

Report on the Misuse of Criminal Justice Systems to Retaliate Against Environmental Defenders

*Submitted in Connection with the 173d Period of Sessions of the
Inter-American Commission on Human Rights*

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Environmental defenders of Gualaguaychú, Argentina – unjustly criminalized for defending the Uruguay River. Photo: Uno Entre Rios

This report is submitted in connection with the hearing “Misuse of Criminal Justice Systems to Retaliate Against Environmental Human Rights Defenders” at the 173d Period of Sessions of the Inter-American Commission on Human Rights. The hearing was requested by:

Argentina

- Asamblea Ciudadana Ambiental de Gualeguaychú
- Asamblea Ciudadana de Famatina
- Asamblea de Chilecito
- Asamblea el Algarrobo
- Asamblea Jáchal no se toca
- Centro de Derechos Humanos y Ambiente
- Consejo de Abogados y Procuradores de la Provincia de la Rioja, Instituto de Derecho Ambiental
- Confederación de Mapuches Argentina
- Fundación Ambiente y Desarrollo
- FUNDAVIDA
- Jóvenes por el Clima, Argentina headquarters

Chile

- Alianza Territorial Mapuche
- Chile Sustentable
- FIMA

Ecuador

- Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y el Medio Ambiente
- Corporación de Gestión y Derecho Ambiental Ecolex

Guatemala

- Alianza de Derecho Ambiental y Agua
- Foro de Organizaciones No Gubernamentales Internacionales en Guatemala
- Plataforma Internacional contra la Impunidad

Mexico

- Centro Mexicano de Derecho Ambiental
- Instituto de Derechos Ambientales A.C.

Nicaragua

- Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua

United States

- Environmental Law Alliance Worldwide (ELAW) U.S. Office

Regional/International

- 350.org
- Amazon Watch
- Centro por la Justicia y el Derecho Internacional
- Center for International Environmental Law
- EarthRights International
- Front Line Defenders
- Global Witness
- Not1More
- Peace Brigades International

Individuals

- Juan Méndez, former Commissioner and President of the Commission
- Dinah Shelton, former Commissioner and President of the Commission
- James L. Cavallaro, former Commissioner and President of the Commission
- David R. Boyd, United Nations Special Rapporteur on human rights and the environment
- Ignacio J. Alvarez, former Commission Special Rapporteur for Freedom of Expression
- S. James Anaya, former United Nations Special Rapporteur on the Rights of Indigenous Peoples

This report¹ is endorsed by:



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EXECUTIVE SUMMARY

Defending the environment is dangerous. Every day, environmental defenders are harassed, threatened, and attacked as reprisal for their work promoting and defending human rights relating to territory, water, air, land, flora, and fauna. Increasingly—and alarmingly—States in the Americas are retaliating against environmental human rights defenders through the improper manipulation of criminal investigations and prosecutions. Environmental defenders are falsely accused of crimes, detained arbitrarily, and subjected to lengthy criminal proceedings plagued with irregularities and due process violations, with the goal of hindering the defenders' work and limiting the civic space available for the defense of the Planet.

This report describes the criminalization of environmental defenders, including the most common forms of criminalization and their particular vulnerability, as a group, to this type of retaliation.

Principal Conclusions

- We are facing a true climate emergency. Never before in the history of humanity has the Earth's climate system been so threatened. And never before have environmental defenders been under such attack.
- Because of their work, environmental defenders are targeted by a range of stakeholders who view environmental defenders as obstacles to conducting their business. Powerful corporate actors—with the complicity or acquiescence of States—increasingly use a sophisticated tactic of criminalization to impede environmental protection efforts.
- The misuse of criminal justice systems to retaliate against environmental defenders threatens their lives and generates a chilling effect that limits the ability of all human rights defenders to defend their communities and protect the environment. It enables polluters to gain leverage over environmental defenders and to avoid unwanted attention, regulation, and environmental enforcement.
- Criminalization is a particularly pernicious threat to environmental defenders. The use of the criminal process by the States and economic actors provides the appearance of legitimacy, such that an outside observer must know significant details about an investigation and the basis for charges to know whether the law and the process are being manipulated for an improper purpose. Criminalization is difficult to identify and document.
- The criminalization of environmental defenders meets all of the requirements for persecution for belonging to a group.

Key Recommendations to the Honorable Inter-American Commission on Human Rights

- Recognize the urgency and severity of this issue within the case system of the Inter-American Commission on Human Rights by automatically expediting petitions filed by environmental defenders facing criminalization as retaliation for their work.
- Monitor and document cases of criminalization against environmental defenders, including by publishing an annual report on the criminalization of environmental defenders and by including a section on environmental defenders in each country report.
- Develop and publish basic guidelines for States on how to ensure that environmental defenders are sufficiently protected from criminalization, including precise instructions for government officials, especially for administrators of the judicial branch like prosecutors and judges.
- Insist on the connection between environmental protection and the defense of human rights, recognize and publicly support the work of environmental defenders, and raise the visibility of the important work they do.

I. INTRODUCTION

Never before in human history has the Earth's climate system been so threatened. And never before have environmental defenders been under so much attack.²

According to scientific reports, reaching the point of irreversible climate change implicates an existential danger for humanity.³ We pour so much greenhouse gas into the atmosphere that we are changing its composition—and thereby heating the Earth at such a rapid rate that it threatens the world climate system's equilibrium.⁴ The amount of greenhouse gases that we can dump into the atmosphere without triggering irreversible climate change has a limit. That limit is called our carbon budget. Our carbon budget is almost exhausted.⁵ That is to say, we are in a climate emergency. Therefore, the work carried out by environmental defenders not only benefits the local community, but also has a global impact.

Environmental human rights defenders (going forward, “environmental defenders”) are on the front lines of actions to demand environmental protection and sustainable development. We need environmental defenders now more than ever.

This report focuses on criminalization of environmental defenders—the misuse of investigations, prosecutions, and other proceedings within State criminal justice systems to retaliate against, threaten, harass, punish, intimidate, defame, and delegitimize environmental defenders. Environmental defenders throughout the Americas report being subjected to improper criminal investigations, false accusations, arbitrary detentions, prosecutions without due process, and improper convictions as a means of intimidation and coercion. Environmental defenders suffer tremendous personal and professional harm from the criminalization of their work to protect the Planet. Criminalization hinders their work, threatens the environment, harms communities suffering from environmental degradation, and shrinks the space for defense of human rights.

Environmental defenders, as a group, are particularly targeted by criminalization. The threat is severe and increasing. As global demand for natural resources grows and the fight against climate change intensifies, more individuals and communities are relying on environmental defenders to demand sustainable development and protection against environmental degradation. This places environmental defenders into conflict with governments and with various economic actors, primarily businesses that seek to exploit natural resources. The labor of environmental defenders clashes with private economic interests that have the ability to influence State institutions, including criminal justice systems. Indeed, environmental defenders are now the most at-risk group of defenders in the Americas.⁶

Environmental defenders are not above the law; but they must not be falsely accused, stigmatized, arbitrarily detained, or subjected to

politically and economically motivated and improper misuse of criminal law simply because they seek to promote human rights relating to the environment. This criminal persecution for belonging to a group has serious consequences and requires strong and coordinated international action to protect environmental defenders, citizens that have decided to protect that which concerns all of us, our home, Planet Earth.

This report, in Part II, describes the strategy of criminalization and explains the particular vulnerability of environmental defenders to such retaliation. This section benefits from the input of several environmental defenders and civil society organizations, who submitted testimonials describing experiences with criminalization. It also draws upon important work conducted by civil society and experts such as the U.N. Special Rapporteurs on the situation of human rights defenders, human rights and the environment, and the rights of indigenous peoples.

Part III then sets out the obligations of States under international human rights law to combat criminalization and protect environmental defenders. Finally, Part IV recommends specific actions for the Inter-American Commission on Human Rights (“the Commission”) to guide and help States to protect environmental defenders and enable them to carry out their work of environmental protection and the promotion of human rights without fear of reprisal.

WHO ARE ENVIRONMENTAL HUMAN RIGHTS DEFENDERS?

Human rights defenders are those who, individually or with others, act “to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” – Article 1, U.N. Declaration on Human Rights Defenders, adopted in 1998.

Environmental human rights defenders are “individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora, and fauna.” They “may work as journalists, activists or lawyers, . . . [and] are often ordinary people living in remote villages, forests or mountains, who may not even be aware that they are acting as [environmental defenders]. In many other cases, they are indigenous leaders.” - Michel Forst, U.N. Special Rapporteur on human rights defenders, *They Spoke Truth to Power and Were Murdered in Cold Blood*, at 8-9 (2016).

II. MISUSE OF CRIMINAL JUSTICE SYSTEMS TO RETALIATE AGAINST ENVIRONMENTAL DEFENDERS

A. Environmental Defenders as a Group Are Particularly Threatened by Criminalization

Environmental defenders as a group are particularly targeted and at increasing risk from criminalization of their work.⁷ Although there is no comprehensive data on the number of environmental defenders facing criminalization as reprisal for their work, reports from environmental defenders, civil society, and U.N. experts demonstrate that the misuse of criminal law and criminal justice systems poses a serious and growing threat to these defenders.

There are a number of factors that appear to contribute to the vulnerability of environmental defenders to criminalization.

First, growing demand for natural resources and the intensifying fight against climate change places environmental defenders in more frequent conflict with governments and businesses seeking to exploit natural resources. Environmental defenders are demanding environmental protection and the right to be consulted about large-scale development and extractive industry projects—as part of their effort to secure long-term sustainable development. But governments and business do not always value or facilitate the participation or contributions of environmental defenders, nor are they open to tighter environmental controls. As recognized by the U.N. Special Rapporteur on the situation of human rights defenders, those engaged in the exploitation of natural resources frequently fail to address the legitimate concerns and demands of environmental defenders and the impacted communities that environmental defenders seek to protect.⁸ Moreover, as described by the U.N. Special Rapporteur on human rights and the environment, “the incentive to pursue short-term material gain too often leads governments and private actors to violate the relevant legal norms and to try to silence those who oppose them. As natural resources become more valuable, governments, business enterprises and other private actors often seek to avoid or violate legal constraints on their exploitation.”⁹ Corporations and States that have benefited from unsustainable exploitation of natural resources risk losing significant economic profits from tighter environmental controls. The criminalization of environmental human rights work is used as a weapon to silence and marginalize environmental defenders, thereby enabling governments and businesses to pursue development and resource exploitation without regard for the environmental consequences and with complete impunity.

Second, and relatedly, environmental defenders confront not only the instruments of State power and interests, but also powerful economic interests with strong political connections that can be used to influence State institutions, including criminal justice systems. This

makes environmental defenders vulnerable to attacks from various stakeholders that view environmental defenders as obstacles to their business. As environmental defenders stand in the way of States and business exploiting non-renewable resources, they become the target of threats and criminalization, including unfounded criminal investigations and attempts to label them as enemies of the state and opponents of development.

Those who drive the criminalization of environmental defenders may use a public “smear” campaign to spread false allegations of criminal misconduct by the defenders, using a combination of social and traditional media—for example, by using shadow accounts on Twitter or Facebook, or by paying reporters and commentators for radio, print or television coverage. Following the publication of false allegations, those who drive criminalization may resort to lobbying, bribery, or coercion in an effort to get public prosecutors or investigators to initiate a formal criminal investigation by the State. In some jurisdictions, private companies and individuals may lodge formal complaints that trigger State criminal investigations or other criminal proceedings that are used against environmental defenders. Powerful individuals and corporations frequently use their political and financial clout to manipulate criminal justice systems.

Third, environmental defenders often belong to marginalized communities that lack the political power to defend themselves. As recognized by the Commission and the U.N. Special Rapporteur on the rights of indigenous peoples, the criminalization of indigenous peoples often occurs in the context of the defense of territories and natural resources.¹⁰ Such peoples face particular obstacles to combatting criminalization. Many indigenous communities do not hold formal title over their traditional lands, limiting their legal protections. They may be located in rural or isolated areas without access to mass media to raise attention to abuses or support networks like lawyers and civil society organizations. Linguistic barriers, lack of familiarity with the legal system, and institutionalized stigmatization and discrimination pose additional obstacles to environmental defenders from indigenous communities.

Because of these factors—the likelihood of conflict arising from growing demand for natural resources, the combined power of State and non-state actors, and their marginalization—environmental defenders are at risk of being subjected to retaliation through misuse of criminal justice systems.

WHAT IS CRIMINALIZATION?

In 2015, in its first-ever report focused on the misuse of criminal law against human rights defenders, the Inter-American Commission on Human Rights described criminalization as the “manipulation of the punitive power of the State by State and non-State actors in order to control, punish, or prevent the exercise of the right to defend human rights.” As an example, the Commission highlighted the filing of unfounded allegations based on criminal offenses that do not meet Inter-American standards. *Criminalization of Human Rights Defenders, OEA/Ser.L/V/IL Doc. 49/15, 31 December 2015.*

Criminalization thus has two elements: (1) creating, changing, or mis-applying criminal law (2) in order to punish or impede typically legitimate and legal activity.

B. The Patterns of Criminalization

States and non-State actors manipulate criminal justice systems in a variety of ways to retaliate against, threaten, harass, and impede the work of environmental defenders. The ultimate aim of these criminalization tactics is the same: to impede the work of environmental defenders, to harass them, to intimidate them, and to silence them. Judges and prosecutors who should guarantee civic space and defend the human rights of environmental defenders become, through the manipulation of the criminal process that they command, the most effective obstacles against environmental defenders.

In some countries, the use of justice systems against environmental defenders is reinforced by other state mechanisms and practices, which benefit private economic interests. One example of this is the use of the public police force to guard private mining and gas companies; another is States' illegal and indiscriminate use of states of emergency.¹¹

Evidence collected by civil society and reported by environmental defenders suggests that criminalization involves a series of repeating patterns, including:

- **Baseless criminal accusations.** Criminal charges may be completely unfounded, or based on fabricated evidence. Charges may also be based on unreliable evidence, such as allegations by stakeholders who stand to benefit from the termination of an environmental defender's work. Such groundless investigations and prosecutions are frequently based on alleged violations of ambiguous criminal laws, such as rebellion, terrorism, obstruction of justice, public road disturbances, contempt of authority, land usurpation, or incitement to commit a crime. It is possible that this behavior may not conform to the principle of legality or may be used against this group in a discriminatory way.
- **Politically motivated application of criminal laws.** In the case of environmental defenders, persecution occurs for being part of the group. Acts that may be considered legal when performed by other individuals are considered criminal when done by an environmental defender. For example, environmental defenders report that protests opposing a mining project frequently result in criminal charges against the protesters—even though no criminal charges are raised against people participating in similar demonstrations in support of the same mining or gas business. This disparate treatment, which reflects that people are not equal before the law, is not publicly recognized by police, prosecutors, or judges, who criminalize the environmental defenders.
- **Violations of due process.** Manipulation of criminal judicial systems results in due process violations at all stages of the process. False charges against environmental defenders may be

accompanied by multiple alterations in the criminal process to ensure control of the process and asphyxiate the work of the environmental defenders. Violations of due process are necessary to allow the criminal persecution to persist. Environmental defenders report that States have illegally acquired evidence against them without proper search warrants; the evidence used is manipulated and altered; the chain of custody is broken; and defendants are not notified of the charges and important decisions against them.

- **Arbitrary use of preventative pretrial detention.** In many cases, environmental defenders are subject to arbitrary pretrial detention, sometimes for prolonged periods. Prison and the threat of prison are effective tools to silence environmental defenders and interrupt their work. Environmental defenders are forced to think and act knowing that they could be detained without cause at any moment, affecting their work, their spirit, and their families. Once arbitrarily jailed, environmental defenders are forced to use their resources to try to regain their freedom in a legal system that acts against them. The longer an environmental defender is detained, the stronger the message to the environmental movement. In addition, over time, news of the arbitrary detention disappears and public opinion can be more easily manipulated against the environmental defender. Thus, the idea forms in the collective imagination that “if you have been in jail for so long, you must have done something wrong,” which delegitimizes the environmental defender’s work.
- **Failure to provide adequate time and means for preparation of a defense.** Environmental defenders report State interference with their ability to properly defend themselves. States may interfere with environmental defenders’ right to name counsel of their choice, in order to exercise their defense; for example, by arbitrarily refusing to credential the defender’s chosen attorney, or by delegitimizing or sanctioning the defender’s trusted lawyer. In addition, judges may impose arbitrary and unreasonably short timelines for the lawyer to prepare the defense, limiting the ability of environmental defenders to effectively defend themselves.
- **Unreasonably lengthy legal proceedings.** Investigations and criminal proceedings against environmental defenders are frequently accompanied by prolonged delays, which subject the prosecuted defender to harassment and emotional distress for long periods of time. Frequently, these lengthy delays violate clear timelines set forth in the State’s criminal justice system. For example, national law may require investigations to be completed or elevated to trial within a certain period of time. In many cases, established deadlines are ignored to the detriment of the environmental defender; in others, in an arbitrary manner without explanation, proceedings are suspended under the argument of judicial autonomy.

- **Forcible eviction.** Civil society has documented the use of laws and regulations to forcibly evict environmental defenders from their land based on alleged criminal trespass.¹² Such evictions are conducted on many occasions with the support of the public force and without due safeguards to protect the right to housing, and may proceed without resolving the defenders' claim to ownership of the property. If the environmental defenders do try to fight these forced evictions within the justice system, their claims are either not heard or are rejected by decisionmakers who may be influenced by powerful economic and political interests.
- **Defamatory statements and stigmatization.** Environmental defenders are frequently stigmatized as “enemies of development,” “unpatriotic,” “environmental terrorists,” or “ecoterrorists.” They are discredited and vilified in official statements, articles, and rumors. Such public smear campaigns may arise from government officials, business enterprises, or “independent” media commentators. This stigmatization generates suspicion about environmental defenders, creating a hostile environment for the exercise of the defense and the promotion of human rights related to the environment. In particular, prosecutors pursuing criminal actions against environmental defenders use this stigmatization to assert that they are protecting society from the influence of a dangerous group, rather than acknowledging that they are manipulating the criminal justice system to repress the environmental claim. For indigenous peoples, this scenario of hostility particularly affects their environment and their community work and organization.

Not every case of criminalization against an environmental defender will involve all or even many of the above characteristics; the experience of each environmental defender is unique and States have demonstrated sophisticated flexibility in manipulating the criminal justice systems to suit specific ends. But reports of environmental defenders, civil society, and U.N. experts reveal that at least one of the above characteristics is typically present when States attempt to harass environmental defenders through criminal process.

Portrayed as outlaws and relentlessly criminally persecuted, environmental defenders are in a state of absolute helplessness and require international help for their protection.

C. Criminalization Has Grave Consequences for Environmental Defenders, Individually and as a Group, as well as for Environmental Protection

Criminalization of the human rights work of environmental defenders has wide-ranging, negative consequences—not only for the prosecuted defenders, but also for environmental defenders as a group. It also negatively impacts environmental protection and the communities impacted by environmental harm and degradation. In

addition, by undermining the rule of law, misuse of State criminal justice systems limits the civic space for human rights work.

WHAT ARE THE EFFECTS OF CRIMINALIZATION?

- Psychological, emotional, reputational, and financial distress
- Vulnerability to physical and other attack
- Breakdown of family and community life
- Impaired effectiveness and legitimacy of civil society organizations
- Reduction of the space for environmental defenders to pursue their work
- Increased degradation of the environment and impunity for polluters and environmental abusers
- Undermining the rule of law
- Deterioration of the independence and impartiality of the criminal justice system

Environmental defenders who face unfounded and often prolonged criminal prosecutions suffer material and psychological damage. It also affects their reputations and their finances. The Commission has recognized that “[u]nwarranted prosecutions of human rights defenders entail psychological and financial burdens, which harass and frighten them and diminish their work. These burdens are aggravated by the unreasonable prolongation of the criminal processes.”¹³ In testimonials submitted in connection with this report, environmental defenders confirm feeling fear, anger, anxiety, frustration, and distress arising from false accusations, arbitrary court decisions, and other abuses of the criminal justice system. Criminalization also puts pressure on the environmental defenders’ family and community life.

Negative consequences extend to the civil society organizations affiliated with prosecuted defenders. Environmental defenders report that, when a founder or prominent member of an organization is falsely accused of a crime by the government, the organization frequently loses donors and grants. The organization may also face suspended or terminated banking services, making everyday operations difficult. Loss of credibility and funding jeopardizes the organization’s future work opportunities and limits their effectiveness.

Criminalization of environmental defenders not only serves as a tactic to intimidate and dissuade them, but it also

diverts environmental defenders' energy and resources, as they must instead focus on their own criminal defense. It enables polluters and other environmental abusers to gain leverage over environmental defenders and to avoid unwanted attention, environmental regulation, and enforcement efforts for valid environmental laws. Without the scrutiny of environmental defenders, State and non-State actors can act with impunity in harming the environment.

Finally, criminalization creates a hostile environment for the defense of human rights. It generates a chilling effect that limits the ability of all environmental defenders to defend their communities and protect the natural environment. It similarly creates fear in all human rights defenders, NGOs, and other actors of civil society that rely on the judiciary for protection from intimidation and retaliation. This shrinks the space for civic participation and action, weakening the human rights movement. Moreover, criminalization creates confusion about the legitimacy of the work and advocacy of prosecuted defenders, making them vulnerable to further attacks and reducing their effectiveness.

D. Unique Threats Posed by Criminalization

Criminalization is only part of the overall threat facing environmental defenders. Being an environmental defender is dangerous. Governments and businesses have engaged in a variety of abuses in order to intimidate environmental defenders and hinder their work. In 2018 alone, at least 164 environmental defenders were murdered for their work around the globe resisting mining, agribusiness, logging, and other powerful and extractive industries.¹⁴ That equates to the killing of three defenders per week. In addition, non-lethal physical assaults, threats, and intimidation are frequent, and often not documented. Indeed, environmental defenders are the group of defenders at greatest risk in the Americas.¹⁵



Alberto Curamil of the Mapuche Indigenous Peoples, Goldman Prize 2019, criminalized and imprisoned for opposing hydroelectric dams.
Photo: Goldman Prize

Criminalization is a more sophisticated and subtler form of retaliation. It provides State and non-State actors committed to hindering environmental defense with a relentless tool of retaliation when a violent approach is not politically viable¹⁶ or sufficiently effective. Unlike murder or physical assault, abuse of criminal law against environmental defenders does not often make headline news. It is also more difficult to identify. Laws and norms may appear neutral on their face and to outside observers, but be applied in an arbitrary fashion so as to target environmental defenders. Moreover, the criminal justice system provides the State with the appearance of legitimacy, following established processes and acting within institutions, such that an outside observer must know significant details about the basis for the charges and the conduct of the criminal investigation to know whether the law is being manipulated. The difficulty in identifying criminalization makes it harder to combat and more challenging to protect victimized environmental defenders.

III. INTERNATIONAL LEGAL FRAMEWORK TO PROTECT ENVIRONMENTAL DEFENDERS

States have obligations to protect environmental defenders as human rights defenders. They also have obligations to provide judicial protection and due process to all people under their jurisdiction, including environmental defenders, as well as to protect the rights to life, integrity, liberty, association, and expression. Finally, States must protect citizens against environmental harms that interfere with the enjoyment of human rights. Below is a brief overview of the relevant human rights obligations.

Environmental human rights obligations. States have duties to protect citizens from harms caused by environmental degradation. According to Article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights (the “Protocol of San Salvador”), States have the obligation to protect the right to a healthy environment.¹⁷ According to this article, “[e]veryone shall have the right to live in a healthy environment and to have access to basic public services” and “States Parties shall promote the protection, preservation, and improvement of the environment.”¹⁸ As recognized by the U.N. Special Rapporteur on human rights and the environment, environmental harm “can and does interfere with the enjoyment of a vast range of human rights, including the right to life, the right to the enjoyment of the highest attainable standard of physical and mental health, and the right to an adequate standard of living and its components (including the rights to food, water and housing).”¹⁹

States have procedural obligations to provide environmental information to the public, to facilitate public participation in environmental decision-making, and to provide access to effective remedies.²⁰ States also have substantive obligations to protect against and respond to environmental harm that interferes with the enjoyment of human rights. These obligations derive from human rights to life, health, and access to water, among others.²¹

Obligations to protect human rights defenders. The Commission has affirmed that, according to Articles 1 and 2 of the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man, “States have the duty to act with due diligence to respect and guarantee the exercise and enjoyment of the rights of all persons, including human rights defenders.”²² This includes the State’s inherent obligation to respect the rights of human rights defenders, ensuring that agents of the State “abstain from violating or tolerating violations of [their] rights.”²³ In *Case of Human Rights Defender v. Guatemala*, the Inter-American Court of Human Rights clearly established that “States should provide the necessary means for persons who are defenders of human rights or who perform a public function, so that when they encounter threats or situations of risk or report human rights violations, they can freely carry out their activities; protect them when they receive threats so as to prevent attacks on their lives and integrity; create conditions to eradicate violations by State agents or private individuals; refrain from hindering their work, and thoroughly and effectively investigating violations committed against them, combating impunity.”²⁴ In this jurisprudence, the Inter-American System has clearly established that, when it comes to human rights defenders, the State’s obligations are reinforced. The American Convention on Human Rights and the International Covenant on Civil and Political Rights set forth substantive rights that the State must protect, including rights implicated by criminalization: every person has the right to a fair trial and the right to judicial protection, among others.²⁵

In addition, the U.N. Declaration on Human Rights Defenders makes clear that human rights defenders have the right to defend human rights.²⁶ Human rights defenders also have the right to be protected, to freedom of expression, freedom of assembly, access to effective remedies, and more. Indigenous peoples are also guaranteed the right to their traditional lands, territories, and natural resources, including by the U.N. Declaration on the Rights of Indigenous Peoples.²⁷

Duty to protect against environmental harm caused by private actors. Businesses also must respect human rights. The U.N. Guiding Principles on Business and Human Rights sets forth three foundational principles: (1) States must protect against human rights abuses committed within their territory or jurisdiction by business enterprises, (2) business enterprises should respect human rights, and (3) States must take appropriate steps to ensure effective remedies for victims of business-related human rights abuse.²⁸ However, as the U.N. Special Rapporteur on the situation of human rights defenders has argued, the human rights obligations of businesses “have not been articulated as clearly as those of the States.”²⁹ The Rapporteur concluded: “The weak regime concerning the duty of companies to respect the rights of [environmental defenders] is one factor underlying vulnerability of [environmental defenders] to risks.”³⁰

IV. RECOMMENDATIONS

Environmental defenders are particularly vulnerable to criminalization when they are without the support and attention of the international community.³¹ The increasing focus of the Commission, civil society, and U.N. Special Rapporteurs on the criminalization of environmental defenders has been important to recognizing and describing the problem. This report respectfully requests that the Commission use its considerable authority to continue developing its jurisprudence and consideration about this issue and contribute to further deepening the understanding of the criminalization of environmental defenders and to ensure that environmental defenders can conduct their work without fear of retaliation. Specifically, the report recommends the Commission:

- **Provide public support for environmental defenders.** The Commission can publicly support environmental defenders, recognizing their role in the protection of the planet and the promotion of human rights.
 - Because many environmental defenders may not necessarily identify as defenders of human rights, and thus be unaware of the protections afforded by the international system, the Commission should clarify the relationship between environmental protection and the defense of human rights. The Commission should also reaffirm its concerns about criminalization and reiterate that environmental defenders are a group vulnerable to this form of retaliation.
- **Declare environmental defenders to be a persecuted group.** The Commission should clarify that environmental defenders are entitled to special protection measures due to their persecution as a group. In this sense, it should reiterate and deepen the reinforced character of protection obligations that States have when it comes to human rights defenders, as recognized by the Inter-American System in its jurisprudence.
- **Monitor the criminalization of environmental defenders.** Currently, there is no comprehensive data on the number of environmental defenders affected by criminalization. The Commission should systematically document information about the criminalization of environmental defenders.
 - Specifically, the Commission should produce an annual report about criminalization of environmental defenders. This annual report on criminalization of environmental defenders should include specific recommendations to States to refrain from criminalizing environmental defense work.
 - The Commission should include a section on environmental defenders in every country report.

- **Expedite petitions filed with the Commission that allege criminalization.** In recognition of the urgency and severity of the threat described in this report, the Commission should accelerate petitions filed by environmental defenders who claim criminalization.
- **Strengthen the OHCHR / IACHR Joint Action Mechanism to Contribute to the Protection of Human Rights Defenders in the Americas, producing urgent actions and strategies about situations of criminalization of environmental defenders.**
- **Develop standards within the Commission to protect environmental defenders, individually and as a group.** The Commission should develop guidelines on the protection of environmental defenders from criminalization. In particular, the Commission should develop and publish basic guidelines for States on how to ensure that environmental defenders are sufficiently protected from criminalization as punishment for their work, including precise instructions for government officials, including judicial administrators, police, prosecutors, and judges, to prevent the criminalization of environmental defenders. In this regard, the Commission should recommend to the autonomous and independent institutions of the States, responsible for monitoring unrestricted respect for human rights, to systematize and adopt policies about these types of situations.
- **Provide exceptional treatment in cases of arbitrary detention of environmental defenders.** In this regard, the Commission could consider developing and implementing mechanisms to address the situation of environmental defenders who are deprived of liberty in a manifestly arbitrary manner, including the use of precautionary measures in exceptional cases, as the United Nations Working Group on Arbitrary Detention has done.
- **Recommend that States protect the space for environmental defense work.** The Commission should recommend that States strengthen their environmental institutions, including national secretariats or ministries of environment, to implement strong environmental controls, apply environmental law, and provide the civic space necessary for environmental defenders to work.

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TESTIMONIALS

The following testimonials illustrate how States are using the criminal process against environmental human rights defenders. They are examples and not intended to be a comprehensive reporting of all instances of criminalization.

The testimonials are provided here as they were submitted or as previously published. The organizations that support this report have not independently investigated each testimony.

ARGENTINA

La Asamblea Ciudadana Ambiental de Gualeguaychú

Según lo informado por el Centro de Derechos Humanos y Ambiente³²

La Asamblea Ciudadana Ambiental de Gualeguaychú lleva más de 10 años de lucha en defensa del Río Uruguay. Una noche en que algunos miembros de la Asamblea Ciudadana se encontraban manteniendo la vigilia de la protesta en la vía pública donde era de conocimiento público que venían realizando desde hacía varios años, una manifestación pública en defensa del Río Uruguay, un motociclista tiene un accidente y pierde su vida próximo al lugar de protesta. En ese momento se apersona personal policial y el fiscal provincial decide imputar con el delito de homicidio a los asambleístas de Gualeguaychú que se encontraban en el lugar del accidente en una acción clara de intimidación y criminalización de la protesta.

Los asambleístas fueron arbitrariamente procesados por el delito de homicidio culposo.

No existe en el proceso contra los ambientalistas de Gualeguaychú prueba fehaciente de que ellos hayan provocado la muerte del motociclista. No se probó tampoco que los ambientalistas procesados hayan interrumpido el tránsito en ese momento ni que las acciones de las Defensoras y Defensores del Ambiente presentes ese día hubieran causado el accidente. Sin embargo, sí se encuentra debidamente probada la alta velocidad que conducía el motociclista por la zona del puente donde ocurrió su accidente, y también se conoce que hubo una advertencia que recibió por un empleado de la aduana sobre los peligros de transitar la ruta por las condiciones meteorológicas de aquel día. Todo esto consta en la causa.

El procesamiento de las Defensoras y Defensores Ambientales de la Asamblea Ciudadana Ambiental de Gualeguaychú por homicidio culposo lo dispuso el juez federal Pablo Seró. Las personas que fueron procesadas son Enrique Alejandro Reichel, María Alicia Rivero, Miguel Ángel González y Miguel Argentino Pérez. La intención era utilizar el proceso penal para amedrentar a los Defensores del Ambiente para que terminaran con su protesta.

La angustia e impotencia de los ambientalistas imputados y de sus familiares, ciudadanos comprometidos con la causa ambiental que ocasionalmente se encontraban en el lugar del accidente, tiende un manto de incertidumbre y desazón hacia adentro de La Asamblea Ciudadana Ambiental de Gualeguaychú, que finalmente decide abandonar la protesta en la vía pública.

Luego de varios años de judicialización y en la certeza de que la criminalización de los asambleístas de Gualeguaychú logró acallar la protesta, las Defensoras y Defensores del Ambiente son finalmente sobreseídos.

Las Protestas Contra Monsanto

Según lo informado por el Centro de Derechos Humanos y Ambiente³³

El monocultivo de soja en la Argentina se basa principalmente en la utilización del agroquímico glifosato, conocido como Roundup por su nombre comercial de propiedad de Monsanto.

En Argentina, Monsanto cuenta desde 1956 con una fábrica en Zárate (Buenos Aires), donde radica su planta de producción de glifosato, la más importante de América Latina. Monsanto en su publicidad corporativa asegura que controla el 95 por ciento del mercado de la soja sembrada en el país.

Las protestas contra Monsanto y especialmente contra la utilización del glifosato se agudizaron. Monsanto decidió abrir una sucursal en la



Mothers of Ituzaigó Anexo and Malvinas Argentinas fight against agrochemicals. They suffer persecution and criminalization. Photo: Goldman Prize

provincia de Córdoba en la localidad de Malvinas Argentinas. Asustados por los impactos del glifosato ya conocidos y las sentencias judiciales en contra de Monsanto en los Estados Unidos, los ciudadanos se organizaron para impedir su radicación en su vecindario. El gobierno provincial reprimió brutalmente a los manifestantes en defensa de la empresa y detuvo arbitrariamente a Defensoras y Defensores del Ambiente.

Las Protestas Contra del Proyecto Veladero y Pascua Lama *Según lo informado por el Centro de Derechos Humanos y Ambiente*³⁴

En la Provincia de San Juan en el 2011, defensores ambientales fueron encarcelados arbitrariamente por manifestarse públicamente y pacíficamente en contra del proyecto Veladero y Pascua Lama de la empresa mega-minera canadiense Barrick Gold y a favor del respeto por la Ley de Protección de Glaciares. En menos de 24 horas de sancionada la ley de Protección de Glaciares, un juez federal en la provincia de San Juan dio lugar a una acción judicial presentada por Barrick Gold (quien había propuesto dinamitar glaciares para extraer oro en su proyecto Pascua Lama) suspendiendo, a favor de la minera, la aplicación de Ley de Glaciares.

Luchan Contra la Industria Extractiva en la Provincia de Catamarca *Según lo informado por el Centro de Derechos Humanos y Ambiente*³⁵

En la Provincia de Catamarca, fuerzas policiales enviaron barras bravas de un equipo de fútbol, para provocar incidentes violentos en una protesta pacífica y legitimar de esa manera la detención arbitraria de Defensoras y Defensores del Ambiente. El siguiente episodio evidencia la secuencia de los hechos que se repite como patrón. En el año 2012, en la Provincia de Catamarca, hubo seis represiones en tan solo siete meses contra Defensoras y Defensores ambientales. Cincuenta y seis Defensoras y Defensores del Ambiente debieron abandonar la provincia pues temían por su seguridad. El mes de enero de 2012 fue particularmente represivo para ciudadanos que se expresaban en contra de la minería. El 26 de enero cuatro ambientalistas fueron encarcelados arbitrariamente por su activismo. Al día siguiente, 18 ambientalistas más fueron reprimidos y encarcelados arbitrariamente. Tan sólo unas semanas después, veinte personas más fueron arrestadas arbitrariamente por manifestarse a favor de la protección del Ambiente (entre ellas un niño de 13 años). Al día siguiente, 10 de febrero, nuevamente hubo represión en contra de los ambientalistas, esta vez en la provincia vecina de Tucumán, pero a raíz de una protesta contra camiones mineros que se dirigían a Catamarca. En este ataque policial a assembleístas, un centenar de efectivos invadieron una asamblea en vigilia a las 3:30 de la mañana, reprimiendo a hombres, mujeres y niños, con balas de goma, patadas, y gases lacrimógenos. La represión fue transmitida en vivo por el megacanal de televisión TN del Grupo Clarín elogiando el accionar policial.

En este caso vemos la complicidad de los medios de comunicación en promover la estigmatización de los Defensores del Ambiente. El 13 de febrero, nuevamente en Andalgalá Catamarca, fuerzas policiales en un claro acto de amedrentamiento con orden judicial allanaron las casas de ocho asambleístas. El primero de junio la Gobernadora de Catamarca solicitó a la Corte de Justicia Provincial que desaloje a los asambleístas que protestan en contra de la minería. La presidente de la Corte Suprema de Justicia de Catamarca respondió: “la cárcel es la solución para los ambientalistas”.

El Pueblo Mapuche

Según lo informado por el Centro de Derechos Humanos y Ambiente³⁶

Es conocida también la lucha del Pueblo Mapuche por defender su territorio en el Sur Patagónico, ante el avance irracional del sector petrolero para explotar la reserva de hidrocarburos no-convencionales en Vaca Muerta (mediante el fracking) y ante otros avances industriales sobre territorio ancestral.

Sistemáticamente, los Mapuches son expulsados de sus territorios, sin consulta ni participación pública, en violación a tratados internacionales firmados por la Argentina. Los intereses petroleros actúan en complicidad con las fuerzas policiales y líderes políticos y actores del Poder Judicial. Los ataques mediáticos con noticias falsas son una de las herramientas utilizadas para justificar el uso indebido del proceso penal para amedrentar a Defensoras y Defensores del Ambiente y lograr que dejen de actuar en defensa del Planeta. Hubo por ejemplo expresiones en medios de comunicación del hermano del gobernador sugiriendo sin fundamento alguno y sin ningún tipo de prueba, que “los indígenas colaboran con grupos terroristas. Los Mapuches utilizan un régimen de terror e inseguridad y son respaldados por miembros de la FARC y terroristas de la ETA. Es necesario respaldar a los jueces y a las fuerzas de seguridad que muestran compromiso con su cargo. Sabemos que en la 9° Región hay gente escondida que pertenece a las FARC y a ETA que se relacionan con algunos dirigentes mapuches para instalar la anarquía total en Neuquén. Tienen armas y se financian con el narcotráfico”.

La violencia disfrazada de acciones judiciales en contra de los pueblos indígenas por las fuerzas policiales es continua y sistemática. Desde allanamientos arbitrarios, detenciones, golpizas, destrucción de pertenencias, invasión de sus hogares, arrestos arbitrarios en medio de la noche, esposados con precintos y dejados a la intemperie sin abrigo y con bajas temperaturas durante horas, y otros abusos son moneda corriente en contra de representantes de la comunidad Mapuche.

Recientemente, una madre y su hijo, fueron acusados de terroristas en un escenario armado por la policía. Para justificar su detención los agentes policiales sacaron armas del baúl del auto policial, las tiraron en el piso delante de la familia mapuche y acusaron a la madre y al hijo de portar armas de fuego. Ambos fueron encarcelados arbitrariamente.

Las incursiones violentas por parte de agentes del Estado en territorio mapuches es uno de los *modus operandi* para criminalizar a Defensoras y Defensores ambientales. Golpizas, balas de goma, gases lacrimógenos, quema de pertenencias, es el preludio a la detención arbitraria de lideresas y líderes indígenas que defienden sus territorios.

Mocase-Vía Campesina

*Según lo informado por el Centro de Derechos Humanos y Ambiente*³⁷

El juez Ramón Tarchini Saavedra, del Tribunal Criminal Cuarto, ordenó la captura de doce integrantes del Movimiento Campesino de Santiago del Estero (Mocase-Vía Campesina). “Se ha desatado un raid judicial y policial, una nueva persecución política de miembros de nuestro movimiento, con procedimientos fuera de la ley”, denunció el MNCI y explicaron que el único “crimen” fue defender la tierra donde siempre vivieron.

Romina Picolotti

Submitted by the victim

Romina Picolotti is a recognized environmental defender with more than twenty years of experience. She is the founder of the Center for Human Rights and Environment (“CEDHA”), the first NGO dedicated to linking human rights and environmental protection. Her work has received international recognition and accolades, including the 2006 Sophie Prize and the 2008 Climate Protection Award from the U.S. Environmental Protection Agency. Ms. Picolotti served as Argentina’s Secretary of the Environment and Sustainable Development (“Environment Secretary”) from 2006 to 2008. Since 2007, Ms. Picolotti has been subject to a politically motivated criminal prosecution plagued by violations of due process and arbitrary state actions. Ms. Picolotti has still—after enduring 12 years of criminal investigation—never been brought to trial. The persecution has caused severe damage to CEDHA and the communities Ms. Picolotti and CEDHA represented, as well as emotional and psychological distress for Ms. Picolotti and her family.

In 2006, an unprecedented event occurred in Argentina. The environmentalist and human rights defender Romina Picolotti, founder of the Center for Human Rights and Environment, became Secretary of Environment of Argentina. It was the first time in the country's history that a person recognized for environmental protection work was entrusted with the national environmental policy control to inspect polluters. The adverse reaction of powers aligned with the polluters would not delay in demonstrating against her.

During Picolotti's tenure as Secretary of Environment, thousands of industries in the sugar, oil, tannery, cold storage, printing, electroplating, pasteurization, and other polluting industries were inspected on site, fined and/or closed down. Never before in the history of the Secretary of Environment were companies closed for not complying with environmental regulations. Picolotti promoted key laws for the protection of the native forest and the recognition of territorial rights of native peoples; established a moratorium on land clearing; and promoted the first glacier protection law in the world that prohibited mining and oil activity in glacial and periglacial areas.

For the first time Argentina had strengthened environmental institutionality. The reaction of the most polluting industrial sectors, threatened by true environmental control, was immediate, with public statements from important industrial institutions and associations that sought to curb environmental control and "silence" the Secretary of Environment. They posted threatening ads in the media and threatened Picolotti and her family.

As the controls of the Secretary of the Environment increased, the threats also increased, which included direct threats against Picolotti's children, her employees, and the office of the Secretary.

In 2007, despite these threats, Picolotti initiated an environmental audit of Papel Prensa (the paper mill belonging to the media conglomerate Grupo Clarín), in relation to the contamination of a local river. Afterwards, the newspaper frontpage featured a series of articles that accused Picolotti of alleged "irregularities" in the handling of funds.

In July 2007, a criminal action was initiated against Picolotti, in a clear reprisal for her work in furtherance of environmental and industry control. One of the complainants was the owner of a petrochemical company who echoed the anonymous complaints and articles published in the Clarín newspaper.

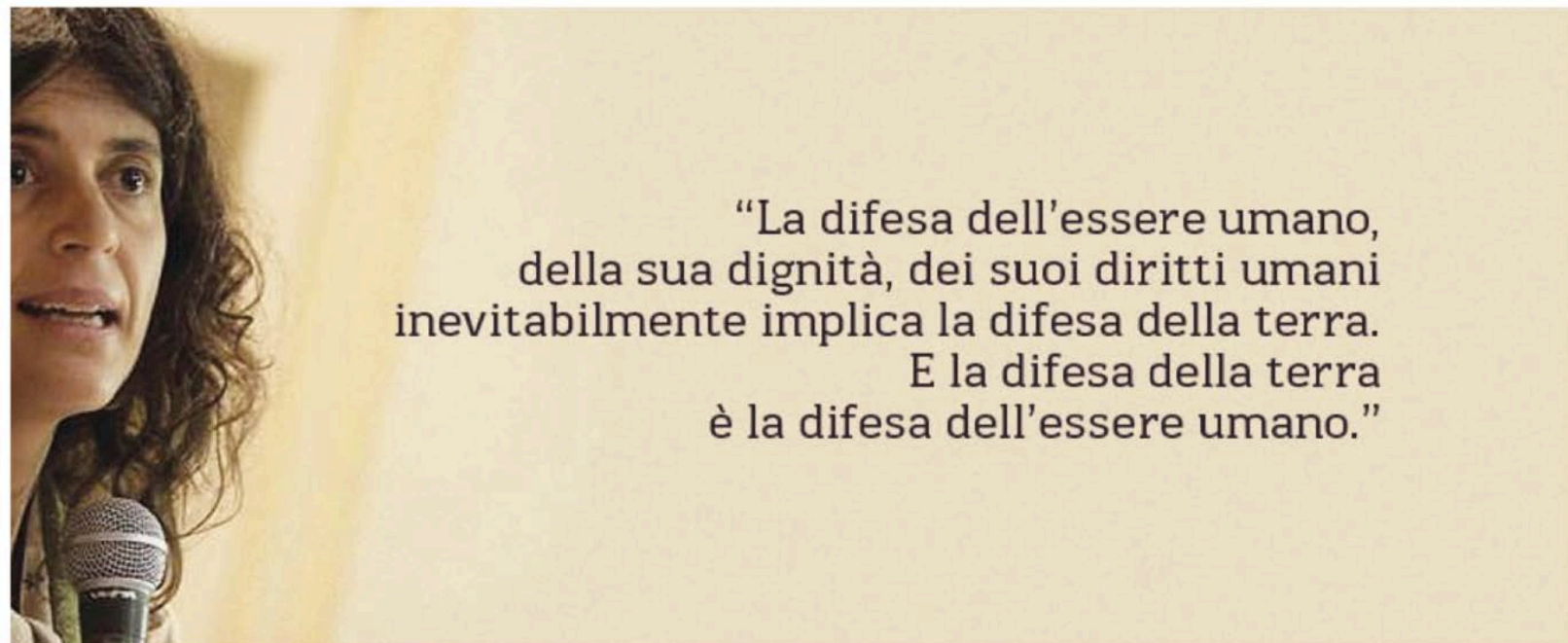
Since its inception, the criminal proceedings against Picolotti have been plagued by numerous substantive and procedural irregularities. For example, dozens of boxes of alleged documentary evidence inexplicably disappeared from police and judicial custody for several days, in violation of the chain of custody. The case records make it clear that the evidence was altered, augmented, and manipulated during that time. In addition to the serious evidentiary irregularities, the case has been marked by repeated unexplained delays, beyond the illegal purpose of harassing and damaging Picolotti and preventing her from continuing her personal life and her defense of the environment. Today, more than 12 years after the start of the criminal process, Picolotti has still not yet had a trial.

Today the criminal investigation, based on false and anonymous accusations, has gone without trial for more than 12 years. During these 12 years of judicial prosecution, due process guarantees have been repeatedly violated, including the right to defense; manipulation of evidence; formulation of false charges; arbitrary searches of the

environmental NGO that she founded, CEDHA; closing of personal the NGO's bank accounts; raids on CEDHA; and repossession of her home.

The institutionality that Picolotti represents was the subject of a fierce attack that began with a campaign of defamation and slander and culminated in a judicial persecution plagued with human rights violations. Picolotti resigned her position as Secretary in November 2008, when the mining lobby overturned the Glacier Law that she had managed to pass in Congress (through a Presidential Veto, openly alluding to mining interest favor as the main reason for the veto), and returned to work at CEDHA.

Romina Picolotti, Sophie Prize 2006, criminalized for advocating for a healthy environment and policing large contaminators. Photo: CEDHA



"The defense of human beings, of their dignity, of their human rights, inevitably implies the defense of the Earth. The defense of the Earth is the defense of people". Chosen internationally in 2012 as one of the brilliant minds of the XXI Century, Romina speaks of the protection of the planet as a moral obligation, during the 21 Brilliant Minds symposium in Perugia, Italy.

CEDHA is one of the most important environmental organizations in Argentina with more than 20 years of experience. During the prosecution of Picolotti, CEDHA was searched, inspected, and its bank accounts were suspended in order to paralyze its action, resulting in closing its offices, reducing its staff, and operating remotely. Twelve years after the criminal prosecution against Romina Picolotti began, her case has not yet been sent to trial and, although the case has been partially dismissed for featuring unfounded accusations, the second decade of criminal judicial investigation continues against her.

Ms. Picolotti's case is the subject of petition P-395-18 before the Inter-American Commission on Human Rights.

Sergio Giachino

Según lo informado por el Centro de Derechos Humanos y Ambiente³⁸

El [periodista] Sr. Sergio Giachino en su labor cotidiana de periodista ha denunciado en reiteradas oportunidades los desmontes en zonas prohibidas.

El periodista Sergio Giachino es detenido sin causa por la Policía provincial de Córdoba. Se lo mantiene incomunicado en una celda y la policía muestra fotos donde lo llevan esposado y encapuchado. Finalmente, ante el reclamo de la ciudadanía es liberado. Sin embargo, los agentes policiales que lo detuvieron arbitrariamente siguen en sus puestos.

CHILE

Alberto Curamil Millanao

Submitted by the Alianza Territorial Mapuche

Lonko (“Mapuche leader”) Alberto Curamil Millanao was imprisoned for “participación a título de autor en el delito de robo con violencia calificado, homicidio frustrado a carabineros de servicio u porte ilegal de arma de fuego.” The proceedings against Curamil have been marred by due process violations, including search and seizure violations, an anonymous complainant, and grave evidentiary issues.

On November 30, 2018, the court held a hearing on the facts that purportedly showed Curamil’s guilt. After the hearing, the tribunal extended the investigation for 30 days. Curamil asserts that he was 50 kilometers away from the scene of the supposed crime at the time it was committed. He also asserts that he is being prosecuted as reprisal for his work opposing a mega hydroelectric project in his community, and for his role as a Mapuche leader. After more than a year, Alberto Curamil remains in prison without a trial.

In 2019 Curamil was awarded the Goldman Prize in recognition of his work to protect the environment.

His family has also been harassed because of Curamil’s advocacy. Police have visited their home and the school of Curamil’s son. Unknown persons have followed Curamil’s daughter Belen, and she has received threatening phone calls. Unknown persons also broke into and damaged Curamil’s family home—they did not steal anything, indicating an intent to intimidate the family.

COLOMBIA

Dr. Yesid Blanco

*As reported by the International Corporate Accountability Roundtable*³⁹

[Dr. Blanco's] commitment to community health has extended beyond the clinic's walls, embracing the defense of human rights and the environment. In 2015 [Dr. Blanco] founded an organization to defend the wetlands, which then evolved into the Corporación Yariguies the following year. In [his] work as both an environmentalist and a physician [he has] drawn attention to mercury contamination of the city's water supply associated with a sanitary landfill that threatens a protected wetland, and [he has] actively opposed fracking in the region in light of the threat it poses to the water supply, among other reasons.

[He] also participated actively in a campaign to remove the mayor of Barrancabermeja for failing to act to protect the public health and the environment, earning [him] the wrath of certain local political and economic elites. According to the Corporación Regional por la Defensa de los Derechos Humanos (CREDHOS), a leading human rights group based in Barrancabermeja:

“Blanco has argued that fracking in Barrancabermeja and the surrounding region, known as the Magdalena Medio, would have a direct negative impact on the San Silvestre environmental protection zone, which provides water to the city, and is a strategic corridor for protected species such as the jaguar. The zone is being negatively impacted by the sanitary landfill operated by the company Rediba.”

[He has] been the target of smear campaigns on social media, threats, and criminal proceedings on trumped up charges. Indeed, [he] was pushed out of [his] job (as of June 30, 2017) and driven into exile ([He] left Colombia in November 2018). CREDHOS also reports: “Any number of complaints and judicial proceedings have been brought recurrently and systematically by a small yet powerful sector that sees in Dr. Yesid Blanco an obstacle to the furtherance of their interests.”

Some of the criminal investigations that [he is] currently facing:

First, the Office of the Attorney General (Fiscalía) is pursuing a case against [Dr. Blanco] for terrorism, related to [his] reporting on the occurrence of mercury in the water in Barrancabermeja. This finding was later confirmed by the Fiscalía, which asked a judge to have the legal representative of Rediba's sanitary landfill arrested; she is currently being held.

Second, the Office of the Attorney General has a criminal investigation under way for procedural fraud, since [Dr. Blanco] filed a motion for special constitutional protection (tutela) on behalf of the population of Patio Bonito, a village in the district of La Fortuna, in Barrancabermeja, where the sanitary landfill operated by Rediba is situated.

Third, there are criminal investigations into alleged slander. The accusations have mostly been made by the municipal administration or by third persons related to it, who are angry at [Dr. Blanco] for having exposed the acts of corruption behind the operation of the sanitary landfill.

Fourth, the Office of the Attorney General is pursuing a criminal investigation for procedural fraud and counterfeit document, allegedly for issuing a false medical certificate to a patient [Dr. Blanco] saw in [his] private practice. Yet [Dr. Blanco has] evidence that this is not so, which has been presented to the medical ethics tribunal, where a proceeding is also pending over the same facts.

This last investigation was begun on the heels of being forced to leave [his] job at the Clínica La Magdalena, which is where [Dr. Blanco] obtained the findings of children affected by contamination of the drinking water.

Though [he has] turned to the Office of the Attorney General, as the agency entrusted with criminal prosecution, to report the threats and harassment targeting [Dr. Blanco], it has moved sluggishly, unlike some of the cases against [Dr. Blanco]. As it appeared increasingly likely that [he] would be arrested in connection with these cases, in early November of last year [Dr. Blanco] left Colombia.



Yesid Blanco, pediatrician and environmental activist, disseminates information on the health impacts of the oil and gas sector in Colombia. As a result, he is criminalized and had to flee the country. Photo: Y. Blanco

[Dr. Blanco] was nominated for the National Award for Defense of Human Rights in Colombia, sponsored by DIAKONIA Sweden, in 2017, as Defender of the Year. And in 2018 [he] was recognized by the International Organization for Training and Medical Research (IOCIM) with the award for medical achievement for better living, as the best specialist in [his] area in Latin America in terms of making contributions aimed at identifying the causes of diseases.

Lideres Ambientales de San Luis de Palenque

Submitted by Fundación Comité de Solidaridad con los Presos Políticos

En Colombia existe un aumento alarmante de las agresiones a las personas defensoras de derechos humanos. Desde que inició la política de paz en el año 2012, hasta la fecha, cada mes (en promedio) son asesinadas 7 defensoras/es, y otras 3 son judicializadas.

La criminalización de defensores/as, pese a ser una práctica sistemática y generalizada en el último periodo, se trata de una forma de agresión que pasa desapercibida y que no suele documentarse ni visibilizarse con suficiente fuerza. Esta modalidad de agresión ha venido en aumento durante los últimos 8 años: desde el 1 de enero del 2012 hasta el 15 julio de 2019, las judicializaciones se han incrementado un 244%. Durante ese periodo, 249 personas defensoras han sido judicializadas, de las cuales el 74% corresponden a defensores/as de la tierra y del medio ambiente.

Uno de los casos más recientes de criminalización de defensores de la tierra en Colombia ocurrió el pasado mes de noviembre, cuando 8 líderes ambientales de Casanare fueron capturados. El 27 de noviembre de 2018, siendo aproximadamente las 2:45AM, se realizaron los procesos de allanamiento y captura de Ferney Salcedo, Yulivel Leal, Jesús Leal Salcedo San Luis de Palenque, Carmen Iraida Salcedo, Miguel Ángel Rincón, Josué Eliecer Rincón, María Teresa Rincón y Salcedo Betancourt, ocho líderes comunitarios y ambientales del municipio de San Luis de Palenque, y además, integrantes de una misma familia.

Con un operativo de más de 200 hombres, entre miembros de la Policía Nacional y el Ejército Nacional, y dos Helicópteros, las autoridades capturaron a estas personas por concierto para delinquir, violencia contra servidor público y obstrucción a vías públicas que afectan el orden público, entre otros delitos.

La Fiscalía General de la Nación (FGN) ha argumentado que las ocho personas conformaron en el año 2016 un Grupo Delictivo Organizado (GDO), el cual tiene como “facha la protesta social”. Según la FGN, este grupo “planeó ataques a la fuerza pública y a los vehículos petroleros bajo las órdenes de Ferney Salcedo”; sin embargo, utilizan como principal argumento el liderazgo de Ferney y otros detenidos en las movilizaciones adelantadas en el municipio.

En ese sentido, la acusación realizada por la FGN por el delito de concierto para delinquir, presupone que el acuerdo de voluntades que requiere este tipo penal se concreta en la articulación social de los detenidos para organizar movilizaciones sociales, como si la acción delictiva a concretar fuese la protesta. De igual forma, en los hechos aducidos por las autoridades para realizar la imputación no se señala actividades propiamente ilegales, más allá de la “agitación de masas”, la cual es propia del ejercicio de liderazgo y movilización social, consagrados como derechos fundamentales a nivel nacional e internacional.

De otra parte, es importante resaltar que una persona no puede ser investigada penalmente por promover o iniciar mediante cualquier medio una protesta. Al respecto, la Directiva No. 0008 de 2016 de la Fiscalía General de la Nación, siguiendo la sentencia C-72 de 2012 de la Corte Constitucional, establece que “no podrán ser procesados los participantes o los organizadores de una marcha en la cual ocurrieron eventos violentos, sino fueron determinadores de los mismos o participaron de estos”.

La FGN les endilga a los ocho procesados los hechos violentos que se presentaron en la movilización del 26 de febrero de 2018, en la cual un agente de policía sufrió lesiones tras ser atado y arrastrado por un caballo. No obstante, hasta la fecha no ha presentado pruebas claras que determinen la responsabilidad individual de alguno de los líderes detenidos en este acto. El ordenamiento jurídico colombiano no contempla la posibilidad de que una persona sea investigada penalmente por participar en una manifestación en la que se cometen actos de violencia. Al respecto es importante recordar lo manifestado por el Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación, Maina Kiai, quien considera que “no se debe considerar responsables o exigir cuentas a los organizadores y participantes en las reuniones por el comportamiento ilícito de otras personas, no se les debe encomendar la responsabilidad de proteger el orden público a ellos [ni] al personal encargado de velar por el buen desarrollo de las reuniones”.

En el caso de San Luis de Palenque a todos los defensores de derechos humanos se les ha imputado el delito de violencia contra servidor público sin que se haya realizado un efectivo proceso de individualización de los responsables de este tipo de conductas. En suma, la Fiscalía realizó una imputación genérica y mal intencionada, con el objetivo de criminalizar actos de protesta social, enmarcados en un contexto de exigibilidad de derechos por vía pacífica por parte de la comunidad.

Una vez que sucedió la captura de inmediato la comunidad salió en rechazo a esta decisión y denunció que se trataba de un montaje judicial promovido por la empresa petrolera Frontera Energy y la Fiscalía, en contra de los principales voceros de la comunidad quienes desde el 2012 han venido denunciando los daños ambientales y sociales

que la explotación del Bloque Cubiro está generando en las comunidades de San Luis de Palenque y Trinidad.

Las/os defensores de derechos humanos y del medio ambiente han denunciado desde el año 2012 que, desde que inicio la exploración del Bloque Cubiro, existe una presión adicional a la infraestructura vial, especialmente la veredal, producto del tránsito de aproximadamente 120 tractomulas diarias, lo cual está generando afectación a la infraestructura social y económica de la población, pues se ha deteriorado el estado de la vía y ha aumentado la muerte de animales, además se ha hecho más difícil la comunicación de esta comunidad con la capital del departamento. De otra parte, le han exigido a la Empresa el pago del 1% de compensación ambiental, dado que el polvo que genera el paso de camiones a diario, así como la captación de agua de los ríos Guanapalo, Pauto y Caño Gandul, han producido muertes de animales silvestres en las fincas campesinas de la zona. Finalmente, han solicitado el cumplimiento en el pago de los servicios de los servicios de alimentación, hospedaje, transporte y lavado de ropa, prestados por habitantes de la comunidad a la Empresa y los cuales no han sido cancelados desde el 2016, ascendiendo a una suma aproximada de 3.400 millones de pesos.

Desde 2016 hasta su fecha de detención, las víctimas participaron en más de nueve reuniones con representantes de Frontera Energy y autoridades públicas para poner de presente sus reclamos en materia de derechos humanos, entre ellos los de carácter ambiental. Allí presentaron su pliego de peticiones y rechazaron la indiferencia de la empresa ante el daño que ha causado a las comunidades.

De otra parte, durante ese mismo periodo, los representantes promovieron más de cinco jornadas de movilización en la cual protestaron en contra de los impactos sociales, ambientales y económicos que las obras de la petrolera Frontera Energy generan en el territorio.

Uno de los aspectos que más dudas siembra sobre la independencia e imparcialidad judicial del proceso es la financiación que Frontera Energy entregó pocos días antes de la captura de estos líderes al Ejército Nacional. El 16 de noviembre de 2018, once días antes de la detención, la empresa suscribió el Convenio No. 18-014 con el Ministerio de Defensa Nacional, en la cual el Ejército Nacional se compromete a brindar una especial protección a las áreas de interés de la empresa a cambio de unos aportes que Frontera Energy realizaría por un monto de \$2.152.974.695 durante un periodo de 13 meses. Tan solo tres días después, suscribió un nuevo convenio, el No. 18-017, para los mismos propósitos, esta vez por un monto de \$2.340 millones de pesos en un plazo de un mes y doce días, es decir, hasta el 31 de diciembre de 2018.

Una de las pruebas en las cuales la Fiscalía sustenta su acusación, es un informe de inteligencia militar allegado 5 días antes de la captura y 3 días después de recibir más de \$4.400 millones, en el cual el Ejército Nacional señala la existencia de una estructura delincencial que tiene como fachada la protesta social.

De otra parte, las autoridades judiciales tampoco gozan de una debida independencia. El Fiscal que lleva el caso (135 EDA) hace parte de una estructura de la institución que es financiada por Ecopetrol (empresa socia de Frontera Energy), empresa que ha firmado desde el año 2015 hasta la fecha, cinco convenios de cooperación con la Fiscalía General de la Nación por un monto de \$82.621.590.882 para que esta entidad preste, a través de las Estructuras de Apoyo (EDA's): "Especial atención para reforzar su capacidad investigativa y de judicialización, en la represión de las conductas delictuales que afectan a ECOPETROL, su grupo empresarial y asociadas, que corresponden a los delitos de (...) obstrucción a vías públicas y vías de hecho durante protestas sociales, entre otros, que afecten la adecuada operación de la industria petrolera, en las zonas que comprenden el presente convenio".

Las autoridades de justicia y seguridad del Estado Colombiano están actuando bajo intereses privados, y han promovido de manera arbitraria, la detención de reconocidos líderes sociales, beneficiando así a Frontera Energy. Es de recordar que éste no es el único caso en el que esta empresa se ve involucrada en posibles detenciones arbitrarias: el 10 de septiembre de 2018, 7 líderes ambientales fueron capturados en el Meta por otro Fiscal EDA, acusados de cometer delitos durante protestas contra Frontera Energy, en Puerto Gaitán.

Estas personas, actualmente privadas de su libertad (3 en centro carcelario y 5 en detención domiciliaria), llevan 10 meses en esta situación, sin que existan avances judiciales que les permita demostrar su inocencia. Dada la imputación hecha por la FGN, podrían durar hasta 3 años con esta restricción sin que se profiera sentencia.

Su vida laboral, económica, personal, familiar y comunitaria se ha visto afectada. Tanto ellos/as, como sus hijos/as sufren de sentimientos depresivos, trastornos alimentarios y del sueño, y las autoridades colombianas hasta la fecha, no han actuado con diligencia e independencia en este caso.

En efecto, en el caso de San Luis de Palenque se han afectado las relaciones interpersonales, dado que se trata de una judicialización a un núcleo familiar, lo cual ha afectado las uniones maritales, como lo es la de Fernery Salcedo y Yulivel Leal, ambos privados de la libertad, el primero en centro carcelario y la segunda en detención domiciliaria. Dadas las restricciones del sistema carcelario, solo pueden verse una vez al mes, durante 40 minutos, para desarrollar su visita íntima, y a su vez la familiar. Esto genera rupturas parciales o totales en los vínculos familiares y de pareja, e incluso, los círculos de amistad en las veredas de las personas, se han visto afectados por la difamación a la que son expuestas las personas defensoras con estos procesos.

Así mismo, los impactos psicológicos y emocionales se agudizan dado que las personas criminalizadas son las responsables de proveer recursos en su hogar, y tienen a su cargo el cuidado de miembros de sus familias que dependen exclusivamente de ellas. En total, 13 niños,

niñas y adolescentes, de un promedio de 12 años, sufren las consecuencias de tener a sus padres con medidas restrictivas de la libertad, sin la posibilidad de continuar desarrollando su vida laboral, profesional y económica. Lo anterior ha conllevado a una desintegración y reorganización del círculo familiar y los roles que asumían sus integrantes.

En efecto, la pérdida de empleo es común. Las ocho personas judicializadas han señalado estar en quiebra por la imposibilidad de desarrollar sus actividades económicas producto de sus detenciones. En su mayoría se dedicaban a labores agrícolas, jornaleros o transportistas, labores que no pueden seguir ejerciendo.

En el caso de Ferney Salcedo y Yulivel Leal, actualmente se encuentran en cobro jurídico, dado que los préstamos que habían adquirido para su cultivo de arroz, no han podido ser cancelados por la imposibilidad de trabajar en el campo, generándose a su vez la pérdida de la cosecha.

Finalmente, la criminalización y estigmatización en San Luis de Palenque generó unos impactos colectivos que van más allá de las personas judicializadas, en términos del efecto amedrantador que se extiende a quienes defienden causas similares. En concreto, se multiplica y generaliza el temor de las personas a la hora de “reclamar sus derechos ya que pueden caer presos”, como afirma Jesús Leal Salcedo. En este sentido, se han paralizado los procesos de exigibilidad de derechos y se ha desincentivado la creación de nuevos liderazgos.

The Rural Association of the Cimitarra River Valley (ACVC) *As reported by Peace Brigades International (“PBI”)⁴⁰*

ACVC is a cooperative of over 25,000 smallholder farmers campaigning, through the model of a “Peasant Farmer Reserve,” to achieve fair and sustainable development for local communities. Since their foundation in 1996, members of ACVC have been victims of threats, murders, arbitrary detentions, displacement, disappearances, torture, and arson attacks on their homes. In September 2007, several of their board of directors were arrested and charged with ‘rebellion’. In May 2008, some were released due to unreliable testimony and lack of evidence, but two of the directors, Andrés Gil and Miguel Angel González, were kept imprisoned. It took a further year of campaigning for Miguel Angel and Andrés to be released, in June and August 2009 respectively, although Andrés was still under investigation [as of 2012]. PBI, along with other international organisations and institutions, led the way in pressuring the international community and the Colombian state to uphold due process and deliver a just resolution to these cases. In December 2010, ACVC was given the National Peace Award. In the same year, the decade long suspension of the Peasant Farmer Reserve was lifted.

ECUADOR

Canton Chillanes Communities

As reported by Amnesty International⁴¹

In January and March 2007, campesino communities in Canton Chillanes, Bolívar province, were reportedly threatened and harassed by members of the armed forces and held on charges of sabotage before being released several days later due to lack of evidence. The arrests were apparently linked to their campaign for the rights of those affected by a planned hydroelectric dam in the area.

Vicente Zhunio

As reported by Amnesty International⁴²

Vicente Zhunio Samaniego, a community leader and President of the Farmworkers' Association of Limón Indanza in Morona Santiago province, was detained on 5 January 2009. The police officers who detained him accused him of taking part in a protest and charged him with sabotage. As Vicente Zhunio was being pushed into the police car, he was shot in the head by an unidentified gunman. Despite the seriousness of his injury, the police refused Vicente Zhunio medical treatment for six hours. He was held incommunicado for 18 hours, during which time he was beaten and threatened with death, to try to get him to sign a blank sheet of paper. His family discovered the following day that he was being held in Macas, 180km from Limón Indanza. He was subsequently transferred to Cuenca, a town nearer to his home, where he remained imprisoned for a month.



Indigenous Community Leaders in Ecuador fighting for a healthy environment are wrongfully accused of crimes such as sabotage and terrorism. They are detained arbitrarily for crimes they did not commit. Photo: El Universo

On 29 January 2009 a judge ordered Vicente Zhunio's release from preventive detention, noting procedural irregularities by the prosecution, namely that they had not ensured that there was sufficient evidence on which to base the accusation. However, the charges remained pending following Vicente Zhunio's release. Although he has consistently maintained that he did not participate in the protest, prosecutors based the accusation on a police report which stated that he had been arrested because "he was supplying people who were blocking the road with food... and when we asked him for his documents he reacted aggressively by being disrespectful". Prosecutors also referred several times to the fact that he had a book

entitled Community Rights vis-à-vis Extractive Activities. They also sought to support their case by drawing on unrelated incidents, such as Vicente Zhunio's work galvanizing communities around the issue of natural resources in 2008.

In December 2009, a judge dismissed the case due to lack of evidence.

Carlos Pérez, Federico Guzmán, and Efraín Arpi

As reported by Amnesty International⁴³

In Azuay province, users of the community water systems and their leaders partially blocked a highway on 4 May 2010 in protest against the final round of debates around the Water Law, scheduled to take place in the National Assembly the following day. Clashes between the police and protesters broke out when the police arrested Carlos Pérez, leader of the Communal Water Systems of Azuay. Federico Guzmán, President of the Victoria del Portete Parish Council, and Efraín Arpi, leader of the San Joaquín community, were also arrested. All three men were charged with sabotage and held in preventive detention for three days. On 27 May 2010 the court requested that the men present themselves to authorities every eight days and prohibited them from leaving the country.

The charges of sabotage were dropped, but then replaced with the criminal offence of blocking a road. Federico Guzmán and Efraín Arpi stated they did not directly participate in the protest, while Carlos Pérez and other witnesses maintained that they allowed traffic to flow through every 30 minutes and that vehicles would be allowed to pass immediately in case of an emergency. The judge ordered their detention and the men paid US\$3,000 bail to remain in liberty.

In August 2010, a judge declared Federico Guzmán, Efraín Arpi and Carlos Pérez innocent of the crime of blocking roads. The prosecution appealed this decision and in August 2011 the three men were convicted. Although they were condemned to one year in jail, the judge handed down a lesser sentence of eight days imprisonment, given that the three men "are not a threat to society and the motivations of their misconduct were altruistic and in support of the people of Tarqui and Victoria del Portete, in defence of water resources, which they fear may be polluted due to mining activities". The leaders filed a request before the National Court for the case to be annulled, which was pending [as of 2012].

Marco Guatemal

As reported by Amnesty International⁴⁴

Following the protests against the proposed Water Law in May 2010, the then Governor of Imbabura province filed a motion with the Public Ministry to investigate Indigenous community leaders who participated in protests against the Water Law and blocked parts of

the Pan-American road. On 26 October 2010, a judge initiated proceedings against several leaders on charges of terrorism and sabotage. The case was archived due to lack of evidence. However, one of the leaders, Marco Guatemal, was then charged with the criminal offence of blocking roads. He was then the President of the Campesino and Indigenous Federation of Imbabura (Federación Indígena y Campesino de Imbabura, FICI).

The first hearing in the case was held in May 2011 and Marco Guatemal was ordered to present himself to the authorities every 15 days. Two months later, a hearing was called, but neither Marco Guatemal nor his lawyer attended; they have stated that they never received notice of the hearing. The judge then issued an arrest warrant for Marco Guatemal and imposed a fine of some US\$1,200 on his lawyer.

Marco Guatemal was arrested on 25 October 2011 and detained for 21 days, until the judge ordered his release and dropped the charge due to lack of evidence of a crime.

GUATEMALA

Escobal Mining Project

As reported by MiningWatch Canada⁴⁵

Since 2011, communities living in the area of the Escobal mine have peacefully resisted the project through marches and community referenda. Since 2011, there have been nearly 90 legal cases filed against peaceful protesters and community leaders. An incident report dated July 2012 and attributed to Alberto Rotondo, the former security manager for Tahoe Resources, appears to recommend that a criminalization strategy be undertaken against those opposed to the mine, urging “a strategic legal and public media communications campaign to prove the involvement of the groups responsible for these actions, especially the involvement of the Catholic Church so that the authorities are forced to take legal action against them.” On September 17, 2012, 31 people were arrested during a peaceful protest. According to the Network in Solidarity with the People of Guatemala (NISGUA), “community members, many active members in the local Catholic parishes, were charged with terrorism and arson, accusations that were finally thrown out more than six months later when a judge ruled there was insufficient evidence to proceed to trial.” Another 26 were detained on April 11, 2013, reportedly on private property and without an arrest warrant. People were protesting at the time because the Ministry of Energy and Mines had just approved the exploitation license for the Escobal project, dismissing without due process over 200 official complaints that local residents had filed against the license based on their concerns about the potential environmental and health

The community impacted by the Escobal mining project in Guatemala protests peacefully but the protestors are accused of terrorism.
Photo: Resistencia Pacífica El Escobar



impacts of the mine. All 26 were freed without charge four days later.

On May 2nd, [2013,] the Guatemalan government imposed a state of siege for about a month in municipalities that had voted against the project. The state blamed delinquency as necessitating this action, but it is widely held that the state of siege was intended for the communities that had been peacefully protesting the mine project through protests and community consultation processes. Twelve members of the Committee in Defense of Life and Peace of San Rafael had their homes raided by police and military forces, and at least 18 had warrants issued for their arrest. Five were arrested and made to suffer months in jail. All eighteen have been absolved of charges for lack of evidence.

Marlin Mining Project

As reported by MiningWatch Canada⁴⁶

Since the early 2000s, there have been a series of criminalization incidents against the Marlin mine in Guatemala:

1. In late 2004 and early 2005, ... Indigenous communities in the department of Quetzaltenango blocked mine equipment from traveling to the Marlin mine site after months of trying to get information from the national government about mining projects. From December 2, 2004 until January 11, 2005, they stopped a large cylinder for the mine mill along the highway at Sololá until some 1,000 police and military were brought in to repress the demonstration. Raúl Castro was killed and some twenty others injured as a result of the state's violent reaction to the protest. Then Minister of the Interior Carlos Vielman publicly accused Mayor Dominga Vásquez of having organized the protest, ordering her arrest and accusing her of "terrorism, sabotage, threats, injuries and damages to private property." Another 15 people also faced legal processes as a result.
2. In August 2007, seven people were arrested in connection with a confrontation between mine workers and residents earlier in the year. In December, five were absolved of charges and freed for lack of evidence, while two were fined and sentenced to two years of house arrest for crimes of coercion, instigation to commit a crime and causing injury. Meanwhile, during this same year, opponents to the mine reported further violence, including a raid, two people disappeared and the beheading of an activist, none of which were investigated further.
3. In early 2008, Gregoria Crisanta Pérez asked the company to remove a post that had been installed on her land for high power electrical lines to the mine. When her complaint went ignored for six months, on June 11th, she short-circuited the power line, leaving the mine without power for several days. The company immediately filed a complaint with the Public Ministry and on June 14th, mine workers entered her property accompanied by

police and restored power to the mine. Three days later, the District Attorney ordered the arrest of Gregoria Crisanta and seven other women from the community of Agel for the crime of aggravated usurpation. The company expanded the complaint a day later to include accusations of inciting to commit a crime, threats against security services of public utility and disobedience. By June 23rd, the National Police had an order to proceed with the arrests, which — while never executed — remained in place for four years.

As a result of these warrants, Gregoria Crisanta and the other women experienced ongoing stress and anxiety, as they faced tremendous stigmatization within their community. The local development committee even denied Gregoria Crisanta participation in a potable water project as punishment. After a year-long drive undertaken by the women's organization Movimiento Tzununija', their arrest warrants were finally overturned on May 18, 2012. During this well-planned political, legal and socio-economic strategy, the women participated in a process of Mayan spiritual healing and political education in order to prepare to give their declarations in court. As part of the court decision, the company finally removed the post from Gregoria Crisanta's property.

La Resistencia Pacífica de la Puya

Submitted by Peace Brigades International on behalf of La Resistencia Pacífica de la Puya

La Resistencia Pacífica de la Puya lo integran comunidades maya y Ladino/Mestizo, de los municipios de San Pedro Ayampuc y San José del Golfo, departamento de Guatemala. Una de las características fundamentales de nuestra Resistencia es que se basa en métodos pacíficos, con apego a lo establecido en la Constitución de Guatemala.

El objetivo de Puya es defender la red de la vida en el territorio, exigiendo a las instituciones públicas garantizar el respeto a diversos derechos humanos, contenidos en la legislación nacional e internacional, que el Estado de Guatemala ha ratificado. Los derechos que reclamamos son: el derecho a la vida, el derecho al agua, el derecho a la salud, el derecho a un ambiente sano, derechos de las mujeres, derechos de los pueblos indígenas y el derecho a defender derechos, entre otros.

En este ejercicio de derechos, las comunidades que conformamos la Puya, rechazamos la implementación de proyectos mineros en el área por atentar contra la vida. Por ello, desde el año 2010 nos organizamos para exigir información a las autoridades acerca de los megaproyectos en la zona, pero nunca obtuvimos respuesta. Por esta razón, las comunidades afectadas decidimos, en el año 2012, hacer un plantón frente a la entrada principal del proyecto minero Progreso VII Derivada, conocido popularmente como "El Tambor". El proyecto pertenece a una empresa estadounidense Kappes, Cassidy &

Associates (KCA), pero también cuenta con inversión canadiense. Sus subsidiarias locales son: Exploraciones Mineras de Guatemala S.A. (EXMINGUA) y Servicios Mineros de Centro América S.A.

A continuación, pasamos a explicar los diversos procesos de criminalización que han enfrentado y/o enfrentan varios de los y las integrantes de la Puya. Los procesos en contra de los compañeros mencionados se basan en acusaciones falsas construidas sobre el argumento de que la Resistencia de La Puya utiliza medios violentos para defender sus derechos. Tras casi diez años de resistencia, son muchas las organizaciones nacionales e internacionales que han podido comprobar que los métodos de lucha de la Resistencia se basan en procesos pacíficos en pro de los derechos humanos. Son múltiples los ataques y provocaciones que hemos sufrido durante todos estos años y, a pesar de la intensidad de los mismos, nosotros siempre hemos mantenido una resistencia pacífica, por considerar este método como el único viable para conseguir nuestras demandas.

1. Criminalización que han enfrentado y/o enfrentan varios de los y las integrantes de la Puya
 - a. Alonso Torres, Valerio Carrillo, Jorge López

El 30 de abril de 2014, **Alonso Torres, Valerio Carrillo y Jorge López fueron** sentenciados a 9 años de prisión (pena conmutable a razón de diez quetzales por día para cada uno de los sentenciados) por coacción, amenazas y detención ilegal en contra de trabajadores de la mina. Los abogados de los integrantes de La Puya buscaron revertir el fallo, debido a las irregularidades encontradas en el proceso. Por ello, presentaron una apelación, una casación y, finalmente, un amparo el cual fue rechazado por el tribunal. Como consecuencia, la sentencia quedaba confirmada y los tres compañeros deberían ir a prisión. Para evitar la cárcel, desde la Resistencia y las familias de los tres compañeros, se realizó el pago de la conmuta en el mes de marzo del 2019. En este momento, queda todavía pendiente el pago de la indemnización que fue fijada por el juez por la cantidad de 22,500.00 quetzales para cada uno de los tres sentenciados. La Resistencia y la familia de los afectados no han podido recaudar el dinero para pagar esta cantidad.

A pesar de los esfuerzos de los compañeros, al no ser capaces de aportar dicha cantidad, el Juzgado decide comunicarle a la Policía Nacional Civil, la emisión de 3 órdenes de captura contra los compañeros. Sumado a eso, corremos el riesgo de que exista una demanda **civil por el pago de la indemnización que esta pendiente.**

- b. Fernando Castro, Francisco Carrillo, Gregorio Catalán y Eusebio Muralles

Por los mismos hechos del caso anterior, los trabajadores de la empresa minera fueron denunciados otros cuatro compañeros de la Resistencia: Fernando Castro, Francisco Carrillo, Gregorio Catalán y Eusebio Muralles. Tras ser sometidos a diversas audiencias dentro del proceso

penal, se demostró en el juicio la inocencia de los compañeros. Por ello, el juez emitió una sentencia absolutoria liberando de los cargos a los compañeros.

Sumado a esto, el juez comprobó no solo que las pruebas eran insuficientes para culpar a los tres compañeros, sino que se evidenció que el Ministerio Público había falsificado las Actas en las que supuestamente los trabajadores de la empresa denunciaron a Fernando, Francisco, Gregorio y Chevo. Por esta falsificación de actas, existe un proceso penal en contra del fiscal auxiliar del MP que tomó dichas actas. Actualmente, este proceso sigue en vigor y la investigación sigue su curso.

c. Compañero de la Resistencia

Por estos mismos hechos, se acusó también a otro compañero de la Resistencia. Los abogados del compañero procedieron a denunciar que durante el proceso se dieron varias irregularidades y el juez decidió sobreseer el caso. Sin embargo, antes de que el juez tomase esta decisión de sobreseimiento, los abogados de los trabajadores de la empresa, coaccionaron al compañero con la promesa de que si se reconocía como culpable, no tendría que enfrentar una pena de prisión.

Este es un hecho grave, y además un patrón que utilizan muchos abogados en otros casos contra personas defensoras de derechos humanos.

Es importante señalar que los nueve criminalizados por estos casos fueron acusados por las mismas personas, los mismos delitos, y el Ministerio Público nunca logró las pruebas para individualizar los procesos. Por tanto, ninguno de los procesos tuvo sustento ya que el derecho penal tiene como principio ser personalísimo.

d. Querrela Penal Contra 13 Personas de la Resistencia

En 2017 la empresa minera, mediante su representante legal, presentó una querrela penal contra 13 personas de la Resistencia de la Puya. El argumento de la querrela era que dichas personas eran responsables de la contaminación del agua. La querrela les acusaba de 7 delitos, entre ellos, detenciones ilegales, coacción, instigación a delinquir, muchedumbre.

Este caso se logró desestimar en mayo del 2018.

e. La Choleña

La Choleña es una aldea del municipio San José del Golfo que es parte de las comunidades que integran la Resistencia Pacífica de la Puya en donde se ha desatado un conflicto por la instalación de una antena de telefonía, por parte de la empresa SBA TORRES GUATEMALA LIMITADA, Subsidiaria de SBA Communications Corporation (con oficinas centrales en Estados Unidos), sin consentimiento de la comunidad. En este conflicto se han visto afectados miembros de la Resistencia pacífica La Puya.

En este caso, la Municipalidad otorgó la licencia para la instalación de la antena de telefonía, pero esta licencia se pudo revocar gracias a la presión de la comunidad. Sin embargo, la empresa promovió diversas acciones jurídicas y la licencia fue nuevamente reactivada.

Para la instalación de dicha antena, la empresa debe pasar por el predio de Saturnino Carrillo, un miembro de la Resistencia Pacífica. Durante el mes de junio de 2017, Saturnino decidió por seguridad instalar una cerca sobre su propiedad privada y fue denunciado inmediatamente por la empresa, ante el Ministerio Público. La municipalidad, sin consultar con Saturnino, decide arbitrariamente declarar el predio como propiedad pública. En la semana del 21 de Agosto de 2017 la empresa llega al predio acompañada de funcionarios del Ministerio Público y removieron el cerco para ingresar la antena.

Debido a este proceso arbitratario contra Saturnino, varios integrantes de la comunidad se pusieron de su favor y trataron de impedir que la empresa instalase nuevamente la antena. Por ello, la empresa ha iniciado procesos legales en contra de algunos de los comunitarios. Hasta el momento la empresa ha solicitado la captura de algunos de ellos. Resulta curioso que este proceso en la Choleña ha estado ligado con el de la mina en La Puya ya que hay nexos entre la abogada de la mina y la empresa SBA.

Por este proceso, los compañeros afectados interpusieron una denuncia en 2018 y finalmente la Jueza de Asuntos Municipales de San José del Golfo cerró el caso. Sin embargo, en septiembre de 2018, los abogados de Saturnino se enteraron que la Fiscalía de Chinautla está solicitando una orden de captura en contra de Saturnino, su esposa y José Catalán. Esta orden de captura sigue en proceso de estar formalizándose y Saturnino y los demás siguen pendientes de este caso.

2. Otros procesos

Además de la criminalización, los y las integrantes de la Resistencia Pacífica de La Puya han tenido que enfrentarse a numerosos casos de represión por parte de las fuerzas policiales del Estado de Guatemala, en colaboración con la empresa minera.

Una de las situaciones de represión y violencia más fuertes que hemos tenido que vivir tuvo lugar el 23 de mayo del 2014, cuando las fuerzas policiales del Estado de Guatemala reprimieron a los miembros de la Resistencia en un intento de desalojo forzado, que tuvo como consecuencia decenas de heridos. A partir de la represión, el Ministerio de Gobernación instaló una sub-estación de Policía Nacional Civil en el terreno propiedad de la empresa minera, para que ésta pudiera continuar sus actividades sin impedimento.

Ante tal situación, las comunidades decidimos presentar denuncias ante el sistema de justicia estatal, argumentando que las instituciones públicas estaban al servicio de la empresa, violando la legislación nacional. Debido a estos esfuerzos, el riesgo de criminalización y otros

ataques por parte de los y las integrantes de la Resistencia Pacífica sigue siendo una realidad cotidiana para nosotros.

En este estado de cosas, desde diciembre de 2018, el caso de La Puya enfrenta una nueva dimensión, que supone un nuevo reto para nosotros, debido a la complejidad del proceso. Desde diciembre de 2018 una demanda fue interpuesta por parte de KCA ante el Centro Internacional de Arreglo de Diferencias Relativas a Inversiones (Ciadi), abriendo un arbitraje entre el Estado y la Empresa. Con este arbitraje la empresa exige que el Estado de Guatemala le pague la cifra de \$300 millones, basándose en el tratado de libre comercio DR-CAFTA, que alega que el Estado ha incumplido por permitir la suspensión definitiva de la operación de la empresa. El arbitraje podría definir el futuro de la Resistencia en función de cómo se resuelva dicho arbitraje con la posibilidad de que se de la reapertura de la mina.

Derivado de esta demanda de arbitraje contra el Estado de Guatemala, en la actualidad, varios medios de comunicación, agentes del gobierno y representantes de la empresa utilizan el discurso que culpa y hace responsables a los y las integrantes de la Resistencia Pacífica de La Puya, por oponerse al desarrollo. Esto de alguna manera pone a los miembros de la Resistencia frente a un ambiente de estigmatización social.

3. Los efectos de los casos de criminalización

Al ser una resistencia conformada por muchas personas de forma colectiva, no todas hemos sufrido procesos de criminalización como tal, pero el hecho de que varios de nuestros compañeros y compañeras de Resistencia hayan tenido que sufrir casos de criminalización nos ha impactado a los demás en lo físico, lo psicológico, lo emocional y lo profesional. Sumado a esto, me gustaría señalar que no solo los casos de criminalización han tenido efectos negativos en diversos aspectos de nuestra vida, sino que muchos otros casos, como amenazas, difamaciones, ataques directos, intentos de desalojo con violencia de parte la policía nacional civil y hostigamientos de parte de trabajadores de la empresa minera, etc, han afectado fuertemente nuestra integridad como seres humanos.

Los compañeros criminalizados y los que no lo han estado han enfrentado y miedo y estrés, bien por la posibilidad de acabar en la cárcel injustamente o bien por la posibilidad de que un caso se abra en cualquier momento contra nosotros.

Los compañeros que han enfrentado procesos, cuando han tenido que acudir a los juzgados han tenido que dejar de lado su trabajo y otras obligaciones que les permiten subsistir por atender a estos procesos. Esto ha implicado que sus condiciones de vida empeoren, debido a que muchos dejaban de percibir su salario por no ir a sus lugares de trabajo. Asimismo, esto repercute en sus vidas sociales y familiares.

Las personas que han enfrentado procesos judiciales y han estado denunciados viven estigmatización en el ámbito social ya que se les hace ver como personas problemáticas.

The Association for the Protection of Las Granadillas Mountain (APMG)

As reported by Peace Brigades International (“PBI”)⁴⁷

APMG campaigns against deforestation and mono-cropping due to their harmful environmental and social impact on local communities. On 29 November 2010, eight members of APMG were ordered to appear in court after a local landowner lodged a formal complaint. The landowner and workers from a logging company had earlier destroyed a wall legitimately restricting access to heavy goods vehicles. When the landowner encountered local villagers rebuilding the wall with the support of APMG it sparked an incident in which villagers were later hospitalised for exposure to tear gas. Subsequently, the landowner publicly accused, through the press, APMG members of illegally detaining his convoy, and announced his intention to initiate judicial proceedings. When, after long delays, the case was finally heard on 13 April 2011, the judge ruled that the case brought against members of APMG was entirely lacking a legal basis, and criticised the public prosecutor for not having carried out the necessary prior investigation. This was not the first time criminal charges against APMG had been thrown out due to complete lack of evidence. PBI has accompanied the Association since August 2008, during which time they have also suffered death threats and illegal surveillance related to their work defending the rights of local communities.

People of San Juan Unite

As reported by Peace Brigades International⁴⁸

People of San Juan Unite (Qamoló Kí Aj Sanjuani) is an indigenous organization comprising several communities in the municipality of San Juan Sacatepéquez who work to conserve the natural resources of their land and defend the rights of indigenous people, in particular their right to be consulted on any major development projects. In 2006, Guatemalan company Cementos Progreso opened the San Juan Project, which included building a cement factory and digging a quarry in the municipality. The communities affected by the project opposed it and demanded their right to be consulted in accordance with Guatemala’s ratification of the International Labour Organisation’s Convention 169 on the Rights of Indigenous Peoples. Consequently, members of Qamoló Ki Aj Sanjauni have been subjected to intimidations and aggressions, and a campaign of criminalisation. In June 2008, 43 villagers from the community of Las Trojes were detained and charged with illegal assembly and protest, a charge that was enabled by a state of prevention declaration in the territory. The Human Rights Defenders Protection Unit (UDEFEQUA) monitors violence against HRDs across Guatemala, and concluded that this

imposition of martial law “constitutes a clear demonstration of a state policy whose aim is to discard the process of dialogue in favour of legal persecution through the abuse of authority.”

Bernardo Caal Xol

As submitted by Peace Brigades International on behalf of the victim

Bernardo Caal Xol is a leader of the Peaceful Resistance of Cahabón, a collective of 38 Maya Q'eqchi communities in the municipality of Cahabón. The Peaceful Resistance of Cahabón formed in 2015 to oppose the construction of dams on the Oxec River in Cahabón, Alta Verapaz, Guatemala. The hydroelectric project, although constructed on Q'eqchi' Maya territory, was licensed in 2012 without a prior consultation, as required by Convention 169 of the International Labor Organization. The company operating the dams, Oxec S.A, a subsidiary of Energy Resources Capital Corp (ERCC), began construction of the Oxec I dam in November 2015.

The following month, in December 2015, Bernardo Caal Xol, a community leader and teacher in Cahabón, filed on behalf of the indigenous Q'eqch'i a complaint with the Guatemalan Supreme Court against the Ministry of Energy and Mining, asking the court to suspend the operations of the Oxec hydroelectric project, since the license was granted without prior consultation with the indigenous communities affected. Although Oxec, S.A. and the Ministry of Energy and Mines argued that prior consent was achieved through an agreement signed in 2012 between the company and a few inhabitants of eleven communities, the Supreme Court agreed with Caal, ruling in April 2016 that the construction be provisionally suspended. The company appealed the ruling to the Constitutional Court.

In January 2017, the Supreme Court made a final ruling, in favor of Bernardo Caal Xol, and the company was ordered to halt construction until the question of community consultation was addressed. In February 2017, the Constitutional Court upheld the suspension of the Oxec hydroelectric plant construction. In May 2017, the Constitutional Court lifted the suspension and granted Oxec permission to resume work, on the condition that an adequate consultation would be carried out within twelve months.

On March 27, 2017, an arrest warrant on charges of fraud was issued for Caal by Judge Ricardo Isaias Caal. The charges related to a period of time between January 6, 2012 and August 31, 2013 when Caal was reportedly receiving a salary yet not teaching. Caal maintains his innocence in the matter. An administrative procedure by the Ministry of Education, in any case, should have preceded any criminal complaint. Caal and his attorneys argue that the charges were lodged against him in reprisal for his work to defend land, territory, and the environment. In addition to the complaint he filed with the Supreme Court, Caal filed lawsuits against Oxec S.A., one alleging illegal cutting of trees and another alleging illegal use of national property in the area where the construction would be taking place. The news of the

arrest warrant found its way immediately to the press, and articles defaming Caal appeared. In response to the arrest warrant, Bernardo Caal voluntarily appeared before the judge on July 9, 2017, paid bail, and was released, with the stipulation that he check in every two weeks, a requirement he complied with.

Flyers began appearing around Cahabón, accusing Bernardo Caal Xol of being a dangerous criminal and an enemy of the state, and a second warrant was issued for Caal's arrest on December 8, 2017. On January 30, 2018, Bernardo Caal Xol voluntarily presented himself. During the January 30, 2018 hearing, no court official referred to any other pending charges against him. He was surprised, therefore, when National Civil Police officers arrested him as he left the courthouse and charged him with aggravated robbery, threats, aggravated illegal detention, and incitement to commit a crime.

The charges, which required pretrial detention, were in connection with an October 15, 2015 demonstration. Employees of Netzone S.A., a subcontractor working on construction of the second hydroelectric plant, known as Oxec II, say they were detained and robbed of tools and electric and communications cables by a group of community members led by Caal. Caal and numerous witnesses maintain that he arrived late and was not at the demonstration when the supposed events occurred. Caal and his attorneys also maintain that video and 420 photographs taken during the march show that the items in and on the truck remained intact. In a February 5, 2018 hearing, Caal's defense team pointed out that the Public Ministry had not carried out a thorough investigation of the incident. The judge dismissed two of the charges—threats and incitement to commit a crime—and set a two-month deadline for the Public Ministry to finish its investigation and present its final conclusions. On November 9, 2018, Bernardo Caal Xol was convicted by the Court of the First Instance in Alta Verapaz and sentenced to seven years and four months in prison for aggravated detention and theft.

No evidence exists of Bernardo Caal's involvement in any crime. The supposed crime happened in 2015. It was not until 2017, two years later, that he was linked to the supposed crime and his arrest was sought.

Numerous witnesses who were at the march say that Caal arrived late. The supposed incident occurred at 8:30 AM. Caal arrived at the march hours later, according to witnesses. The 13 videos and 420 photographs do not place Caal at the march earlier in the day, and show items on the truck intact, according to Caal's attorneys.

United Nations experts have found his conviction to be politically motivated: "The criminalisation of Mr. Caal Xol was preceded by virulent defamation campaigns in media, depicting him as a violent criminal acting against the interest of the nation," said the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, who visited Guatemala in May 2018 and met Caal in prison in Cobán.

“The conviction of Mr. Caal Xol to over seven years in prison on charges of illegal detention and aggravated robbery of a drill, a tool box and some fibre optic cable, appears grossly inflated and was primarily based on testimonies of affiliates with the Oxec company. The conviction of the Q’eqchi’ leader is an apparent attempt to silence and discredit the legitimate exercise of the rights of the indigenous community,” the experts stated. “This is not an isolated case; there are numerous indigenous community members who are being criminalised in Guatemala for defending their traditional lands and resources against large-scale development projects which cause environmental damage.”

Bernardo Caal Xol has expressed serious concern for his safety in prison. He has stated in media interviews that there are often rumors of threats against him in the prison. He wrote an urgent open letter, dated August 18, 2019, asking for a meeting with the Human Rights Ombudsman to report to him the penal and political persecution he was suffering at the hands of the Guatemalan government.

Caal has a wife and two daughters ages 10 and 12. His separation from his family is painful for the children, his wife, and himself. His wife is also a teacher. They live in Chimaltenango, a journey of 262 kilometers from the prison in Cobán where Caal is. To visit him they must first travel to Guatemala City (correct? The article says “the capital”) in a taxi. Then they have to take a bus to get to Cobán. The journey takes eight hours, and they must sleep in a hotel. They arrive on a Saturday night to visit him on Sunday and then have to make the journey back. The journey wears on them physically, psychologically, and economically.

In addition, the Peaceful Resistance of Cahabón has suffered the loss of a leader and the demoralizing effect of seeing a leader jailed in reprisal for his efforts to use the legal system to secure the rights afforded to his community by law. The hydroelectric project continues, with the construction of new dams planned.

HONDURAS

Defenders of the Guapinol River

Submitted by Trocaire⁴⁹

The water defenders from Guapinol and Sector San Pedro in the Bajo Aguan region of Honduras are facing years in jail for peacefully standing up to protect the rivers that more than a dozen communities depend on.

A court has already ruled there is no evidence – Back in February 2019, a Judge ruled that there was absolutely no evidence to send 13 water defenders from the same region to trial after trumped up charges were laid against them. Now, eight more defenders are in the same situation and are facing criminal conspiracy and other charges that are meant to prosecute gangs and drug trafficking networks – not local communities who have organized to protect their most valuable resource: their water. The water defenders are currently at risk of facing years in pretrial detention if the charges are not immediately dropped.

The crimes were allegedly committed on September 7, 2018 near a camp called “For Water and Life” that had been established by members of the local community and the Municipal Committee in Defense of Common and Public Assets, on August 1, 2018. The camp was installed on a public highway as an attempt to draw attention to the many irregularities surrounding the licensing of the Los Pinares mine. According to the members of the Committee, it was a space for the community to gather, share information and discuss local issues while participating in religious and cultural activities.



The charges against the water defenders were filed by the Los Pinares company, which operates an iron oxide mine within the Parque Nacional Montana de Botadero Carlos Escaleras Mejía, and the State of Honduras on behalf of Santos Corea, the manager of a company private security called SEPSI that has been hired by Los Pinares.

The mine operated by the Los Pinares mining company is working illegally – Despite repeated calls by the affected communities, the local mayor and council have refused to hold a legally binding consultation about the Los Pinares iron mining project. The company is now working without consent of the local communities in a national park that should be protected. The state’s prosecutors who are propelling the charges forward against the water defenders – even one who died more than 4 years ago – have had charges filed against them for abuse of authority. Yet, they continue to protect the company and put economic interests over the well being of locals.

MEXICO

Alianza Sierra Madre A.C.

Submitted by the victims

Alianza Sierra Madre es una organización no gubernamental que desde hace 25 años acompaña a comunidades indígenas en la Sierra Tarahumara en el estado de Chihuahua México, en la defensa de sus derechos humanos. Durante estos años hemos acompañado procesos legales ante las instancias nacionales mediante los cuales se demanda el pleno reconocimiento de su propiedad ancestral y el acceso preferente de sus recursos naturales, así como el irrestricto derecho al Consentimiento, previo e informado. Por la defensa que han hecho de su territorio y sus bienes naturales dos comunidades indígenas han sufrido el ataque, la persecución y el hostigamiento por parte de actores externos que han pretendido disuadir a sus integrantes. Choréachi y Coloradas de la Virgen, en el municipio de Guadalupe y Calvo, Chihuahua es un claro ejemplo. En los últimos 6 años al menos ha sido asesinados 12 indígenas y más de 15 en 30 años. En los procesos legales en los que reclaman sus derechos, las autoridades impartición de justicia y los actores externos, han desconocido el derecho de las comunidades a su propiedad ancestral, así como al de conservar sus bienes naturales. Lo anterior lo ha llevado a encarar juicios de más de 10 años de litigio y hasta la fecha no encuentran sentencias firmes que les de certeza jurídica sobre sus bienes.

Mediante los procesos legales que enfrentan las comunidades indígenas, aspiran al reconocimiento de sus territorios y a que el Estado, les garantice su derecho de preferencia a sus recursos naturales, a la conservación de los mismos y a que no sean objeto del comercio. Por lo anterior los indígenas han enfrentado toda clase de acciones por parte de los perpetradores quienes los persiguen, lo acosan e incluso los asesinan.

Como se ha dicho, los efectos por la defensa de sus derechos ha repercutido en la pérdida vidas. Por la situación de inseguridad y violencia que se vive en la región, pero en particular dentro de los territorios en los que se encuentran las comunidades antes mencionadas, sus integrantes han tenido que emigrar a otros lugares, han sido desplazados por la presión que sobre ellos existe y que repercute en la integridad física personal y emocional de familias enteras. Al ser desplazados de sus comunidades, han dejado sus ranchos, siembras, animales, perdiendo con ello su patrimonio y la posibilidad de alcanzar una vida plena en su entorno. Actualmente el territorio de las comunidades se encuentra tomado de facto por el crimen organizado.

Allianza has submitted a Request for Precautionary Measures to the Commission (En el caso de Choréachi ante la CIDH MC -60/14 y ante la Corte IDH Medidas Cautelares 25 de marzo de 2017).

Bettina Cruz Velázquez

As reported by Article 19, Center for International Environmental Law & Vermont Law School⁵⁰

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

Blackfire Exploration's Payback Mine

As reported by MiningWatch Canada⁵¹

Mariano Abarca, a father of four and a restaurant owner in the town of Chicomuselo, was an important community leader in the opposition to Blackfire's Payback mine. In July 2009, he participated in a delegation that traveled from Chicomuselo to Mexico City to protest in front of the Canadian Embassy. There he was videotaped speaking to an Embassy representative when he stated that the company had broken its promises to provide work to everyone in the Ejido Grecia; that infrastructure in Chicomuselo had been damaged by the company's trucks; and that the community was highly concerned about environmental contamination given the importance of the rivers that flow from the Sierra Madre highlands of Chiapas.

Three weeks later, undercover police detained Abarca in response to a complaint filed by Blackfire's Public Relations Officer, Luis Antonio Flores Villatoro. The complaint alleged that Abarca was responsible for crimes of "illicit association, organized crime, attacks on communication routes, damages against the company and disturbing the peace, and threats against bodily integrity, as well as collective integrity and the integrity of state heritage." After being held for eight days, Abarca was released without charge for lack of evidence. In a videotaped interview recorded at that time, Mariano said that if any harm should befall him, his family, or other activists, the community would blame Blackfire.



Mariano Abarca of Chicomuselo, Mexico, is arrested, criminalized, and killed for his environmental activism against a mining project. Photo: Alchetron

On November 27, 2009, about four months after protesting in front of the Canadian Embassy, a male assailant shot Mariano Abarca in the back at close range in front of his house. The three individuals detained immediately following the murder all had connections with the company, although none of those named by the Abarca family and activists closely following the conflict were ever investigated, except for one who was jailed in what is widely believed to be a case of political persecution.

Instituto de Derecho Ambiental a.c. (IDEA)

Submitted by the victims

El equipo del Instituto de derecho ambiental a.c. (IDEA) ha sufrido varios ataques durante los últimos años contra su equipo legal y también contra los defensores de las comunidades con las que trabaja. Se ha ejercido un uso indebido de la criminalización por parte del Estado, consistiendo en la manipulación del poder punitivo del Estado por parte de actores estatales y no estatales con el objetivo de controlar, castigar o impedir el ejercicio del derecho a defender los derechos humanos. Los activistas y defensores a quienes asesora el IDEA y aliados, han sido objeto de amenazas e intimidación por parte de los gobiernos municipales de la Zona Metropolitana, en específico de Guadalajara, Zapopan y Tlaquepaque, así como del Gobierno Estatal de Jalisco y Colima, así como del Gobierno Federal a través de sus delegaciones de la Procuraduría Agraria, Registro Agrario Nacional y la ahora Fiscalía General de la Republica.

1. Procedimientos legales/Investigación

- a. Eduardo Mosqueda Sánchez, Director Ejecutivo de IDEA, fue detenido en el año 2015 de manera arbitraria y acusado de los delitos de despojo, robo calificado, privación ilegal de la libertad, daños y lesiones. Lo anterior fue reacción ante el desarrollo de un proyecto de IDEA para la defensa de las tierras reconocidas a una comunidad indígena Nahuatl. Junto con él fueron detenidos, por autoridades del Estado Mexicano de Colima, 33 indígenas nahuatl de Ayotitlán. Permaneció en prisión, incluyendo módulos de máxima seguridad, por aproximadamente 10 meses. Pudo recuperar su libertad por orden de un Juzgado Federal quien no encontró elementos para la configuración de ninguno de los delitos imputados en su contra.
- b. Damaris Santana Luis Juan, ex-abogada del área de justicia ambiental del IDEA, fue investigada por la Procuraduría General de la República por el delito de falsedad de declaraciones. Esto fue intento de intimidación, al promover Damaris un amparo que protegía a los defensores de derechos humanos de la comunidad de cualquier agresión y detención arbitraria en su contra mientras ejercían su labor de defensores. El teléfono de Srta Damaris fue robado por un hombre armado. Este expediente ya concluyó y se archivó.
- c. Raquel Gutiérrez Nájera, Presidenta del IDEA, en la actualidad cuenta con 2 denuncias penales federales, por el delito de falsedad de declaraciones. Denuncias que nacen a partir de los procesos de defensa exitosos que han logrado suspensiones definitivas de megaproyectos inmobiliarios (Defensa de Las Cañadas y Arboledas del Sur).
- d. Pedro León Corrales, Director General del IDEA, en la actualidad cuenta con 1 denuncia penal federal, por el delito de falsedad de declaraciones. Denuncia que nacen a partir del proceso de defensa exitoso que han logrado suspensiones definitivas a favor de la Comunidad Indígena de Santa María Tequepexpan, en contra de megaproyectos inmobiliarios.
- e. Se asesoró a Pina Ramírez y Zeferino, ambos del Parque San Rafael, quienes fueron detenidos arbitrariamente por manifestarse afuera del Parque para que la autoridad no lo fragmentara con obras de infraestructura. Logramos que el Agente del Ministerio Público los soltara por inexistencia de delito.
- f. Defensa y acompañamiento a María de Jesús (hija) y Marta Rodríguez (Madre) quienes defienden las tierras de

su ejido Santa Cruz de la Soledad, en Chapala, con ellas se ha activado de manera exitosa el mecanismo establecido por la Secretaría de Gobernación para Periodistas y defensor@s de Derechos Humanos.

- g. Defensa y acompañamiento para 7 vecinos y estudiantes que apoyaban las actividades de vecindados y la CIH de Santa María Tequepexpan en el Bosque en Arboledas del Sur. Se logró liberar ese mismo día por ausencia de delito que perseguir.
2. Además, los líderes y miembros de IDEA han sido víctimas de delitos graves, amenazas, intimidación, y campañas de desprestigio.

- i. Delitos

1. En 2017 se robaron un par de computadoras portátiles de los directivos. Ingresando al vehículo particular de la presidente de la organización.
2. En 2018 y 2019 han existido amenazas contra miembros de IDEA, por mensajes, teléfono y personales—incluyendo mensajes gráficos con fotos y descripciones de violencia.
3. En hubo la simulación de secuestro de la exabogada Andrea Guadalupe Santoyo Martínez miembro del IDEA, donde su familia fue avisada de su secuestro, dando detalles precisos de su vivienda.
4. El 15 de enero de 2019 se recibió una llamada de extorsión, donde se dio el nombre de la Presidenta, amenazando con actuar contra la familia. Dio los datos del domicilio, dijo ser Héctor Alejandro González.
5. En el pasado se sufrió el robo de un vehículo afuera de la oficina. El 29 de diciembre de 2018 se sufrió el robo de la computadora de la camioneta de la presidenta de la organización, lo cual afectó económicamente (70,000.00 pesos mexicanos) y en traslados por 2 meses. Limitando con ello la capacidad operativa y económica de la cabeza de la organización.

- ii. Intimidación

1. En los años 2015, 2016, 2017, 2018 y 2019 ha existido hostigamiento por los casos de Cañadas, Ayotitlán y Santa María Tequepexpan. Pues a raíz de esos casos se han percibido vigilancia en la

oficina, casas de los defensores y durante los traslados en vehículo.

2. Se tiene el antecedente de un ingreso a la oficina por parte de un desconocido. Se tiene la sospecha de la entrada en otras ocasiones a la oficina, también se sospecha del forzado del portón y cerradura externa. La última ocasión en la madrugada del sábado 11 de mayo de 2019.

iii. Campañas de “desprestigio”

1. Han habido campañas de desprestigio, en medios de comunicación por parte de particulares y miembros del gobierno de diferentes niveles, por la labor de defensa del IDEA en el caso de Ayotitlán contra IDEA y en San Rafael, Santa María Tequepexpan y Arcos de Guadalupe, contra los defensores de las áreas.
3. IDEA ha presentado una queja por violaciones de derechos humanos ante el tribunal de Jalisco, Mexico que se llama Comisión Estatal de Derechos Humanos (queja: 4540/2018/CEDHJ).
4. Los efectos negativos incluyen:
 - i. Sobre la capacidad económica de la asociación y de las comunidades defendidas, pues los procesos de criminalización y alteración contable han desviado los esfuerzos económicos y humanos de la organización en la defensa de sus miembros.
 - ii. Muchos de los miembros de la asociación y de las comunidades asesoradas abandonan la colaboración ante la criminalización de otros miembros de sus equipos o de ellos mismos.
 - iii. El desgaste psicológico y emocional han provocado la salida de personas del trabajo de defensa.

Isidro Baldenegro López

As reported by the U.N. Special Rapporteur on human rights and the environment⁵²

On 15 January 2017, . . . Isidro Baldenegro López was shot and killed at a relative’s house in the state of Chihuahua, Mexico. Baldenegro was a leader of the Tarahumara indigenous people in the Sierra Madre mountains. As a young boy, he had witnessed the murder of his father for opposing logging that threatened the forests in which the Tarahumara live. Despite this, Baldenegro dedicated his life to peacefully opposing the deforestation of his people’s traditional lands,

including by founding an NGO (1993) and by organising a series of blockades and marches (e.g. in 2002). But his efforts angered the powerful network of state officials, landowners and criminal bosses involved in logging, and in 2003 he was imprisoned for 15 months on false charges of arms and drugs possession. After international protests against his detention, he was released in 2004, and received the Goldman Prize in 2005. He had only recently returned to his community of Coloradas de la Virgen, after a long period of exile because of threats against him and his family.

The Organisation of the Indigenous Me'phaa People (OPIM)

As reported by Peace Brigades International ("PBI")⁵³

OPIM campaigns for the rights of indigenous communities and against impunity surrounding human rights violations committed by the Mexican Army. On 17 April 2008, five members of OPIM were arrested in connection with the 2007 murder of Alejandro Feliciano García, an army informant. The four accused of aiding and abetting the murder were released in March 2009, as a result of numerous inconsistencies in the case, including doubtful forensic evidence and unreliable witness testimony. However, OPIM member Raúl Hernández, remained in jail on the grounds that two witnesses said they had seen him shoot the victim. After a drawn out process, Raúl's lawyers were finally able to prove the falsity of the witness statements and he was declared innocent and released on 27 August 2010. Following Raúl's acquittal, PBI, together with Amnesty International, are calling for an investigation into his unfounded prosecution and for him to be fully compensated for his unfair imprisonment. Members of OPIM continue to receive threats and harassment for their legitimate work against impunity and in defence of indigenous rights.

NICARAGUA

Hipólito Morales Mclaud

Submitted by Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua

El día veintidós de abril del año dos mil diecinueve la comunidad de San Jerónimo realizó una denuncia ante los funcionarios de gobierno municipal, regionales y nacionales a través de sus autoridades tradicionales (entre las estructuras tradicionales están los Wihta, Síndicos, el Consejo de Ancianos), el propósito de la denuncia sobre la presencia de los colonos o terceros en las comunidades indígenas quienes desarrollan actividades de explotación forestal, el extractivismo centrada en la minería y que han venido provocando situaciones de violencia; así mismo denunciaron sobre el proyecto de construcción de una carretera sin el consentimiento de la población de la comunidad de San Jerónimo. En este periodo, las autoridades tradicionales acompañando por el Sr Hipólito Morales Mclaud Wihta de la comunidad de San Jerónimo emprendieron algunos esfuerzos para proteger sus tierras, recursos naturales y su identidad cultural. Establecieron reuniones con los colonos y comunidades vecinas para presentar sus rechazos a los daños ambientales y el proyecto de construcción de una carrera.

Posteriormente el Sr Hipólito Morales M fue detenido en mayo del año dos mil diecinueve por la policía nacional del Municipio de Waspam y trasladado al Juzgado Distrito Penal de Bilwi, Circunscripción de la Región Autónoma de la Costa Caribe Norte. En dos ocasiones ha sido detenido por la misma causa penal, por los supuestos delitos de Robo Agravado, incendio y amenazas con arma, pero durante el juicio penal logramos demostrar su inocencia y fue absuelto. El Sr Morales estuvo tres meses encarcelado. Además debido a las presiones y maniobras de funcionarios de la alcaldía de Waspam simpatizantes del FSLN y grupos afines al gobierno fue destituido de su cargo en este mes de septiembre 2019.

PARAGUAY

Campeños en Curuguaty

As reported by Amnesty International⁵⁴

El 15 de junio de 2012, más de 300 agentes de policía acudieron a desalojar a alrededor de 70 campesinos que ocupaban unas tierras en el distrito de Curuguaty. La Fiscalía investigó únicamente la muerte de los seis policías, y determinó la presunta responsabilidad de varios campesinos.

Está previsto que el 22 de junio se dé inicio al juicio oral en Asunción en contra de 13 personas, incluida una mujer que era adolescente al momento de los hechos, por la muerte de los seis policías y otros presuntos delitos cometidos por los campesinos acusados relacionados con este caso.

“El ministerio público no ha garantizado la imparcialidad de la investigación y ha vulnerado el debido proceso. Nos preocupa que el caso está llegando a juicio arrastrando falencias importantes, como la inclusión de testigos mayoritariamente de la policía y el presunto manejo indebido del lugar de los hechos, que levantan dudas sobre la imparcialidad y la independencia con la que este proceso ha sido abordado hasta la fecha y sus consecuencias para que se lleve a cabo un juicio justo con todas las garantías del debido proceso”, ha dicho Guadalupe Marengo [Directora Adjunta del Programa de América].

Por otra parte, la defensa llevada adelante en el caso de la adolescente acusada por la Coordinadora de Derechos Humanos Paraguay (CODEHUPY), y otros abogados en el caso de 11 campesinos, ha alertado a Amnistía Internacional sobre otras fallas en la investigación y diversos obstáculos impuestos por las autoridades para ejercer una defensa adecuada de los acusados.

En diciembre de 2014 se notificó a los abogados de 11 campesinos la apertura de un sumario administrativo en su contra para investigar su conducta profesional durante el proceso judicial, argumentando que estaban haciendo un uso inadecuado de mecanismos procesales para retardar el proceso. Un órgano dependiente de la Corte Suprema debe todavía decidir sobre este sumario.

Raúl Marín

As reported by Amnesty International⁵⁵

Raúl Marín, a lawyer, Paraguay’s former Deputy Ombudsman and a human rights defender, has provided legal advice to communities and families claiming their right to decent housing, as part of the struggle for access to land. Raúl Marín has been the target of a campaign of vilification by the authorities and certain sectors of society because of his work defending the rights of the Marquetalia settlement community.

Raúl Marín is facing two criminal cases, both for trespass. In the first, (Case No. 11214 of 2015) he is alleged along with others to have been apprehended in flagrante while in the vicinity of the occupied property collecting money, been detained by members of Central Police Station 54 and placed at the disposal of the Public Prosecutor. The arrest warrant of 13 January 2016 indicates that the lawyer was arrested for obstruction of justice during a forced eviction of the urban community of San Lorenzo, without explaining what actions allegedly constituted obstruction. As a result of these charges, Raúl Marín was held in pre-trial detention for a month and then placed under house arrest; he remained under house arrest [as of 2018]. Raúl Marín has complained about several obstacles that are hampering his ability to adequately exercise his right to defence, including being denied access to his judicial file for several months.

The second criminal process initiated against Raúl Marín (Case No. 11789 of 2015) for trespass was based on a complaint from the Minister of the Interior in December 2015. The indictment issued by the Prosecutor's Office states that according to the preliminary investigations undertaken, as well as data in the fact-finding report prepared by the National Police and the statements of the head and deputy head of the police station and intervening officers of that jurisdiction, there is a reasonable and objective certainty that the accused would be an instigator of the criminal act of trespass. However, a review by Amnesty International of the procedural elements cited in the indictment did not find evidence that the lawyer instigated or participated in a crime.

PERU

Central de Rondas de Campesina de Tupen de la Provincia de Celendín, Región de Cajamarca

Submitted by EarthRights International

Los campesinos (Ronderos) que fueron criminalizados en este caso son:

1. Hither Ananías Rojas Gonzales con DNI N° 42482685. Procedencia: Centro Poblado de Yagen, distrito de Cortegana, provincia de Celendin.
2. Santos Huaman Julca con DNI N° 40559387. Procedencia: Chalcan, distrito de Miguel Iglesias, provincias de Celedin.
3. Elmer Lorenzo Saldaña Montoya con DNI N° 44627217. Procedencia: centro Poblado de Yagen, distrito de Cotegana, provincia de Celendín.
4. Exequiel Dávila Julca con DNI N° 27051904. Procedencia: Centro Poblado de Yagen, distrito de Cortegana, provincia de Celendin, departamento de Cajamarca.
5. Eladio Julca Julca con DNI N° 27052330. Procedencia: Centro Poblado de Yagen, distrito de Cortegana, provincia de Celendín.
6. Edi Julca Julca con DNI N° 41986337. Procedencia: Centro Poblado de Yagen, distrito de Cortegana, provincia de Celendín, departamento de Cajamarca.
7. Nelans Hamilton Rójas Gonzales con DNI N° 46343311. Procedencia: Centro Poblado de Yagen, distrito de Cortegana, provincia de Celendin.
8. Pedro Chavez Marin con DNI N° 42482683. Procedencia: Centro poblado de Yagen, distrito de Cortegana, provincia de Celendín.
9. Ruben Eduard Micha Garcia con DNI N° 46969888. Procedencia: Centro poblado de Yagen, distrito de Cortegana, provincia de Celendín.
10. William Quelcin Calla Rojas con DNI N° 45051220. Procedencia: Centro poblado de Yagen, distrito de Cortegana, provincia de Celendín.
11. Wilson Rojas Díaz con DNI N° 44553873. Procedencia: Centro poblado de Yagen, distrito de Cortegana, provincia de Celendín.
12. Richard Mayta Julca con DNI N° 41984683. Procedencia: Centro poblado de Yagen, distrito de Cortegana, provincia de Celendín

Del 25 al 28 de junio del año 2014, tres (3) trabajadores de la empresa Odebrecht irrumpieron sin autorización en los caseríos de Tupen y Yagen. Frente a este hecho, los ronderos de Central de Rondas Campesinas de Tupen, entre ellos, Hither Ananías Rojas Gonzales, Santos Huaman Julca, Elmer Lorenzo Saldaña Montoya, Exequiel Dávila Julca, Eladio Julca Julca, Edi Julca Julca , Nelans Hamilton Rójas Gonzales, Pedro Chavez Marin, Ruben Eduard Micha Garcia , William Quelcin Calla Rojas, Wilson Rojas Díaz y Richard Mayta Julca, les solicitaron que se retiren del lugar y luego los trasladaron al pueblo de Tupen, no sin antes haber levantado un acta de incautación.⁵⁶

Posteriormente, dos días después, la policía, el Fiscal de Laymebamba y los ronderos, tuvieron una reunión donde acordaron que los trabajadores de Odebrecht sean trasladados a Yagen y luego al Distrito de Chumuc. Luego, los trabajadores fueron puestos a disposición del Ministerio Público, todo esto, tras un acto de coordinación entre la ronda de Yagen y las autoridades estatales.

En ese marco, el Estado peruano, a través de la Fiscalía en lo penal, inició una denuncia contra los doce ronderos de Tupen, por el delito contra la libertad personal, en su modalidad de secuestro, en agravio de Alfonso Mego Bustamante, Roberto Palacios Bandan y Alex Rodríguez Zegarra, y solicitó treinta años de pena privativa de libertad para cada uno.

El proceso judicial duró más de cuatro años, y en su desarrollo, tres testigos, ex trabajadores de Odebrecht, desistieron de su declaración inicial y manifestaron que no fueron conducidos en contra de su voluntad, que no fueron víctimas de ningún tipo de lesión por parte de miembros de la comunidad, y en consecuencia que no fueron secuestrados.

Tras años de persecución penal, estigmatización y búsqueda de justicia, el 28 de septiembre, en el marco del juicio oral, el Fiscal de Celendín retiró los cargos frente al Tribunal, por considerar que en el proceso se probó que los ronderos actuaron con plena legitimidad legal de sus funciones jurisdiccionales y que no existía prueba alguna de la comisión de algún tipo de delito. Así, el Primer Juzgado Colegiado Supraprovincial de Cajamarca, decidió absolver a los doce ronderos de toda responsabilidad penal; dictando el sobreseimiento definitivo de la causa.⁵⁷

La denuncia judicial se da en un contexto donde las organizaciones sociales, como las Rondas Campesinas de Tupen, Yagen y Mendan, dieron a conocer su rechazo al proyecto “Chadin 2”, proyecto hidroeléctrico que se ubica en el río Marañón, que es uno de los ríos principales del país y uno de los principales afluentes del Amazonas. La oposición al proyecto Chadin 2 ha sido sostenido durante años, y hay argumentos legales y técnicos que indican la inviabilidad el proyecto. Para los pobladores del lugar represar el Río Marañón es atentar contra su vida, sus territorios y el medio ambiente.

Este grupo de ronderos, junto a otros pobladores con el apoyo legal de ERI y otras organizaciones, interpusieron una acción de amparo contra el proyecto hidroeléctrico Chadin 2, que se encuentra actualmente en curso.

César Estrada

As reported by Amnesty International⁵⁸

Indigenous social commentator, patrol member and human rights defender César Estrada initially faced criminal charges, along with two other patrol members, for abduction and aggravated robbery, in relation to actions which the campesino patrols consider to be part of their mandate. The prosecution based the charges on the testimonies of the people who were arrested by the patrols and on the statements of the accused.

Around noon on 11 December 2013, members of the Campesino Patrol of the Blue Lagoon Valley, in the district of Huasmín, province of Celendín, Cajamarca region, Peru, detained four people travelling in a vehicle within the territory of the campesino community and asked them for the reason for their presence in the region. When they checked the vehicle, patrol members found Yanacocha company contracts. As the people in the car had not mentioned that they had any kind of link with the company, and that this campesino community opposes mining by the company, the four people were taken to the community centre, which was a few hundred meters from where the vehicle stopped, to account for their presence. The patrol members offered the detainees lunch. Around 6pm, members of the campesino patrol took the four people to a spot on the road from where they returned to where they had come from.

However, the members of the patrol kept the car, arguing that they needed it to continue the investigation. They did not force the four detainees to leave their car as compensation, as the four claimed. The Blue Lagoon Valley campesino patrol invited the Prosecutor's Office to a meeting on 26 December 2013 to discuss coordination issues regarding security in the region and to hand over the car they had in custody.

César Estrada has denied participating in the detention of the four people and told Amnesty International that he and another of the patrol members accused arrived at the patrol house when the four people were already giving their explanations to the Assembly. César Estrada has maintained that he left the Assembly before 4pm because he had to return to work, that he helped write up the record of what happened, and that he returned to the community after the four people had already been released. César Estrada has faced various obstacles in exercising his right of defence. In addition to the shortcomings of the lawyer who was initially assigned to his case and who did not produce documentary evidence proving that he was not in the patrol but at work during the earlier part of incident.

On 11 July 2017, after three and a half years of proceedings, and after the closure of the evidentiary stage, the court stated during the public oral hearing that the actions could constitute extortion rather than abduction and aggravated theft. Faced with this new accusation, the defence lawyer claimed that neither César Estrada nor another of the patrol members that he was representing were present at the time of the arrest and that they only arrived at the patrol house after the

people had been arrested. He also insisted that the intervention of the campesino patrol took place within the framework of the jurisdictional powers granted to them by the Constitution. In addition, he noted that the crime of extortion was not committed because the campesino patrol never sought any advantage or economic retribution for the vehicle and, on the contrary, wanted to return it.

The Prosecutor's Office stated that the accused were responsible for the crime of extortion but did not link this conclusion with the evidence or provide evidence that they could have been committed this offence. Likewise, none of the evidence presented in the proceedings supported the allegation that the patrol or César Estrada in particular had sought any economic advantage. At no time during the proceedings was the Prosecutor's Office able to prove that César Estrada had committed a crime.

On 25 July 2017, the Supraprovincial Collegiate Criminal Court of Cajamarca sentenced César Estrada and another of the patrol members to 10 years' imprisonment without the possibility of parole for the crime of extortion and to a fine of 8,000 soles (approximately US\$2,470) for reparation. Their conviction is currently under appeal [as of 2018]. Amnesty International considers that this criminal process has been used to harass and intimidate César Estrada for his work defending human rights and to send a message to other members of the community that they should not continue their human rights work.

Conga Mining Project

As reported by Amnesty International⁵⁹

Sixteen community leaders claiming rights to a healthy environment and to territory in the context of the Conga mining project in the Cajamarca region, Peru, were indicted for aggravated abduction and subsidiary charges of coercion. Additionally, one of the leaders was accused of insulting national symbols (*ultraje a símbolos de la patria*). Among the accused leaders were the environmental defenders Milton Sánchez Cubas and Ramón Abanto Bernal, President and Assistant Secretary General, respectively, of the Institutional Platform of Celendín (*Plataforma Institucional de Celendín, PIC*), founded in 2009 to promote the defence of water and the environment against the possible environmental impacts of the mining operation. Also among the accused defenders was the leader of the Sorochuco community patrol, Emperatriz Bolaños Ayala.

The Public Prosecution's accusation was based on events that occurred on 26 April 2013, when at around 11am, some of the accused presented themselves at the Municipal Auditorium of Sorochuco to participate in a meeting which the then governors of Sorochuco and Celendín were attending. Subsequently, members of the community requested that the meeting be moved to the main square of the district so that the governors could report on how they were dealing with the issues to the general population. At the end of the meeting, one of the defendants

picked up a coat of arms of the Governorate and walked among the public carrying it, for which he was accused of insulting national symbols.

The Prosecutor's Office requested a penalty of 31 years and 8 months' imprisonment without the possibility of parole for the majority of the accused, and for one of them, 33 years and 6 months' imprisonment for the crime of abduction. As regards the charge of coercion, the prosecution called for a sentence of eight months without the possibility of parole for 13 defendants, and 16 months for three other defendants. In addition, the prosecution called for reparation of 4,000 nuevos soles (US\$1,235) as a form of solidarity with the defendants. For the person accused of insulting national symbols, the Prosecutor's Office requested in addition one year and four months imprisonment without the possibility of parole, as well as a 100-day-rate fine and reparation of 2,000 nuevos soles (US\$618).

After attending some of the hearings which formed part of the public oral debate, Amnesty International could not find any evidence submitted by the Prosecutor's Office that would link the human rights defenders with the crimes of abduction or coercion. The sole basis of the prosecution's accusations were the testimonies of the aggrieved parties, of others whose statements contained contradictions, and of a police official who admitted that he did not personally see the events described in the report and even pointed out that his sources of information were people who had "infiltrated" the march.

During the trial hearing of 28 March 2017, the Supraprovincial Court of Cajamarca, hearing the case in the second instance, declared the case to be baseless because in effect the Attorney General's Office had not fulfilled its constitutional function of providing evidence that could support conviction of the accused and that the accusation set out in the charge submitted for deliberation was weak and did not accurately identify the behaviour harmful to the legal rights of each of the accused, so it is impossible for the court to consider this case further at this stage.

Luciano Ataucuri Chavez

Submitted by EarthRights International

(Hay otros defensores ambientales denunciados en el mismo proceso judicial: Jaime Mantilla Chancuaña, Julian Alejo Ataucuri Mancilla, Victoria Quispesivina Corrales, Samuel Acero Hurtado, Urbano Cjula Caceres Esteban Alvis Ccahuana Wilber Garcia Huaycani Edgardo Aguirre Pacheco, Grimaldo Asto Puma. Todos los denunciados sono de diferentes comunidades y distritos, todos en la Provincia de Chumbivilcas.)

Luciano Ataucuri Chavez es actualmente presidente de la Federación Interprovincial de Defensa Territorial y Ambiental de Cotabambas, Chumbivilcas, Espinar, Paruro y Grau (FIDTA- CCHEPG) y de los líderes y lideresas ambientales víctimas de criminalización en el Perú.

En septiembre del 2011, los Frentes de Defensa, comunidades campesinas, organizaciones sociales de base, municipio, y población en general, luego de meses de acudir a las diferentes instituciones nacionales y regionales para solicitar que se proteja el medio ambiente, al no ser escuchados, acordaron realizar una protesta social, que comenzó el 14 de diciembre de 2011.

Las organizaciones sociales señalaron que, la protesta social se realizó porque, la empresa minera Anabi S.A.C. extrae Oro a tajo abierto; el agua que contamina discurre por el Río Molino, que es parte de la cabecera de una microcuenca que impacta en las comunidades de Antuyo, Totorá Palca, Capillania, Phusillo, Marcjahui, Ocra, Huatarussi y San Sebastián, del distrito de Llusco Collana; y contamina las comunidades que se encuentran al entorno de la carretera Quiñita – Arequipa por donde transportaba material minero de alta toxicidad (arsénico).

La protesta social inició el 14 de diciembre del 2011 y, continuó el 05 y 09 de enero de 2012 y febrero de 2012. En el desarrollo de la protesta se llevó a cabo el bloqueo de la carretera asfaltada de Santo Tomás a la comunidad de Quiñota, lo cual impidió que 03 flotas que transportaban 15 toneladas de nitrato de amonio, continuaran con su trayecto desde la ciudad de Arequipa a la comunidad de Quiñota, donde se encuentra la Empresa Minera Anabi. También, se produjo la destrucción del Campamento Minero de Anabi S.A.

Producto de la protesta social, la empresa minera presentó una denuncia penal contra diez líderes/as y/o dirigentes/as de las organizaciones sociales, por los delitos penales de entorpecimiento de los servicios de transporte, secuestro, disturbios y robo agravado y solicitó una pena de cárcel de 30 años para c/u de los defensores ambientales.

Desde el 2012 hasta el 2018, el Estado peruano por su parte, a través de la Fiscalía en lo penal de la provincia de Chumbivilcas, inició las investigaciones desde el momento de recepcionada la denuncia. Así, el proceso de investigación superó dos etapas del proceso judicial, con los cuestionamientos de la defensa técnica de los defensores ambientales contra el Fiscal y la Jueza que se encontraban a cargo del proceso de investigación por no respetar el debido proceso, su falta de transparencia, falta de imparcialidad y la instrumentalización del proceso penal para criminalizar a los defensores ambientales.

En enero del 2019 hasta la actualidad, se viene desarrollando el juicio oral, etapa procesal que debe culminar con una sentencia condenatoria o absolutoria de los defensores ambientales. Este último generará un precedente para los demás casos de criminalización contra los defensores ambientales.

El procedimiento legal o denuncia penal ha provocado que los reclamos por la contaminación ambiental producidos por la empresa minera Anabi S.A que los/las defensores/as ambientales cuestionaban, sean

invisibilizados y deslegitimados por la justicia peruana. Asimismo, ha logrado debilitar el liderazgo de los defensores ambientales en sus organizaciones comunales y locales.

Por otro lado, contrariamente, el Estado peruano no ha iniciado investigaciones penales y/o administrativas contra la empresa minera Anabi S.A. por los actos de contaminación ambiental ocasionados por la explotación y el transporte del mineral. Así mismo también hasta hoy nunca se inició las investigaciones de los policiales que hicieron abusos contra nuestros hermanos pobladores de Llusco y Quiñota.

Este caso, el impacto se ha dado de manera negativa, ya que los defensores ambientales hemos sido estigmatizados, perseguidos y cuestionados por nuestra labor de defensores ambientales. Asimismo, ha generado un impacto negativo en las comunidades, familias de corte emocional y psicológico, puesto que la persecución de los y las defensoras, no solo se da a través de este proceso, sino que contra ellos.

Estos procesos debilitan el movimiento social porque se utiliza el sistema de justicia para deslegitimar la lucha y la defensa del territorio, generando estigma y rechazo. Al interior de las organizaciones genera divisiones y problemas internos, como consecuencia de las mismas presiones.

De la misma forma es trabajar al cansancio tanto de las mineras y del estado, para que ningún poblador pueda denunciar de la vulneración de los derechos humanos, el abuso de las mineras. Y particularmente es también agotamiento de la fuerza emocional, económica, tiempo.

Máxima Acuña

As reported by Amnesty International⁶⁰

Environmental defender Máxima Acuña and her family, who promote human rights in the context of the Yanacocha company's Conga mining project in the Cajamarca region, have faced prosecution for almost five years on baseless charges of land invasion.

In August 2011 Maxima Acuña; her spouse, Chaupe Jaime Lozano; her eldest daughter, Isidora Chaupe Acuña; and her son-in-law, Elías Rodríguez Chaupe, were charged with land invasion. The Prosecutor's accusation was based on the fact that Maxima Acuña and her family had allegedly used violence to take possession of the land known as Tragadero Grande in the Cajamarca region, Peru, from the Yanacocha Mining company.



Maxima Acuña of Peru, Goldman Prize 2016, is indicted for fighting against the arrival of a mining company. Photo: Goldman Prize

Amnesty International had access to the judicial file of the criminal action against the defender and members of her family for land invasion and concluded that the Prosecutor's Office did not present any evidence to support the accusation that they entered the area known as Tragadero Grande through the use of violence and/or threats. Therefore, the organization considered that this process was being used as a form of harassment and intimidation against the defender, through the misuse of the justice system to obstruct and silence her work in defence of human rights.

In May 2011, before the criminal complaint was filed against her, Máxima Acuña and her husband had already accused Yanacocha mining company personnel of committing this same crime on 24 May when they had to leave the property they occupied. This complaint was closed on 11 August 2011, only a few months after it was filed and in the same month as the Yanacocha company requested that the police and the Prosecutor's Office come to remove the family from Tragadero Grande.

On 20 February 2017, the Prosecutor's Office opened a new investigation against several people who occupy managerial positions

in Yanacocha for alleged land invasion and for damages and tort regarding Máxima Acuña and Jaime Chaupe in relation to the protection of property actions exercised by the company on 4 October 2016 on the disputed property. On 8 November 2017 the criminal court judge in Celendín closed the investigation, at the request of the Prosecutor's Office. On 20 November 2017 the subsequent appeal filed by Máxima Acuña and her family was rejected.

The charges of land invasion against Máxima Acuña were finally definitively dismissed on 12 April 2017 by Peru's Supreme Court of Justice

Milton Sánchez Cubas

As reported by Amnesty International⁶¹ with additional submissions from EarthRights International

Environmental defender Milton Sánchez is currently a member and Executive Secretary of la Plataforma Interinstitucional Celendina de la provincia de Celendin, región de Cajamarca.

Sánchez told Amnesty International that he estimates that he has about 60 legal proceedings against him. He has been granted precautionary measures by the IACHR to protect his life and personal integrity because of the risks he faces. In the framework of the implementation of these precautionary measures, Milton Sánchez and other beneficiaries have requested that the authorities give them a list of criminal proceedings opened against each one of them, with the aim of exercising their right to information, as well as trying to exercise in the best way possible their right to defence. He told Amnesty International that approximately 300 people were facing legal proceedings just in relation to opposition to the Conga mining project because of its possible environmental consequences, especially on the lagoons and water sources in Cajamarca. He also indicated that at least 120 people were facing prosecution in relation to activities to defend and promote human rights in the context of the hydroelectric projects planned on the Marañón River.

In his own words, Sanchez explained:

En julio del 2015, la organización social denominada Plataforma Interinstitucional Celendina, inició una protesta social en rechazo a la empresa minera Newmont – Yanacocha, para proteger las lagunas de “Tragadero Grande”, predio que pertenece a una comunidad originaria y, donde, habita la familia de Máxima Chaupe .

Frente a ello, Estado peruano, a través de la Fiscalía Penal de Celendin, inició una investigación en mi contra, como autor del delito de disturbios (Art. 315 del CP) y solicitó siete años de pena privativa de libertad.

Luego de un proceso muy difícil este año (2019) el Poder judicial de Celendin emitió una sentencia absolutoria a mi favor, la cual fue ratificada por el Juzgado Penal Unipersonal de Celendín. Esto se dio debido a que la Fiscalía no pudo probar mi participación en la realización de un hecho delictivo.

En este caso, se han observado algunas situaciones particulares que permiten deducir una instrumentalización del sistema de justicia penal para la criminalización y estigma d ellos defensores ambientales, lideres/as y quienes manifestamos nuestro rechazo a los proyectos extractivos en nuestros territorios, que lo único que han dejado es más pobreza, contaminación, problemas sociales ambientales y graves problemas en la salud de las personas.

Este proceso es un ejemplo de cómo las empresas y el estado se apoyan, pues la denuncia fue presentada por la empresa minera Yanacocha, los únicos testigos en la investigación fueron contratados por la empresa minera, el proceso judicial tuvo una duración de casi cinco años debido a la suspensión constante de audiencias de juicio oral y la transgresión del derecho a un debido proceso. Es importante señalar que la empresa minera tiene un convenio de seguridad con la Policía Nacional del Perú.

Este es uno de los 60 (aproximadamente) procesos he tenido en mi contra por el ejercicio legítimo de mi derecho a la protesta y a exigir respeto por parte de la empresa y el Estado. Algunos procesos están abiertos y otros han sido archivados, pero el estigma y el daño personal y familiar es muy grande.

La denuncia penal se presenta en mi contra por mi calidad de defensor y líder de la Platadorma Interinstitucional Celendina y por participar en la defensa del medio ambiente y el territorio, como, por ejemplo, la defensa de la “laguna azul”. Este caso se dio como consecuencia de mi participación en actos de protesta social contra la empresa Newmont/Yanacocha.

La denuncia penal ha generado problemas organizacionales, ya que, a través del proceso judicial, se ha intentado deslegitimar los pedidos de protección de la Laguna Azul. También, ha generado un impacto negativo a nivel personal y familiar, ya que durante años he tenido que estar muy pendiente de los actuados en el proceso judicial, un mecanismo legal que sólo conocen los abogados, lo cual genera más mayor desesperación. El daño emocional por el estigma y la persecución es algo que no puedo describir, es sentirse todo el tiempo en constante amenaza.

Tintaya Mining Project

As reported by Amnesty International⁶²

Oscar Mollohuanca Cruz, former mayor of Espinar, and Herbert Huamán and Sergio Huamani Hilario, former president and vice president respectively of the United Front for the Defence of the Interests of Espinar (Frente Único de Defensa de los Intereses de Espinar, FUDIE), are currently facing criminal proceedings which could be directly related to their role as human rights defenders and their organization of and participation in the protests of May 2012 to demand amendments to the commitments agreed by the company with the campesino communities, relating to operation of the Antapaccay extension of the Tintaya mine.

Oscar Mollohuanca Cruz, Herbert Huamán and Sergio Huamani Hilario face charges of acts prejudicial to public security, obstruction of public highways and riot. The Prosecutor's Office has called for sentences of eight years' imprisonment without the possibility of parole for the first offence and seven for the second and third, as well as the payment of civil compensation of 100,000 nuevos soles (US\$30,686). Initially, the community leaders had also been accused of incitement to commit a crime. However, this charge was declared inadmissible by Ica Investigation Court No. 1 in November 2014. The same court dismissed the case against a fourth person accused of illegal possession of ammunition in the context of the same protests, because there was no evidence to support this and what there was "could have been planted."

The actions on which the accusations are based date back to 2012, when many people from Espinar took to the streets and declared a strike between 21 and 29 May in support of their demand for amendments to the conditions set out in the Framework Agreement on issues such as the environment and services for the community in relation to the Antapaccay extension to the Tintaya mine. Derechos sin Fronteras described to Amnesty International how the police used excessive force including slingshots, dogs, horses, and tear gas to disperse people protesting peacefully; two people died, 15 protesters and 30 police officers were injured and 19 people were detained.

According to the sections of the file that Amnesty International has been able to access, the three community leaders are accused of organizing, coordinating and calling the marches, as well as a degree of prior organization. On the basis of people's participation in the protests, the Prosecutor's Office considered that when a crime is committed through mass unrest, all the participants cannot be identified, however, all those who are identified can be considered responsible; consequently, all those involved in the struggle against mining activity are considered to have fomented disorder through serious attacks on another's physical integrity or property, even though they did not themselves personally carry out such acts.

The prosecution's accusations against human rights defenders are based solely on their role as community leaders, automatically considering them to be organizers of the demonstrations and

responsible for any damage or crime caused; this is in contravention of international human rights standards. On 17 July 2017, the First Unipersonal Court of Ica found the three community leaders not guilty, on the grounds that the Prosecutor's Office had failed to show probable cause for the offences imputed.

However, on 7 August 2017 the Prosecutor's Office lodged an appeal against the decision, which was granted on 15 August 2017, and the case was referred to the President of the Ica Criminal Appeals Chamber where it remained pending [as of 2018].

Las Bambas Mining Project

As reported by Amnesty International⁶³

Several community leaders working to defend human rights in the context of the Las Bambas mines interviewed by Amnesty International also indicated that they were being prosecuted for conspiracy in connection with the protests in September 2015. According to a leader in the Apurímac region, there have been around 300 charges since 2010 for crimes such as abduction, coercion or blocking public roads.

Walter Aduriri

As reported by the U.N. Special Rapporteur on the rights of indigenous peoples⁶⁴

Aymara leader Walter Aduriri . . . was sentenced to seven years in prison in July 2017 on charges of causing disturbances in the context of protests against mining concessions in the Puno region of Peru.

ENDNOTES

¹ This report was coordinated by Romina Picolotti with the assistance of Jessica Lutkenhaus and Kelsey Quigley. We especially appreciate expert input from Dinah Shelton, Viviana Krsticevic, David Boyd, Maria Leoni, and Juliana Valencia, as well as all the organizations and victims who sent information to make this report possible.

² See John H. Knox, United Nations Special Rapporteur on Human Rights and the Environment, *Environmental Human Rights Defenders: A Global Crisis*, at 2-5 (Feb. 2017), <https://www.universal-rights.org/wp-content/uploads/2017/03/EHRDs.pdf> (describing the “scale of the crisis” facing environmental defenders, including increasing threats and murders).

³ To avoid potential catastrophe, we should limit global warming to 1.5 degrees centigrade. V. Ramanathan, M.L. Molina, D. Zaelke, N. Borgford-Parnell, Y. Xu, M. Auffhammer, P. Bledsoe, W. Collins, B. Croes, F. Forman, O. Gustaffson, A. Haines, R. Harnish, M.Z. Jacobson, S. Kang, M. Lawrence, D. Leloup, T. Lenton, T. Morehouse, W. Munk, R. Picolotti, K. Prather, G. Raga, E. Rignot, D. Shindell, A.K. Singh, A. Steiner, M. Thiemens, D.W. Titley, M.E. Tucker, S. Tripathi, & D. Victor, *Well Under 2 Degrees Celsius: Fast Action Policies to Protect People and the Planet from Extreme Climate Change*, Institute for Governance & Sustainable Development, at vii, 7-8 (2017), <http://ramanathanold.ucsd.edu/files/FULLlowresWellUnder2DegreesDigitalVer.pdf>.

⁴ IPCC, 2018: Summary for Policymakers, p. 5. In: *Global Warming of 1.5°C*. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)], https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf.

The Intergovernmental Panel on Climate Change (“IPCC”) is the United Nations body responsible for evaluating scientific knowledge related to climate change. It was established in 1988 by the United Nations Environment Programme (“UN Environment”) and the World Meteorological Organization (“WMO”) in order to provide policymakers with periodic scientific evaluations of climate change, its implications, and future potential risks, and to propose adaptation and mitigation strategies. It has 195 Member States. The assessments of the IPCC provide governments, at all levels, scientific information that they can use to develop climate policies. They also constitute a fundamental contribution in international negotiations aimed at tackling climate change. The IPCC reports are prepared and revised in various phases, thus guaranteeing objectivity and transparency. The IPCC evaluates thousands of scientific articles that are published each year to inform policymakers about what we know and do not know about the risks related to climate change.

⁵ The special report published by the IPCC warns us that if we want to have a 67% change of limiting global warming to at least 1.5 degrees centigrade, by January 1, 2018 there were 420 giga-tons of carbon dioxide remaining in our global budget of total carbon dioxide, and we emit around 42 giga-tons of carbon dioxide every year. IPCC, 2018: Summary for Policymakers, at 12. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)], https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf.

⁶ Amnesty International, A Recipe for Criminalization: Defenders of the Environment, Territory and Land in Peru and Paraguay, at 4 (2018), <https://www.amnesty.org/download/Documents/AMR0181582018ENGLISH.PDF>.

⁷ See Inter-American Commission on Human Rights, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, 31 December 2015 Original: Spanish, at para. 42 (noting that human rights defenders generally are “ever more systematically and repeatedly” facing criminalization).

⁸ Michel Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders, They Spoke Truth to Power and Were Murdered in Cold Blood, at 21 (2016), https://www.protecting-defenders.org/sites/protecting-defenders.org/files/environmentaldefenders_0.pdf

⁹ John H. Knox, United Nations Special Rapporteur on Human Rights and the Environment, Environmental Human Rights Defenders: A Global Crisis, at 10 (Feb. 2017), <https://www.universal-rights.org/wp-content/uploads/2017/03/EHRDs.pdf>

¹⁰ See Victoria Tauli-Corpuz, Report of the Special Rapporteur on the Rights of Indigenous Peoples, U.N. Doc. A/HRC/39/17, 10 August 2018 Original: English, at para. 4, 27, <https://undocs.org/en/A/HRC/39/17>; Inter-American Commission on Human Rights, Criminalization of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49, 31 December 2015 Original: Spanish, at para. 48.

¹¹ In some cases, States establish legal mechanisms and practices so that the National Police, which normally completes the first acts of investigation, facilitates private security for mining businesses and gas companies to guarantee the continued extraction of natural resources. EarthRights International, Instituto de Defensa Legal & Coordinadora Nacional de Derechos Humanos, Informe: Convenios entre la Policía Nacional y las empresas extractivas en el Perú: Análisis de las relaciones que permiten la violación de los derechos humanos y quiebran los principios del Estado democrático de Derecho (2019), <https://earthrights.org/wp-content/uploads/Informe-Convenios-entre-PNP-y-empresas-extractivas.pdf>.

¹² See Amnesty International, A Recipe for Criminalization: Defenders of the Environment, Territory and Land in Peru and Paraguay, at 15-22, 27-28 (2018), <https://www.amnesty.org/download/Documents/AMR0181582018ENGLISH.PDF>.

¹³ Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, 31 December 2011 Original: Spanish, at para. 109, <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>. The Commission specifically highlighted psychological effects of unwarranted prosecution, including anguish, fear, insecurity, stigmatization, tension, and frustration. *Id.* See also Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 5 rev. 1, 7 March 2006 Original: Spanish, para. 179, <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf> (“[C]riminal proceedings are instituted without any evidence, for the purpose of harassing the members of the organizations, who must assume the psychological and economic burden of facing a criminal indictment.”).

¹⁴ Global Witness, Enemies of the State? How Governments and Business Silence Land and Environmental Defenders, at 8 (July 2019), <https://www.globalwitness.org/en/campaigns/environmental-activists/enemies-state/>.

¹⁵ Amnesty International, A Recipe for Criminalization: Defenders of the Environment, Territory and Land in Peru and Paraguay, at 4 (2018), <https://www.amnesty.org/download/Documents/AMR0181582018ENGLISH.PDF>.

¹⁶ Peace Brigades International, Criminalisation of Human Rights Defenders, at 2-3 (2012), https://www.peacebrigades.org/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf.

¹⁷ Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), 16 November 1999, A-52, <https://www.refworld.org/docid/3ae6b3b90.html>.

¹⁸ *Id.*

¹⁹ John H. Knox, United Nations Special Rapporteur on Human Rights and the Environment, Environmental Human Rights Defenders: A Global Crisis, at 14 (Feb. 2017), <https://www.universal-rights.org/wp-content/uploads/2017/03/EHRDs.pdf>.

²⁰ *See id.* at 15.

²¹ *See id.* at 15-16.

²² Inter-American Commission on Human Rights, Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II. Doc. 207, 29 December 2017 Original: English, at para. 9, <https://www.oas.org/en/iachr/reports/pdfs/Defensores-eng-2017.pdf>.

²³ *Id.*

²⁴ I/A Court of H.R., Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No. 283, para. 142.

The Inter-American Court of Human Rights found that States have an obligation to protect environmental defenders at risk of human rights violations in *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of 3 April 2009. Series C No. 196, para. 149 (“The recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work.”). For discussion of this case, see Lauri R. Tanner, *Kawas v. Honduras – Protecting Environmental Defenders*, 3 *Journal of Human Rights Practice* 309 (2011), <https://www.ohchr.org/Documents/Issues/Business/ForumSession4/LauriTanner.pdf>.

²⁵ American Convention on Human Rights, 1144 U.N.T.S. 123, art. 8, 25, entered into force 18 July 1978, <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf>; International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 2, 9, 14, entered into force on 23 March 1976 for all provisions except those of article 41, https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf.

²⁶ United Nations, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, March 1999, <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

²⁷ Victoria Tauli-Corpuz, Report of the Special Rapporteur on the Rights of Indigenous Peoples, U.N. Doc. A/HRC/39/17, 10 August 2018 Original: English, at para. 12, <https://undocs.org/en/A/HRC/39/17>.

²⁸ United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

²⁹ Michel Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders, They Spoke Truth to Power and Were Murdered in Cold Blood, at 23 (2016), https://www.protecting-defenders.org/sites/protecting-defenders.org/files/environmentaldefenders_0.pdf.

³⁰ *Id.*

³¹ John H. Knox, United Nations Special Rapporteur on Human Rights and the Environment, Environmental Human Rights Defenders: A Global Crisis, at 21 (Feb. 2017), <https://www.universal-rights.org/wp-content/uploads/2017/03/EHRDs.pdf>.

³² Centro de Derechos Humanos y Ambiente, El Costo Humano de defender el Planeta: Criminalización de Defensoras y Defensores del Ambiente en Argentina (forthcoming 2019).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Dr. Yesid Blanco's Story, ICAR, <https://www.icar.ngo/dr-yesid-blanco-story>.

⁴⁰ Peace Brigades International, Criminalisation of Human Rights Defenders (2012), https://www.peacebrigades.org/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf

⁴¹ Amnesty International, "So that no one can demand anything": Criminalizing the Right to Protest in Ecuador? (2012), <https://www.amnesty.org/download/Documents/20000/amr280022012en.pdf>

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ MiningWatch Canada, In the National Interest? Criminalization of Land and Environment Defenders in the Americas 29-31 (2015), https://miningwatch.ca/sites/default/files/inthenationalinterest_fullpaper_eng_1.pdf

⁴⁶ *Id.*

⁴⁷ Peace Brigades International, Criminalisation of Human Rights Defenders (2012), https://www.peacebrigades.org/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf

⁴⁸ *Id.*

⁴⁹ For more information, see, e.g. *Violan derechos humanos de ambientalistas en Honduras*, PRENSA LATINA (Sept. 13, 2019), <https://www.prensa-latina.cu/index.php?o=rn&id=305432&SEO=violan-derechos-humanos-de-ambientalistas-en-honduras>.

⁵⁰ Article 19, Center for International Environmental Law & Vermont Law School, A Deadly Shade of Green: Threats to Environmental Human Rights Defenders in Latin America (2016), https://www.article19.org/data/files/Deadly_shade_of_green_A5_72pp_report_hires_PAGES_PDF.pdf.

⁵¹ MiningWatch Canada, In the National Interest? Criminalization of Land and Environment Defenders in the Americas 29-31 (2015), https://miningwatch.ca/sites/default/files/inthenationalinterest_fullpaper_eng_1.pdf

⁵² John H. Knox, United Nations Special Rapporteur on Human Rights and the Environment, *Environmental Human Rights Defenders: A Global Crisis* 9 (Feb. 2017), <https://www.universal-rights.org/wp-content/uploads/2017/03/EHRDs.pdf> (footnotes and internal quotation marks omitted)

⁵³ Peace Brigades International, *Criminalisation of Human Rights Defenders* (2012), https://www.peacebrigades.org/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf

⁵⁴ Amnesty International, *Paraguay: Continúa la impunidad a tres años de las muertes en Curuguaty* (June 15, 2015), <https://www.amnesty.org/es/latest/news/2015/06/paraguay-continua-la-impunidad-a-tres-anos-de-las-muertes-en-curuguaty/>.

⁵⁵ Amnesty International, *A Recipe for Criminalization: Defenders of the Environment, Territory and Land in Peru and Paraguay*, at 23 (2018), <https://www.amnesty.org/download/Documents/AMR0181582018ENGLISH.PDF>.

⁵⁶ Disposición de formalización y continuación de investigación preparatoria, Disposición N° 04-2014-MP- FPM- MIGUEL IGLESIAS, de fecha 19 de diciembre del 2014. Ministerio Público- Fiscalía Provincial Mixta Miguel Iglesias.

⁵⁷ EarthRights International, *Defensores ambientales del Río Marañón le ganan en juicio a Odebrecht* (Oct. 3, 2018), <https://earthrights.org/blog/defensores-ambientales-del-rio-maranon-le-ganan-en-juicio-a-odebrecht/>.

⁵⁸ Amnesty International, *A Recipe for Criminalization: Defenders of the Environment, Territory and Land in Peru and Paraguay*, at 30-33 (2018), <https://www.amnesty.org/download/Documents/AMR0181582018ENGLISH.PDF>.

⁵⁹ *Id.* at 33-34

⁶⁰ *Id.* at 30-31 (footnote omitted).

⁶¹ *Id.* at 29.

⁶² *Id.* at 29, 34-35.

⁶³ *Id.* at 29-30

⁶⁴ Victoria Tauli-Corpuz, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/39/17, 10 August 2018 Original: English, at para. 67, <https://undocs.org/en/A/HRC/39/17>.