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Situation of human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, in accordance with General Assembly resolutions 66/164 and 68/181 and Human Rights Council resolutions 16/5 and 25/18.

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Report of the Special Rapporteur on the situation of human rights defenders

Summary

The present report highlights the situation of environmental human rights defenders. In his report, the Special Rapporteur raises alarm about the increasing and intensifying violence against them. He makes recommendations to various stakeholders in order to reverse this worrying trend and to empower and protect those defenders, for the sake of our common environment and sustainable development.

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I. Introduction

1. The present report is dedicated to the heroic activists who have braved the dangers facing them and defended the rights of their communities to a safe and healthy environment, to a future with dignity and respect, and to their traditional land and livelihood. They spoke truth to power, and were murdered in cold blood. This happened in Honduras, where the renowned environmental campaigner Berta Cáceres and her colleague Nelson García from the Civic Council of Popular and Indigenous Organizations of Honduras were slain one after another in March 2016, for having opposed hydroelectric dams in the sacred Gualcarque river basin.[1] The tragedy is common in the Philippines, where indigenous defenders of the Manobo community in Mindanao were murdered in September 2015.[2] Attacks and killings of environmental and indigenous rights defenders in Mato Grosso Do Sul, Brazil, have continued with impunity.[3] In South Africa, prominent defender Sikhosiphi Rhadebe was assassinated at his home on 22 March, after reportedly being put on a "hit list" of opponents to mining operations in Xolobeni.[4] These are not isolated cases. On average, three environmental activists were murdered each week in 2015.[5]

2. The present report raises alarm about the shocking rate of killings, as well as threats, harassment and intimidation, of environmental human rights defenders. The Special Rapporteur wishes to convey to Member States that the killing of environmental human rights defenders is only the tip of the iceberg. He calls on States to address the disturbing trend of increasing violence, intimidation, harassment and demonization of the brave individuals and groups who strive to defend and promote environmental and land rights. His observations and recommendations aim to elicit greater recognition of the role of environmental human rights defenders, afford them better protection and empower them to continue their legitimate human rights activities.

3. It is the duty of the State to respect the right of everyone to promote and protect a safe, clean, healthy and sustainable environment, necessary for the enjoyment of a vast range of human rights. The State has a parallel duty to protect environmental human rights defenders from violations committed by both State and non-State actors. Nevertheless, international human rights law makes it clear that business enterprises, the media and other non-State actors are obliged to respect human rights obligations and refrain from contributing to or committing violations. The Special Rapporteur is therefore seriously concerned about the worrying numbers of killings and violence that, without doubt, underestimate the true extent of threats and risks facing environmental human rights defenders.

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[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19864&LangID=E; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18481&LangID=E; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19805&LangID=E.

[2] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16481.

[3] Communication to Brazil (BRA 7/2015) dated 9 October 2015, available from https://spdb.ohchr.org/hrdb/31st/public_-_UA_Brazil_09.10.15_(7.2015).pdf; end of mission statement by the Special Rapporteur on the rights of indigenous peoples on her visit to Brazil, 17 March 2016, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18498&LangID=E.

[4] Communication to South Africa (ZAF1/2016) dated 31 May 2016.

[5] Global Witness, *On Dangerous Ground* (2016). Available from www.globalwitness.org/fr/reports/dangerous-ground/.

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

5. The Special Rapporteur stresses that it is the responsibility of the international community and of States to empower and protect environmental human rights defenders, especially as the 2030 Agenda has engendered high hopes among civil society. He hopes that his report will guide all stakeholders in their future efforts to implement these and other important objectives, while remembering that empowering environmental human rights defenders is crucial to the protection of our environment and all other related human rights.

Methodology

6. In his report the Special Rapporteur draws from primary and secondary sources of information. In order to consult a broad range of actors, the Special Rapporteur launched a public call for inputs on the subject of environmental human rights defenders,[6] seeking submissions on a set of questions touching on the threats and challenges facing them as a result of their work; root causes underlying those threats and challenges; specific actors playing a role in that connection; and effective measures taken to overcome those challenges. As a result, he received 30 submissions from States, civil society organizations and human rights defenders. He has also drawn from seven regional consultations with defenders (see A/70/217), as well as from communications that he has sent to States on alleged violations against individual or groups of environmental human rights defenders.[7] He has also reviewed the wealth of reports on the subject issued by civil society. Finally, the Special Rapporteur convened an expert meeting on the situation of environmental human rights defenders on 4 and 5 July 2016 in Florence, Italy.

II. Normative framework

7. For the purposes of the present report, the term “environmental human rights defenders” refers to individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna. Land and environmental rights are interlinked and are often inseparable. As a result, the two broad categories of defenders advocating for the environment and for land rights are often characterized as “land and environmental rights defenders”, “environmental rights defenders”, or just “environmental activists”. The report defines those defenders through the inclusive term “environmental human rights defenders”, whose

[6] See www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Environmental.aspx.

[7] Communications can be found in the annual reports of the Special Rapporteur, available from www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx, or communications reports of special procedures, available from www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

rights to exercise such fundamental freedoms as the rights to expression, privacy, association and peaceful assembly have been enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. With regard to exercising the right to protect environmental and land rights, article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms — the Declaration on Human Rights Defenders — further holds that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels".

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

9. Owing to word limitations on documents and the vast literature on the subject, the Special Rapporteur will not delve here into a comprehensive analysis of diverse international human rights norms relevant to the protection of environmental human rights defenders; he will only outline the applicable normative framework. With regard to the sphere of activities of environmental human rights defenders, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights share a common article 1, which refers to the right of self-determination, by virtue of which all peoples freely determine their political status, pursue their economic, social and cultural development, and dispose of their natural wealth and resources. The Declaration recognizes the legitimacy of the defence of environmental rights by acknowledging the "valuable work" of human rights defenders in the elimination of violations, including those resulting from "the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources".

10. The mandate has consistently held that the protection accorded to defenders by the Declaration is not dependant on whether the focus of their work is on civil and political or economic, social and cultural rights (see, for example, A/HRC/4/37, paras. 27-30, and A/HRC/19/55, paras. 61-63). As recently as March 2016, the Human Rights Council adopted resolution 31/32 on protecting defenders addressing economic, social and cultural rights, reaffirming the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues and development.

11. The State's primary responsibility to protect the rights to life, liberty and security of person is enshrined in article 3 of the Universal Declaration and in articles 6 (1) and 9 (1) of the International Covenant on Civil and Political Rights. This obligation is further emphasized in the Declaration on Human Rights Defenders, in particular in its articles 2, 9 and 12. Both negative and positive aspects are included: on the one hand, States must refrain from violating the rights

of human rights defenders; on the other hand, they should act with due diligence to prevent and investigate human rights violations and bring the perpetrators to justice.

12. The State's obligation to provide an effective remedy for violations is affirmed in article 2 (3) (a) of the International Covenant. Article 9 of the Declaration further holds that defenders have the right to benefit from an effective remedy and to be protected in the event of violations. Prompt and impartial investigations into alleged violations, prosecution of the perpetrators regardless of their status, provision of redress, including appropriate compensation to victims, and enforcement of the decisions or judgments are fundamental in order to ensure the right to an effective remedy. Failure to take these actions leads to further attacks against defenders, resulting in a climate of impunity (see A/58/380, para. 73, and A/65/223, para. 44).

13. The Special Rapporteur underlines the importance of the right of environmental human rights defenders to participation in the conduct of public affairs and decision-making, enshrined in article 25 (a) of the International Covenant and article 8 of the Declaration. That right is said to include the right to submit to the relevant governmental agencies criticism and proposals for improving their functioning and to draw attention to any aspect of their work that hinders or impedes the realization of human rights. The Rio Declaration on Environment and Development, as well as other prominent commitments, reaffirmed the importance of public participation.

14. International instruments protecting the rights of specific populations also guarantee their right to participation. The obligation to consult, with the objective of obtaining the free, prior and informed consent of indigenous peoples concerning legislative or administrative measures that may affect them directly, is established in the United Nations Declaration on the Rights of Indigenous Peoples (arts. 18 and 27) and in the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO). Furthermore, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities provides for the right of minorities to participation (arts. 2 and 4).

15. Transparency and access to information are directly linked to the right to seek, obtain and impart information, which is stated in article 19 of the International Covenant, as well as article 6 of the Declaration on Human Rights Defenders. Article 14 of the Declaration provides that States have the responsibility to take legislative, judicial and administrative measures to promote the understanding by all persons under their jurisdiction of their human rights, including through the publication and widespread availability of laws and regulations.

16. In their reports, previous Special Rapporteurs have stated that the key elements of guaranteeing a safe and enabling environment for human rights defenders, including environmental human rights defender, are adoption of a conducive legal and institutional framework; the fight against impunity and access to justice; establishment of a strong national human rights institution; effective protection policies and mechanisms; respect and support by non-State actors of the work of defenders; a robust community of defenders; and others (see, for example, A/HRC/25/55).

17. In his 2013 report, the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/25/53) outlined human rights obligations relating to the

environment drawn from international agreements and the bodies charged with interpreting them. The threefold duties include: (a) procedural obligations of States to assess environmental impacts on human rights and to make environmental information public; to facilitate participation in environmental decision-making; and to provide access to remedies for environmental harm; (b) substantive obligations of States to adopt legal and institutional frameworks that protect against environmental harm, including harm caused by private actors; and (c) non-discrimination and other obligations of States relating to the protection of groups in vulnerable situations, including women, children and indigenous peoples.

18. While States are bound by international human rights law, non-State actors are required to respect human rights, including the right to defend environmental and land rights. Transnational corporations and other business enterprises must respect human rights, as set out in the Guiding Principles on Business and Human Rights. The Guiding Principles aim to implement the United Nations "Protect, Respect and Remedy" Framework, which rests on three pillars: the State duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to respect human rights; and the need for access to an effective remedy for victims of business-related human rights abuses (see A/HRC/17/31, para. 6).

19. Furthermore, the Guiding Principles require that companies identify and assess any actual or potential adverse human rights impacts through meaningful consultation with potentially affected groups, as an integral part of their responsibility to respect human rights. Such impact assessments should be carried out not only at the start of a new project, but also throughout the life cycle of the project, prior to any significant changes in the operating context (see A/68/262, para. 44).

20. The Special Rapporteur supports Human Rights Council resolution 26/9 on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, and believes that such an instrument would be timely. He urges the open-ended intergovernmental working group established pursuant to the resolution to fully consider the heightened risk posed by business activities to environmental human rights defenders in negotiations.

21. The Special Rapporteur appreciates the rights-based approach of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), which requires States parties not only to guarantee those rights, but to ensure that persons exercising them are not penalized, persecuted or harassed in any way.[8] He encourages more States to accede to the Convention, thus putting in place the dual protections for the environment and human rights.

22. The Special Rapporteur notes with satisfaction the ongoing negotiations in Latin America and the Caribbean on the application of principle 10 of the Rio Declaration on Environment and Development,[9] and urges the parties to expedite the conclusion of the agreement in the light of the urgency of the situation, described in the following section. He urges the Economic Commission for Africa (ECA) and the

[8] See www.unece.org/env/pp/contentofaarhus.html.
[9] See http://negociacionp10.cepal.org/3/en.

Economic and Social Commission for Asia and the Pacific (ESCAP) to develop similar legally binding instruments on access to information, public participation and justice in environmental matters, including measures to protect environmental human rights defenders. Such multilateral instruments would be an effective tool to achieve sustainable development goals and respond to many challenges facing our planet, from climate change, biodiversity loss and environmental pollution to poverty eradication. They would also ensure that both States and corporations are held accountable for any violations against environmental human rights defenders and establish effective safeguards to ensure that community interests are fully considered in environmental decisions.

23. The international community and institutions must also act to end threats, intimidation and violence, used to curtail the interaction between environmental human rights defenders and the international and regional human rights mechanisms. The Human Rights Council, in its resolutions 22/6 and 24/24, reaffirmed the right of everyone to unhindered access to and communication with international bodies. The Guidelines against Intimidation or Reprisals (the "San José Guidelines") (HRI/MC/2015/6) endorsed by the chairs of the United Nations human rights treaty bodies aim to enhance the protection provided by treaty bodies to those who face reprisals for engaging with the international human rights regime. The Special Rapporteur encourages other relevant international and regional organizations to follow suit and put in place policies and measures to prevent and address reprisals against environmental human rights defenders.

III. Hostile environment

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

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

26. Despite their human rights work, environmental human rights defenders increasingly face violence and violations of their rights on a daily basis. They are often treated as enemies of the State and, all too often, are targeted for assassination.[10] The scale of killings indicates a truly global crisis.

27. Despite the complexity of quantifying the whole situation, there have been rapid strides in exposing the true picture of attacks against environmental human rights defenders. One revealing report documented the unprecedented 185 killings

[10] See www.theguardian.com/global-development/2016/jun/05/world-environment-day-protecting-activists-human-rights-issue.

of environmental human rights defenders across 16 countries in 2015.[11] The 59 per cent increase from 2014 meant that more than three defenders were murdered, on average, every week in the course of 2015. The sectors of mining and extractive industries (42 killings), agribusiness (20), hydroelectric dams and water rights (15) and logging (15) were major drivers of the murders. According to another report, the largest single group, constituting 45 per cent of the documented 156 defenders killed in 25 countries in 2015, were related to the defence of environmental, land and indigenous peoples' rights.[12]

28. Both reports, collaborated by numerous others,[13] indicate that the large majority of assassinations occurred in the countries of the global South, especially in Latin America and Asia. This is not to deny serious allegations of abuses of environmental human rights defenders in the global North countries, including harassment and strategic lawsuits against public participation that occur with State complicity, or at least disregard.[14] Killings of environmental human rights defenders amounted to 67 per cent of all reported murders of defenders in Asia and 41 per cent of those reported in Central and South America.[15] In 2014, three quarters of the 116 cases of killings of environmental human rights defenders in 17 countries — on average more than two victims per week — took place in Central and South America, with South-East Asia the second most-affected region.[16] The spike in killings was related to large-scale hydropower projects, where dams were built in countries with weak legal regimes, repressive Governments and rampant corruption, and on lands belonging to indigenous and ethnic minority peoples.[17]

29. The Special Rapporteur shares civil society observations that other common characteristics of the killings include the overall impunity with which the perpetrators of these crimes can act and the woefully lacking or ineffective protection measures available for environmental human rights defenders at risk. In almost every affected Latin American country, government and corporate actors are involved in the murders of environmental human rights defenders.[18]

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[11] Global Witness, *On Dangerous Ground*.

[12] Front Line Defenders, *Annual Report 2016: Stop the Killing of Human Rights Defenders* (2016), p. 7. Available from www.frontlinedefenders.org/en/resource-publication/2016-annual-report.

[13] See, e.g., Observatory for the Protection of Human Rights Defenders, *Criminalización de Defensores de Derechos Humanos en el Contexto de Proyectos Industriales: Un Fenómeno Regional en América Latina* (2016), available from www.fidh.org/IMG/pdf/criminalisationobsangocto2015bassdef.pdf, and *Annual Report 2014: "We are not afraid!"*, available from https://wearenotafraid.org/en/; and Friends of the Earth International, *We Defend the Environment, We Defend Human Rights* (2014), available from www.foei.org/wp-content/uploads/2014/06/We-defend-the-environment-we-defend-human-rights.pdf.

[14] Article 19, *A Dangerous Shade of Green: Threats to Environmental Human Rights Defenders and Journalists in Europe* (2014), available from www.article19.org/resources.php/resource/37608/en/a-dangerous-shade-of-green:-threats-to-environmental-human-rights-defenders-and-journalists-in-europe.

[15] Front Line Defenders, *Annual Report 2016*, p. 7.

[16] Global Witness, *How Many More?* (2015), available from www.globalwitness.org/documents/17882/how_many_more_pages.pdf.

[17] Submission by International Rivers, June 2016.

[18] Article 19, *A Deadly Shade of Green: Threats to Environmental Human Rights Defenders in Latin America* (2016), available from www.article19.org/data/files/Deadly_shade_of_green_A5_72pp_report_hires_PAGES_PDF.pdf.

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

31. Reports also indicate that most individuals and groups facing threats are those who oppose land grabbing, extractive industries, the industrial timber trade and large-scale development projects.[19] Indigenous communities and ethnic and racial minorities are particularly vulnerable (see A/HRC/24/41 and A/71/291).[20] They are the most affected because the resources exploited are usually located in their lands; they lack legal protection while exerting strong and vocal opposition; many indigenous communities do not hold formal title over the land they inhabit; and their access to justice is limited.

32. Communications sent by the Special Rapporteur reflect the grim picture of the situation of environmental human rights defenders. In the period from December 2006 to July 2016, the mandate sent 2,730 communications on human rights defenders, 243 of which (9 per cent) concerned environmental defenders. There has been a slight increase in the number of cases involving environmental human rights defenders, from a total of 106 (7 per cent) out of 1,498 communications in the first five-year period (December 2006-May 2011) to 137 communications (11 per cent) in the second period (June 2011-July 2016).

33. During the latter period, the Special Rapporteur sent communications concerning 433 individual environmental human rights defenders whose rights had been violated by the State (security forces, police and local authorities) and by non-State actors (transnational companies, paramilitary groups, organized crime, private security firms and the media).

34. Latin American and Asia have been the most hostile regions for environmental human rights defenders. In the last five years, of the 137 communications, 48 per cent concerned the Americas, the most dangerous area. Those promoting rights in relation to the extractive and mining industries, palm oil cultivation and deforestation proved to be most at risk (27 communications). The largest number of communications concerned Honduras (11), Mexico (10), Brazil (9) and Peru (8). In the vast majority of the fatal cases, the victims had previously reported threats and intimidation, but they received no adequate protection despite a prominent decision

[19] See also Global Witness, *Deadly Environment* (2014), available from www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment/; and Mining Watch Canada, *In the National Interest? Criminalization of Land and Environment Defenders in the Americas* (2015), available from http://miningwatch.ca/publications/2015/9/21/national-interest-criminalization-land-and-environment-defenders-americas.

[20] See also the civil society organizations joint report to the Inter-American Commission on Human Rights, available at www.ishr.ch/sites/default/files/article/files/reportcoalitionbusinesslandishr.pdf.

by the Inter-American Court of Human Rights[21] affirming the State duty to respect, protect and fulfil the rights of defenders, as well as to conduct serious and effective investigations of any violations against them, thus preventing impunity.

35. Asia is the second most-dangerous region and has seen an increase in the number of communications, from 25 communications (24 per cent) during the first period to 50 (36 per cent) in the second. The Philippines and India received the largest number of communications on environmental human rights defenders, 9 and 8 respectively.

36. According to civil society reports, corroborated by the communications sent by the Special Rapporteur in the last two years, the most dangerous countries for environmental human rights defenders were Brazil, Cambodia, Colombia, Guatemala, Honduras, India, Mexico, Peru, the Philippines and Thailand. There are indications that some African countries are facing similar challenges, even if they were not documented and publicized sufficiently.

37. On the basis of the communications sent in the last five years, one can observe a clear link between violations committed against environmental human rights defenders and the area of their activities. The extractive industry was the sector with the most violations (54 communications), while 37 communications referred to land rights, such as territorial disputes and the right to ancestral lands; 27 communications referred to construction projects such as hydroelectric dams, oil and gas pipelines and aqueducts. Other areas in which environmental human rights defenders faced threats included development policy, fisheries, forced evictions, nuclear power and environmental pollution.

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

39. The increased scale of acts of reprisal against environmental human rights defenders protesting against environmental harms caused by projects funded by international financial institutions is disquieting. The submissions received revealed large gaps between professed commitments to participation and accountability and the situation on the ground, pointing to an overwhelming failure by those institutions to assess risks and respond to reprisals effectively. One report documented case studies in Cambodia, Ethiopia, India, Uganda and Uzbekistan of reprisals taking a variety of forms.[22] The critics of projects funded by the World Bank Group were reportedly the target of threats, intimidation tactics and baseless criminal charges. Some women faced sexual harassment or gender-based threats, attacks, or insults when they spoke out. Security forces responded violently to peaceful protests, physically assaulting community members and arbitrarily

[21] *Kawas-Fernández v. Honduras*, judgment of 3 April 2009.

[22] Human Rights Watch, *At Your Own Risk: Reprisals against Critics of World Bank Group Projects*, available from www.hrw.org/report/2015/06/22/your-own-risk/reprisals-against-critics-world-bank-group-projects.

arresting them. In other cases, critics or their family members were threatened with the loss of their jobs or livelihoods. In many countries, such reprisals often occurred within a broader effort to demonize critics as unpatriotic or "anti-development".

40. It is evident that the situation of environmental human rights defenders is alarming. The scope and intensity of violence against them demand immediate action. The Special Rapporteur therefore calls on the international community, regional communities, States, international financial institutions, business enterprises and other actors to urgently and publicly adopt a zero-tolerance approach to the killing of and violent acts against environmental human rights defenders, and immediately launch policies and mechanisms to empower and protect them. He notes that the threats and risks facing environmental human rights defenders could be effectively prevented only if the causes and contexts underlying the hostile environment where they operate are fully understood and addressed.

IV. Root causes underlying violations

A. Exclusion and power imbalance

41. One of the systemic causes of conflicts around environmental rights is the imbalance of power between States, companies and environmental human rights defenders. The increasing conflicts over the environment stem from resource exploitation that fails to address legitimate concerns and demands of local communities. Those communities are extremely vulnerable to exploitation and abuse because they are already marginalized and excluded from decision-making. Power inequality permeates all decision-making processes, from the upstream phases such as the determination of the advisability of a project to the design of the project, and onward to its implementation. In many cases, power inequality is aimed at shrinking space for civic participation in order to muzzle opposition to development projects. It also relates to a poor understanding of communities' specificities and their exclusion. The affected rights holders often live in rural, isolated areas, with little access to government services and the judiciary.

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

43. Moreover, in many cases, not only do State authorities and companies fail to consult with and obtain the consent of the affected communities, but they also stigmatize dissent and retaliate against critics, instilling mistrust and engendering more conflict in the mid- to long term. The Special Rapporteur heard testimonies that highlight the lack of support by corporations and State authorities for community-based environmental impact assessments and consultations, which could de-escalate potential conflicts.

44. Preventive approaches, including ensuring the meaningful participation of environmental human rights defenders in the decision-making at all stages, are crucial to overcoming these challenges. Laws, contracts and human rights impact assessments by States and corporations should be developed with the active participation of defenders and communities. They should also contain provisions and procedures on the procedural rights of these communities and defenders. Such provisions should be included in national action plans on business and human rights, environmental impact assessments and decision-making on business concessions and land tenure.

45. The range of actors that stand to gain from hindering their work exacerbates the risks facing environmental human rights defenders. The human rights obligations of business actors have not been articulated as clearly as those of States, and the weak regime concerning the duty of companies to respect the rights of defenders is one factor underlying their vulnerability. Reports have shown that businesses have been involved in human rights abuses that range from restricting the legitimate activities of defenders to curtailing the exercise of their rights, to attacks carried out by private security firms on behalf of companies. National action plans, when established, often fail to advise how States should sanction corporations involved in such abuses. Some corporations have developed social responsibility strategies or mechanisms, which either lack teeth to prevent violations or have been used as publicity tools to whitewash the company's public image.

46. A number of United Nations experts, civil society organizations and business representatives have repeatedly made the ethical and business case for ensuring that human rights defenders are protected and consulted.[23] Business must respect the rights of defenders to express dissent and oppose their activities. This responsibility extends to ensuring that their subsidiaries — as well as private security firms and contractors acting on their behalf — refrain from harming defenders and restricting their rights, are not involved in threats or attacks, and consult to identify, mitigate and remedy the adverse human rights impact of business operations. States should communicate clearly the human rights obligations of business enterprises, incentivize them to uphold those responsibilities as a matter of good business practice and sanction those companies associated with threats to defenders both at home and abroad.

B. Commodification and financialization of the environment

47. The intensified competition for natural resources in recent decades has led to multiple social and environmental conflicts all over the world. The recent crisis has exposed the vulnerability of the countries of the global South, which have prioritized resource-based development models to raise their national income. Much of the demand for the resources in those countries comes from countries in the global North. In a globalized world, the quest for economic growth has resulted in a neo-colonial environment that exacerbates conflicts between communities and business actors. What underlie these conflicts are profoundly different approaches to development.

[23] See, e.g., http://us1.campaign-archive2.com/?u=97549cf8cb507607389fe76eb&id=6c8b3ea389&e=b9e5fa41cf.

48. Recent reports have pointed to a growing opposition between what could be considered a commodity-based approach, prioritizing economic growth and midterm profits, and rights-based approaches, favouring populations' interests and sustainability.[24] Communities protesting against projects that threaten their very livelihood and existence have often faced stigmatization and attacks from States and corporations, which label them "anti-development". Yet, these defenders often seek to preserve natural resources and to ensure a holistic and long-term approach to development where land, water, air and forests are not reduced to mere marketable goods. The commodification and financialization of nature often lead to simplifying the real "value" of the environment, ignoring the social or cultural dimensions and the complex interactions of elements within and between ecosystems.

C. Corruption and impunity

49. Corruption and impunity also underlie the growing number of conflicts around natural exploitation and large-scale development projects, owing partly to the fact that the majority of such projects require vast financial investments, which can fall prey to corruption. This situation is particularly patent in States with poor and non-transparent governance processes, which lead to collusion at the expense of the public good. In many land-grabbing situations, businesses, authorities, local suppliers and sometimes organized crime benefit from loopholes in the laws regulating these practices.[25]

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

51. The Special Rapporteur is extremely concerned about the lack of independent and prompt investigations into attacks perpetrated against environmental human rights defenders, which is often linked to a lack of resources, corruption and collusion between perpetrators. States have nearly always failed to ensure that perpetrators are brought to justice and sanctioned. This has been the case in countries such as Brazil, Guatemala, Honduras and the Philippines, and this situation can perpetuate the climate of impunity, sending the message that environmental human rights defenders cannot trust the justice system to seek remedy for violations.[26]

52. As a result, these root causes have long-term effects, contributing to the establishment of a two-tier system in which the law is more assiduously applied to

[24] Friends of the Earth International, "*We Defend the Environment*"; Global Witness, *On Dangerous Ground*.

[25] See www.u4.no/publications/environmental-crime-and-corruption; and www.globalwitness.org/fr/campaigns/environmental-activists/death-comrade/.

[26] See Observatory for the Protection of Human Rights Defenders, *Annual Report 2014*.

small-scale farmers, ethnic minorities or indigenous peoples who are not able to provide property deeds while human rights violations committed by business interests and their allies continue with impunity.

D. Groups of environmental human rights defenders at higher risk

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

54. Many violations against environmental human rights defenders can be directly linked to patriarchy, sexism, racism, xenophobia and chauvinism. This is important in the case of women defenders, who may oppose large-scale development projects but also challenge the systemic power inequality and discrimination deeply rooted in societies. They usually question patriarchy or misogyny, sometimes within their own communities. As activists, they face the same threats as other defenders but they are more likely to face gender-specific violence. Reports have shown that sexual violence is used to silence women human rights defenders in particular.[27] In Latin America, for example, women defenders are among the most threatened environmental human rights defenders owing to the nature of their human rights work and to their gender.[28]

55. Furthermore, women environmental human rights defenders face a number of challenges, including those related to exclusion from participation in the negotiation and decision-making processes; criminalization used as a political strategy to deter resistance and delegitimize their work; smear campaigns against them in the media; and discrimination and violence against them in their families, communities and human rights movements.[29] Women rights defenders from indigenous communities, with ethnic or racial minority origins or with disabilities can also suffer multiple

[27] See http://defendingwomen-defendingrights.org/wp-content/uploads/2014/03/Our-Right-To-Safety_FINAL.pdf; https://urgentactionfund.org/in-our-bones/.

[28] Urgent Action Fund of Latin America and the Caribbean and others, *Patterns of Criminalization and Limitations on the Effective Participation of Women Who Defend Environmental Rights, Territory, and Nature in the Americas* (2015), available from http://media.wix.com/ugd/b81245_33bf16237c2847e2bb300f664356d424.pdf, and *Women Defending the Territory*, available from http://media.wix.com/ugd/b81245_72106e74f799442f8cca5e1c685700a6.pdf.

[29] Submission from Association for Women's Rights in Development.

discrimination.[30] Gender, indigenous status, rural location and other factors can intersect to isolate individuals, groups and communities.

56. Indigenous communities also face multiple forms of aggression and violence. In specific situations, oppression against them is encouraged by institutionalized racism and stigmatization that deny the rights of these communities. Private actors such as agribusinesses and extractive industries as well as law enforcement agencies have been regularly observed to commit violations against environmental human rights defenders from indigenous communities. National development strategies often fail to include specific approaches and processes for indigenous communities that would ensure the conservation of their ancestral lands and recognize their rights to their livelihoods and environment. Linguistic barriers, countless obstacles to accessing basic social services and the imposition of unfavourable models of consultation aggravate the vulnerability of indigenous environmental human rights defenders.

57. In this context, the Special Rapporteur advocates an intersectional approach, embracing the heterogeneity and diversity of environmental human rights defenders and understanding the various root causes and situations exposing them to risks and threats.

V. Empowering environmental human rights defenders

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

59. Protection practices should contribute to the full respect of the rights of environmental human rights defenders and strengthen their security. The Special Rapporteur outlined seven principles that undergird effective protection practices for human rights defenders: they should be rights-based, inclusive, gender-sensitive, focused on "holistic security"', oriented to individuals and collectives, participatory and flexible (A/HRC/31/55).

A. Strengthening resources and capacities

60. The effective protection of defenders starts with the recognition that everyone has the right to defend human rights. This is particularly important in the case of environmental human rights defenders, who may not self-identify as human rights defenders or whose identity may be more clearly tied to their community or to the environmental causes they pursue. The Special Rapporteur recognizes the importance of these other identities and advocates for a non-exclusive approach to the identification of environmental human rights defenders. Indeed, defenders can and should draw strength from their multiple, overlapping identities. It is also important to recognize that because such identities might create risks for particular environmental human rights defenders, the resources and capacities of the defenders must recognize and seek to address the differences between and among them.

[30] See www.ishr.ch/sites/default/files/article/files/reportcoalitionbusinesslandishr.pdf.

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

62. Litigation against perpetrators is an important way of ensuring accountability and obtaining redress. Coordinated transnational litigation against perpetrators of violence against environmental human rights defenders has helped reveal the complicity of various international businesses and decreased impunity. However, the use of legal processes often requires technical expertise and familiarity with judicial systems that are foreign to defenders' communities, especially when the legal action in question takes place far away from their place of residence, for example, in the home State of a transnational corporation. In such cases, defenders require legal advice, as well as sustained material and psychological support, to pursue claims. The Special Rapporteur welcomes initiatives that support environmental human rights defenders by connecting local communities with international law firms and overseas lawyers,[31] and he intends to actively support legal action initiatives in this area.

63. Networks — local, regional and international — can effectively support individual environmental human rights defenders and communities at risk. They allow good practices to be shared, demonstrate solidarity and muster resources, and facilitate access to safe havens for defenders under threat. Networks can take a variety of forms, ranging from informal ad hoc associations to international confederations of organizations, to global networks of defenders working on similar issues. Given the nature of the work of environmental human rights defenders, there is a pressing need to develop networks that bring together the overlapping constituencies involved in environmental justice, including environmentalists, conservationists, indigenous communities and the human rights movement.

64. Environmental human rights defenders often face situations of acute risk, when they are threatened with severe harm or their very lives are put in danger. For interventions in these situations to be effective, they need to be timely, accessible and appropriately tailored to the circumstances of defenders (A/HRC/31/55). Legal advice, legal representation, the provision of bail and trial monitoring have been particularly important for defenders who have been criminalized for their activities. Legal forums are increasingly being used to silence defenders, particularly those who oppose large-scale development projects and the actions of companies. The use of strategic litigation against public participation lawsuits silences defenders, effectively denying them their rights to freedom of expression and participation in public affairs. Defenders require support in their defence against such lawsuits, the financial and psychological burdens of which are often so great that they distract and demobilize defenders.

65. In emergencies, some environmental human rights defenders can benefit from ad hoc and structured relocation initiatives. A number of actors provide emergency grants to defenders in immediate danger. Emergency grants that have easy and fast application processes and quick response times and that allow defenders discretion

[31] See www.edlc.org/our-work/providing-resources/resource-directory/.

in using funds in a manner appropriate to their personal situation have helped many defenders cope with threats and attacks. With respect to both relocation and emergency grants, however, the particular characteristics of environmental human rights defenders may make the traditional delivery of such support inappropriate: the community-based nature of environmental and land activism may make relocation a less-desirable option and traditional ideas about who should apply for emergency grants may make this option unsuitable. It is vital to consult the defenders themselves on the suitability of interventions in their personal circumstances lest they inadvertently increase the risks that defenders face. Further work should be done by all actors to ensure that defenders are aware of the support that is available to them in emergency situations.

B. Fostering a safe and enabling environment

Meaningful participation, transparency, and accountability

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

67. Participation should begin with the involvement of local communities in long-term planning. National action plans on business and human rights, environmental impact assessments and other formal processes should be developed through consultative processes involving broad participation.

68. State and non-State actors should obtain the free, prior and informed consent of indigenous communities affected by activities on lands that they own, occupy or use (ibid.). The Special Rapporteur recognizes that there is an ongoing debate about what constitutes such consent and whether it has been fulfilled in particular cases. The United Nations Declaration on the Rights of Indigenous Peoples provides guidance on the application of this principle to indigenous peoples. However, further discussion and the setting of international standards on the nature and application of this principle to indigenous peoples and other communities is necessary, coupled with a renewed emphasis on its implementation through monitoring and support to environmental human rights defenders.

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

Impunity and access to justice

70. The Special Rapporteur is seriously concerned about impunity for attacks against environmental human rights defenders, an issue he raised in his first report in June 2014 (A/HRC/28/63). He is acutely aware that little or no action is usually taken even when environmental human rights defenders lodge formal complaints about violations they have faced. It is vital for State authorities to investigate such incidents promptly and to bring perpetrators to justice. When these incidents relate to the activities of companies, it is crucial for the authorities to consider them carefully and to conduct their own investigations to determine to the culpability of their employees, contractors and business partners.

Legal frameworks

71. In order to build an environment conducive to the defence of rights, States need to review regularly the adequacy of laws, policies, regulations and enforcement measures to ensure that businesses respect human rights and that environmental human rights defenders are protected. In relation to the latter, civil society has developed a model law for the protection of defenders[32] which provides useful guidance on the features of a comprehensive national protection regime.

72. As mentioned above, one of the root causes of abuses suffered by environmental human rights defenders is the lack of legal recognition of land rights, in particular for indigenous communities and those affected by post-colonialism, conflict and other causes of forced displacement. States should enact laws that recognize the rights of such individuals and communities. Conversely, States need to review and repeal laws that facilitate the exploitation of natural resources, thereby threatening the rights of those affected.

Businesses and human rights due diligence

73. The Special Rapporteur welcomes commitments by business enterprises to respect human rights and protect the environment, often expressed in public statements and policies, as well as through the adoption of voluntary guidelines and codes of conduct. The Equator Principles, for example, set out a framework which financial institutions can use to assess and manage the social and environmental risks and impacts of projects, as well as to meet minimum standards for due diligence.[33]

74. Such commitments, while significant, are insufficient in themselves. The Special Rapporteur echoes the observations of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the importance of measuring the efforts of State and non-State actors to protect rights and remedy abuses so that gaps in performance and accountability can be tracked, reported and assessed (A/70/216).

75. Human rights impact assessments can be useful tools for human rights due diligence, if structured and implemented appropriately. Such assessments should estimate possible future and actual human rights impacts; involve the participation

[32] Model Law for the Recognition and Protection of Human Rights Defenders (June 2016), available from www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf.

[33] See www.equator-principles.com/resources/equator_principles_III.pdf.

of affected individuals and communities; and assess risks to rights holders as well as the capacity of duty bearers to respect, protect and fulfil these rights.[34]

76. Businesses should provide clear guidance to employees, contractors and partners on the rights of environmental human rights defenders and communities to express their views, conduct peaceful protest and criticize practices without intimidation or retaliation. They should have clear procedures for receiving complaints of misconduct and to respond to them in a timely manner. Human rights due diligence should involve tracking responses and explaining how the impacts are addressed. Businesses need to set up transparent processes that provide remedies for negative human rights impacts.

77. In some cases, banks and financial institutions have provided funds, services and technical support for companies to rectify and prevent human rights violations, such as the improper acquisition of land. The Special Rapporteur welcomes the growing commitment of financial institutions to principles such as responsible financing, lending and investment. The use of environmental, social and governance criteria for risk assessment and the evaluation of the performance of investments can strengthen the accountability of corporations.

Human rights education

78. Environmental education is, laudably, becoming widespread, as expressed both in formal curricula in educational institutions and in public education campaigns. Such education initiatives should recognize the crucial role played by environmental human rights defenders in environmental protection. Building public support for defenders through education serves important preventive and protective functions. Human rights education must also be available for government officials, journalists and others working on environmental and development issues. The Special Rapporteur encourages initiatives such as the Global Action Programme on Education for Sustainable Development of the United Nations Educational, Scientific and Cultural Organization and supports the call by UNESCO for inclusive, empowering education about the environment, engaging civil society and local communities as active participants.

79. Similarly, it is important for different branches of Government beyond traditional units responsible for law enforcement to recognize the role of environmental human rights defenders in environmental protection. State entities responsible for other activities, including for the environment, resource development and indigenous peoples, must also be involved in the protection of the environment and environmental human rights defenders. States are encouraged to integrate a human rights-based approach into the work of environmental protection agencies and other relevant institutions. It is important that such institutions be given the resources and support required for effective environmental governance.

[34] Toolkits and guides on human rights assessment impacts are available from https://hrca2.humanrightsbusiness.org/; www.unglobalcompact.org/docs/issues_doc/human_rights/GuidetoHRIAM.pdf; and www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf.

Human rights awards

80. Awards and prizes for environmental human rights defenders are an important means of drawing attention to their work and the risks they face. Awards are based on their environmental achievements generally or on specific risks. An example of the latter is the Goldman Environmental Prize, awarded annually to environmental human rights defenders from around the world.[35] Awards also help build the profile and legitimacy of defenders, give voice to their security concerns and celebrate their successes. However, awards are not a panacea, and should be supported by robust protection measures for defenders at risk. Wherever advisable, they should recognize groups of defenders and communities rather than singling out individuals.

C. Boosting regional and international support

Role of individual States

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

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

83. States play a prominent role in monitoring and protecting environmental human rights defenders through their diplomatic missions abroad and human rights focal points trained to respond to the situation of defenders at risk. States should keep the situation of environmental human rights defenders on the agenda of bilateral and international discussions, including by raising specific cases of defenders at risk through high-level visits, political dialogue, démarches and "quiet diplomacy", using the universal periodic review process to make recommendations to States on the protection of defenders, supporting strong Human Rights Council resolutions on the protection of defenders and developing and implementing guidelines for the protection of defenders.

Regional and international forums

84. Regional and international forums provide important mechanisms for monitoring and responding to the situation of environmental human rights defenders. The Inter-American Commission on Human Rights established the Office of the Rapporteur on the Situation of Human Rights Defenders, which monitors the situation of defenders, including environmental human rights defenders. The Commission and the Inter-American Court of Human Rights have provided important relief to environmental human rights defenders through court decisions and "precautionary measures", requesting States to take action where defenders are

[35] See www.goldmanprize.org/.

at acute risk. The Special Rapporteur is concerned about the budgetary reduction facing the Commission and its impact on the continuing ability of the Commission to monitor, support and protect defenders in the region.

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

86. Interregional dialogues between regional institutions are an important conduit for raising awareness of the situation of environmental human rights defenders. The Special Rapporteur encourages the expansion of the dialogues, including the new regional regime emerging in the Association of Southeast Asian Nations (ASEAN) region in the light of the many risks faced by environmental human rights defenders in Asia.

International cooperation in bringing perpetrators to justice

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

88. The Special Rapporteur welcomes initiatives by States to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. These include obligations on companies to report on their operations globally and legal regimes allowing for the prosecution of nationals wherever their offences were committed.

International financial institutions

89. International financial institutions play a significant role in providing financial and technical support to State and non-State actors for economic and social development around the world. They are important actors in ensuring that environmental human rights defenders can voice concerns without fear of reprisals. At a minimum, international financial institutions have a duty to ensure that their activities do not contribute to, or exacerbate, human rights violations, including those committed by borrowers. In this regard, the Special Rapporteur joins the call made in March 2016 by over 150 civil society organizations for international financial institutions to ensure meaningful and effective participation and

accountability within their investments and guarantee a systematic analysis of the enabling environment for fundamental freedoms at the country and project levels.[36]

90. International financial institutions such as the World Bank Group can play an active role in influencing actors in the public and private sectors to respect the rights of environmental human rights defenders, to act with transparency and accountability for their actions and to seek the meaningful participation and consultation of affected communities in their activities. The Special Rapporteur welcomes the reflection on the practice of the World Bank by its Inspection Panel and looks forward to upcoming publications on the lessons emerging in a number of domains of the Bank's activities, including environmental assessment and indigenous peoples and the requirements for consultation, participation and disclosure of information. He advocates the adoption of concrete policies and measures to prevent and address acts of reprisals against environmental human rights defenders for their cooperation with international financial institutions.

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

VI. Conclusions and recommendations

A. Conclusions

92. Environmental human rights defenders are at the heart of our future and the future of our planet. They play a critical part in ensuring that development is sustainable, inclusive, non-discriminatory and beneficial for all, and does not cause harm to the environment. The Special Rapporteur stresses that empowering and protecting environmental human rights defenders is part and parcel of the overall protection of the environment.

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

94. The international community and States should urgently assume their responsibility to empower and protect environmental human rights defenders. The newly adopted international agreements, such as the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change, have engendered high

[36] See http://rightsindevelopment.org/?news=sign-on-statement-on-ifis-participation-and-human-rights.

expectations among environmental human rights defenders around the world. That vision is doomed to fail if those individuals and groups on the frontline of defending sustainable development are not protected at the national, regional and international levels.

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

B. Recommendations

96. **In order to reverse the tide of the worsening situation of environmental human rights defenders, the Special Rapporteur wishes to put forward a set of recommendations to the attention of various stakeholders. He calls on all stakeholders to urgently and publicly adopt a zero-tolerance approach to the killings of and violent acts against environmental human rights defenders, and to immediately launch policies and mechanisms to empower and protect them. He further appeals to all actors to document more systematically information on the situation of environmental human rights defenders at risk, especially in countries of concern, with a view to advocating more actionable and effective measures for their protection.**

97. **The international community should:**

(a) **Ensure that the implementation of the 2030 Agenda for Sustainable Development is guided by a human rights-based approach, guaranteeing meaningful participation of environmental human rights defenders and affected communities, as well as empowering and protecting defenders at the international, regional and national levels;**

(b) **Publicly scrutinize and condemn violations of the rights of environmental human rights defenders and raise the visibility of their legitimate role in defending the land and environmental rights;**

(c) **Ensure that any future bilateral and multilateral trade agreements involving countries where environmental human rights defenders are under threat include measures to prevent and address violations against defenders and mechanisms to investigate and remedy violations;**

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

(e) **Formulate an international treaty to prevent and address human rights violations by transnational and national business enterprises, also considering the heightened risk posed by business activities to environmental human rights defenders.**

98. **The General Assembly and the Human Rights Council should monitor violations against environmental human rights defenders.**

99. **Regional intergovernmental organizations should:**

(a) **Urge negotiating parties in Latin America and the Caribbean to expedite the conclusion of the negotiations on the application of principle 10 of the Rio Declaration on Environment and Development;**

(b) **Encourage more States to accede to the Aarhus Convention, in the absence of other multilateral and regional agreements at this stage;**

(c) **Provide political and financial support to regional human rights mechanisms with a view to reinforcing the protection of environmental human rights defenders in the regions;**

(d) **Formulate policies and measures to prevent and address reprisals against environmental human rights defenders for cooperating with regional mechanisms.**

100. **ECA and ESCAP should develop similar legally binding instruments on access to information, public participation and justice in environmental matters, including measures to protect environmental human rights defenders.**

101. **The ASEAN Intergovernmental Commission on Human Rights and the African Commission on Human and Peoples' Rights should establish a mechanism to provide emergency protection for defenders.**

102. **States should:**

(a) **Reaffirm and recognize the role of environmental human rights defenders and respect, protect and fulfil their rights;**

(b) **Ratify ILO Convention No. 169 and guarantee the right to consultation and participation of indigenous communities in decisions at every stage of a project's life cycle;**

(c) **Ensure a human rights-based approach to development in all relevant legal and policy regulations, including multilateral and bilateral agreements or contracts, and establish mechanisms for due diligence concerning the protection of environmental human rights defenders and the environment;**

(d) **Ensure a preventive approach to the security of environmental human rights defenders by guaranteeing their meaningful participation in decision-making and by developing laws, policies, contracts and assessments by States and businesses;**

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

(f) **Guarantee the effective implementation of any precautionary or urgent measures granted to environmental human rights defenders by regional human rights mechanisms;**

(g) **Develop protection mechanisms for environmental human rights defenders, taking into account the intersectional dimensions of violations**

against women defenders, indigenous peoples and rural and marginalized communities;

(h) **Ensure prompt and impartial investigations into alleged threats and violence against environmental human rights defenders and bring to justice direct perpetrators and those that participated in the commission of crimes;**

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

103. **United Nations organizations and agencies should:**

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

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

(c) **Monitor, document and respond to the cases of alleged acts of reprisal against environmental human rights defenders for cooperating with international financial institutions, United Nations agencies and United Nations human rights mechanisms.**

104. **International financial institutions should:**

(a) **Respect and protect the human rights of defenders and implement their obligations in all activities to ensure an enabling environment for defenders;**

(b) **Integrate a human rights-based approach in their policies for fund allocation and management; condition their funds on such an approach, in consultation with affected communities and environmental human rights defenders and with their continuing support in the implementation of human rights safeguards.**

105. **Business enterprises should:**

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

(b) **Fulfil legal and ethical obligations, including rigorous human rights due diligence, and perform human rights impact assessments for every project, ensuring full participation by and consultation with affected communities and environmental human rights defenders;**

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

(d) **Disclose information related to planned and ongoing large-scale development projects in a timely and accessible manner to affected communities and environmental human rights defenders;**

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

(f) **Ensure that private security companies and other subcontractors respect the rights of environmental human rights defenders and affected communities and establish accountability mechanisms for grievances.**