and legislations that contribute to eroding the civic space, many businesses have been directly responsible for threats and

## CIVIC SPACE RATINGS BY POPULATION



Source: CIVICUS monitor findings April 2017

violence towards human rights defenders as well as being complicit with governments in limiting the space of civil society.<sup>7</sup>

From the government side, repressive laws and restrictions have been implemented in many countries to silence opposing voices. For example, in the past few years more than 120 laws that limit democratic civic space have been adopted in 60 countries. Additionally, given the current global situation of high security concerns and terrorist threats, many governments have implemented regulatory measures and broadly defined anti-terrorism legislations that contribute to the shrinking space of civic freedoms. From the business side, one tactic from companies is to lobby governments to pass legislations that limit the ability of human rights defenders to speak out.<sup>8</sup>

## Natural resource defenders risking their lives

Shrinking civic space directly affects community defenders, civil society organisations and indigenous leaders that struggle to protect their land, rural areas and the environment.<sup>9</sup> Resource exploitation is intensifying together with a contraction of political liberties and lowering of tolerance for freedom of expression in many countries around the world.<sup>10</sup> This is a very dangerous and explosive situation. According to Front Line Defenders, 312 human rights defenders were murdered in 27 countries during 2017.<sup>11</sup> Most of those killed (209 persons) were defending

## Human rights defenders - who are they?

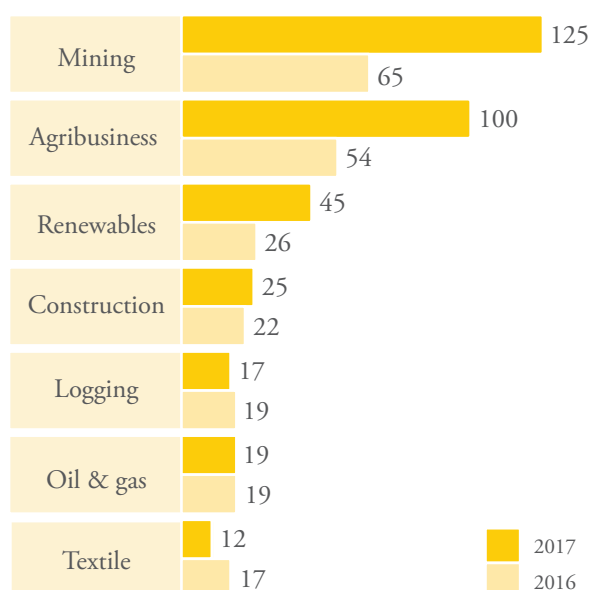
Human rights defenders are individuals or groups that in their personal or professional capacity and in a peaceful manner strive to protect and promote human rights. Human rights defenders may be social activists, leaders of civil society organisations, journalists, lawyers, trade unionists, community representatives, indigenous peoples, peasants - or others who defend their fundamental rights and freedoms. The rights that they defend include the right to peaceful assembly and association, the freedom of expression and opinion and the freedom of movement, which are all anchored in the international system of human rights. But they also defend their rights to land, environment, livelihood and a healthy life.





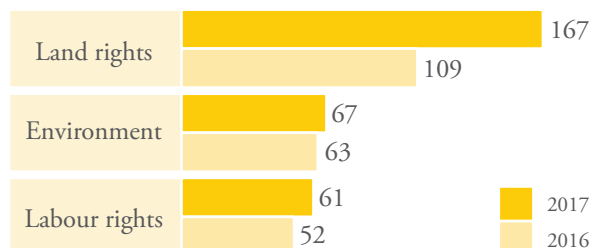
Mining in The Democratic Republic of Congo.

#### SECTORS WITH MOST ATTACKS ON HUMAN RIGHTS DEFENDERS



Source: Business and Human Rights Resource Centre

#### ISSUES WITH MOST ATTACKS ON HUMAN RIGHTS DEFENDERS



Source: Business and Human Rights Resource Centre

their land, environmental or indigenous peoples' rights. Almost all of these cases were related to major projects, extractive industry or large business. Since many killings are never reported, the true number is likely to be much higher. Eighty per cent of the killings reported by Front Line Defenders took place in four countries; Brazil, Colombia, Mexico and the Philippines. This trend of attacks is increasing and spreading, putting an activist who is either protecting natural resources or indigenous rights, or both, at risk in many countries around the world. Industries that involve large encroachments on land and sectors such as mining, extraction of oil or gas, agri business and dam construction are the most dangerous for human rights defenders. Indigenous people and ethnic and racial minorities are particularly vulnerable groups.

#### Triggers behind the shrinking space

There are many reasons behind the trend of shrinking civic space. The global political and economic landscape is currently facing many challenges such as security threats and counter-terrorism measures, absence of rule of law, technological advancements and a changing global aid landscape<sup>12,13</sup>. As the UN Global Compact states, it is fundamental that governments "have good laws, institutions and processes in place to ensure accountability, stability, equality and access to justice for all. This ultimately leads to respect for human rights and the environment".<sup>14</sup>

Freedom House estimates that 105 countries demonstrate a net decline for political rights and civil liberties, whereas only 61 have experienced net gains.<sup>15</sup> The decline in the rule of law has become one of the main drivers in a downward spiralling trend of global freedoms.<sup>16</sup> An absence of rule of law destroys societal trust and creates a space of fear and lack of transparency and information where reporters and human rights defenders are not free to expose their concerns.<sup>17</sup>

The following are the main measures used to silence and restrict human rights defenders:

### **Criminalisation**

Criminalisation remains the most common measure to limit and delegitimise human rights defenders and their work.<sup>18</sup> Thousands of defenders have been arbitrarily detained, presented with unfounded charges and sometimes prosecuted and sentenced to long prison terms.

### **Security concerns and anti-terrorism measures**

Given the unstable situation in many countries, security concerns and counter-terrorism measures are on the rise for many governments<sup>19</sup>. In reaction to recent terrorist attacks, some governments take the opportunity to justify security and counter-terrorist measures which closes space for civil society.<sup>20</sup> The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms raised concerns in a report to the UN General Assembly in 2015 stating that “mass surveillance powers, often justified on counter-terrorism grounds, have been used to target civil society groups, human rights defenders and journalists in a number of states”<sup>21</sup>. More than 140 countries have issued counter-terrorism legislations since the attacks of September 11, 2001 that diminish freedoms of expression and association in the country in pursuit of “security”.<sup>22</sup> These legislations are often broad and vaguely defined.

### **Killings and physical attacks**

The killings of human rights defenders are increasing, with more defenders being killed each year in more countries. Almost four environmental defenders a week were killed in 2017.<sup>23</sup> Physical attacks against women human rights defenders may take the form of sexual assault or rape. A major problem is widespread impunity, which allows the perpetrators to go free. This makes it even more difficult to reverse this trend.

### **Enforced disappearance**

Abductions and enforced disappearance occur in several countries. It is a common tactic particularly in Asian countries, for example China and Pakistan. Enforced disappearance of government critics, journalists and other human rights defenders are often not effectively investigated and victims’ whereabouts remain unknown.

### **Threats, harassments and defamation**

Threats and harassments have become common in order to undermine and delegitimise the work of human rights defenders. Civil society activists and defenders are criticised in public media, false rumours are spread publicly and smear campaigns are instigated. It is not uncommon for human rights defenders to receive death threats, which means that they constantly live in fear for their lives. Family members and relatives are also exposed to threats and harassment. Troll attacks in social media are another tactic used against human rights defenders. According to Front Line Defenders, threats, defamation and intimidation were more widely used against women human rights defenders

compared to men during 2017. Threats of sexual violence were not uncommon.<sup>24</sup>

### **Surveillance**

Technological advances are empowering human rights defenders by providing them with new platforms to speak out. However, the same advances are also used to increase surveillance and control over citizens<sup>25</sup>. Mass surveillance as well as targeted surveillance of human rights defenders is increasing around the world. This situation has made technology an invisible threat causing fear, paranoia and the feeling of being under surveillance everywhere for human rights defenders<sup>26</sup>. Several countries have adopted legislations to prevent people from gaining access to and using encryption tools and services to protect their communication from surveillance.<sup>27</sup>

### **Internet/media censorship**

Internet censorship violates the right to freedom of expression. Some countries have introduced legislations that have been used to penalise people and organisations for publishing material and spreading their message on the internet and in social media. For example, in Thailand vague formulations in the Computer Crimes Act have resulted in criminal proceedings against human rights defenders.<sup>28</sup> In Cambodia, the government has tried to silence independent and critical media, for example by the forced closure of radio transmissions and the newspaper Cambodia Daily. Bangladesh, Pakistan and Malaysia have also enacted internet-related legislations.<sup>29</sup>

### **Restrictions on foreign funding and registration**

Even though access to funding is a universal right and essential for non-governmental organisations (NGOs),<sup>30</sup> a common approach by governments in many countries around the world is to restrain funding and development aid to civil society organisations, which in turn reduces the freedom of expression in a society and limits the right to association.<sup>31</sup> Lack of financial support has resulted in closures of many local human rights organisations, which negatively affects the work of human rights defenders.<sup>32</sup> Many countries have proposed and enacted legislations that limit foreign funding and in some countries, such as Belarus and Bahrain, all foreign funding is prohibited<sup>33</sup>. Introducing restrictions on registration or making the process of registration difficult is another way used by states to hinder the right to association.



Colombia's largest coal mine Cerrejón.

Photographer: Richard Solly.



Photographer: Luis Manolo Yela Casanova, Altropico.



Threats among environmental defenders are escalating in areas where Altropico is working in Ecuador.



## The role of business

The global situation has been well-documented with different cases showing the way governments utilise different methods, such as those mentioned above, to silence dissent. For instance, in Turkey, the government has been tracking down opposition leaders after the failed military coup in 2016, and in the Philippines, the government's war-on-drugs has been used as a method to silence opposition.<sup>34</sup> However, the role of business is less documented and less discussed. Still, business plays a critical role regarding threats and attacks on human rights defenders and civic freedoms. Between 2016 and 2017, the number of attacks on defenders linked to business and human rights increased substantially. The attacks are carried out by the companies directly or in the context of their operations. Countries where the situation for people defending their rights in relation to business operations is most serious include Brazil, Mexico, Colombia, Honduras, Guatemala, the Philippines, South Africa and Vietnam.<sup>35</sup>

In a recent report, the UN Special Rapporteur on the situation of human rights defenders expressed worries of a lack of action by states in response to attacks on human rights defenders by business actors. He refers to states where attacks occur as well as to home states of businesses involved in attacks. In his report, he stresses the complicity between states and companies. There are many examples where states tend to pursue cases brought forward by businesses against human rights defenders, but not act on cases put forward by defenders against businesses. In certain countries, companies have been complicit when states introduce legislations oppressing civic freedoms. Of the attacks documented during 2015 and 2016, 25 per cent were connected to companies with headquarters in Canada, China and the US.<sup>36</sup> In the globalised economy of today with complex corporate structures, it is often difficult to reveal the links between attacks and the companies, their subsidiaries and supply chains. This makes it difficult for defenders from local or indigenous groups to hold companies to account, given the economic and political power imbalances.

## Companies fail to consult

Indigenous communities as well as local people from rural and remote areas have often been targeted when they have protested against business operations that threaten their livelihood and access to land. These groups are often already marginalised and hence particularly vulnerable. One of the root causes of conflicts is the failure of companies and governments to consult local and indigenous people about business projects and to ensure their right to free, prior and informed consent. Excluding affected communities from having a say over the use of their land and natural resources often provokes protests. Land rights are in many cases at the heart of conflicts.

The UN Special Rapporteur on the situation of human rights defenders stresses that businesses not only have a negative duty to abstain from violating human rights, but also a positive obligation to support a safe and enabling environment for defenders in the countries where they operate. Such an environment will also contribute to long-

term stability of business operations. Corporate support for the protection of human rights defenders is, in fact, also growing.

The World Bank's Doing Business Survey shows that the rule of law is necessary for enhancing business activity in a country, for example starting a business, obtaining credit and dealing with regulations.<sup>37</sup> This view is also held by the World Economic Forum, which points out that restrictions, factors and triggers that contribute to the shrinking civic space put at risk the ability of businesses to achieve their targets in relation to the Sustainable Development Goals in the 2030 Agenda.<sup>38</sup>

According to the UN Global Compact, there are several actions that companies can take to support the rule of law regarding the protection of human rights and access to justice<sup>39</sup>:

- Actions that help prevent violence and other crimes, including against women and children.
- Actions to enhance access to information and protect other fundamental freedoms.
- Actions in support of more responsive, inclusive, participatory and representative decision-making at all levels, and to boost public participation in law making.
- Actions to support the consistency of local laws and international standards.

## Free, Prior and Informed Consent

Free, Prior and Informed Consent (FPIC) is a specific right that relates to indigenous peoples and is recognised in the UN Declaration on the rights of indigenous peoples and the International Labour Organisation Convention 169. It allows indigenous peoples to give or withhold consent to a project that may affect them or their territories.

The principle implies that:

- Their consent shall be given voluntarily and without coercion, intimidation or manipulation.
- Their consent shall be sought sufficiently in advance of any authorisation or commencement of activities.
- They shall be provided with all information relating to the activity, and the information shall be objective and accurate.



# Human rights defenders killed in 2017



Source: Front Line Defenders



# A HOSTILE ENVIRONMENT

Human rights defenders in the extractive sector are particularly vulnerable in many parts of the world, with only little or ineffective protection of the state. This generates an environment of impunity as well as demonisation and delegitimisation of human rights defenders.

## SLAPP lawsuits

In 2017, when two lawyers from the Centre for Environmental Rights and a local community leader were sued for defamation in South Africa by a subsidiary of a multinational mining company that claimed thousands of South African Rand in damages, this became just another case of Strategic Lawsuits Against Public Participation - also known as “SLAPP”. A SLAPP lawsuit is not necessarily about winning a case, but an efficient mechanism to bury human rights defenders with lengthy court proceedings and costs to cover legal representations.

A targeted individual may decide to withdraw the criticism to avoid this, but the SLAPP suit goes beyond the individual case as it sets an example to anyone considering criticising a company in the future. Many jurisdictions do not allow SLAPP lawsuits or have introduced anti-SLAPP laws that provide a remedy against such suits, for instance by protecting the right to public interest litigation and the freedom of speech.

A SLAPP lawsuit is just one way that companies may intimidate human rights defenders. Many other measures used by companies may deliberately or unintentionally contribute to undermining the protection of human rights defenders, see figure on page 16.

## Significance of the rule of law

Sometimes, the local criminal law provides companies with the opportunity to make groundless or un-sustained allegations against human rights defenders resulting in deten-

tions and criminal charges against them. Companies must realise that seemingly small actions on their behalf contribute to the general hostile environment whereby human rights defenders are demonised. In other instances, it might be physical or verbal attacks and threats that are either tolerated by the company itself or not denounced by the company in case that a business relation or an authority has conducted such attacks. In the gravest cases, extractive industries have been indirectly or even directly linked to killings or disappearances of human rights defenders or members of their families. Sometimes private security agents used by the companies are the ones carrying out the killings and attacks. The risks are even more present in countries or local regions with a high level of corruption or affected by conflicts and private militia and/or with a low level of rule of law and freedom of expression. In some countries that have faced long internal conflicts, human rights defenders and civil society organisations might be delegitimised by the government or companies linking them to illegal armed actors.

“There exists a systematic conspiracy between the state and the companies against the local communities.”

Leonardo González Perafán, Projects Coordinator, INDEPAZ, Colombia.

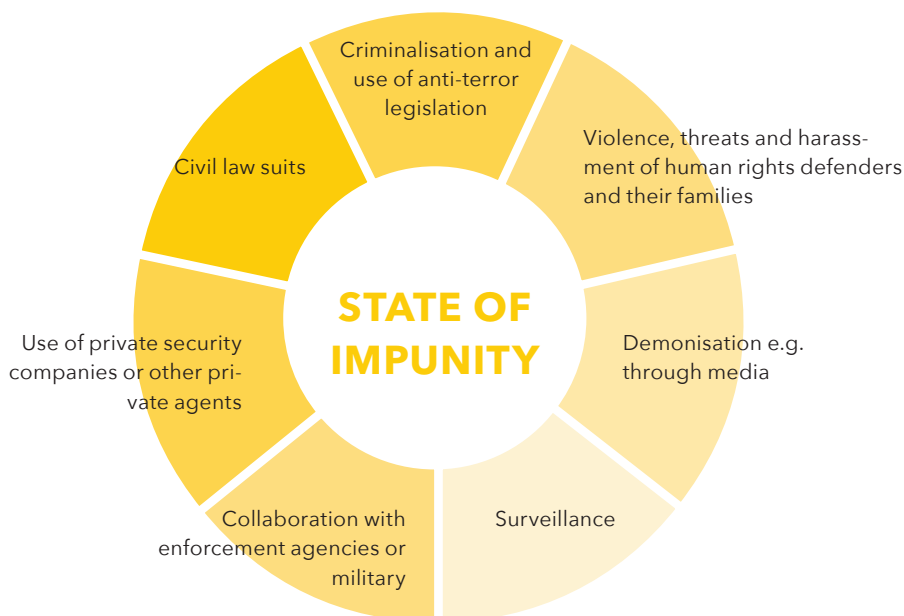
## What is a SLAPP lawsuit?

SLAPP stands for Strategic Lawsuits against Public Participation. It is a lawsuit that is intended to censor, intimidate and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. Such lawsuits have been made illegal in many jurisdictions because they impede freedom of speech. SLAPPs are effective because even a meritless lawsuit can take years to defend and often involves high costs for the defense.

A cornerstone for the protection and respect of human rights and human rights defenders is the prevalence of the rule of law. National human rights protection cannot exist without the rule of law, and failure to respect human rights will undermine the rule of law. Companies that ignore national legislations, including recognised human rights standards, engage in corruption, interfere with the administration of justice, fuel local conflicts and violate human rights defenders do not respect the rule of law. States that fail to up-hold the rule of law are likely to be violating their international responsibility to protect human rights. The failure to up-hold the rule of law contributes to a system of impunity, where authorities are not interested in enforcing the law because they depend on companies. The immediate victims of this environment are the individual human rights defenders and the local rights holders. But in the long term, the country in general



## WAYS HOW COMPANIES MAY INTIMIDATE HUMAN RIGHTS DEFENDERS



as well as the company and its shareholders are also losing. When comparing general rule of law indicators from a variety of international so Index<sup>40</sup> and Front Line Defenders' annual report on human rights defenders at risk<sup>41</sup>, there appears to be a linkage between poor human rights and rule of law records and a more hostile environment for human rights defenders. Below are some cases from different countries that illustrate this.

### Angola

The Angolan government is regularly applying strict measures to prevent people from forming associations and speaking out. Angola's human rights record is poor according to Civicus' civic space monitor.<sup>42</sup> Many civil society organisations have raised concerns about the Angolan state when it has tightened restrictions for human rights defenders. For example, in 2016 a Luanda court sentenced 17 members of a book club to prison for discussing peaceful protests at a meeting the year before<sup>43</sup>.

Angola has a low score in the 2017 Resource Governance Index, ranking 72 among 81 countries.<sup>44</sup> This international index evaluates the quality of governance in the oil, gas and mining sector in the countries. Angola is one of the most resource-dependent countries in sub-Saharan Africa. The oil and gas sector accounts for around 95 per cent of the country's exports. However, corruption and poor governance is hindering the distribution of economic gains from the oil and gas export among the 25 million inhabitants. According to the Natural Resource Governance Institute, there are no requirements for Angolan public officials to declare assets in extractive companies or for companies to declare their beneficial owner (a legal term for the real owner behind a company)<sup>45</sup>.

### What is the rule of law?

The rule of law is the principle that law should govern a nation, as opposed to governance by decisions of individual government officials. The following universal principles constitute a working definition of the rule of law. They were developed by World Justice Project<sup>46</sup> in accordance with internationally accepted standards and norms.

#### 1. Accountability

The government and private actors are accountable under the law.

#### 2. Just laws

The laws are clear, publicised, stable and just; are applied evenly; and protect fundamental rights, including the security of persons, property and certain core human rights.

#### 3. Open government

The processes by which the laws are enacted, administered and enforced are accessible, fair and efficient.

#### 4. Accessible and impartial dispute resolution

Justice is delivered timely by competent, ethical and independent representatives, who are accessible, have adequate resources and reflect the make-up of the communities they serve.

Source: World Justice Project, What is the rule of law?



In 2015, the journalist and human rights defender Rafael Marques de Morais was charged for criminal defamation because he investigated killings and torture at the country's diamond mines<sup>47</sup>. Rafael Marques wrote a book in 2011 about human rights abuses in Angola's diamond-rich Lundas region. He also lodged a complaint against nine Angolan generals for their moral responsibility for the human rights abuses<sup>48</sup>. Rafael Marques originally faced nine defamation charges relating to his book and when his trial began the number of charges rose to 24, which could have resulted in a nine-year prison sentence. One of the charges came from the company ITM Mining<sup>49</sup>.

According to human rights groups, the prosecution and trial of Rafael Marques were marked by serious violations of his rights to a fair trial. Initially, the generals seemed to drop the charges after an out-of-court settlement, as international political and media attention was growing. In the settlement agreement, Rafael Marques agreed not to republish the book and that he would make a statement before the court that he did not have the intention of offending the generals.<sup>50</sup> But in an unexpected move, Rafael Marques was sentenced to six months in prison, which was suspended for two years<sup>51</sup>. Afterwards, he told media that he believed the generals had deliberately misled him, because they wanted to avoid the public embarrassment of being interrogated in court, but that they still wanted to punish him<sup>52</sup>.

“ I fight corruption because it is the most sophisticated weapon the regime uses to subdue society and subvert citizenry.”

Rafael Marques de Morais, journalist and human rights defender, Angola

## Thailand

Thailand's democracy has faced several setbacks in recent years, and the country is presently governed by a military junta. The rights to freedom of expression, peaceful assembly and political opposition are often challenged, and human rights defenders are regularly persecuted by the government.<sup>53</sup> Thailand has traditionally had a strong civil society sector, but the interim constitution allows the government to arbitrarily dissolve, harass and impede the operations of critical civil society organisations.

In recent years, there have been reports of cases against women human rights defenders, who have spoken out against human rights violations. In July 2017, seven women - Phonthip Hongchai, Ranong Kongsae, Wiron Ruchichaiwat, Suphat Khunna, Bunraeng Sithong, Mon Khunna and Lamphloen Rueangrit - were charged for violating the Public Assembly Act and the Criminal Code for protesting against the business activities of Tungkhram gold mining company in Loei province<sup>54</sup>. Local communities in the province had expressed concerns about the impact of gold mining on their health, environment and access to water. The women played a significant role in leading



Photographer: Tanenhaus.

Cerrejón, Colombia's largest coal mine.

around 200 community members in protests against the renewal of the mining company's permit. The women were accused of allegedly intimidating district officials<sup>55</sup>.

The seven women face up to five years and six months in prison and a fine of up to USD 3000<sup>56</sup>. The UN Human rights regional office for South-east Asia asked Thailand to drop the cases against the women. Similarly, the UN Committee on the Elimination of Discrimination against Women (CEDAW) urged the government of Thailand to protect and allow women human rights defenders to speak out without fear and threat of lawsuits, violence or intimidation.<sup>57</sup>

## Thai protesters charged at Chinese potash exploration

Media in Thailand reported in May 2018 that two persons were charged with violating the Public Gatherings Act when local people protested against exploration of potash in Sakon Nakhon by the company China Mingda Potash Corporation. The manager of the company told the local press that they planned to file more complaints against the protesters, since they, according to him, forced a halt to the exploration work and caused damages to the company. The protesters expressed their disappointment over the authorities, whom they said ignored the people's demands while overtly supporting the Chinese potash mining company. The local people fear that the explorations will eventually lead to the construction of an underground mine in their locality with serious impact on the environment.<sup>58</sup>



## South Africa

South Africa has a progressive constitution reflecting the fight against apartheid. However, in recent years, the protection of and respect for human rights has experienced several setbacks. Despite the country's reputation of civic activism, civil society is experiencing a shrinking space, affecting peaceful assembly and freedom of expression. At times, the police employ restrictive and violent measures to curb protests and public demonstrations. The government has increasingly imposed a culture of secrecy by trying to control critical or inconvenient information.<sup>59</sup>

South Africa is among the top gold producers in the world and also has important deposits of platinum, diamonds and manganese. The mining sector contributes around 24 per cent to the country's total exports, but the equitable distribution of benefits from the sector is debated.<sup>60</sup>

In 2017, the company Mineral Sands Resources, a subsidiary of the Australian mining company Mineral Commodities Limited, sued two lawyers from the Centre for Environmental Rights (CER), Tracey Davies and Christine Reddell, and a local community activist, Davine Cloete, for defamatory statements about the company's heavily criticised operations in Tormin mineral sands mine (see above).<sup>61</sup> Local communities and environmental activists have raised numerous concerns about the legality of the company's operations, including mining in prohibited zones and causing a collapse of the sea cliffs below the mine processing plant.

The company has claimed monetary compensation for damages from both lawyers and the activist. According to CER, this is not the first time Mineral Commodities Limited has sued activists who have criticised its business operations.<sup>62</sup> In November 2017, the University of Cape Town and the Centre for Applied Legal Studies at the University of Witwatersrand intervened in the case, providing assistance to CER and further expertise in the area of SLAPP lawsuits.<sup>63</sup>



Collapse of the sea cliff below the Tormin processing plant on the West Coast of South Africa.

Photographer: Anonymous.



Community members in South Africa demonstrate against coal mining in their areas.

Photographer: Earthlife.

## Malawi

Malawi has many challenges in relation to protection and respect of human rights. Intimidation of human rights defenders is reported, and the government is allegedly impeding activism and the right of association. Co-optation of civil society leaders undermines strong and independent non-government voices. Restrictive NGO regulations have been proposed, that could further erode the independence of civil society. The police have allegedly used excessive force to stop demonstrations, and impunity exists for perpetrators of violations.<sup>64</sup>

In December 2016, a Malawian court held a trial of eight Tanzanian activists for allegedly trespassing, spying and working as foreign agents.<sup>65</sup> The group, which included a journalist, local farmers and activists, was investigating a uranium mine in Northern Malawi. The uranium mine was established by Paladin, an Australian mining company. According to a variety of sources, the company's operations were associated with pollution of Lake Malawi, social dislocation, poor wages and lack of attention to local communities. The court case attracted international attention, and Malawi was accused of violating the rule of law and harassing groups acting in the public interest.<sup>66</sup>

“If companies operate in an environment in which civic freedoms are under attack and dissent is routinely punished, then frank and open dialogue with stakeholders is no longer possible. As a result, due diligence will not be likely to reflect or address human rights risks and impacts, damaging not only affected communities but also the long-term sustainability of business activities. Successful conduct of business relies on stability – sound institutions, the smooth functioning of justice and public confidence in their personal safety. Such stability is hard to come by, if not impossible, when civil society is under attack and human rights are ignored.”

The UN Special Rapporteur on the situation of human rights defenders. Report July 19, 2017



MUUNGANO WAMACHING  
TAWI LA KIRUMBA  
MWANZA  
JIANDIKISHE KURA YAKI  
INA THAMANI KWA MAENDELEO  
YETU.



Demonstration on May 1st in Mwanza, Tanzania.



# HUMAN RIGHTS DEFENDERS IN PRACTICE

Threats and attacks towards environmental and human rights defenders are escalating and defenders are often risking their lives because of their work.

Human rights defenders addressing injustices, unsustainable behaviour of companies and violations of rights in their local communities are feeling the pressure from powerful national and local actors linked to extractive industries. They are representing legitimate interests, and they are all telling the same stories about a shrinking civic space.

## Kenya

Since 2010, the Constitution of Kenya guarantees the rights of freedom of association, expression and peaceful assembly. However, in practice, these rights are often violated, and several cases of human rights activists and journalists being harassed, intimidated and prosecuted are reported. Peaceful assemblies are routinely met with excessive and brutal force by state security officers.<sup>67</sup> According to a fact-finding mission report by the Observatory for the Protection of Human Rights Defenders in 2017, human rights defenders suffer from high levels of police violence, widespread impunity in violent cases, criminalisation, intimidation and a hostile environment for civil society organisations<sup>68</sup>.

The Kenya Oil and Gas Working Group (KOGWG) has been working for approximately nine years with local

communities in advocating for sustainable development and good governance in Kenya's nascent oil and gas sector. The network coordinator of KOGWG, Muturi Kamau, argues that as a public interest network, their role is to increase local stewardship, social accountability and sector understanding to enhance constructive dialogue that holds duty bearers accountable to fulfil their obligations. He further states that the overall situation with human rights defenders and extractive industries in Turkana region in north-western Kenya is very difficult to address given the high level of corruption as well as tension between the local communities and companies.

The companies see human rights defenders as an impediment to their operations because the defenders can raise the concerns of communities living around the projects, Muturi Kamau says. Furthermore, human rights defenders are viewed as a threat because they can empower the Turkana community by providing a better understanding of the environmental and social impacts of oil and gas exploration, and thus communities are able to agitate as a common voice which the company is opposed to.

According to Muturi Kamau, the main problem in Kenya is corruption and companies buying out human rights activists to silence their communities' voices and representation. This has further worsened due to elite-capture where individuals (typically elected officials such as members of parliament), who wish to benefit at the detriment of the community, enter agreements with companies which are not transparent. These elites tend to incite the locals against human rights defenders who dare to raise these issues at the grass roots level.

In Turkana county, many communities are marginalised with high levels of illiteracy and poverty thus making them easily prone to accept payments from companies, Muturi Kamau says. These communities live close to the development projects, which makes it easier for companies to provide them with a certain amount of money to buy their collaboration without any documented commitments, Muturi Kamau adds.

On the other hand, many human rights defenders have used their right of freedom of expression, as stated in the Constitution, to speak out and raise their concerns against oil and gas companies, Muturi Kamau explains. But in these cases, companies call in the police force to deal with the human rights activists, making the whole situation very difficult for any community to freely protest against powerful businesses.



Photographer: Muturi Kamau/KOGWG.

Kenya Oil and Gas Working Group discusses with inhabitants of Lopii village in Turkana.





Women groups demonstrating for peace and against racism in Colombia.

## Colombia

Colombia is considered one of the world's most dangerous countries for environmental and human rights activists given the high rate of violence and harassments<sup>69</sup>. According to Front Line Defenders, more than 90 human rights defenders were killed in 2017<sup>70</sup>. A mission to the country by the Observatory for the Protection of Human Rights Defenders confirmed that there has been an increase in attacks of human rights defenders, especially for those who defend land and environment in rural areas. The Observatory identified that the persistence of paramilitary structures, the criminalisation of peaceful protests, a high level of impunity and weak institutional capacity are among the structural problems that contribute to the dangerous environment for human rights defenders<sup>71</sup>. Following the peace agreement between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC), land is at the heart of many conflicts when displaced community members return to their former areas. The extraction of natural resources is intensifying as the country seeks to attract foreign companies and investors, further encroaching upon local and indigenous peoples' land.

Considering the opportunity for an enabling environment for dialogue created by the peace agreement, civil society organisations and local communities are demanding to be considered in public consultations related to the development of mining projects. Companies report on sustainability work and a national legislation regarding mining

exists in the country. However, this has not been enforced into practice, according to the project coordinator of the Research Institute for Development and Peace (INDEPAZ), Leonardo González Perafán. INDEPAZ has been working for many years with local communities on the social and environmental impacts of mining<sup>72</sup>. The overall problem between mining companies and local communities is the way the companies communicate and approach communities in practice, Leonardo González says.

Resettlements of local communities due to expansion of mining operations have taken place in different regions across the country. La Guajira, Cesar, Tolima and Meta provinces have been the most affected areas by mining companies, says Leonardo González. One of the most well-known cases regarding resettlements of communities is linked to the largest coal mine in Cerrejón<sup>73</sup>.

Currently, the situation is changing for many local communities given the peace agreement between the national government and the FARC rebels, Leonardo González says. The mining companies have taken advantage of this situation by expanding into land where there are no formal land titles, even if it is inhabited by peasants, indigenous people or Afro-Colombian communities. Communities are reluctant to speak out because the government has assigned so called 'energy battalions' to protect the state's land and the private interests of multinational companies in the extractive sector<sup>74</sup>. Difficulties to prove who is the owner of the land and limited access to land titles makes



the conflict around land and extractive industries very complex. Currently the Colombian government is working on a land law, as part of the rural reforms that are included in the peace agreement.

Carmenza Gómez Ortega is the legal representative of ANZORC, a Colombian NGO that brings together 65 peasant organisations. ANZORC is engaged in creating peasant reserves which will help small-scale farmers to remain in their territories and to receive land titles. But armed groups have turned up in the territories and taken over control, Carmenza Gómez explains. There have been killings and farmers were also among the victims. The perpetrators have not been punished. There is still mistrust between the state and many communities, Carmenza Gómez states.

According to Leonardo González, the pressure from paramilitary groups and companies towards local communities and indigenous people is intensifying. The state is in many cases defending the companies, since it considers the extractive industry of high national economic interest and thus a priority in contrast to the rights of the communities. The mining industry needs to be based on a sustainable approach that respects human rights, Leonardo González says. This is more important than ever, if Colombia is to achieve a lasting peace. We need to work hand in hand, also with the private sector, to rebuild Colombia, Carmenza Gómez concludes.

## Cambodia

The situation for human rights defenders in Cambodia is alarming and very dangerous according to different civil society organisations.<sup>75, 76</sup> In 2016, the United Nations Human Rights Council expressed concerns about the situation for human rights activists and civil society organisations who speak out in Cambodia<sup>77</sup>. The country will hold national elections in 2018 and the government has been tar-

getting those that they see as threats to their political power. In recent years, there has been a systematic crackdown on independent voices, such as forced closure of newspapers and radio stations, suspensions of and restrictions on civil society organisations and political parties as well as harassment and arrests of human rights defenders. According to Amnesty International, many cases of threats against and intimidation of human rights defenders and civil society organisations have been registered, showing that the misuse of the justice system and the harassment from security forces has increased against human rights activists.<sup>78</sup> In February 2018, the Cambodian government proposed broad and vaguely defined amendments to the constitution of the country as well as to Cambodia's criminal code, that would for example prohibit Cambodian citizens from "any activity" that directly or indirectly "affects the interests" of Cambodia or its citizens. According to Cambodian human rights organisations, these amendments constitute a severe threat to human rights and fundamental freedoms, and are clearly designed to further criminalise any individual or organisation that expresses legitimate dissent.<sup>79</sup>

Cambodia is ranked poorly in most international indexes regarding the rule of law, civic space and links to extraction of natural resources. Civicus ranks Cambodia as a repressed state due to the arbitrary restrictions to the right to freedom of expression of citizens and human rights defenders.<sup>80</sup>

A case against two activists from Cambodian NGO Mother Nature was reported in the media during the autumn of 2017<sup>81</sup>. Mineral resources in Cambodia remain to a large extent unexplored, but the extraction of sand from the Koh Kong province has become an important mining activity<sup>82</sup>. The main problem with the extraction of sand is the close relationship between the government and the companies involved, the co-founder of Mother Nature, Alex Gonzalez-Davidson, says when interviewed in November 2017.

Cambodia has recently become one of the world's top ten sand exporters, with much of its exports going to land expansion projects in Singapore. Cambodia banned sand exports in July 2017.<sup>83</sup> According to environmental groups, the industry has destroyed shrimp and crab stocks, damaged local ecosystems and caused protective sand banks to collapse. The trade in illegally extracted sand is growing due to the demand of neighbouring countries, explains Alex Gonzalez-Davidson. This situation puts a major burden on communities with all the negative social and environmental effects that this brings to the country. In Cambodia, no matter how illegal and negative the mining of sand may be, it has the full support of the government, Alex Gonzalez-Davidson states.

According to him, it is a multimillion-dollar business that involves considerable levels of corruption between government officials, local authorities, police and mining companies. Whenever local communities speak out, private companies have the support of the government to silence them by imprisoning, harassing or intimidating the human rights activists with the support from local police, Alex Gonzalez-Davidson clarifies.

In September 2017, two activists - Hun Vannak and



Construction workers calling for improved conditions in Cambodia.

Photographer: LICADHO, Cambodia.





Local communities protesting against mining in their territories in Huehuetenango, Guatemala. "No to mining, yes to life"

Doem Kundy - from Mother Nature were arrested when they were taking photos and filming boats, allegedly delivering piles of sand to an international trawler. The activists were charged with making unauthorised recordings of private property<sup>84</sup>. After a trial without witnesses, they were found guilty and sentenced to 12 months in jail, with seven months suspension. They were released on probation on February 13th, 2018.<sup>85</sup> These arrests are an example of how police are used by private companies to intimidate human rights activists, says Alex Gonzalez-Davidson. Overall, an enormous systemic repression exists, not just from private companies but also with increasing government support. Close coordination apparently exists between them, Alex Gonzalez-Davidson argues.

### Guatemala

Civic space in Guatemala is diminishing through increased repression against human rights organisations and local communities by private and military forces<sup>86</sup>. According to the International Federation for Human Rights (FIDH), 14 murders and seven attempted murders of human rights defenders took place in Guatemala in 2016<sup>87</sup>, showing an escalation of repressions against human rights activists in the country. Land rights defenders are particularly targeted. The European Parliament expressed its concerns in a resolution in early 2017 about the situation for human rights defenders in Guatemala where 223 aggressions, includ-

ing cases of criminalisation, intimidation and threats, were registered in 2016 alone<sup>88</sup>. The European Parliament stresses the need for Guatemala to develop a public policy for the protection of human rights defenders, and calls on the Guatemalan government to accelerate the procedures to ensure the establishment of a national mechanism for free and informed prior consultations as well as to launch wider social consultations concerning hydro-electric plants, mining projects and oil companies.<sup>89</sup>

Guatemala's mining sector accounts for around seven per cent of the country's total exports<sup>90</sup>. According to the Ministry of Energy and Mines, there were 307 active mining licenses in the country and more than 500 licenses under review by January 2017<sup>91</sup>. Guatemala has no requirements for mining companies to disclose projects, project closure, beneficial owners or rehabilitation measures. According to the Natural Resource Governance Institute, this situation creates a weak enabling environment<sup>92</sup>.

Many regions in Guatemala have had problems with extractive industries, especially with pollution of water sources across several farming regions<sup>93</sup>. The mining industry requires large amounts of clean water and contaminates water sources downstream with heavy metals, affecting local inhabitants<sup>94</sup>. The Ecumenical Christian Council of Guatemala has supported communities in Zacapa and Chiquimula in the Eastern part of the country and given them a voice for many years<sup>95</sup>.





Testimonies presented to the UN Special Rapporteur for Indigenous people at the Maya pyramid in Zaculeu, Guatemala, 2010.

Lutheran church leader Rev. José Pilar Álvarez explains that human rights activists have spoken out to safeguard natural resources in the region since the area provides water, food and livelihoods to more than 600 000 inhabitants<sup>96</sup>. In their territories there are at least 30 mining licenses for gold, silver, nickel, uranium and antimony, which have affected the communities living in the area.

Companies and the state do not consult indigenous people, according to Rev. José Pilar. This is a violation of their rights according to the Constitution of Guatemala and international conventions, and there is no help from any state institutions or the judiciary. Even if a court rules in favour of indigenous communities, companies ignore the rulings or take further legal action to reverse the rulings. Consequently, cases drag on in the court system for years, and meanwhile the companies may continue to pollute, Rev. José Pilar says.

“The Government of Guatemala has taken away the private security of human rights defenders, leaving us vulnerable with a high risk of being attacked by security forces from private companies.”

Rev. José Pilar Álvarez

Their support for the indigenous population has resulted in threats and intimidation against Rev. José Pilar and others. The pattern that the companies use against human rights activists is the same, no matter which industry: lack of consultation with indigenous people, criminalisation against activists using all available legal mechanisms and militarisation of territories where companies have operations to intimidate local communities, Rev. José Pilar explains. He has himself been arrested, prosecuted and put under house arrest on fabricated charges.

Some companies have established different dialogue mechanisms but without conditions that benefit the communities and human rights defenders, Rev. José Pilar says. This dialogue is pre-stated for the benefit of the companies that use the legal mechanisms to their benefits. It is worth mentioning that the government is not acting on behalf of the communities but more on behalf of the mining companies, Rev. José Pilar emphasises. In general, the main challenge is that commercial and trade agreements promote the exploitation of natural resources without taking human rights into consideration.

### Indigenous people in Guatemala

In May 2018, three Guatemalan indigenous leaders were killed in separate incidents. The groups, which they belonged to, have protested against mining and hydroelectric projects in their areas, accusing powerful forces of pushing indigenous farmers off their lands.

The UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, has expressed concerns over forced evictions and criminal prosecutions of indigenous people in Guatemala. At a visit to the country in May 2018, she stated that “the escalating incidence of forced evictions and the abuse of criminal proceedings against indigenous peoples who seek to defend their land was repeatedly raised as a key concern. I visited several indigenous leaders in prison who have been charged with criminal offences which appear to be inflated and who have been subjected to lengthy pre-trial detention. The root cause of the situation is land tenure insecurity. Guatemala has neither adopted legislation nor a mechanism for the adjudication of the rights of indigenous peoples to land, territories and natural resources. Many are left in a situation of total vulnerability in the face of competing interests and numerous projects that are carried out without consultations or the consent of the people concerned.”<sup>97</sup>



Consultation among indigenous people in Conception Huista in Guatemala following ILO Convention 169.





Small scale mining in The Democratic Republic of Congo.



# DEFENDERS IN THE HUMAN RIGHTS FRAMEWORK

States have a duty to protect human rights defenders, and extractive industries have a responsibility to respect defenders and the rule of law.

In 2011, the UN Council for Human Rights endorsed the UN Guiding Principles for Business and Human Rights (UNGPs). With the UNGPs, the international community confirmed that the state has the duty to protect human rights and that companies have a responsibility to respect human rights. States and companies are also required to respect the right to remedy in case of a negative human rights impact. These principles are not a novelty for states, but reflect the intentions of the existing body of international human rights instruments.

International human rights law stipulates the duties of the state to protect human rights and fundamental freedoms of individuals or groups. There is an expectation that companies do no harm to human rights through their business activities and relationships. The UN Universal Declaration of Human Rights lays out fundamental human rights to be universally protected. Many of the Declaration's provisions have become incorporated into customary international law, which is binding on all states. In the Declaration, there is a clear call for companies to respect human rights and human rights defenders<sup>98</sup>.

“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 environmental human rights defenders from violations committed by both State and non-State actors. Nevertheless, international human rights law makes it clear that business enterprises, the media and other non-State actors are obliged to respect human rights obligations and refrain from contributing to or committing violations.”

The UN Special Rapporteur on the situation of human rights defenders. Report, August 2016

## UN Declaration on human rights defenders

A similar approach is found in the UN Declaration on Human Rights Defenders from 1998.<sup>99</sup> This declaration confirms that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.” According to article 19 of the Declaration, neither states, individuals, groups nor organs of society have the right to engage in any activity aimed at the destruction of the rights and freedoms referred to in the Declaration. The Declaration elaborates the rights contained in international human rights conventions that are particularly relevant for the activities and protection of human rights defenders such as freedom of expression, access to information, freedom of peaceful assembly and association, right to a fair trial as well as protection of personal integrity.

In 2000, the UN established the mandate of the Special Rapporteur on the situation of human rights defenders to monitor and support the implementation of the Declaration. In several reports, the Special Rapporteur has identified human rights defenders working on the issue of business and human rights as one of the most vulnerable groups of defenders and stressed that business interests often are one of the key challenges faced by human rights defenders.

## Universal Declaration on Human Rights

The Preamble to the UN Universal Declaration on Human Rights emphasises “every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”<sup>100</sup>. Companies are by all interpretations included in the term “every organ of society”.





Photographer: Jeppe Schilder.

Digging for minerals in The Democratic Republic of Congo.

The Special Rapporteur is empowered to receive complaints and communications on violations of human rights defenders. The rapporteur may investigate a matter (usually through correspondence) addressing the authorities in the respective countries. Many of the communications concern extractive industries.

### The Human Rights Council

In 2016, the UN Human Rights Council adopted a landmark resolution on “protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights”.<sup>101</sup> The resolution encourages non-state actors to refrain from actions that undermine the capacity of human rights defenders to operate free from hindrance and insecurity, and to express public support for the important and legitimate role of human rights defenders. It also underscores the responsibility of all business enterprises to respect human rights defenders, and encourages all companies to identify, assess and address any adverse human rights impact related to their activities through meaningful consultation with potentially affected groups and other relevant stakeholders in a manner consistent with the UN Guiding principles on business and human rights. It also encourages companies to engage with human rights defenders.

The Universal Periodic Review (UPR), conducted under the auspices of the Human Rights Council, is a process for a review every four years of the human rights records of all UN member states. States have the opportunity to declare what actions they have taken to improve the human rights situation in their countries and to fulfill their human rights obligations. The UPR also includes a sharing of best human rights practices around the world. The aim of the mechanism is to improve the human rights situation glob-

ally and to address human rights violations wherever they occur. The UPR hence provides an opportunity to all states to address violations of human rights defenders and links to business.

### The UN Environmental Rights Initiative

In March 2018, the UN launched the Environmental Rights Initiative with the aim to promote and protect environmental rights, taking a stand against ongoing threats, harassment and killings of environmental defenders<sup>102</sup>. “Those who struggle to protect the planet and people should be celebrated as heroes, but the sad fact is that many are paying a heavy price with their safety and sometimes their lives,” Erik Solheim, Executive Director of the UN Environment Programme (UNEP) said at the launch. “It is our duty to stand on the side of those who are on the right side of history. It means standing for the most fundamental and universal of human rights.”

The initiative will:

- Work with governments to strengthen institutional capacities to develop and implement policy and legal frameworks that protect environmental rights effectively and inclusively.
- Engage with businesses to help them to better understand what their environmental rights obligations are.
- Support civil society organisations and vulnerable populations in their efforts to access information on their environmental rights and to shine a spotlight on environmental rights violations.
- Collaborate with media on the training of journalists on issues related to environmental rights and environmental defenders.



Consultation among indigenous people in Concepcion Huista in Guatemala following ILO Convention 169.

### International instruments

There are several international instruments that confirm expectations on companies to respect human rights. The ILO tripartite Declaration of principles concerning multinational enterprises and social policy and the OECD Guidelines for multinational enterprises are two examples. However, the instruments are non-binding on companies and the performance of the companies is not directly subject to assessment by international courts or human rights mechanisms. The OECD Guidelines have been aligned with the UN Guiding principles since 2011.

In 2016, the Office of the Prosecutor under the International Criminal Court (ICC) indicated that it would prioritise its case selection for investigation and prosecution with respect to conduct which constitutes a serious crime under national law, such as the illegal exploitation of natural resources, human trafficking, land grabbing or the destruction of the environment.<sup>103</sup> The ICC does not have a mandate to prosecute companies, but an executive of a company that has been involved in such acts could in theory be charged depending on the circumstances. The ICC is yet to initiate any such case against executives.

### Treaty on business and human rights

The international community has for several years unsuccessfully attempted to address the fact that the international instruments do not include a legally binding treaty on the conduct of businesses. In 2014, the UN Human Rights Council adopted a resolution calling for the establishment of an Intergovernmental Working Group to elaborate an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises. Three sessions have been held so far in the working group, the most recent in October 2017. The first two sessions deliberated on the content, scope, nature and form of a future legally binding international

instrument, while the third session discussed the elements for a draft instrument prepared by the chairperson of the working group.

### Regional frameworks

Not only the UN system, but also regional systems, such as the Organisation of American States (OAS), have endorsed the UN Guiding principles. Consequently, the OAS expects its members and organs to apply and implement the UNGP. Under the OAS, the Inter-American Commission on Human Rights has been provided with a broad human rights mandate, including receiving complaints and monitoring the protection of human rights defenders. The commission has, for example, established the Rapporteur on the Rights of Human Rights Defenders that provides support in the specialised analysis of petitions presented to the Inter-American Commission regarding alleged violations towards human rights defenders.

On several occasions, the commission has highlighted the duty of the state to protect human rights defenders against the extractive industry and that acts of third parties can compromise a state's international responsibility.<sup>104</sup> In early 2017, the commission expressed its deep concern over the increase in violence against human rights defenders in the region, particularly those who oppose extractive projects and defend land rights and natural resources as well as indigenous and Afro-descendant human rights defenders.<sup>105</sup> Cases related to human rights defenders may be tried by the Inter-American Court for Human Rights.

In 2004, the African Commission for Human Rights established a Special Rapporteur on Human Rights Defenders, and in 2009, the Working Group on Extractive Industries, Environment and Human Rights Violations was established. The African Union is in the process of developing a policy for the implementation of the UN Guiding principles in Africa.





Mine workers in The Democratic Republic of Congo.

“In Africa, nowhere is the impact on human rights and the threat that the unaccountable power of corporations presents to human rights more pronounced than in the extractive industries. While the investment of extractive industries is increasingly seen as a vehicle for development, which is not entirely wrong, there is huge concern about the manner in which their activities affect peoples’ access to and ownership of land, their rights to a healthy environment and the conditions they are forced to work under.”

Commissioner Solomon Ayele Dersso, Chairperson of the Working Group on Extractive Industries, Environment and Human Rights in Africa, July 2016

### National frameworks

The UN Declaration on Human Rights Defenders can be applied as a guiding tool by national authorities handling issues related to human rights defenders or when adopting new legislation. In many countries, ratified international conventions automatically become part of domestic law without any further acts of implementation, or the national constitutions contain an obligation for any person, including legal persons, to respect the Bill of human rights in the constitution. Furthermore, the failure to respect the Bill

of human rights may become subject to investigation by a national human rights institution or ultimately a court.

It must be acknowledged that several countries have realised that the protection of human rights defenders is the responsibility of the state and that the role of the defenders in protection and promotion of human rights must be recognised. For instance, several West African countries have adopted national laws on recognition and protection of human rights defenders. This followed a campaign by regional and local civil society organisations. Similar initiatives have been introduced or considered in other countries around the world. However, the reality shows that legislations are not enough. The challenge is in the implementation of and adherence to the legislations.

“Human rights advocacy constitutes a positive and complementary contribution to the State’s own efforts as guarantor of the rights of all persons under its jurisdiction. Accordingly, the prevalence of human rights in a democratic state depends largely on the respect and freedom afforded to these defenders in their work.”

Colombian Commission of Jurists. Provisional Measures. Order of November 25, 2010

### OECD National Contact Points

The national human rights infrastructure is further supplemented by National Contact Points (NCP) established under the OECD Guidelines for multinational enterprises. The guidelines are so-called soft-law (non-binding instruments), but the NCPs are empowered to receive complaints from anyone, examine the matter and issue statements and recommendations. Although the statements are non-binding, the mechanism still offers a remedy similar to a court for anyone who has been subject to a negative human rights impact.

In practice, however, the majority of the NCPs appear rather inefficient. According to the OECD Watch’s analysis in 2015, many weaknesses of the NCPs exist, which leads to a lack of access to remedy for victims of corporate abuses. Examples of weaknesses are too many barriers for accessing the complaints mechanisms, a lack of transparency in NCP processes, a lack of impartiality when handling the complaints, and that many of the NCPs do not follow the indicative timelines making it hard to predict when the complaint will be solved<sup>106</sup>. The NCPs are often not very proactive and their case-law is limited.

The Swedish NCP has only published information about four cases received since 2012. One of these cases was a complaint against the Norwegian state-owned company Statkraft because the company allegedly breached the rights of Sami people in 2012. The company reached an agreement on compensation with the respective Sami village in 2016.<sup>107</sup>







# RESPONSIBILITY OF STATES

Human rights defenders are calling for home states of multinational companies as well as investors to take action. States have the duty to protect against human rights abuses, including violations by businesses.

## Responsibility of states

According to international human rights law, states have an obligation to respect and protect the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuses by third parties, including business enterprises. According to the UN Guiding principles on business and human rights, states should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.

Companies have a responsibility to respect human rights, which entails avoiding violations of the rights of others and addressing adverse human rights impacts that are linked to their operations or business relationships. Addressing negative human rights impacts requires companies to take adequate measures for the prevention, mitigation and remediation of such effects. The UN Guiding principles urge companies to have a process for human rights due diligence in place in order to identify, prevent, mitigate and account for how they address their impacts on human rights. The process should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships. A number of countries have recently adopted legislations that address the human rights impacts of business enterprises. Some laws include mandatory requirements on companies to conduct a human rights due diligence, such as

the Duty of Care law 2017 in France, while others contain requirements on reporting, for example the Modern Slavery Act 2015 in the UK. Similar laws are currently being discussed in Switzerland, Germany and the Netherlands. The Special Rapporteur on the situation of human rights defenders has expressed his support for the adoption of laws that make human rights due diligence a mandatory requirement for companies. He believes that these laws are likely to be more effective in addressing the conduct of business compared to voluntary reporting systems.<sup>108</sup>

Sweden has not yet taken any initiative to adopt or investigate legislation with binding requirements on companies to conduct human rights due diligence.

## State-owned companies

States should take additional steps to ensure that business enterprises that are owned or controlled by the state respect human rights. This includes respect of human rights defenders. Violations of human rights by state-owned companies may entail a violation of the state's own international legal obligations. Many companies in the extractive industries are fully or partly owned by states.

“Where a business enterprise is controlled by the state or where its acts can be attributed otherwise to the state, an abuse of human rights by the business enterprise may entail a violation of the state's own international law obligations.”

The UN Guiding principles on business and human rights, Principle no. 4

In the Forbes list, which shows the world's 500 largest companies, amongst the 35 largest oil and gas companies, 18 are either state-owned or controlled by the state<sup>109</sup>. They are headquartered in, for instance, China, India, Indonesia, Malaysia, Norway, Russia, Mexico, Brazil, Iran, Kuwait, Algeria and Saudi Arabia. Saudi Arabia and Malaysia have not ratified the covenants comprising the UN Bill of human rights. China has signed but not ratified the Covenant on civil and political rights.

State-owned companies are, as commercial companies, expected to follow the UN Guiding principles and the OECD Guidelines for multinational enterprises. Where states own or control business enterprises, they have the

## Human rights due diligence process

Human rights due diligence is an on-going risk management process for companies to identify, prevent, mitigate and account for how they address their adverse human rights impacts. The process includes four key steps:

- Assess actual and potential human rights impacts
- Integrate and act on the findings
- Track responses
- Communicate how impacts are addressed

The UN Guiding principles on business and human rights. Principle no 17



greatest means within their powers to ensure that relevant policies and legislations regarding respect for human rights are implemented – a fact that is stressed in the UN Guiding principles.

Several countries, including Sweden, Norway, France and Switzerland, have adopted ownership guidelines stating that state-owned companies are expected to lead by example. The Swedish ownership directive has been updated on several occasions, where sustainability requirements have become more pronounced. According to the directive, all state-owned companies should adapt their guidelines and practices to the UN Guiding principles.<sup>110</sup> However, the directive does not include a binding requirement on the companies to conduct human rights due diligence.

Nevertheless, state-owned companies should be front-runners in protecting human rights defenders and promote an enabling environment for them. This includes not obstructing justice, cooperating fully with judicial and non-judicial grievance mechanisms and providing remedy for human rights abuses that they may be causing or contributing to. The UN Working Group for Business and Human Rights has suggested that government entities in charge of the state-owned companies should ensure that they respect human rights. Furthermore, these entities should establish explicit mandates to the boards of state-owned companies to ensure and monitor the implementation of human rights standards.<sup>111</sup>

### Role of development banks

Since its inception in 2011, the Agua Zarca hydroelectric project in Honduras has been associated with high level of violence and conflicts culminating in the killing of the renowned human rights defender Berta Cáceres and her colleague Nelson García in March 2016. The brutal murder of Berta Cáceres attracted international attention. For the previous 20 years, she had defended the territory and rights of the indigenous Lenca people. She was a co-founder of the Council of Popular and Indigenous Organisations of Honduras (COPINH), and together with other COPINH members she protested against the dam project. Over the years, she had suffered death threats, attacks and attempted kidnappings.

The Agua Zarca project was financed by, among others, the Dutch Development Bank (FMO). The FMO suspended their loans for the dam following the murder of Berta Cáceres, while civil society groups demanded their permanent withdrawal from the project. In 2017, the FMO and other international investors withdrew their funding from the project. The FMO was criticised by civil society organisations for not having acted earlier, since Berta Cáceres had reported the threats and attacks for several years.<sup>112</sup>

A report commissioned by the FMO recommended that they “consider developing updated and more detailed guidelines for projects that may have impacts on indige-



Photographer: Forum Syd Honduras.

Demonstration by Berta Cáceres' organisation COPINH, Honduras.





Photographer: Forum Syd Honduras.

Occupation of land by communities at Valle, Honduras.

nous peoples and review existing projects in the light of these guidelines. These enhanced guidelines and requirements for loans would be particularly important in countries with weak institutions, high levels of corruption and where the rule of law is not well established. Include within the contracts with companies or the state a requirement that policies and qualified staff able to respond appropriately to social conflicts in complex situations are in place.”<sup>113</sup>

The Aqua Zarca case is just one of many examples where projects funded by development banks meant to facilitate development have led to harsh criticism from local stakeholders. Communities find that their concerns are ignored in the implementation of projects, and that the banks have failed to conduct adequate human rights due diligence prior to a project’s approval or do not follow up on reports of human rights violations.

The case also illustrates the responsibilities of states to ensure that their export credit agencies and development banks conduct thorough human rights due diligence and engage with local stakeholders prior to and during the project cycle. Further, credit agencies and development banks should facilitate access to remedies for potential victims and promote the protection of human rights defenders. These institutions must adopt policies on respect for human rights defenders and integrate these into contracts and agreements. They should also use their leverage to influence actors in the public and private sectors to act transparently and be accountable. Where there is reason to suspect that something has gone wrong, state organs should, as

the FMO did in Honduras, commission an independent fact-finding mission to investigate the human rights concerns and be transparent and publish the findings.

### Swedish pension funds

The Swedish national pension funds (the AP funds) are managing more than 1 350 billion SEK of the pension capital of the Swedish people. The present regulation for the pension funds has allowed investments that are contradicting Swedish international commitments on human rights, climate and environment. The funds have investments in several international mining companies, which are accused of violations of indigenous peoples’ rights, forced resettlements and threats towards human rights defenders<sup>114</sup>. The Ethical Council for the first-fourth AP funds is holding dialogues with some of the companies, with the aim to improve the companies’ work on sustainability. In June 2017, a proposal for a new regulation for the AP funds was presented by the government, which was handed in to the Council on Legislation in May 2018<sup>115</sup>. Thereafter it will be submitted to the Parliament. The proposal contains several improvements compared to the existing regulation. However, the requirement on high yields is still superior to the objectives on sustainability, which raises questions about how effective the regulation will be in ensuring that investments by the AP funds are responsible and sustainable. The new regulation is expected to enter into force on January 1, 2019.



# HOW BUSINESSES CAN SUPPORT DEFENDERS

Companies have a lot to gain from an environment where human rights are respected and human rights defenders are supported.



Photographer: Carlos Cardenas, Forum Syd.

Vattenfall visits communities affected by coal mining in Colombia, in 2017.

“Business can only flourish in societies where human rights are respected, upheld and advanced.”

Unilever. Enhancing livelihoods, advancing human rights. Report, 2015.<sup>116</sup>

## Business and human rights defenders

A hostile environment towards those who dare speaking out does not benefit companies. It may escalate local conflicts, endanger their investment and in a globalised market endanger their brand or the brand of their business relations.

The business case for protecting, respecting and promoting the rights of human rights defenders is increasingly recognised. One extractive company that was interviewed as part of this report explained: “You cannot ignore people on the ground. It is a win-win situation. You cannot even do business if you do not address the issues with the people on the ground, including human rights defenders.”

Human rights defenders should be regarded by

companies as essential partners in understanding local context, challenges and solutions. Human rights defenders are often present in areas where companies or investors do not have access to reliable information. Including them as stakeholders and respecting their views are ways to perform due diligence and protect sustainable investments. Failure to engage with human rights defenders and, worse, contribute to their intimidation is a short-term strategy that carries substantial risk for companies and their shareholders. Companies risk their “social license” as well as their legal license to operate.

“We think that we need to know the human rights defenders. We need to know their issues, what they are asking for, and we need to engage with them. We think that we can help our business by preventing and mitigating human rights impacts.”

ITAIPIU Binacional, Brazil



## Achieving the SDGs

States and companies should realise that human rights defenders are essential for the achievement of the UN Sustainable Development Goals (SDGs) in the 2030 Agenda and for the evaluation of the progress in achieving the goals. Human rights defenders may contribute to the achievement of all the SDGs and their protection is included as one of the indicators of SDG 16: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”.

### Sustainable Development Goal 16

Peace, Justice and Strong Institutions, Indicator 16.10.1: Number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months.

Indicators for the Sustainable Development Goals in the 2030 Agenda

## UN on the role of companies

The UN Working Group on Business and Human Rights has identified several reasons why companies should care about the shrinking civic space and the role of human rights defenders:<sup>17</sup>

- Narrowing of the space for civil society weakens the rule of law, which also negatively impacts business, deteriorating the enabling environment for responsible business and effective government.
- When able to operate freely, civil society can be a key critical friend and partner for business helping to identify and address human rights risks and remediate abuses.
- Human rights defenders as first responders are often the best placed to identify risks and harms that can be mitigated or redressed, creating positive outcomes for rights holders as well as for the business itself.
- Ambitious goals and complex challenges – such as achievement of the SDGs – will need ideas, expertise, input and collaboration from all societal actors including an active and open civil society.
- Speaking up in support of civil society helps companies to meet social expectations and earn and maintain their “social license to operate”.

## Engagement by companies

Several companies in the extractive sector have realised that they need to be engaged in the support of human rights defenders. This wake-up call has often been triggered by

a concrete case threatening the companies’ social, or even legal, license to operate.

One example of company engagement is the case where jewellery companies Tiffany & Co. and Leber Jeweler in 2015 wrote an open statement<sup>18</sup> calling for the charges to be dropped against Angolan journalist and human rights defender Rafael Marques de Morais, who was accused of criminal defamation linked to the country’s diamond mines (see the case on Angola in chapter four). The companies’ statement was published in international media and circulated broadly. The action by the companies combined with the international attention around the charges against Rafael Marques probably contributed to the charges initially being dropped, although he was still sentenced to six months in prison in the end.

### Open statement on charges against Angolan journalist

We, the undersigned companies, are concerned over reports of human rights abuses in the diamond sector in Angola, and over efforts by the Angolan Government to criminally prosecute the award-winning journalist and human rights activist Rafael Marques de Morais on charges of libel against a number of Angolan generals. ... Over 30 human rights, press freedom and anti-corruption NGOs worldwide have expressed grave concerns over irregularities in the proceedings against Mr. Marques to date, and that he will not receive a fair trial in Angola. As jewelry firms, we wish to work towards a global diamond supply chain free from human rights abuses. ... Furthermore, we request the Presidency to order the formation of an independent commission that will fairly and objectively investigate the allegations of human rights abuses committed against artisanal diamond mining communities reported by Rafael Marques.

From the open statement by Tiffany & Co. and Leber Jeweler, April 22, 2015

However, engagement by companies does not necessarily hit the headlines of the media, because the companies may prefer to attempt to use their leverage on state or private actors through other means. One company interviewed for this report explained that they provide support to train local law enforcement agencies in human rights but they cannot be explicit about it as it would be a sensitive matter for the government. Another company said that they cooperate with a national human rights institution.

The character of engagement may vary, but engagement with NGOs and reaching out to human rights defenders is



gradually becoming more integrated into some, often larger, extractive industries' business model. Engagement with human rights defenders is essential, one of the interviewed companies explained: "It must be part of your business model if you want to remain in business, not just business but responsible business."

In an interview with French energy company TOTAL, they highlighted their engagement with the local office of the NGO Collaborative Learning Projects (CDA) in Myanmar. Their collaboration with CDA has provided TOTAL with the opportunity to have a third party assessing its engagement with local communities and critical stakeholders, including human rights defenders. One of the reports published by CDA observed that TOTAL in general was praised for its approach in Myanmar. However, there was a need for TOTAL to ensure "that it is consistently working to build its relationships with community members broadly to communicate clearly, hear and understand local perceptions, and to respond timely to issues that may arise."<sup>119</sup> Although this could be regarded as criticism, it is also an indication that at least some extractive companies accept to engage with NGOs that are actually criticising their performance, and hopefully use such reports to improve their performance.

### Vattenfall and human rights in Colombia

The energy utility Vattenfall, Sweden's largest state-owned company, has started an important work to identify and address the human rights impact in the coal supply chain in Colombia. In 2017, hard coal imported from Colombia accounted for 8 per cent of Vattenfall's total hard coal sourcing.

In 2017, Vattenfall conducted an impact assessment trip to Colombia to identify possible human rights risks related to their coal procurement. Following the visit, a report with concrete recommendations to the mining companies was published<sup>120</sup>. Vattenfall was the first European energy utility to conduct such a risk analysis.

Vattenfall assessed human rights risks related to displacement and land restitution in the internal armed conflict, workers' rights, involuntary resettlement as well as environment and communities. Its report recognises that coal mining has been carried out in a context characterised by conflict and violence, which affected many people. In the Cesar region, over 3 000 people were killed and hundreds of people disappeared between 1996 and 2006. The perpetrators were paramilitary groups but according to human rights organisations, the international mining companies took advantage of the situation and failed to address the human rights violations that took place in the areas where they were operating. The mining companies, for example, could get hold of land in areas where communities had been forcefully displaced. Around 430 000 people were victims of forced displacement due to the conflict in Cesar region alone. The Dutch organization PAX has documented reports by witnesses on ties between a paramilitary group and the mining companies<sup>121</sup>. Vattenfall's report recognises that the perpetrators were seldom prosecuted and that access to remedy for victims has been ineffective.

Vattenfall has clear and concrete demands on the mining companies. In the report, they state that "companies should set up, publically communicate and implement a zero-tolerance policy regarding threats, intimidation and physical or legal attacks against human rights defenders, including those exercising their rights to freedom of expression, association, peaceful assembly and protest against the business or its operations." Vattenfall also recommends that "companies should take concrete efforts to engage in constructive dialogue with victims of past human rights violations. This dialogue could include defining steps towards reconciliation for the victims."<sup>122</sup>

Vattenfall is now working together with the mining companies to develop individual action plans based on the recommendations. In the end, Vattenfall is prepared to use its commercial leverage: "Ultimately, should we reach the conclusion that a company is not willing to agree on an action plan or has not met an agreed action plan within reasonable time frames, we will seek to temporarily cease



Photographer: Carlos Cardenas, Forum Syd.

Vattenfall interviews community members during their impact assessment in Colombia.



imports, followed by disengagement if matters remain unsolved.”

Vattenfall’s human rights risk assessment in 2017 was followed by a second assessment trip to Colombia in April 2018. This time three other European energy utilities, Engie, RWE and Uniper as part of a Bettercoal delegation, joined the visit. Vattenfall’s commitment to address human rights impact in the coal supply chain has been commended by civil society and it can be used as an example for other energy companies.

“The important thing is that companies can encourage everyone to speak out. Companies have a very important role to make this possible for everyone. They need to have a functional grievance mechanism and engage proactively with communities.”

Interviewed company

### Policies on human rights defenders

In 2017, the Corporate Human Rights Benchmark (CHRB) assessed 41 extractive companies around the world against a number of benchmark criteria,<sup>123</sup> including if companies had an explicit policy commitment to respect the rights of human rights defenders. CHRB did not identify any policy documents in the public domain for the 41 extractive companies. Interestingly, the same seems to be the pattern for the assessed companies in the agricultural industry. In comparison to the apparel industry, where among the world’s 30 largest apparel companies that were assessed, at least three of them have explicitly committed themselves to respect the rights of human rights defenders namely Adidas, Mark and Spencer and Hennes & Mauritz.<sup>124</sup>

Although the absence of explicit policies on human rights defenders is disappointing, this could be attributed to the fact that many companies are slow to adopt new policies and perhaps instead focus on mainstreaming the UN Guiding principles on business and human rights into their management approach, as explained by two of the companies interviewed. The businesses confirmed the importance of applying the UN Guiding principles. According to them, robust adoption of the principles would lead to better performance and prevent direct or indirect attacks on human rights defenders and automatically strengthen the engagement with local stakeholders.

Some companies emphasised the duty of the home as well as the host state to protect human rights defenders. Furthermore, it was observed by one company that there is a need to address the role of state-owned companies as well as small and medium-sized local or international enterprises. These smaller companies might not have a transparent and pronounced focus on human rights impacts and are not always up to date on international developments, according to one of the interviewed companies.

### Recommendations by the Special Rapporteur

The interviews with companies and human rights defenders conducted for this report reflect the views of the UN Special Rapporteur on the situation of human rights defenders expressed in recently published recommendations to companies in relation to respecting and protecting environmental human rights defenders:<sup>125</sup>

- Adopt and implement relevant international and regional human rights standards, including the UN Guiding principles for business and human rights.
- Fulfill 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 environmental human rights defenders.
- Refrain from physical, verbal or legal attacks against environmental human rights defenders and meaningfully consult with them in the design, implementation and evaluation of projects and in due diligence and human rights impact assessment processes.
- Disclose information related to planned and on-going large-scale development projects in a timely and accessible manner to affected communities and environmental human rights defenders.
- Establish the grievance mechanisms necessary to avoid, mitigate and remedy any direct and indirect impact of human rights violations.
- Ensure that private security companies and other subcontractors respect the rights of environmental human rights defenders and affected communities, and establish accountability mechanisms for grievances.

The roadmap for companies to protect, respect and promote the rights of human rights defenders is hereby drafted and the business case is clear for the extractive industry. The next step is for companies to turn commitments and words into practice, either in their own capacity or together with other like-minded companies and the industry as a whole. There are already good examples and it is important that other companies engage in learning about these initiatives.

“Whatever framework that we develop should deal with the UN Guiding principles. Whatever we do needs to be aligned with the principles.”

Interviewed company



# CONCLUSIONS

International reports demonstrate that the democratic space for civil society, including human rights defenders, is shrinking in many countries all over the world. At the same time, the search for natural resources is intensifying including in areas with local and indigenous communities and fragile ecosystems. The expansion of natural resource extraction is motivated by the needs of a global market and should ideally also lead to sustainable development in resource-rich countries benefitting locally as well as nationally. States and companies have a responsibility to ensure that this is carried out with respect for international human rights standards. International human rights instruments require states to respect, promote and protect human rights also against potential violations by private actors, including business.

The same instruments expect private actors to respect human rights. This division of responsibilities has been further elaborated in the three pillars of the UN Guiding principles on business and human rights: Protect, respect and remedy. All states and companies, regardless of size and ownership structure, are expected to contribute to the implementation of the UN Guiding principles and the realisation of sustainable development.

The sad truth is that sustainable development is still a vision far from being realised for many vulnerable groups living in resource-rich countries, where there is a lack of respect for human rights and the rule of law and high levels of corruption. Under these circumstances, human rights defenders are local watch-dogs. Even though they are instrumental to the achievement of the Sustainable Development Goals, they are increasingly subject to a variety of violations of their human rights committed by state and private actors, and have no, or ineffective, access to protection. The extraction of natural resources is one of the most dangerous sectors for human rights defenders. In the most extreme cases, they are paying with their lives to address injustices and unsustainable behaviour by the extractive industry. However, not only the host countries for extractive industries but also home countries (often developed nations), where headquarters of the extractive companies or business partners, financial institutions, development banks and export agencies are domiciled, are failing to address the threat against defenders.

The figures on violations of human rights defenders paint a miserable picture of a very hostile environment. Front Line Defenders reported 312 killings of human rights defenders in 27 countries in 2017 - an increase on the previous year.<sup>126</sup> More than 60 per cent of these defenders were working to defend land, indigenous and environmental rights - issues that often involve the extractive industry directly or indirectly. Reported cases are probably just the tip of the iceberg, but they significantly impact local communities and discourage others that wish to address injustices and unsustainable development.

Many states and companies believe that this downward spiral must come to an end, but converting words into practice is harder to accomplish. However, the expectation is that all actors should embed the principles of international and national human rights instruments, including the UN Declaration on human rights defenders, into every decision, process, action and relationship in which they are involved. Furthermore, states and companies are expected to communicate openly and transparently, provide access to information and be held accountable for their behaviour.

The objectives of states and non-state actors should be to create, or contribute to the creation of, an enabling environment for human rights defenders characterised by the following elements:<sup>127</sup>

- A conducive legal and institutional framework.
- Fight against impunity and access to justice.
- A strong national human rights institution.
- Effective protection policies and mechanisms.
- Non-state actors' respect and support of the work of defenders.
- Access to UN bodies.
- Special attention to women human rights defenders.
- A robust community of defenders.

While states have the duty to ensure these elements, the extractive industry has the responsibility to contribute to their successful implementation and to respect them and not to obstruct them, either directly or indirectly.



Colombia's largest coal mine Cerrejón.

Photographer: Richard Solly, Colombia Solidarity Campaign/London Mining Network.



# RECOMMENDATIONS

The critical and legitimate role that civil society, including human rights defenders, plays to safeguard human rights and promote democracy must be recognised by countries all over the world. States are failing to protect those who are defending their rights, including creating a safe environment and punishing the actors who are responsible for abuses. Businesses contribute directly or indirectly to violations towards human rights defenders and shrinking civic space. The following are recommendations by Forum Syd to states and companies.

## Recommendations to states:

States around the world, both home states of companies and host states where companies have operations, should:

- Publicly recognise the legitimacy of human rights defenders and their work, and ensure a safe and enabling environment for civil society and human rights defenders.
- Adopt legislation that protects human rights defenders and ensures an effective implementation of the UN Declaration on human rights defenders.
- Publicly condemn violence, threats, harassments and attacks against human rights defenders.
- Without delay investigate and address attacks and threats against civil society representatives, including human rights defenders, and bring the responsible actors to justice. Ensure that the perpetrators do not have impunity.
- Recognise the particular challenges and risks that women human rights defenders face and ensure that they receive the specific protection that they need against gender-based and sexual threats and violence.
- Adopt national legislation with mandatory requirements on companies to conduct human rights due diligence.
- Actively work for an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights within the UN system.
- When business-related abuses of civil society representatives, including human rights defenders, occur within their territory and/or jurisdiction, ensure that those affected have access to effective remedy.
- Ensure that foreign embassies can facilitate and create spaces for dialogue between companies, investors, representatives from authorities, affected communities and human rights defenders.
- Ensure that foreign embassies have the knowledge and can provide capacity building to companies on local context and situations regarding human rights defenders and human rights risks.

## Recommendations to companies:

Companies, particularly those with operations and business relations in high-risk sectors, such as extraction of natural resources, and in countries with high risks for human rights violations should:

- Implement human rights due diligence processes, as stipulated in the UN Guiding principles on business and human rights.
- Prior to any business operations, hold consultations with affected communities, so that they can give their free, prior and informed consent.
- Guarantee the informed and meaningful participation of affected communities in environmental, social and human rights impact assessments related to the business operations.
- Conduct consultations with human rights defenders at critical stages in the planning and implementation of business operations.
- Establish a safe and effective grievance and remedy mechanism where human rights defenders can bring complaints of violence and attacks related to the business operations.
- Adopt a policy on the protection of human rights defenders and of zero-tolerance of violence, threats or intimidation against human rights defenders.
- Speak out and publicly condemn reported threats and attacks against human rights defenders, for example by issuing open statements in support of human rights defenders under attack.

“We want the international community to work hand in hand with us to fulfill the peace agreement in Colombia. The private sector must also be part of this process. We do not want more people murdered. We want to build peace in all the regions.”

Carmenza Gómez Ortega, Legal representative of ANZORC, Colombia



# ABBREVIATIONS

CDA	Collaborative Learning Projects	INDEPAZ	Research Institute for Development and Peace
CEDAW	UN Committee on the Elimination of Discrimination Against Women	KOGWG	Kenya Oil and Gas Working Group
CER	Centre for Environmental Rights	NCP	National Contact Points
CHRB	Corporate Human Rights Benchmark	NGO	Non-governmental Organisation
COPINH	Council of Popular and Indigenous Organisations of Honduras	OAS	Organisation of American States
EHRD	Environmental Human Rights Defenders	OECD	Organisation for Economic Co-operation and Development
FARC	Revolutionary Armed Forces of Colombia	SDGs	Sustainable Development Goals
FIDH	International Federation for Human Rights	SLAPP	Strategic Lawsuits against Public Participation
FMO	The Dutch Development Bank	UN	United Nations
FPIC	Free, Prior and Informed Consent	UNEP	UN Environment Programme
ICC	International Criminal Court	UNGP	UN Guiding Principles for Business and Human Rights
ILO	International Labour Organisation	UPR	Universal Periodic Review

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# DEFENDING THEIR RIGHTS, RISKING THEIR LIVES

Threats and violence against human rights defenders and attacks on civic freedoms escalate in many parts of the world. In 2017, over 300 human rights defenders were killed in 27 different countries. In many cases, there are direct links to business operations. Sectors that are particularly dangerous for those who defend their rights are mining, agribusiness, oil or gas and dam building. Local and indigenous people who defend their rights to land, environment and natural resources are particularly vulnerable.

Why is it so dangerous for human rights and environmental defenders to defend their rights in relation to extraction of natural resources? What responsibility do companies have for their operations, suppliers and customers? What is the responsibility of the state for companies' behaviour abroad?

This report examines the links between extractive industries and shrinking civic space. It discusses measures used to silence human rights defenders and the responsibility and role of states as well as companies. Cases from different countries around the world illustrate the hostile environment, risks and challenges faced by human rights and environmental defenders.

There are, however, examples of businesses that play a positive role towards supporting human rights defenders. The report discusses what kind of measures companies can undertake to support civic freedoms.

States and companies have a responsibility to ensure that extraction of natural resources is carried out with respect for human rights. Urgent measures need to be undertaken to stop the escalating trend of shrinking civic space.



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