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Human Rights Defenders Working on Land & Environmental Issues Recommendations for States and Multilateral Bodies

Human Rights Defenders and Women Human Rights Defenders ((W)HRDs) are key players in the field of business and human rights. Yet too often (W)HRDs lack basic guarantees for their security, and are subject to smear campaigns and legal persecution designed to impede their work with rights holders and victims. According to Global Witness, at least 908 defenders have been killed since 2002 in the context of increased competition for the use of land and natural resources. The legal system is often stacked against them too; a paradoxical logic pervades in which (W)HRDs will face spurious charges and arbitrary treatment before the law, while at the same time investigations into attacks against defenders themselves languish in impunity. The upshot of repressive tactics is that affected communities and individuals are less able to reclaim their rights while the likelihood of further violations increases. To improve access to justice, promote rights-awareness in communities, and to prevent future violations from occurring, it is essential that (W)HRDs' work is fully enabled by states, companies, and multi-lateral bodies.

1. A Preventative Approach: Mainstreaming (W)HRD Protection in Business and Human Rights Policy

States have at their disposal a raft of international standards and guidance on supporting and protecting (W)HRDs at risk. These include national laws and policies, multi-state mechanisms such as the EU Guidelines on HRD Protection, and the recommendations of UN and Regional experts and Special Procedures, including the Working Group on TNC's and Human Rights. Although implementation remains inconsistent, we have seen examples of good practice by international embassies that have enhanced defenders security and enabled their work. These include office and field visits by embassy staff to meet with (W)HRDs, publically or privately raising cases of concern with local authorities and companies, trial observation, lobbying for stronger security measures, accompanying defenders to meetings with authorities, and holding events and awards ceremonies to recognise their work in defence of human rights.

In spite of some positive examples there is a lot more that states can be doing. The National Action Plans (NAPs) offer an opportunity for states to fully synergise policy on (W)HRDs with policy on business and human rights. The NAP provides a platform to establish a more coherent approach across government and to fully articulate to companies the need to respect and protect the work of (W)HRDs. While the UN Guiding Principles do refer in passing to defenders, PBI considers that operational mechanisms like the NAPs need to go much further in outlining why and how protection and promotion of (W)HRDs is essential. In summary, government policy related to business and human rights, especially NAPs, should:

- Promote a more comprehensive strategy to protect (W)HRDs working in this field, drawing on existing international mechanisms and guidelines.
- Clearly demonstrate how this approach will be implemented and communicated with key stakeholders including companies and (W)HRDs themselves.
- Ensure coherency at all relevant levels of government regarding policy on protecting (W)HRDs, including in the design, implementation, and monitoring of trade policy.

2. Stronger Legal Safeguards to Defend Rights: Countering Criminalisation & Impunity

PBI has observed an increasing criminalisation of defenders who work on land and natural resource issues, by means of groundless accusations, investigations, and judicial processes. The UN Special Rapporteur for HRDs asserts that basic procedural rights “are often ignored,” pointing to excessively long periods of detention, the filing of investigations and charges without evidence, and the use of unreliable or uncorroborated evidence. Legal persecution is a burden on (W)HRDs and their organisation in terms of financial and human resources, reputational damage, and personal wellbeing, and can serve to impede or even paralyse their work. This situation leads to a weakening of the rule of law, a situation that unscrupulous businesses are able to exploit. The IACHR affirms that “often, the owners who manage megaprojects or the staff who work on them are the ones lodging criminal complaints against defenders for the purpose of reducing their activities of defence of their rights.”

States need to take tougher action to combat criminalisation of HRDs working on business and human rights issues. Diplomatic missions are often reluctant to intervene in cases of criminalisation in case their actions are regarded as political interference. While by its nature criminalisation is a complex issue to address, if left unchallenged it undermines both judicial independence and the rule of law. Equally, the inability of many states to investigate and prosecute attacks against (W)HRDs exposes the fragility of the justice system and leaves the door open for further violations. To address this situation, States should:

- Increase efforts to promote and embed the right to a fair trial and due process of law as fundamental rights, especially where the rights HRDs are violated.
- Promote more effective monitoring and oversight mechanisms to identify, eliminate and redress common abuses of due process and right to a fair trial.
- Clearly outline the responsibility of business enterprises to respect the work of (W)HRDs, including by respecting their right to freedom of expression, assembly, and association.

3. A Better Seat at the Table: Addressing Flawed Participatory Processes

(W)HRDs play a key role in advising and representing affected communities and individuals in processes of dialogue and consultation with States and companies. They are also an important stakeholder voice in the design and implementation of national policy on issues of development and business and human rights. However, in practice defenders claim that there is often a lack of political will to meaningfully accommodate their views. In other instances, PBI has observed that defenders who engage in participatory processes are subsequently recipients of intimidation, attacks, criminalisation, and smear campaigns intended to undermine their position and to dissuade them from participating. To address this issue, states should:

- Promote more effective and meaningful participation of (W)HRDs in processes that they chose to engage, ensuring that adequate security guarantees are in place.

UN FORUM EVENT: PBI, OMCT, FIDH, Franciscans International

Improving protection and ensuring participation of land and environment defenders in all business initiatives and discussions

Weds 3rd December 08:00 - 09:30 Room IX

Hila Elver, UN Special Rapporteur on the Right to Food (video message)
HRDs from Colombia, Honduras, Philippines. Representatives from CIDSE and OMCT