

# DEFENDERS AT RISK

Attacks on human rights and environmental  
defenders and the responsibility of business.

**Report #95**

**SWED  
WATCH**

This report, which can be downloaded at [www.swedwatch.org](http://www.swedwatch.org), is authored by Swedwatch. Swedwatch is an independent not-for-profit organisation that conducts in-depth research on the impacts of businesses on human rights and the environment. The aim of the organisation is to contribute towards reduced poverty and sustainable social and environmental development through research, encouraging best practice, knowledge-sharing and dialogue. Swedwatch's member organisations Afrikagrupperna, Act Church of Sweden, Diakonia, Fair Action, Solidarity Sweden-Latin America and the Swedish Society for Nature Conservation stand behind the report and have participated in developing its recommendations. Swedwatch would like to thank the following organisations which have also contributed to the report:

Asia Indigenous Peoples Pact  
Bench Marks Foundation, South Africa  
Bangladesh Garment and Industrial Workers' Federation  
Committee for Peasant Unity, Guatemala  
Comisión de Derechos Humanos de Ica, Peru  
Green Advocates Liberia  
Movimiento Ríos Vivos Colombia  
WoMin, South Africa



Swedish Society  
for Nature Conservation



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Publisher: Alice Blondel  
Published: 12th of December 2019  
ISBN: 978-91-88141-28-6

This report has been co-financed by the Government of Sweden. Responsibility for the content lies entirely with the creator. The Government of Sweden does not necessarily share the expressed views and interpretations.





# Preface

## By the UN Special Rapporteur on the Situation of Human Rights Defenders

Over the past years, news of the murders of environmental activists and those who expose corporate abuse have become sadly familiar. Every week, somewhere in the world, communities, families, organizations, mourn the loss of relatives, friends, colleagues for the mere fact that they defended human rights. They were shot dead while cycling back from work, as they were sleeping close to their children or they simply disappeared without a trace. Different contexts, different *modus operandi* but the same result: to cast terror among those who speak truth to power. And this epidemic seems out of control.

As I will soon be finalizing my mandate as UN Special Rapporteur, I remember the hundreds of courageous defenders I have had the privilege to meet during these almost six years. Many were defenders of land and environmental rights, others were labor rights defenders. Some, out of modesty, just call themselves “peasants”, “defenders of the Pachamama” or “simple workers”. Many did not want to become defenders, they just had to. Sometimes, when you heard these defenders speak, you could picture the places they were talking about. Their ancestral lands, the places that were important for the social fabric. Others talked about trying to make work a better place. They were not only talking about places but also about values: solidarity, hope, justice. By listening to them you would understand why they kept going despite the fear and the exhaustion.

Many steps, positive ones have been taken though. Important ones like the discussion around legally binding rules on business and human rights. Many States have been developing national action plans on business and human rights, some have adopted legislation on mandatory human rights due diligence and some companies are talking to each other to identify good practices or have developed human rights policies. Others have developed initiatives to engage with local communities. I celebrate all these positive steps.

But for now, this is not enough to reverse the trend. Many times, because of the lack of implementation and because short-term solutions should be accompanied by systemic changes. It is also largely due to a clear lack of understanding (both by States and companies) of the positive role played by human rights defenders. In my 2016 and 2017 reports to the United Nations General Assembly, I identified key initiatives by companies to address the situation of defenders on the ground such as human rights policy statements, human rights due diligence, disengagement when conflicts occur, access to remedy. In addition, some of the main detonators to environmental conflicts such as power imbalance, the commodification of nature, impunity and the lack of access to justice, the ongoing model of development need to be tackled by States to ensure long-term solutions.

Respecting and protecting human rights defenders are not options. They are intrinsically linked to the international obligations and commitments made by States related to the protection of fundamental rights and freedoms and to the Sustainable Development Goals. It is high time all actors, States, companies, investors, in particular understand that defenders are not the enemy but indispensable allies that will help create a better and safer future for everyone. With its concrete recommendations, this report helps “walk the talk” and opens many avenues to ensure human rights defenders operate in safe and enabling environments.

*/ Michel Forst*

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situation of human rights defenders



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# Executive summary

Human rights and environmental defenders play a key role in holding companies and states accountable for business-related human rights violations and environmental degradation. However, defenders are increasingly defamed, harassed and killed for protecting labour rights or opposing commercial projects such as mines, dams or plantations that are related to powerful economic and political interests.

Companies can be linked to attacks against defenders through suppliers, customers or other business partners. Both states and business actors are vital in addressing this risk and in moving towards a systematic protection of, and respect for, defenders as a cornerstone of any democratic society. This includes the protection of the fundamental rights to the freedoms of expression, association and peaceful assembly. These freedoms are all prerequisites for the fulfilment of the Sustainable Development Goals, SDGs – in particular Goal 16, which aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.<sup>1</sup>

Defenders around the world pay a high price when this responsibility is not adequately recognised. Since 2015, more than 2,000 business-related legal and physical attacks have been reported. These have targeted indigenous leaders, defenders of labour rights and the environment, small-scale farmers and women defenders. The rate increased by 12 percent between 2017 and 2018.<sup>2</sup>

This report is based on a survey with 22 European companies and on interviews with defenders working on corporate responsibility or related issues in Liberia, Bangladesh, Colombia, The Philippines, Guatemala, South Africa, Thailand, Peru and Azerbaijan. Their testimonies provide evidence of grave and systematic oppression of critical voices and point to common ways in which companies put defenders in danger:

- By contributing to existing tensions and exacerbating local conflict dynamics;
- By cooperating with state-owned companies or state-prioritised projects in countries where governments target defenders; and
- By offering resources or technology that can be used against defenders.

With this report, Swedwatch seeks to highlight the alarming situation for defenders and the urgent need for companies to take action. To ensure they do not undermine the rights of defenders, companies should include a zero-tolerance principle related to any kind of involvement in attacks against defenders in policies and contracts with business partners. Companies also have a responsibility to identify and address risks to defenders in their value chains, and should consult with them as part of their human rights due diligence (HRDD) processes. They should bear in mind that certain groups of defenders are more likely to become victims of attacks than others, includ-

ing community leaders, indigenous peoples, environmental defenders and labour rights defenders. Women defenders within these groups often face particular risks and challenges.

The report outlines steps that companies should take to help ensure that defenders can work in a safe and enabling environment. These measures may also benefit individual companies and the business sector as a whole. For instance, consulting with defenders is an effective way for companies to gain a better understanding of their operating environment, and to minimise risks of financial and reputational damage.

The report also underlines the role of states in addressing business-related attacks on defenders and the need for legislation to ensure that companies respect defenders throughout their value chains. There is a significant implementation gap between the UN Declaration on Human Rights Defenders and national laws and policies that support and protect defenders on the one hand, and the increasing number of laws that restrict and criminalise defenders' work, on the other hand. Supporting defenders and listening to their perspectives is ultimately crucial for addressing global threats such as climate change, rising inequality and conflicts. Without their active contribution, the fulfilment of the SDGs is at risk.

## Recommendations

The report recommends a number of ways to enhance the protection of defenders, in line with the UN Declaration on Human Rights Defenders, UN resolutions on human rights defenders and civic space, the UN Guiding Principles on Business and Human Rights (UNGPs), the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises, and in support of the Sustainable Development Goals.

### Business actors

- Adopt a policy commitment to respect human rights defenders and to not obstruct their work in the course of company operations and investments, including by pledging not to use criminal proceedings against human rights defenders even where they may oppose a project or operation.
- Include a zero-tolerance principle to any kind of involvement in attacks against defenders in relevant business relations, contracts and agreements.
- Promote a clear understanding at all levels of the company of the role of defenders in safeguarding human rights and the environment.

- Ensure transparency in relation to supply chains and business partners, particularly when operating in high-risk contexts, to allow at-risk defenders to reach out for support, and to help companies identify and address risks to defenders.
- Conduct HRDD in alignment with the UNGPs and the OECD Due Diligence Guidance for Responsible Business Conduct. This should include assessing the situation of civic freedoms and human rights and environmental defenders and engaging in meaningful consultation with defenders and civil society, paying particular attention to vulnerable groups of defenders, while seeking to avoid exacerbating any risks during the consultation process.
- Use leverage over business partners to support defenders and the right to freedom of expression, assembly and association whenever there is an opportunity to do so. Encourage third parties such as governments, state authorities and other business actors to comply with their duties and responsibilities to respect the rights of human rights defenders, protect them from attacks and threats, and to create and maintain an enabling environment in which human rights defenders can operate freely.

## National governments and the EU

- Adopt legislation on mandatory human rights due diligence for companies, highlighting their responsibility to conduct meaningful consultation with, and address risks to, defenders in company value chains.
- Develop clear guidance on how business actors should integrate measures to respect defenders throughout their operations and ensure that state-owned companies lead by example.
- Ensure a safe and enabling environment where human rights and environmental impacts can be investigated and reported without fear of retaliation.
- Establish effective judicial and non-judicial grievance mechanisms for defenders and victims of business-related human rights impacts, and ensure efficient venues for seeking remedy.
- Enhance efforts to address factors that allow attacks on defenders to continue, such as impunity for violations.
- Address conflicts of interests between trade promotion and the state's duty to protect human rights as outlined in policy coherence goals, for example in decisions on export credit guarantees and in trade agreement negotiations, to ensure these take into account the risks, threats and restrictions faced by defenders.
- Ensure that embassies and other diplomatic missions work actively with defenders of human rights and the environment and provide guidance to businesses on how to respect human rights and defenders in line with the UNGPs.



## Civil society organisations

- In dialogue with business actors and government representatives, offer expertise on the situation faced by defenders and facilitate contacts with defenders or civil society organisations representing their interests when relevant.

# 1. Introduction

In recent years, the situation faced by human rights and environmental defenders (referred to hereafter as defenders) has gone from alarming to catastrophic. Between 2017 and 2018, the United Nations (UN) verified 431 killings of human rights defenders, journalists and trade unionists in 41 countries. At least eight defenders were killed every week during this period – a sharp increase from the average of one victim a day from 2015 to 2017.<sup>3</sup>

While these figures represent attacks on a wide range of defenders, those who work to protect rights that are adversely impacted by business misconduct are among the most at risk.<sup>4</sup> Regardless of the state's ability to protect defenders, businesses have an independent responsibility to ensure that defenders can effectively and safely address the human rights impacts linked to their operations. Over 2,000 attacks including threats, violence, legal attacks and killings of defenders working on business-related human rights violations occurred between 2015 and 2019; the rate increased by 12 percent between 2017 and 2018.<sup>5</sup>

These figures highlight a deeply worrying development, particularly because an overwhelming majority of those responsible for these offences are never held to account.<sup>6</sup> Furthermore, the UN Special Rapporteur on the Situation of Human Rights Defenders has highlighted that there is insufficient comprehensive data on such attacks, indicating that the actual number of incidents is likely to be significantly higher than reported.<sup>7</sup>

According to the UN Special Rapporteur, violations against defenders form part of a systematic pattern of actions designed to intimidate and silence criticism, undermine their organisational movements and discourage others from defending human rights.<sup>8</sup> The underlying causes behind the rise in attacks are complex and include both country-specific and international factors. However, there are several common denominators, including conflicts of interest, poor governance, corruption and a lack of political will and capacity to protect defenders and human rights and to prosecute those responsible for violations.<sup>9</sup> Additional common factors include the imposition of commercial projects on communities without their consent and increasing restrictions on civil society and civic freedoms in many countries.

This report addresses the urgent situation for defenders by clarifying the responsibilities of businesses and partly also the duties of states to help safeguard them. Without the valuable contribution of defenders, global challenges such as climate change, conflict and rising inequalities - captured in the UN Sustainable Development Goals (SDGs)- will remain unsolved.

## Who is a human rights defender?

The 1998 UN Declaration on Human Rights Defenders<sup>10</sup> defines defenders as people who – individually or with others – act to promote and strive for the protection and realisation of human rights and fundamental freedoms at the national and/or international level. The term includes defenders working on civil, political, economic, social and cultural rights such as land, environmental, and indigenous community defenders, women’s rights defenders, trade unionists and many others.

According to the definition in the declaration, defenders are not only found within non-governmental organisations (NGOs) and intergovernmental organisations. In some instances, they may be government officials, civil servants, members of the private sector or ordinary people. They must accept the universality of human rights as defined in the Universal Declaration of Human Rights. The 1998 UN Declaration on Human Rights Defenders also states that it is not essential for a defender to be correct in his or her arguments in order to be a legitimate defender, as long as he or she defends a human right; however, all defenders are required to be peaceful in their actions in order to enjoy protection under the declaration.<sup>11</sup>

This report focuses on the situation facing defenders who raise grievances in relation to business operations that negatively affect human rights and the environment.

## Limitations of civic freedoms

Defenders are exposed to ever greater risks as restrictions on civil society and limitations on civic freedoms increase. In recent years, such restrictions have intensified on a global scale, including in democracies. According to the International Institute for Democracy and Electoral Assistance (International IDEA), an intergovernmental organisation that promotes democracy, there has been a spike in the number of countries moving away from democratic development since 2011. In 2013 they exceeded the number of countries moving towards democratic development, while public access to information and the protection of fundamental freedoms were under threat across the globe.<sup>12</sup>

The enjoyment of civic freedoms is dependent on an environment that accepts and encourages members of society to express various (and sometimes conflicting) points of view, often referred to as civic space. Civic space depends on the state’s protection, promotion and facilitation of the fundamental rights of freedom of expression, association and peaceful assembly.

According to the global civil society alliance CIVICUS, civil society is under serious attack in 111 countries, almost six in 10 countries worldwide. Repression of peaceful civic activism is widespread in most parts of the world: just 4 percent of the world's population lives in countries with civic space.<sup>13</sup>

Limitations on civic freedoms can take different forms. Most limitations directly affect defenders, who may become subject to legal restrictions, reputational attacks, and excessive force or surveillance by state security. Between 2012 and 2015 more than 120 laws constraining the freedom of association or assembly were proposed or enacted in 60 countries.<sup>14</sup> Technical developments have also facilitated government surveillance of citizens, such as location tracking through mobile phones. EU-based companies control an important share of the global market in Information Communication Technology (ICT), particularly exports of surveillance, tracking, intrusion and monitoring technology.<sup>15</sup>

Business actors also increasingly harass defenders and civil society organisations (CSOs) through legal and judicial tools such as Strategic Litigation Against Public Participation (SLAPP) lawsuits (see box below), which further limits the enjoyment of civic freedoms and contributes to shrinking the civic space.<sup>16</sup> In an environment where basic freedoms and civil society are undermined, it becomes increasingly dangerous for people to defend their rights.

#### FACT

### **Strategic Litigation Against Public Participation (SLAPP)**

SLAPPs are lawsuits filed by a private party with the intention to silence or intimidate another private party engaging in public participation, including criticism or opposition. SLAPPs are often filed without merit to cause financial harm to individuals and organisations, who have to hire lawyers and engage in costly legal battles to continue their work. SLAPP lawsuits are usually characterised by one or more of the following:<sup>17</sup>

- The remedies sought are unusually aggressive or disproportionate to the conduct targeted by the lawsuit.
- The corporate plaintiff is engaged in procedural manoeuvres that appear to be intended to drag out the case or drive up costs, such as pursuing appeals with little prospect of success.
- The corporate plaintiff appears to be trying to exploit its economic advantage to put pressure on the defendant.
- The lawsuit targets individuals as well as the organisations they work on behalf of.
- The lawsuit appears to be part of a wider public relations offensive designed to bully or intimidate critics.
- The corporate plaintiff has a history of SLAPPs and/or legal intimidation (e.g. threats of legal action designed to scare critics into silence).

## Civic freedoms

**THE RIGHT TO FREEDOM OF ASSOCIATION** is the right of any citizen to create or join a formal or informal group to take collective action. Associations can include civil society organisations (CSOs), clubs, cooperatives, non-governmental organisations, religious associations, political parties, trade unions, foundations and online associations, as well as less-defined groups such as social movements. Associations do not have to be registered for this right to apply. This right also allows groups to access funding and resources.

**THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY** is the right of citizens to gather publicly or privately and collectively express, promote, pursue and defend common interests. This includes the right to participate in peaceful assemblies, meetings, protests, strikes, demonstrations and other temporary gatherings for a specific purpose. States not only have an obligation to protect peaceful assemblies; they should also take measures to facilitate them.

**THE RIGHT TO FREEDOM OF EXPRESSION** includes the right to access information, critically evaluate and speak out against the policies and actions of state and non-state actors, and publicly draw attention to and carry out advocacy actions to promote shared concerns, without fear of retaliation from anyone. CSOs should be assured the freedom to carry out investigations and document their findings under this right.

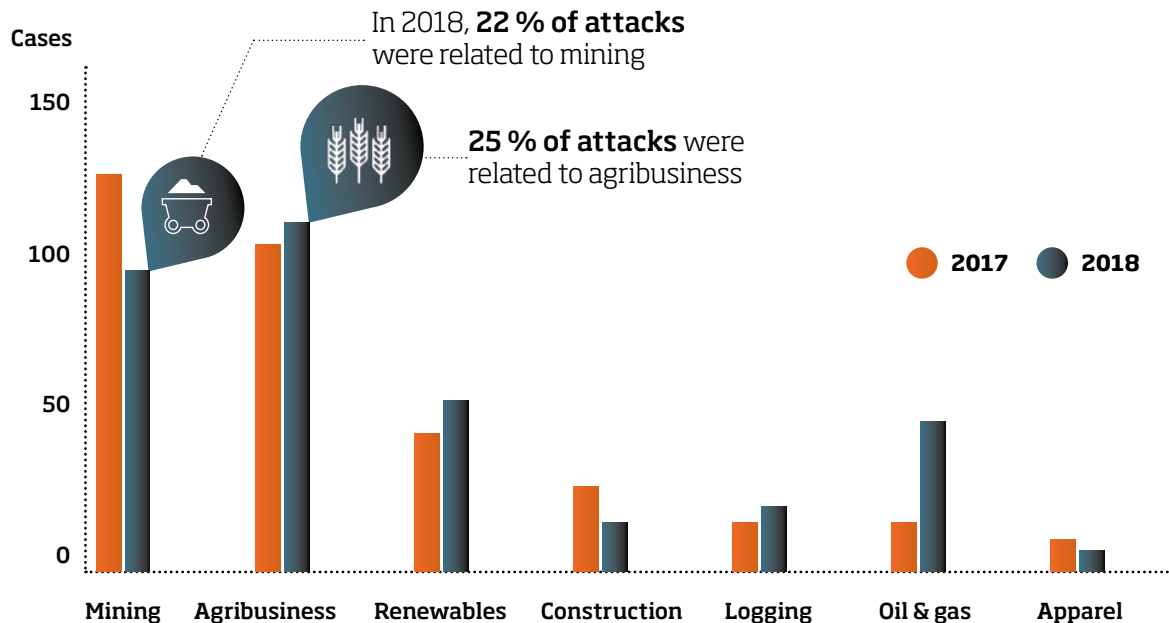
*Source: CIVICUS and the Universal Declaration of Human Rights, article 19 and 20*

## High-risk sectors

Business-related attacks on defenders can occur in many sectors and countries. However, attacks on defenders who oppose or criticise companies are particularly common in some sectors, including food and agriculture, extractives, renewable energy, and apparel and footwear.<sup>18</sup> These sectors are therefore the focus of this report. The ICT sector is also included since it, apart from risks related to mineral extraction and manufacturing, entails particular risks for defenders related to surveillance.

According to the database of Business and Human Rights Resource Centre, the most dangerous sectors for defenders in 2018 were agribusiness (which accounted for 25 percent of all attacks), extractive industries (22 percent), and renewable energy (12 percent).<sup>19</sup> Business projects in these sectors typically occupy large areas of land and impact a number of natural resources and biological diversity. Although such projects commonly require government permission, communities that rely on these resources for their livelihoods are seldom guaranteed their right to meaningful consultation and consent. Conflicts between local communities and companies is often the result.

## Which **business sectors** were the attacks related to?



SOURCE: BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE

According to figures from Front Line Defenders, 77 percent of all the defenders killed in 2018 were working on land, indigenous peoples' rights and environmental rights, up from 67 percent the previous year. While Latin America accounts for over half of the total killings of environmental defenders, attacks have also increased in Asia, primarily in India and the Philippines.<sup>20</sup>

## Food and agriculture

The agricultural sector is among the sectors where most attacks on defenders occur,<sup>21</sup> partly due to its dependency on natural resources such as land and water. The sector is also linked to high human rights risks in terms of forced labour, unsafe working conditions, lack of freedom of association, and the extensive use of chemicals that may affect the health of workers and surrounding communities and their water sources, causing particular harm to women and children.<sup>22</sup> Women and migrant workers constitute a large part of the workforce, and are generally vulnerable to violations of labour rights. In addition, they are often excluded from decision-making fora and lack the ability to claim their rights.





A Buddhist monk in Myanmar, next to a jade mine. The extractive sector, linked to environmental degradation and severe human rights violations, is one of the sectors where most attacks on defenders occur. PHOTO: MINZAYAR OO

In many countries, the agribusiness sector advocates forcefully to pressure governments to implement generous tax exemptions or less strict labour laws for agricultural workers, which become a source of conflict with workers and local communities.<sup>23</sup> Through global supply chains, the risks associated with the agricultural sector are also tied to the food sector and companies selling agricultural products. Defenders at risk in the food and agriculture sector often advocate for land rights or labour rights.

## Extractive industries

Extractive industries (mining, gas and oil) are linked to a wide range of human rights risks, as operations in this sector often lead to conflicts with local communities, including indigenous peoples. This sector had the highest number of environmental defenders killed in 2018.<sup>24</sup> Companies in this sector often employ private security contractors or engage state security forces, which in many cases are responsible for the excessive use of violence against workers and community members.<sup>25</sup> Women and girls are vulnerable to sexual harassment and violence perpetrated by these actors, particularly in conflict-affected settings.

Extractive projects are furthermore associated with high environmental costs such as pollution and the degradation and depletion of natural resources, which in turn cause human rights impacts such as jeopardising access to water and sanitation and creating health problems among local communities. Women and children are often disproportionately affected. Environmental concerns may also relate to the construction of infrastructure around extractive projects such as pipelines or new roads, which can damage biologically sensitive areas or intrude on indigenous peoples' land. An influx of male workers to project sites is furthermore often associated with increased prostitution and sexually transmitted diseases, and the heightened risk of sexual violence against women and girls.<sup>26</sup>

Other critical and common human rights risks in this sector are the displacement of rural and indigenous communities and the associated disruption of their livelihoods, as well as a lack of consultation with affected communities, corruption, lack of transparency in agreements between companies and governments and funding of armed conflicts. Defenders reporting on such issues are often at risk.<sup>27</sup>

## Renewable energy

The renewable energy industry plays a crucial role in the achievement of the SDGs, and the share of renewables in meeting global energy demand is expected to grow by 20 percent between 2018 and 2023.<sup>28</sup> However, while there is an urgent need for a rapid global transition to a low-carbon economy, many renewable energy projects, such as wind, solar, bioenergy, geothermal and hydropower, entail a broad range of human rights and environmental impacts. Allegations of adverse human rights and environmental impacts related to the renewable energy sector have become more frequent in recent years. These allegations include killings, threats and intimidation, land grabs, dangerous working conditions, lack of fair wages, and harm to indigenous peoples' lives and livelihoods. Most allegations are reported in Latin America, followed by southeast Asia.<sup>29</sup>

Research indicates an alarming lack of transparency, awareness and implementation of human rights responsibilities among companies operating in the sector in relation to adopting human rights policies, and identifying and addressing the environmental and human rights impacts associated with the projects, so-called human rights due diligence, or HRDD.<sup>30</sup> Indigenous peoples are often disproportionately impacted by the expansion of wind, solar or hydro energy projects or by large-scale plantations used to produce biofuel such as ethanol. Consequently, defenders at risk in the renewable energy sector often work with land issues, environmental protection and indigenous peoples' rights, such as rights to traditionally used land areas, the right to consultation, and the right to free, prior and informed consent (FPIC, see page 18).

## Apparel and footwear

The apparel and footwear sector is a main driver of the economic and social development of many developing countries and provides employment opportunities to millions of workers, particularly women.<sup>31</sup> During the past decade, it has experienced rapid growth in Asia and other parts of the developing world. However, it is also characterised by high volatility and low predictability.<sup>32</sup>

Governments usually support domestic manufacturing, and strive to maintain their country's competitive advantage by keeping wages low. At the same time, CSOs and trade unions struggle to defend the right to freedom of association and fair wages through collective bargaining. The media and governments in these countries often portray labour unions, NGOs and other defender organisations advocating improved labour rights as acting against their country's economic interests.<sup>33</sup>

Breaches of labour rights and unfair wages are two of the most common sources of conflict in the sector. According to the World Bank, female garment workers constitute a highly vulnerable group. Women's rights are more frequently violated both at work and in other contexts. Women defenders and labour rights defenders face particular risks in this sector.<sup>34</sup>

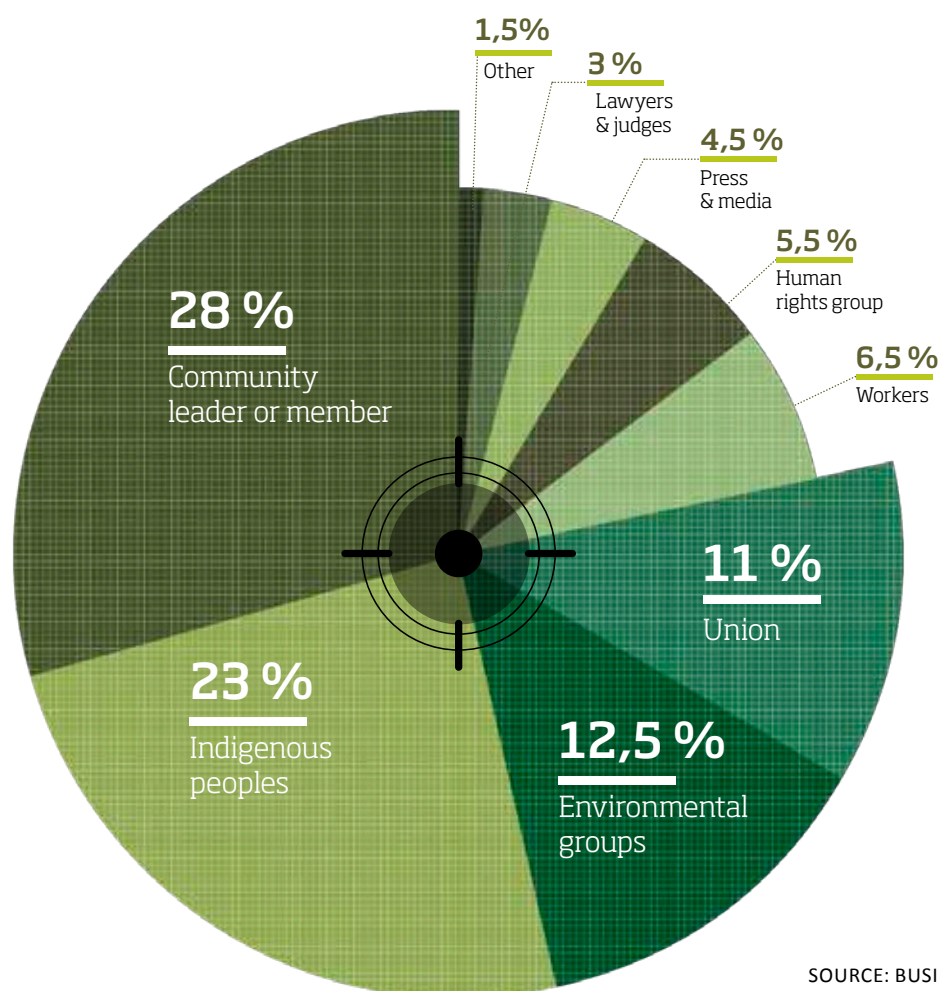
## The ICT sector

The ICT sector is characterised by long and complex supply chains that involve actors operating in business areas such as extraction, production and network operators. Companies in this sector therefore have a responsibility to manage a wide range of challenges.

In addition to risks related to the extraction of minerals and concerns regarding workplace health and safety – particularly exposure to toxic chemicals and accidents, – the sector's products can also be used for surveillance purposes. Many governments are increasingly misusing their surveillance powers to monitor regime critics and citizens' political activities.<sup>35</sup> The UN Special Rapporteur on Freedom of Opinion and Expression has called for an immediate moratorium on the sale, transfer and use of surveillance technology until human rights-compliant regulatory frameworks are in place.<sup>36</sup>

A range of defenders can be at risk in the ICT sector in addition to those working on business-related activities. This includes LGBTI defenders, women's rights defenders and journalists. These risks are particularly acute in undemocratic states and where ICT is used for surveillance by authoritarian regimes.

## Business-related attacks 2015-2018



SOURCE: BUSINESS  
AND HUMAN RIGHTS  
RESOURCE CENTRE

## Defenders most at risk

Certain groups of defenders are more likely to become victims of attacks than others. These include community leaders, indigenous peoples, environmental defenders and labour rights defenders. Women defenders within these groups often face particular risks and challenges.

### *Women defenders*

In many countries and sectors, women are at the forefront of defending labour rights and protecting water, land and the environment, and therefore risk attacks.<sup>37</sup> Women defenders are subject to the same types of risks as any human rights defender, but they are also targeted with gender-specific threats and violence, including sexual



assault and rape, sexualised smear campaigns, questioning of their morals and roles as wives and mothers, and the targeting of their children. The reasons behind the targeting of women defenders are often complex and depend on the specific context in which the individual defender works.<sup>38</sup>

In many cases, the work of women defenders is seen as challenging traditional family and gender roles in society, which can lead to hostility from the general population and authorities. Women defenders are also often stigmatised by their own communities and family members. Investigations of intimidation, threats and violence, whether committed by state or non-state actors, are rarely undertaken and women defenders are often left without effective protection.<sup>39</sup> The most dangerous sectors for women defenders from 2015 to 2018 were mining, agribusiness, renewable energy, and apparel and footwear. In 2019, documented attacks against women human rights defenders working on corporate responsibility or related issues increased from the previous year.<sup>40</sup>

### *Indigenous defenders*

Although indigenous people constitute only 5 percent of the world's population, they represent 25 percent of those exposed to business-related attacks. They hold over 20 percent of the world's land use rights, and often live off land that companies exploit.<sup>41</sup> Indigenous peoples play an important role as stewards of natural resources and protectors of biodiversity.

The UN Declaration on the Rights of Indigenous Peoples recognises indigenous communities' right to Free, Prior and Informed Consent, FPIC. It is also embedded within the universal right to self-determination.<sup>42</sup> The right to FPIC allows indigenous peoples to give or withhold their consent to a project that may affect them or their territories, and to negotiate the conditions under which a business project will be designed and implemented.<sup>43</sup> Non-existent or flawed FPIC processes with indigenous communities may lead to forced displacement and jeopardise their rights to food, access to water, health and livelihoods, with implications for a wide range of other human rights,<sup>44</sup> even threatening their very existence.

### *Environmental defenders and land rights defenders*

Environmental defenders (also widely referred to as environmental human rights defenders) and land rights defenders are two large groups of defenders that often overlap. UN Environment Programme considers an environmental defender to be anyone who is defending environmental rights, including constitutional rights to a clean and healthy environment, when the exercise of those rights is threatened.<sup>45</sup> Journalists, activists or lawyers who expose and oppose environmental destruction or land grabbing can be considered environmental defenders.<sup>46</sup>

The 2016 murder of the internationally recognised environmental defender Berta Cáceres from Honduras highlighted the threats and attacks faced by land and environmental defenders worldwide, particularly indigenous defenders.<sup>47</sup> Since then the negative development has continued: 164 environmental defenders were killed in 2018 alone. On average, three environmental defenders are killed every week.<sup>48</sup> People who speak out for climate justice are also increasingly threatened and intimi-



dated with violence, repressive laws, frivolous lawsuits and disinformation campaigns.<sup>49</sup> Global Witness (GW), a UK-based research organisation that records attacks on environmental defenders, has noted that struggles between governments, companies and local communities over land use and natural resources were linked to most of the killings documented in 2018. Furthermore, GW concludes that governments and businesses fail to tackle the main root cause of the attacks: the imposition of damaging projects on communities without their free, prior and informed consent.<sup>50</sup>

#### FACT

### Threats against environmental defenders

According to a 2019 study by the Swedish Society for Nature Conservation, Sweden's largest environmental non-profit organisation, the criminalisation of environmental activism is increasing. The study was based on testimonies from four global environmental networks and 21 organisations in 10 countries that have all experienced persecution and attacks on CSOs and associations.

Among the organisations surveyed, 80 percent said that civil society is experiencing shrinking civic space in the countries where they operate. A further 88 percent said that the situation in the country where they are based has deteriorated in recent years. The survey responses indicate that even in countries that guarantee some room for manoeuvre for civil society, the civic space is shrinking. The barriers to environmental defenders identified included smear campaigns, exclusion from decision-making fora, frozen finances, surveillance, fabricated prosecutions, wrongful detentions, travel bans and restrictions on mobilisation, threats, violence and murder. Furthermore, 68 percent of the study's respondents reported that decision-makers in their country view the environmental movement as a threat, and 52 percent provided concrete examples of companies involved in threats and harassment against their own or a partner organisation.<sup>51</sup>

In many cases, victims of business-related human rights abuses belong to rural communities and may not define themselves as defenders. Instead, threats to their livelihood force them to engage in the protection of community access to land and water against powerful economic or political interests. However, these individuals also fall under the UN's definition of human rights defenders. While they lack the strong legal protection of indigenous peoples, peasants gained increased recognition as a group entitled to specific rights in the 2018 UN Declaration on the Rights of Peasants and Other People Working in Rural Areas.<sup>52</sup> The role played by defenders in land governance is also affirmed in the UN Food and Agriculture Organization's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, which requires states to respect and protect the civil and political rights of defenders of human rights, including the human rights of peasants, indigenous peoples, fishers, pastoralists and rural workers.<sup>53</sup>

## *Labour rights defenders*

Any person or organisation defending labour rights is a human rights defender as articulated in the UN Declaration on Human Rights Defenders.<sup>54</sup> According to the 2019 Global Rights Index of the International Trade Union Confederation (ITUC), there are ongoing, systematic attempts to undermine basic labour rights, freedom and democracy globally. The index ranks 145 countries according to their degree of respect for workers' rights based on data from the past six years. The number of countries that exclude workers from the right to establish or join a trade union increased from 92 in 2018 to 107 in 2019.<sup>55</sup> Labour rights defenders experience violence and various restrictions of their rights, including obstruction and repression of unions by governments and employers, laws that limit collective bargaining, and dismissals.<sup>56</sup>

The ITUC has also reported a recent increase in violence arising from attempts to prevent workers from unionising; the safety of trade union leaders remains precarious. In 2018, 81 percent of countries in the ITUC index denied some or all workers the right to collective bargaining, and 65 percent excluded some groups of workers from labour law, such as domestic, agricultural and contract workers.<sup>57</sup>

In many countries, peaceful protests by workers are often violently repressed by state security forces. The most common reprisal faced by workers who speak up about violations is dismissal. For example, more than 12,000 garment factory workers in Bangladesh were fired in late 2018 and early 2019 for protesting against low wages.<sup>58</sup> Workers and union representatives also face arbitrary arrest, detention and imprisonment. According to the ITUC, Bangladesh, Colombia, Guatemala and the Philippines, which are also highlighted in chapter 4 of this report, were among the 10 worst countries for workers in the world.<sup>59</sup>

## **Who are the offenders?**

Attacks on defenders can be carried out by state security forces, police and official local authorities, or by non-state actors such as companies, paramilitary groups, organised crime, private security and the media. In most cases, perpetrators of threats and violent attacks go unpunished. In cases where someone is actually held accountable, it is rarely the instigator behind the attack.<sup>60</sup> For environmental defenders killed in 2018, and where the perpetrators could be identified, these attacks were carried out by paramilitary groups, police, landowners, private security guards, poachers, military, settlers, loggers, hired gunmen and business representatives.<sup>61</sup> Other types of attacks, such as legal or reputational attacks, can come from a variety of sources including local business representatives or employees, politicians or the media. For instance, between 2015 and 2018, at least 24 SLAPPs were brought against 71 human rights defenders by business actors in the extractive sector.<sup>62</sup>

In many countries, media and government actors often portray communities and defenders as “enemies of development” or “enemies of the state” when they criticise or oppose economically important sectors. According to Swedwatch’s interviews with defenders, violent attacks on defenders are often preceded by smear campaigns in

the media, which in many countries is controlled by economic and political elites. Negative media attention can exacerbate the risks for defenders speaking out against harmful business operations. Such reputational damage increases the risk of attacks on defenders by other actors, such as paramilitaries or organised crime networks, and sends a signal that crimes against the defender will go unpunished, or even be rewarded.<sup>63</sup>

## 2. Corporate responsibility in regard to defenders

While states have a central responsibility and duty to protect, promote and implement all human rights and fundamental freedoms,<sup>64</sup> companies have a responsibility to respect such rights and freedoms.<sup>65</sup> According to the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly referred to as the Declaration on Human Rights Defenders, states and other actors in society have responsibilities towards defenders.<sup>66</sup>

The declaration builds on and reinforces existing rights as outlined in, for example, the International Covenant on Civil and Political Rights. It makes clear that “no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedom”<sup>67</sup> and that everyone has a role to fulfil as a human rights defender.

According to the declaration, “Individuals, groups, institutions and non-governmental organisations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.” These actors are also stated to have an important “role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.”<sup>68</sup>

This notion is further supported by several UN resolutions adopted after the 1998 declaration that explain how defenders’ rights should be understood in different contexts and the role of states and other actors, such as companies, in ensuring the fulfilment of those rights.

## Guidance from the UN

Several UN resolutions address business responsibility in regard to defenders and civic space, whereby they:

- Underscore the responsibility of all transnational and other business enterprises to **respect human rights, including the rights of human rights defenders** to freedom of expression, peaceful assembly and association, and participation in public affairs.<sup>69</sup>
- Urge business enterprises to **identify and address** any adverse human rights impacts related to their activities through **meaningful consultation** with potentially affected groups and other relevant stakeholders in a manner consistent with the UN Guiding Principles on Business and Human Rights.<sup>70</sup>
- Highlight the importance of **accountability** of all transnational and other business enterprises, including their **provision of, or cooperation in, remediation**.<sup>71</sup>
- Invite leaders in all sectors of society, including business, to **express public support** for the important role of women human rights defenders, including the legitimacy of their work.<sup>72</sup>
- Urge all non-state actors to respect all human rights and **not to undermine** civil society's capacity to operate free from hindrance and insecurity.<sup>73</sup>

The UN Special Rapporteur on the Situation of Human Rights Defenders has also addressed the responsibility of business in regard to defenders, underlining the importance of protecting and supporting defenders and their work to achieve the SDGs.<sup>74</sup> The Special Rapporteur has in several reports addressed the lack of accountability for adverse human rights impacts of business activities, and urged companies and states to ensure that both preventive and reactive measures are adopted and implemented to respect and protect human rights defenders.<sup>75</sup> The Special Rapporteur has also called on the international community, states, international finance institutions, business enterprises and other actors to urgently and publicly adopt a zero-tolerance approach to killings and violent acts against defenders, and immediately launch policies and mechanisms to empower and protect them.<sup>76</sup>

## The importance of human rights due diligence

The acknowledgement of corporate responsibility in relation to human rights has developed following the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011. The UNGPs build on existing laws and serve as the most comprehensive and globally recognised framework on business and human rights. The principles apply to all businesses and make clear that companies are responsible for respecting human rights regardless of how well the state fulfils its duties. The principles, especially the key concept of HRDD (see the fact box below),

have been incorporated into various other guidelines, including the OECD Guidelines for Multinational Enterprises, which apply to all companies based in OECD member states and adhering countries.<sup>77</sup>

Protection of human rights defenders is increasingly recognised as central to the implementation of the UNGPs<sup>78</sup>, particularly in relation to the process of conducting HRDD. Meaningful stakeholder consultation during the process of identifying and addressing potential and actual impacts is a key component of that process. Consulting with defenders during due diligence processes serves several purposes. Risks to defenders that question or oppose business activities, including to their lives and personal security, are salient human rights risks in many areas where companies operate and need to be identified and addressed according to the UNGPs.

FACT

### **Human rights due diligence (HRDD)**

According to the UNGPs, all businesses should conduct HRDD processes to identify and address adverse impacts on human rights related to businesses.<sup>79</sup> HRDD should:

- Assess actual and potential human rights impacts, integrate and act upon the findings, track responses and communicate how impacts are addressed;
- Cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or that may be directly linked to its operations, products or services through its business relationships;
- Vary in complexity depending on the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- Adapt to changing human rights risks as the business enterprise's operations and operating context evolve.

Where the state is unwilling or unable to fulfil its human rights duties, companies need even more rigorous systems in place to avoid causing harm and to assess the risks of cooperating with state entities and state-owned businesses. The OECD Due Diligence Guidance for Responsible Business Conduct, published in 2018, provides practical guidance for HRDD. Companies must tailor their approaches to HRDD to specific risks and take into account how these risks affect different groups – for example, by applying a gender perspective and ensuring a conflict perspective when needed.<sup>80</sup>

The expectation that companies conduct HRDD as defined in the UNGPs has been further developed in the OECD Due Diligence Guidance for Responsible Business Conduct. The guidance clarifies that involvement in reprisals against civil society or human rights defenders who document, speak out on, or otherwise raise the potential and actual human rights impacts associated with projects constitutes an adverse impact on human rights. Each company's due diligence process should therefore address how to avoid involvement in such adverse impacts.<sup>81</sup>



## Duties of the state

States have the duty to protect people from human rights abuses by business enterprises within their territory and/or jurisdiction.<sup>82</sup> States also have the primary obligation to ensure the rights and protection of human rights defenders, as set out in various human rights instruments, in particular the UN Declaration on Human Rights Defenders, by adopting legislative, administrative and other steps necessary to ensure their rights and freedoms and by taking all necessary measures to ensure their protection.<sup>83</sup>

This duty has been reaffirmed in many UN Human Rights Council and General Assembly resolutions, including the 2016 resolution on the protection of human rights defenders working on economic, social and cultural rights.<sup>84</sup> A 2017 General Comment by the Committee on Economic, Social and Cultural Rights also focuses on state obligations in the context of business activities, and recommends that states protect human rights defenders and refrain from legal measures that would criminalise their work.<sup>85</sup>

A 2019 General Assembly resolution recognising the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development calls upon all states to implement the UNGPs.<sup>86</sup> This includes developing a national action plan on business and human rights, and encouraging – and, where appropriate, requiring – all business enterprises to carry out HRDD and meaningful and inclusive consultations with potentially affected groups and other relevant stakeholders.<sup>87</sup>

According to the UNGPs, states should not assume that businesses invariably prefer, or benefit from, state inaction. Instead, they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.<sup>88</sup> A growing number of countries have implemented new legislation to require companies to conduct HRDD in order to avoid negative impacts on human rights.<sup>89</sup> States should also ensure that government departments, agencies and other state-based institutions that shape business practices are aware of and observe the state's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.<sup>90</sup> The UNGPs urge states to ensure that such institutions act in a manner that is compatible with the government's human rights obligations.<sup>91</sup>

Embassies and other diplomatic missions play a central role in states' ability to promote civic space. In conflict-affected areas, the risk of serious human rights violations is generally heightened. When foreign companies conduct business in such areas, their home country should provide support by ensuring that businesses are not involved in violations and that companies are aware of the elevated risks, as well as how to address them.<sup>92</sup> For the European Union, the EU Guidelines on Human Rights Defenders should assist EU missions in their approach to human rights defenders.<sup>93</sup>

# Gains for companies from engaging with defenders

Engaging with human rights defenders is often beneficial for businesses and can help them:

**Secure a stable and predictable business environment.** Defenders uphold fundamental democratic principles and the rule of law through their work at the local, national, regional and global levels, which serves the entire society, including companies and investors. A successful and stable business environment requires respect for civic freedoms and the rule of law, and the failure of national governance and social instability are often seen as potentially damaging to businesses.<sup>94</sup> By supporting democratic principles and those who defend them, companies also reinforce stable, predictable business operations and help minimise political volatility and instability.<sup>95</sup>

**Increase their contribution to the SDGs.** The business sector has a critical role in contributing to the achievement of the SDGs, which requires ideas, expertise, input and collaboration from all societal actors, including an active and open civil society. Since many companies struggle to clarify their contribution to the SDGs, it is clear that most goals cannot be met without the active participation of defenders. Defenders at all levels play a critical role in pointing out the obstacles to reaching the SDGs, and creating solutions for global challenges, including climate change, conflict and rising inequalities.<sup>96</sup>

**Identify and address risks at an early stage.** Consulting with defenders is both a responsibility and an effective way to identify and address the risks associated with complex global value chains. Human rights defenders are often among the first to identify risks and harm that can be mitigated if properly addressed. Consulting with defenders can help a company understand the perspectives of those who may be affected, improve the quality of human rights impact assessments, adequately prioritise which impacts to address first, and help a company decide how to manage the identified impacts.<sup>97</sup>

**Maintain social license to operate and reduce potential conflicts with stakeholder groups.** Speaking up in support of civil society and defenders at risk can help companies meet social expectations and earn and maintain their so-called social license to operate.<sup>98</sup> This could also help build competitive advantage and mitigate both reputational and financial risk.

**Avoid complicity.** In addition to the positive impacts that might arise from companies that meaningfully consult with defenders, businesses also need to be aware of the risks of not doing so. By not engaging, they may contribute to increasing the risks to defenders simply by operating in areas where defenders and civic space are under attack. When defenders are silenced and attacked, so is democracy itself. By not consulting with or assessing the risks to defenders, and by cooperating with business partners who are in conflict with defenders, companies risk contributing to negative impacts on defenders, a shrinking civic space and to undermining many of the SDGs. In conflict areas it could also increase the risks of complicity in violations of international humanitarian law.<sup>99</sup>

### 3. What should companies do?

Attacks against defenders are committed on a daily basis by business enterprises.<sup>100</sup> More often, however, companies are linked to attacks through their business relationships. Whether the link is direct or indirect, all business enterprises have an independent responsibility to ensure that defenders can effectively and safely address the human rights impacts linked to their operations.<sup>101</sup>

The deteriorating situation for defenders and civil society is increasingly on the business and human rights agenda. However, many companies still lack the capacity and guidance needed to adequately address the situation.

Guidance for companies on how to identify and address risks to defenders is dispersed across various guidelines and needs further clarification. This section aims to clarify what companies should do to live up to their responsibilities as outlined in norms and resolutions, and in recommendations by the UN Special Rapporteur on the Situation of Human Rights Defenders.

In short, companies need to apply a mix of preventive and responsive measures to safeguard civic freedoms and facilitate an enabling environment for defenders and civil society. They should also act when defenders associated with their operations are at risk. The application of these measures rests upon rigorous HRDD processes, including meaningful consultations with defenders and identification of risks to defenders.

#### Ensure respect for defenders is embedded in policies and internal systems

Companies should address the situation of (and risks to) company employees in their capacity as defenders, as well as external defenders, and their opportunities to safely address business-related human rights grievances.<sup>102</sup> Policy commitments on human rights should reflect the critical role that defenders play in bringing human rights issues to the company's attention and address the risks they face in doing so. Such policies should include a commitment not to retaliate against defenders or organisations that criticise the company, and ideally a commitment not to sue defenders for defamation or participate in SLAPP lawsuits. Companies should also actively engage with defenders and grassroots CSOs to elaborate their human rights policies.<sup>103</sup>

Companies should also ensure that employees at all levels, including leadership and regional and country offices, are aware of defenders who are at risk in the company value chain and how these risks should be addressed. Companies should promote this understanding among their own employees as well as suppliers' employees, including both defenders directly involved such as union leaders or whistle-blowers and external defenders relevant to the company's wider operation.<sup>104</sup> According to the UNGPs, they should also have effective operational-level grievance mechanisms in place and cooperate in remediation processes when appropriate.<sup>105</sup>

## How to integrate defenders in human rights due diligence processes



## Identify risks to defenders and civic space

As part of their HRDD processes, companies should assess the situation of civic freedoms and human rights defenders in the countries in which they operate, and identify gaps between international standards and national laws and practice.<sup>106</sup>

While risks to defenders may vary significantly depending on the political and cultural context in which they operate, some groups of defenders tend to be at a particularly high risk of retaliation and repression (see examples on page 17). When companies assess risks to defenders in their value chains, they should consider the vulnerabilities of different groups. Expert input should always be sought.

## Engage in meaningful dialogue with defenders

Meaningful stakeholder consultation to identify and address potential and actual impacts is a key component of HRDD.<sup>107</sup> This requires companies to listen to affected stakeholders and take their perspectives into account in internal decision-making processes. Stakeholder engagement should include discussions about how the company manages its impacts; companies should not simply recite their positive contributions as a one-off exercise to satisfy licensing requirements.

In order to be meaningful, dialogue between companies and other stakeholders (including defenders) should be two-way, conducted in good faith, responsive and ongoing.<sup>108</sup> Two-way engagement means that parties freely express opinions, share perspectives and listen to alternative viewpoints to reach mutual understanding – not just convey information. Ongoing means that it is not just to be able to say the company “did” stakeholder engagement, but an ongoing process focused on building a mutually beneficial relationship.

Engagement should be focused on people who are (or may be) affected by the company’s operations, or their legitimate representatives, not just organisations the company has a friendly relationship with. Companies also need to be aware that local communities are not homogenous units but consist of a variety of groups and interests, and that they may experience impacts differently. In dialogues with potentially affected stakeholders, including defenders, companies should consider whether such consultations could put those individuals at risk of reprisals or other threats to their, or their families’, safety.<sup>109</sup> Indeed, local elites may accuse defenders and civil society actors that work on business-related issues of being anti-development, extremists or even terrorists in order to silence them. The defenders seen as the most uncomfortable to work with in the local context might be the most relevant for companies to engage with.

## Support civic space and an enabling environment

The state, as the main duty bearer, holds the main responsibility for ensuring that defenders can enjoy a safe and enabling environment in which their work has the broad support of society, and government institutions and processes are aligned with their safety and the aim of their activities.<sup>110</sup> Other actors also play an important role in supporting states, independently and in partnership, to achieve this objective. In line with the various UN resolutions calling on businesses to express public support for defenders, and companies’ responsibility to use their leverage to address adverse human rights impacts, companies should highlight the risks to defenders and civic space as often as possible, for example in dialogue with governments and state authorities in countries where the company operates and has identified risks to defenders and/or infringements on civic freedoms. Legal restrictions are among the most significant threats to defenders; they directly affect their ability to play a crucial role in supporting responsible business conduct.<sup>111</sup>





Women human rights defenders protesting against corruption in Guatemala. PHOTO: WAKIB KEJ

In many countries where defenders are at risk, there is a lack of political will to address the situation and ensure an enabling environment and open civic space. Therefore, addressing concerns in dialogue with government representatives might not suffice. Requirements to protect defenders and uphold zero-tolerance of violence against defenders should be put into writing in business-related contracts as often as possible, for example with host governments, arrangements involving state security forces, and contracts to provide equipment and/or personnel to state entities, including to state-owned companies.<sup>112</sup>

In line with the UNGPs' first pillar on the duty of the state, companies operating in conflict areas can expect support and clear guidance from their home state, through its embassy, on how to manage risks, including to defenders. They may also explore ways to jointly address risks in cooperation with embassies. EU missions have an important role to play in putting the EU's policy towards human rights defenders into practice, and can be contacted for advice.<sup>113</sup>

Companies can also support defenders and help preserve civic space by being transparent about their business partners and supply chains. This makes it easier for defenders at risk to reach out to companies for support, and for companies to identify and address risks to defenders.

## When risks to defenders are identified

Ideally, companies should identify risks to defenders at an early stage to allow for proactive, rather than reactive, measures to support and protect them. This requires companies to collect information that can help predict if a defender is at risk and to know how to interpret the warning signs. While such signals may vary between contexts, they can include:<sup>114</sup>

- Reputational attacks in the media;
- Shutdown of organisational websites;
- Attacks against the offices of an organisation and robbery of computers and sensitive information;
- Travel bans to prevent defenders from attending international meetings;
- Negative comments from government representatives, such as insinuations or direct accusations against the defender for being anti-development, against the interests of the nation, not being trustworthy, being too ideological, working on behalf of vested interests or foreign states, being terrorists or linked to such organisations;
- SLAPP lawsuits filed against the defender or their organisation;
- Administrative and legal barriers to defenders' work or laws that criminalise them and limit freedom of speech, assembly and association;
- Crackdowns on protesters;
- Suppliers decline external audits and/or refuse to engage with local civil society;
- Reports of general decline in state of civic freedoms and attacks on defenders;
- Physical attacks on other defenders working on similar issues.

When a company identifies risks to a defender or group of defenders in its value chain, it should promptly create an action plan to mitigate the risk of further retaliation against the defender. This plan should consider the severity of the harm and the degree of company involvement, and identify where the company has leverage to address the issue, if such action is welcomed by the defender and does not put them in further danger.<sup>115</sup> The risks of acting have to be weighed against the risks of not acting. The action plan should be adapted to the local context but can include some, or all, of the following:

- Consult with the defender and their organisation and/or community to understand the risks and possible instigators of threats or attacks. Use civil society actors to access the defender if contact is not established, and ensure that consultation takes place in a way that does not further exacerbate any risks to the defender, for example by offering a safe meeting location.
- Encourage reporting threats or attacks to the police and other relevant institutions, depending on the location and severity. It may be appropriate, for example, to inform regional human rights bodies<sup>116</sup>, the UN Special Rapporteur on the Situation of Human Rights Defenders, national human rights commissions and NGOs that specialise in the protection of defenders.<sup>117</sup>

- Identify whether a state-developed protection scheme is available for defenders and push for implementation of such protection in dialogue with the host state and relevant authorities. Encourage governments to ensure that necessary investigations into attacks on defenders are undertaken.
- Use company leverage to raise concerns over the situation of the defender in as many contexts as possible, and explore possibilities for joint action with other companies, civil society or business associations, for example through a statement or letter to concerned parties. Such measures should consider the benefits and risks of doing so publicly vs. privately.
- If the defender faces criminal charges in the form of SLAPPs from a company in the supply chain, consider threatening to terminate the contract with the supplier if they do not withdraw the lawsuit, to send a clear message to other suppliers that attacks, including legal attacks, on defenders will never be tolerated.<sup>118</sup>

## The risks of omission

The UNGPs establish three types of relationships between companies and human rights violations: causing, contributing to or being linked to negative impacts.<sup>119</sup> In a statement on the UNGPs in 2017<sup>120</sup>, the Office of the High Commissioner for Human Rights clarified that a company's involvement with an impact may shift over time, depending on its own actions and omissions. For example, if a business<sup>121</sup> identifies or is made aware of an ongoing human rights issue that is directly linked to its operations, products or services through a business relationship – yet over time fails to take reasonable steps to prevent or mitigate the impact – it could eventually be seen to be facilitating the continuance of the situation and thus be “contributing to”.<sup>122</sup>

According to UNGP Principle 19, companies that cause or may cause an adverse human rights impact should take the necessary steps to cease or prevent the impact. Where a company contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution. When a company is linked to the problem, it should use its leverage to mitigate the impact as much as possible. The UNGPs state that “when looking at business relationships, the focus is not on the risks the related party poses to human rights in general, but on the risks that it may harm human rights in connection with the enterprise's own operations, products or services”.<sup>123</sup> Given the degree of influence exercised by business actors in many parts of the world, including in the political sphere, their silence when human rights defenders are targeted or repressive laws are enacted may be taken as a sign of approval of such measures.





## 4. Defender perspectives

Findings from interviews with defenders conducted for this report illustrate at least three recurring ways in which companies may increase risks to defenders and thereby be linked to adverse human rights impacts. While the risks are context specific and these findings are non-exhaustive, they provide important indications of how companies may be linked to, or contribute to, the deteriorating situation for human rights defenders:

- By contributing to existing tensions and exacerbating local conflict dynamics;
- By cooperating with state-owned companies or state-prioritised projects in countries where governments target defenders;
- By offering resources or techniques that can be used against defenders.

Swedwatch's six member organisations and their network – which includes thousands of partner organisations across Asia, Africa and Latin America – note that defenders and civil society face an increasingly hostile environment in all these regions. Ten excerpts from interviews with defenders are recounted below to highlight their perspectives.

All interviewees work on business and human rights issues in countries that exercise significant repression against defenders. Most have also engaged in reporting on business-related impacts in the sectors highlighted in this report. Their testimonies illustrate the global trend of increased criminalisation of defenders through legal, reputational and physical attacks.

Understanding the challenges faced by vulnerable groups of defenders is important for identifying and addressing risks linked to a company's value chain. Some of the defenders interviewed face additional barriers in their work related to their identity, which makes them more vulnerable. For example, the common stigmatisation of women defenders by their own communities is illustrated in several of the cases, particularly in interviews with defenders from Peru, Colombia, Guatemala, South Africa and Azerbaijan. These countries all have strict gender norms and alarmingly high levels of violence against women, but women in each case have taken a lead in human rights and environmental struggles, exposing themselves to significant risks.

The cases from the Philippines, Thailand, Peru and Colombia illustrate the worrying global trend of increased harassment and criminalisation of indigenous peoples and land rights defenders, linked to their use and defence of territories and natural resources. Human rights defenders from these countries are commonly accused of being guerrilla fighters or terrorists, solely due to their work in advocating human rights and land rights for local rural or indigenous communities.



# Defenders portrayed in this report

The defenders interviewed for this report work on corporate responsibility or related issues in nine different countries. They all have experience of business-related legal, reputational or physical attacks against themselves or their organisation. Their testimonies illustrate the global trend of increased criminalisation of defenders worldwide.



**Dalila Merida**

Committee for Peasant Unity, Guatemala

»We stood outside the farm with our placards and their security guards started shooting at people. There was a lot of physical violence. Since then the owners of the farm began to criminalise us, filing lawsuits, accusing me and four others of aggravated usurpation.«

page 44



**Milena Florez**

Movimiento Ríos Vivos, Colombia

»The paramilitary groups who have taken over the area after FARC left have pointed out several of us as military targets for opposing the hydroelectric project.«

page 40

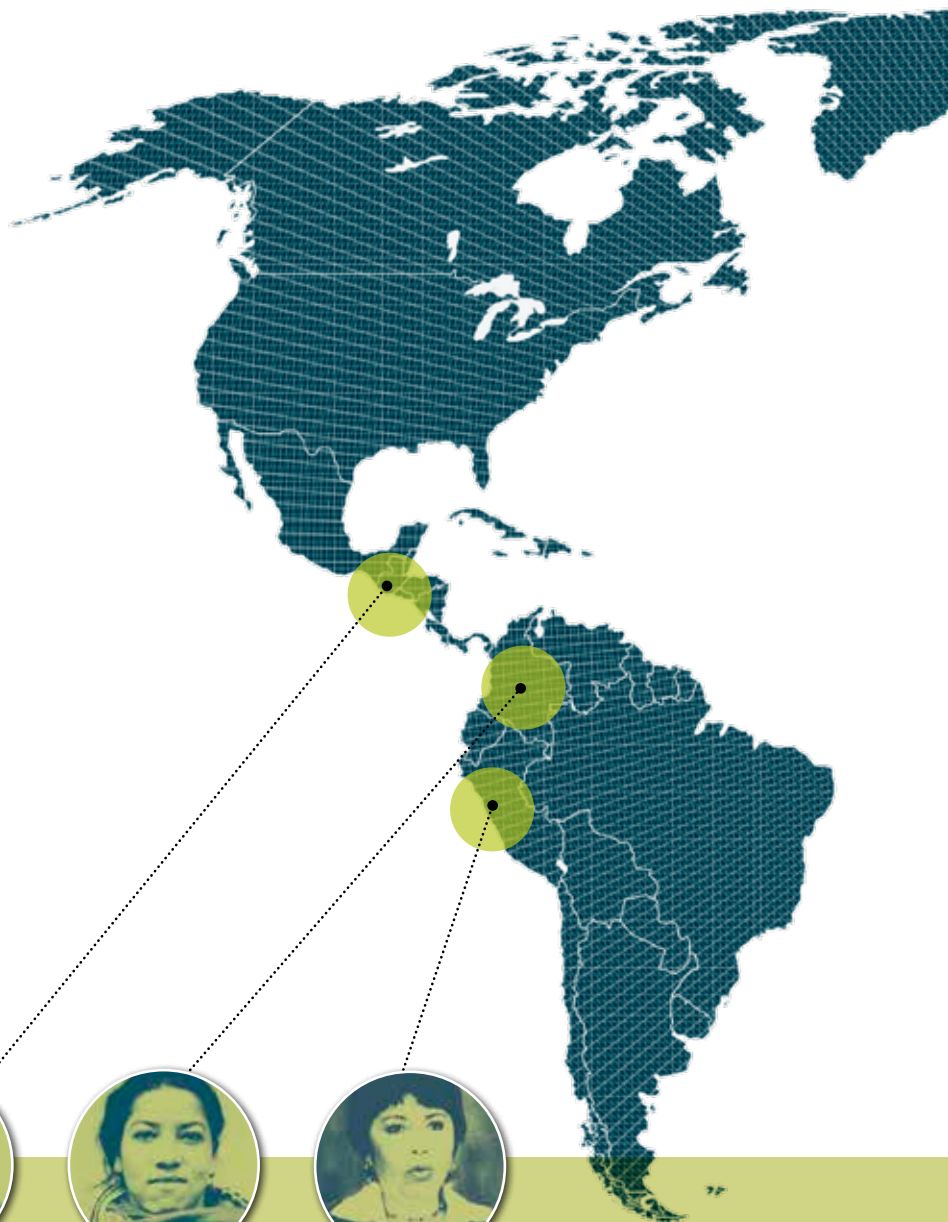


**Rosario Huancaya**

Human Rights Commission of Ica, Peru

»Being a human rights activist means being uncomfortable. It has closed many doors for me in my personal life and sometimes I ask myself why I am still doing this. But I have to.«

page 50







**Francis  
Colee**

Green  
Advocates,  
Liberia

»We have faced all forms of security threats and attacks in relation to our work on land and property rights for local communities in Liberia. Personally, I have experienced intimidation, harassment, physical attacks, death threats, defamation and threats of arrest.«

page 36



**Uenice  
Mampa**

Bench Marks  
Foundation,  
South Africa

»On one occasion some of our community members got shot when they were protesting against the injustices. The mines have divided our community and created a lot of tensions between us.«

page 46



**Arzu  
Geybullu**

Freelance  
journalist,  
Azerbaijan

»It has become the norm that phone calls are intercepted. The authorities have also relied on mobile phone operators to determine who has been present at demonstrations and have called these people into questioning, or detained them.«

page 52



**Babul  
Akhter**

Bangladesh  
Garments and  
Industrial Work-  
ers' Federation,  
Bangladesh

»I was under arrest for 12 days. One day they physically tortured me. I was prepared to die that night. But then I was released from jail, only because of the international pressure from big brands in the garment sector.«

page 38



**Anonymous  
defender**

Asia Indigenous  
Peoples Pact,  
Thailand

»Criticising private companies or government agencies is very sensitive in Thailand. Human rights defenders face a lot of risks in relation to business. I have to be very careful.«

page 48



**Ryan  
Mendoza**

Community  
health worker,  
The Philippines

»The military works hand in hand with the companies, and they were monitoring what we were doing. They told us that before we came, local people did not do or say anything but since we arrived, the locals wanted to protest.«

page 42



**LIBERIA: FRANCIS COLEE**

»We have faced all forms of security threats and attacks in relation to our work on land and property rights. «

The Liberian government has heavily promoted foreign investment in mining and large-scale agriculture since the end of the country's civil war in 2003, which was largely driven by competition for natural resources. Business and trade in natural resources played a fundamental role during decades of armed conflict, and irresponsible business conduct still leads to frequent conflicts between companies and communities and fosters social unrest between and within communities. These conflicts undermine the country's social cohesion and resilience, and hinders sustained peace.<sup>124</sup>

**Despite some positive** advances, human rights defenders in Liberia continue to face a hostile environment and severe threats related to their work. Particularly vulnerable groups include defenders of sexual orientation and gender identity rights, land and environmental rights defenders, and journalists. Defenders working on corporate accountability, including issues related to the palm oil industry and land grabbing, are vulnerable to defamation, criminalisation and physical attacks by members of public institutions. In recent years defenders have been subjected to spurious criminal charges, repeated arrest, lengthy imprisonment and torture.<sup>125</sup>

The local environmental organisation Green Advocates has worked since 2003 to defend the environment and land rights and to provide legal aid and support for local communities that are often excluded from decisions related to new projects such as mining or large-scale plantations.<sup>126</sup> Francis

Colee has worked with Green Advocates since 2005 and is currently the head of programs:

**How would you describe the situation for defenders working on corporate responsibility in Liberia?**

– There is a shrinking space for human rights defenders in relation to businesses in Liberia. The most sensitive issues or sectors are land conflicts. Our advocacy with local communities has largely been about helping them exercise their economic, social and cultural rights which are frequently abused by the government and companies. Local communities' right to free, prior and informed consent has not been respected, leading to community resistance to the [land] concessions and, in some instances, violence. The government and the companies view us as anti-development or against foreign investments. Defenders are under attack for advocating with local communities. But in the communities, we are treated with lots of respect because we try to help.

**What forms of attack have you experienced in your work?**

– We have faced all forms of security threats and attacks in relation to our work on land and property rights for local communities in Liberia. Our community partners are also frequently threatened with physical violence. Personally, I have experienced intimidation, harassment, physical attacks, death threats, defamation and threats of arrest. In 2016 the police attacked our offices to arrest our Lead Campaigner and all staff of Green Advocates. Plainclothes security personnel visited our homes and communities making inquiries about our whereabouts. In fear of my life, I went underground along with other staff of Green Advocates. We could only resume

work at Green Advocates after three months when our legal team went to court and overturned the arrest warrant.

**What impacts have the attacks had on you?**

– Physical attack or threats of arrest have had the potential to instil fear in me and other staff, and obstruct my work with local communities, including pushing me to decide to voluntarily leave my job at Green Advocates – but I resist. Some of my friends that are employed by the government and companies are afraid to publicly associate with me for fear of losing their jobs. My family fully understands the nature of my work, which is about standing up with others in order to protect rights, and they are ready to go through security threats and attacks with me. ●

»Personally, I have experienced intimidation, harassment, physical attacks, death threats, defamation and threats of arrest.«





**BANGLADESH: BABUL AKHTER**

»I was under arrest for 12 days and under tremendous mental torture. One day they physically tortured me. I was prepared to die that night.«

**D**efenders in Bangladesh face judicial harassment, arbitrary arrest, fabricated charges, abduction, physical attacks, torture and extrajudicial killings.

Between February 2013 and September 2017, at least 15 Bangladeshi human rights defenders were killed.<sup>127</sup> Restrictive legislation also poses a threat to their work. A wide range of defenders face particularly high risks, including those who criticise the government, those working on anti-corruption or who are critical of Islamic parties, journalists, bloggers, women human rights defenders, defenders working on sexual orientation and gender identity rights, and defenders working on the rights of minorities. Bangladesh also has a long record of abuse and violations of fundamental workers' rights and of labour rights defenders.<sup>128</sup>

**Bangladesh is the** world's second-largest garment exporter after China, and its garment industry accounts for 75 to 80 percent of the country's export earnings.<sup>129</sup> In 2017, there were 4,482 garment factories in the country employing 4 million workers, about 80 percent of whom are women. Workers find it difficult to survive on their wages. Even though they work 10 to 12 hours a day, or even more with overtime in peak seasons, they struggle to make ends meet and feed themselves and their families. Excessive overtime due to low wages also limits workers' ability to be active citizens and take part in trade unions, civil society and society at large.<sup>130</sup>

Babul Akhter, a former garment factory worker in Bangladesh, founded and has served as president of the Bangladesh Garments and Industrial Workers' Federation since 2000.<sup>131</sup> In his fight for decent wages and union rights he has been heavily targeted by political and economic elites who are closely linked to the garment sector.

**How would you describe the situation for defenders in the garment sector in Bangladesh?**

– In Bangladesh, around 30 percent of our Members of Parliament are garment factory owners or directly associated with the industry – and more than 60 percent of them are businessmen. So, you can think about the magnitude of their power. We who are workers' leaders at the federation level are watched 24 hours a day by the government agencies.

**What forms of attack have you experienced in your work?**

– I was arrested once after a demonstration in 2010. I was under arrest for 12 days and under tremendous mental torture. One day they physically tortured me. I was prepared to die that night. I cannot express right now my feelings about the situation that I was in at that moment. That was the month of Ramadan, so the police stopped giving me any food and separated me from the other prisoners in that cell. But then I was released from jail and the government withdrew all the criminal charges against me, only because of the international pressure from big brands in the garment sector.

Since then we have faced many difficulties. In 2012 our regional leader Aminul Islam was brutally murdered. In December 2018 and January 2019, there was another crackdown

during protests for an increased minimum wage and we again faced problems. When there is unrest, the intelligence branches and the police authorities always imply that we are responsible for all kinds of conflicts in the industry. This time there was not much international pressure or lobbying from international brands in the sector, so there was no effort to resolve the issue – from either the government or the manufacturers. Thus, more than 12,000 workers are still dismissed and 35 cases against the workers are still pending.

**What role does international pressure from buyers play?**

– It is very clear how important international pressure is for us, in particular from the companies sourcing from Bangladesh. I think the international brands have responsibilities. Brands have codes of conduct and social responsibilities. Consumers can put pressure on the brands, and brands can put pressure on the suppliers. If the consumers together with the workers' leaders can put pressure on the brands, the brands will talk to the suppliers and the government. In that case, both the manufacturers and the government will follow the advice coming from the global brands. ●

»I was released from jail and the government withdrew all the criminal charges, only because of the international pressure from big brands in the garment sector.«



**COLOMBIA: MILENA FLOREZ**

»After the peace agreement the situation got much worse: several of my colleagues have been killed.«

Colombia is one of the most dangerous countries in the world for defenders. In November 2016, the leftist guerrilla Revolutionary Armed Forces of Colombia (FARC) and the Colombian government signed a peace agreement that allowed FARC to form an official political party and to integrate former fighters into society. Although most demobilised FARC ex-combatants are committed to the peace agreement, in August 2019, two FARC commanders publicly defied the 2016 peace agreement and called on supporters to take up arms after criticising the government for not upholding its end of the deal.<sup>132</sup> Many of the human rights risks linked to the conflict, including violence perpetrated by armed groups such as former paramilitaries and guerrilla fighters, still exist. While the peace process is facing critical challenges and significant human rights risks persist, foreign investments in Colombia's previously inaccessible rich natural resources have increased markedly and could exacerbate conflicts if not properly addressed.<sup>133</sup>

**Although the number** of casualties due to the armed conflict decreased during and after the peace negotiations, defenders have experienced a rise in threats and attacks. Among those most at risk are defenders of indigenous and farmers rights, defenders of sexual orientation and gender identity rights and Afro-Colombian defenders. Women defenders within these groups face particular risks and challenges. Defenders who work in areas dominated by criminal groups operating in the vacuum left by FARC, and



where there is resistance to the peace accord, face additional risks. These areas often have illicit economies, high levels of violence, endemic poverty and a lack of state presence. Economic interests with links to criminal groups affect defenders of indigenous rights, land rights, union workers and all defenders working on rights threatened by megaprojects. The largest increase in killings of defenders in 2018 took place in the agribusiness and renewable energy sectors.<sup>134</sup>

**The Movimiento Ríos Vivos** Colombia movement opposes Colombia's largest hydropower project currently under construction in Antioquia. Movimiento Ríos Vivos Colombia organises people who are adversely affected by the project and has, since construction began in 2009, reported on related environmental impacts and human rights abuses.<sup>135</sup> These include forced evictions and a lack of compensation to artisanal miners who for generations have lived and worked on the shores of the Cauca River where the project is located. Milena Florez is an environmental defender in the Movimiento Ríos Vivos movement currently living in exile in Europe:

**How has the situation for you as defenders changed after the peace process?**

– We were always targeted, but after the peace agreement the situation got much worse: many of my colleagues have been killed. The paramilitary groups who have taken over the area after FARC left have pointed out several of us as military targets. In 2016 we received increased threats and recently one of the armed groups started asking for me. They were not very friendly.

I had to leave and now I am in exile with my children; it is very hard.

**How have these threats and attacks affected you?**

– For us it is very sad because we are defending the environment that belongs to everyone. It is very hard when they threaten us only because we tell the truth. I feel sad. We are not doing anything wrong. My children are very afraid. They know other defenders are being killed and they tell me to stop and ask if I want to be killed. As a woman you are always more questioned as a defender. We are judged more harshly, especially when our work puts our families in danger. But I say, if we don't defend our rights then who will? I have always thought that if we do not do it, others will not either because many are afraid and have been silenced already – so we have to be stronger. ●

»The paramilitary groups who have taken over the area after FARC left have pointed out several of us as military targets.«



**THE PHILIPPINES: RYAN MENDOZA**

»The military works hand in hand with the companies, and they were monitoring what we were doing.«

In the Philippines, defenders are facing a massive clampdown on civil society and a rapid increase in killings and violence. Civil society groups report that repression is worsening, including attacks on farmers and their organisations, church workers, alternative media, indigenous peoples, peace advocates and other defenders.<sup>136</sup>

A climate of impunity, in combination with the government's encouragement of extrajudicial killings of alleged drug users and members of the leftist National Democratic Front of the Philippines, has resulted in the serious deterioration of the situation for human rights defenders in the country who are often accused of being either terrorists or drug dealers. Government figures suggest that there were 20,322 deaths from July 2016 to November 2017 related to the anti-drug war.<sup>137</sup> Judicial harassment and the criminalisation of defenders remain common, and politicians and private actors, such as mining companies, use the criminal justice system to silence those who oppose their interests. Since 2017, when martial law was declared in Mindanao, an island rich in natural resources with a long history of armed conflict, local human rights defenders have increasingly been targeted with threats, intimidation and harassment from military agents. Defenders have also reported instances of close monitoring and surveillance by security officials.<sup>138</sup>

**Ryan Mendoza is** a nurse who has worked for several church-based organisations in Mindanao, including the National Council of Churches<sup>139</sup>, promoting human rights and

the right to health for indigenous peoples. Due to death threats, Mendoza had to leave Mindanao and has lived in exile in Europe since 2018.

**Can you describe your work to promote human rights?**

– Since 2006, I have been working with churches to find a way for them to contribute to defending human rights defenders and communities and to increase awareness of human rights within the church organisations. I started working as a community nurse, particularly with indigenous communities. Most of the time I stayed in small villages in the mountains in the south. I soon realised that people cannot live there if they do not have any land or if their land is taken away from them – it makes people more likely to get sick. So, with the church I started working to raise peoples' awareness of human rights.

**How is this related to the business sector?**

– The communities are very affected by logging, mining and monocrop plantations, mainly oil palm and pineapple. We organised a campaign against the companies that own the plantations, which were grabbing the local peoples' land – land which originally belonged to the community. We saw that the lack of land was connected to their lack of nutrition and poor health. I was there to teach them about sanitation and hygiene. We were organising them and teaching them that they have rights and they can go to the city hall and demand their rights.

**What kind of attacks have you experienced in relation to your work as a defender?**

– The military works hand in hand with the companies, and they were monitoring

what we were doing. They always saw us as an instigator, causing conflicts. They told us that before we came, local people did not do or say anything but since we arrived, they wanted to protest. I was accused of being part of the communist movement and could not go back to the communities since I was told I was put on the blacklist of people who were defenders or organised the communities. The community told me that I had to go and helped me escape before it was too late. All this continues. Two months ago my colleagues were attacked – one is in prison now and one has been shot dead. Just this year (2019) in the province of Bukidnon in Southern Philippines, where I did most of my community health work and organising, 14 defenders have already been killed and half of them I have personally worked with. It feels surreal to be safe in Europe when they are left there. ●

»I was accused of being part of the communist movement and could not go back to the communities since I was on the blacklist.«



**GUATEMALA: DALILA MERIDA**

»We stood outside with our placards, but on the first day they confronted us and their security guards started shooting at people.«

In Guatemala, threats, harassment and killings of defenders increase each year, as does the stigmatisation and criminalisation of defenders and their work, often by those at the highest level of government. The situation is grave for all human rights defenders in Guatemala, but defenders of the environment, land rights and indigenous rights are most at risk. More than 50 percent of those attacked are women human rights defenders. Defenders at particular risk include union workers, those who struggle against impunity and corruption, indigenous defenders and defenders working on issues related to truth, justice and reparation after the civil war that formally ended in 1996. Defenders are subject to death threats, physical attacks, harassment, surveillance, stigmatisation, judicial harassment, arbitrary detention, forced disappearance and killings. Many of the violations are carried out by clandestine security structures and illegal, often armed, groups that emerged during the civil war with links to the military and intelligence services. Criminal proceedings are often launched by private companies related to the mining sector and the construction of dams in order to silence defenders or social movements that resist large-scale mining or hydroelectric dam projects.<sup>140</sup>

**The Committee for Peasant Unity (CUC)** peasant movement, founded in 1978, works in over 200 communities to defend the land, water and food rights of impoverished peasants in Guatemala, primarily in communities facing displacement or environmental damage caused by mining, dams and industrial agriculture corporations.<sup>141</sup> The

CUC has experienced the shrinking civic space in Guatemala through the increase in legal attacks against its members. Currently, over 200 CUC members face criminal charges initiated in 2019. Over half of them are women. Dalila Merida is the regional coordinator of CUC in the community of Coatepeque, in the Costa Sur region, and one of the women facing lengthy legal procedures initiated by a company.<sup>142</sup>

**Could you describe how the attacks against you started?**

– In my community, the CUC has been defending the rights of 300 retired farm workers whose pensions and other social security benefits had not been paid by the farm owners at the farm where many of them had worked their entire life. In 2016 we organised a demonstration outside the farm to pressure the farm owners to engage in dialogue. We stood outside the farms with our placards but on the first day they confronted us and their security guards started shooting at people. There was a lot of physical violence. Since then the owners of the farm began to criminalise us, filing lawsuits, accusing me and four others of aggravated usurpation. I was detained for nine days but the charges were dropped due to lack of evidence. But since then the case has been opened again, and we recently had the first hearing.

**How will this affect you and your work as a defender?**

– The minimum penalty is six years. I don't know what will happen, but I know it is their way of trying to silence us. I have already been working for over 11 years with this movement. It has been quite complicated because people judge you without knowing the reality. When they detained me, I was just leaving univer-

sity. The detention was very public and it came out in the media. People started saying it was because of robbery and other things that were untrue. My children were very affected. One of them went to see me when I was detained. He started to cry and couldn't stop. He didn't think they would let me out.

**How are women affected compared to men?**

– Women are judged more harshly because we are the ones in charge of the family and the children; it makes it more complicated for women to be defenders than for men. Many of us have faced legal charges despite [the fact] that we are a peaceful organisation that defends rights. It has become a way to silence us, but we are so many, they will never succeed. We have nothing to be ashamed of. We have to keep fighting to achieve the justice we are looking for. ●

»There was a lot of physical violence. Since then the owners of the farm began to criminalise us, filing lawsuits, accusing me and four others of aggravated usurpation.«





**SOUTH AFRICA: UENICE MAMPA**

»We were beaten by the security guards at one of the mines. The mines have divided our community and created a lot of tensions between us.«

**T**hough CSOs are able to work relatively freely within the Republic of South Africa, there are increasing reports of rising hostility between the government and these organisations. There are growing concerns among local and international organisations regarding the treatment of human rights defenders by state actors, particularly in relation to their rights to freedom of assembly, freedom of expression and freedom of association. Defenders face threats, intimidation, harassment and physical attacks – sometimes fatal – from private individuals and members of the police force.<sup>143</sup> This is especially true for human rights defenders working on corporate accountability and the impact of the extractive industries on local communities and the environment. Defenders who raise concerns about the loss of indigenous lands and environmental destruction caused by these projects are often violently targeted.<sup>144</sup> This has been widely experienced by organisations working to protect human rights related to the mining industry, such as Bench Marks Foundation and WoMin.<sup>145</sup>

**Uenice Mampa is a** community leader advocating for change in the mining industry in her community of Ga-Mampa, Limpopo Province, with support from Bench Marks Foundation.

**How has your community been impacted by the mining industry?**

– Where my community is located, there are around 32 platinum and chrome mines. We have many environmental issues related to the mines. Our houses crack due to the



blasting, and the air and water is heavily polluted by the dust from the mines. I have been part of the community resistance against the mines. We have demonstrated many times and tried to engage in a dialogue with the mining companies, but they don't listen to us.

**Have you faced any form of retaliation for defending the rights of your community?**

– On one occasion some of our community members got shot when they were protesting against the injustices. One of them died and five were hospitalised, while others were arrested. Our community members used their own money to bail their members out of jail. Then again we were beaten by the security guards at one of the mines. The mines have divided our community and created a lot of tensions between us. We are not part of [the] decision-making; instead they take decisions on our behalf. We want them to respect and consult with us because we are the ones affected.

**Medical Nziba is a** community leader and defender of women's rights in the grassroots organisations supported by WoMin in Emaqibini Village, Kwazulu Natal in southeastern South Africa.

**How has your community been impacted by the mining industry?**

– For over 15 years, the villages around the Somkhele Tendele coal mines have been struggling for water. In August [2019] women from the villages organised a march which lasted for two days. I was arrested together with 29 other women for illegal protest and was jailed for nine days. After the women were released the [local] councillors announced that 17 million rand (EUR 1.03

million) had been allocated for water services. This was thanks to the women's fight. However, we have not seen any water investments and have not heard [anything] about this since that announcement and don't know if it's true. The community has been suffering for too long. They have tried to raise their concerns with the mine and with the tribal and state authorities without success.

**How has this affected you?**

– I feel like I was not the one who should be arrested. The people who should be arrested were the mining company and officials that fail to provide basic service delivery for the community. It is tiring for all of us engaged in this, as we do not know what the outcome of the case will be. I was not happy to spend nine days in jail, but it was worth it. The struggle for water is a struggle for life. ●

»I feel like I was not the one who should be arrested. The people who should be arrested were the mining company and officials that fail to provide basic service delivery for the community.«

**/ Medical Nziba**



## THAILAND: ANONYMOUS DEFENDER

»Human rights defenders face a lot of risks in relation to business, and many of us have been threatened in different ways.«

In Thailand, the defenders most at risk include those working on land rights and environmental issues, business and human rights, and those active in conflict zones in the border provinces of southern Thailand where impunity is widespread. The military government suppresses dissent, restricts freedom of expression and assembly, and criminalises human rights defenders, including pro-democracy activists, academics, civil society leaders, journalists, lawyers and members of political parties. Many defenders have been subject to investigation and prosecution with lengthy proceedings. The security and military forces use forced disappearance to harass and repress human rights defenders.<sup>146</sup>

The situation for indigenous groups and indigenous defenders opposing land grabbing by the government or businesses is particularly severe. Although Thailand voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007, the government still does not recognise more than 35 groups that define themselves as indigenous peoples.<sup>147</sup>

**Swedwatch interviewed a** defender working on indigenous peoples' rights at an organisation that forms part of the Asia Indigenous Peoples' Pact who wished to be anonymised due to security concerns.<sup>148</sup>

**How did you come to work as a human rights defender?**

– I belong to the Karen indigenous group living in Chiang Mai province, in the northern part of Thailand. I have been involved in human rights advocacy since 2011, after

my village came into conflict with a national park over land boundaries and land tenure. In 2014, one of our leaders who had condemned our community's forced eviction disappeared and in 2019 he was found brutally murdered.

**Could you describe the situation for indigenous and other defenders in relation to business in Thailand?**

– From my perspective, human rights defenders face a lot of risks in relation to business, and many of us have been threatened in different ways – either through physical harassment, intimidation, extrajudicial killings or by having charges filed against us.

Criticising private companies or government agencies is very sensitive in Thailand. The Thai government enacted an amended Computer Crime Act in 2017 which allows authorities to check your device without asking for a court warrant. Many defenders have faced lawsuits for defamation of private sector companies or individual government officers.

When issues cannot be spoken about publicly it means the problem will not be resolved. Our freedom of expression is very limited. ●

»They threat us through physical harassment, intimidation, extrajudicial killings or by having charges filed against us. I have to be very careful.«



**PERU: ROSARIO HUANCAYA**

»Being a human rights activist means being uncomfortable. It has closed many doors for me in my personal life.«

In Peru, state and non-state actors commonly intimidate and harass defenders, who face stigmatisation, criminalisation, repression and violence. Since 2011, 119 defenders have reportedly been killed, and hundreds face criminal proceedings. Working with human rights is still sensitive in Peru after the internal armed conflict of 1980 to 2000, and human rights defenders are often portrayed as terrorists or guerrilla sympathisers. Trade union leaders and defenders of women's and indigenous people's rights are some of the most vulnerable groups. Environmental defenders who work to defend the rights of indigenous or *campesino* communities have been the direct target of judicial harassment, physical attacks, police brutality, smear campaigns and surveillance.<sup>149</sup>

**In the Peru's Ica valley**, the local CSO Human Rights Commission of Ica (CODEHICA) has worked to promote human rights for over 30 years.<sup>150</sup> CODEHICA has issued several reports on the poor working conditions and environmental impacts related to the agro-export sector. The Ica valley is a major export zone for fruit and vegetables, and the agribusiness companies constitute an important source of income. However, the overexploitation of groundwater reserves has led to an acute water crisis for local communities.<sup>151</sup> Defenders raising these concerns are opposed by a powerful economic and political elite closely connected to the agro-export sector. Rosario Huancaya has worked on CODEHICA's communications team for over 20 years.

**What sort of retaliation have you faced in your role as a defender?**

– When we started to address the working conditions in the farms in 2010, we were heavily criticised and smeared. The media here in Ica is not independent for the most part, and is often closely linked to the political and economic elite engaged in the agro-export sector. During these years they accused CODEHICA of making people lose their jobs. As a communications officer I am always visible and therefore they go after me. In 2012 I received an envelope with a bullet and a note saying “the next one will go to your body”. I also received death threats on the phone twice. We reported it to the police but never knew who they were from.

**How have these attacks affected you?**

– As a woman it is harder because you are perceived as vulnerable. The kinds of attacks you have to stand up to as a woman defender are not the same as for men. I live alone and don't use makeup. That has been used against me many times. On various occasions they have called me a terrorist and showed my face on TV, comparing me to a girlfriend of a famous guerrilla leader, just because of how I look. A man would never be attacked in that way. It is personal and gets under your skin.

I have felt bad many times for my family, for what they have to hear about me. With all the bad things that are repeated, people start thinking that some of it must be true. In our country, many people think that we are terrorists and guerrilla supporters just because we talk about human rights. The social conflicts in our society are still huge. Being a human rights activist means being

uncomfortable. It has closed many doors for me in my personal life and sometimes I ask myself why I am still doing this. But I have to. There are so many issues to address still so we simply can't stop yet. ●

»I sometimes ask myself why I am still doing this. But I have to. There are so many issues to address still so we simply can't stop yet.«





## **AZERBAIJAN: ARZU GEYBULLA**

»It has become the norm that phone calls are intercepted.«

**I**n Azerbaijan, the government has systematically targeted civil society and human rights defenders with politically motivated charges and through laws and regulations that restrict the activities of independent groups and their ability to secure funding. The government also targets the political opposition, journalists, lawyers, and youth leaders and more recently other groups, including defenders of sexual orientation, gender identity rights and religious activists. State control over the media curtails public discussion of human rights issues and human rights defenders.<sup>152</sup> Thus ICT companies selling equipment to Azerbaijan face very high risks of becoming involved in government measures designed to silence or oppose the work of defenders.

**Arzu Geybulla is an** Azerbaijani journalist and well-known human rights defender currently living in exile in Turkey after receiving a large number of online threats. She has worked for several democracy organisations such as the National Democratic Institute, the think tank European Stability Initiative, Freedom House, Index on Censorship and International Partnership for Human Rights.<sup>153</sup>

### **How did the threats against you start?**

– They started with an interview about the work that I was doing with a Turkish-Armenian newspaper. Since our countries are in conflict I was seen as the enemy. I started getting really nasty threats online. It escalated quickly as all of a sudden I found myself in pro-government newspapers, news, Facebook posts and tweets. I started



getting death threats and rape threats. It was not only tarnishing my image but also my journalism work and my career, my name and also my family. They even used my parents – calling them names and slut shaming my mother and saying things about my dad which were completely unbelievable.

**How have these attacks affected you?**

– After these experiences, I felt really threatened by the people who were commenting. But I was also curious to see if they were really trolls or real people. I started seeing how everything was linked and that I was targeted as part of a bigger campaign. This was in 2014, and there was a massive crackdown on civil society at that time. The more I looked into the profiles of some of the harassers, the more details I found out. Many of those commenting were ruling party members or government employees but also random people. Over the years, as I documented the behaviour of these online commentators, I found out that the type of trolling these people were engaged in was more of a coordinated attack and it was not just random. I found out that the comments were copy/paste accusations copied from newspapers or from the speeches of the president or other government officials.

**What responsibility does the ICT sector have in your view?**

– This government has invested a lot in buying surveillance techniques which are used against civil society in my country. It has become the norm that phone calls are intercepted. Recently, for example, pro-government media leaked a conversation between a political activist and a US Embassy diplomat that was held over the mobile phone. Or when the internet suddenly goes down when there is a political protest planned. It is the govern-

ment's way of trying to control civil society and it couldn't be done without the help of the ICT companies. The authorities have also relied on mobile phone operators to determine who has been present at demonstrations and have called these people into questioning, or detained them. As an ICT company operating in Azerbaijan it is very hard not to get involved in all that. ●

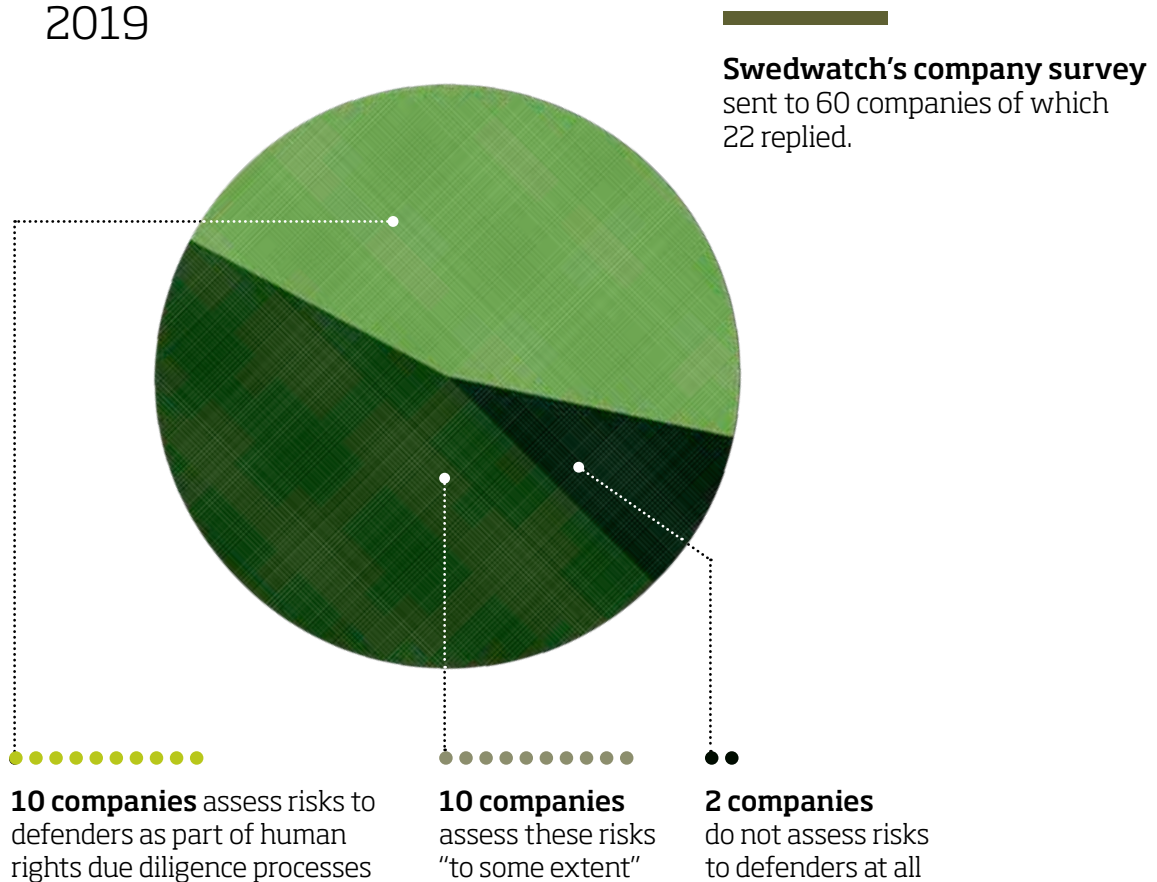
»The authorities have relied on mobile phone operators to determine who has been present at demonstrations. As an ICT company operating in Azerbaijan it is very hard not to get involved in all that.«

## 5. Swedwatch's company survey

In early 2019, Swedwatch invited 60 large European companies within high-risk sectors to respond to survey questions regarding their efforts to identify and address risks to defenders in their value chains. Several of the 22 companies that participated in the survey hold leading positions within their sectors. The following companies replied:

- FOOD AND AGRICULTURE: Lidl, S-Group, Tesco
- MINING: Anglo American, ArcelorMittal, Glencore, Rio Tinto
- RENEWABLE ENERGY: Enel, Vattenfall, Vestas Wind Systems, Siemens
- APPAREL AND FOOTWEAR: Adidas, C&A, H&M, Inditex, New Wave Group, Next
- ICT: Deutsche Telekom, Ericsson, Tele 2, Telenor, Telia

### Survey of companies' risk assessments 2019



The survey found that 10 of the 22 companies claim to include a risk assessment for defenders as part of their due diligence process, and assess limitations on the operating environment for defenders. Another 10 affirmed that they assess these risks “to some extent”. Most do so only in relation to union rights and threats against labour rights defenders, not in relation to other types of defenders. Two companies do not assess risks to defenders at all. No company acknowledged paying particular attention to defenders belonging to vulnerable groups.

Twelve companies confirmed the statement that “the business sector should take active steps to protect defenders”. However, nine companies responded that the business sector should be less active in this respect, and merely “avoid a negative impact on defenders’ situation and civic freedoms”. All companies in the survey agreed that the business sector has a responsibility towards defenders.

## Identified risks to defenders and company responses

Risks to defenders in the **FOOD AND AGRICULTURE SECTOR** identified by the companies include threats and intimidation, attempts to interfere with or suppress the work of human rights defenders, and attempts to discredit or defame defenders. Responses to these risks include active engagement and dialogue with defenders to discuss these risks.

The companies in the **MINING SECTOR** identified risks to defenders’ personal safety and security, discrimination, threats or harassment, for example to union and community leaders, restriction of the freedom to raise concerns in an open civic space, retaliation or reprisals from government or other third parties.

Companies in this sector described responding to risks by developing company policies or publishing statements on human rights defenders as well as engaging in dialogue with defenders to discuss risks. They reported that they engage in dialogue with business partners, business peers, and host and home governments, and have processes to receive and address grievances related to defenders.

Risks to defenders in the **RENEWABLE ENERGY SECTOR** identified by the companies include harassment, arbitrary arrestment in countries with weak rule of law, killings by state military or via security forces. Companies surveyed in this sector reported that they raise risks to defenders in dialogues with their business partners.

Risks to defenders identified by companies in the **APPAREL AND FOOTWEAR SECTOR** include restrictions related to the freedom of expression and assembly, threats of arrest and detention, unfair dismissal from employment, lack of freedom of association and risks faced by union leaders. These companies mentioned adopting company policies or making public statements on human rights defenders in response to risks, and raising such risks in dialogues with business partners.

Risks to defenders identified by companies in the **ICT SECTOR** include the fear that governments will intercept and interfere with their communications and track their locations. In response, companies discuss these risks with international NGOs, investors, and home and host governments.

## Companies ask for clearer guidance

Companies that have not assessed risks related to defenders and/or civic freedoms, or that have only done so to a limited extent, explained that this is due to a lack of clarity and adequate guidance from the UN and/or home government, lack of competence/know-how, not being entirely clear on the best sources of information relating to these risks and not understanding how to appropriately mitigate identified risks.

## Observations

Although only about a third of the 60 companies approached by Swedwatch replied to the survey, their answers encouragingly indicate that the issue of the risks facing defenders is on the agenda of several of the largest Europe-based companies.<sup>154</sup> Given the leading position of some of these companies in European – and, in some cases, global – markets, they can significantly influence their peers by leading by example. Swedwatch calls on these companies to use this opportunity to the fullest.

On a less positive note, over half (12) of the companies surveyed did not reply that they assess risks to defenders and civic space as part of their current due diligence processes, and none of the companies currently assess the risks to the most vulnerable groups of defenders. This indicates that their current work to identify and address risks to defenders is largely insufficient and not in line with the expectations outlined in international norms and guidelines, including the UN Declaration on Human Rights Defenders and various UN resolutions adopted in recent years. Swedwatch also notes that they are failing to fully comply with their responsibilities as outlined in the UNGPs, particularly that most do not assess risks to defenders as part of HRDD and none pay attention to particularly vulnerable groups of defenders.

The companies also differ in their perceptions of business' responsibility in relation to defenders. When asked what role business should take in protecting civic freedoms and defenders at risk along value chains, nearly half interpret their role as merely avoiding negative impacts. However, as existing guidance urges companies to take a more active role in support of human rights defenders, Swedwatch notes a gap in how this is interpreted.

A majority of companies contacted (38) chose not to respond. Although the reasons behind these decisions in most cases were not conveyed to Swedwatch, it may indicate they are insufficiently addressing these issues.

Given the severity of the situation for defenders worldwide and the internationally agreed framework governing corporate responsibility regarding defenders, companies and states urgently need to take a more active approach. To this end, clarity and official guidance are needed.

Development of legislation on mandatory HRDD processes could be an efficient way to further push and encourage companies to step up their work in this regard. Several EU countries have already committed to do so. In the absence of such legislation at the national or regional levels, Swedwatch calls on all companies to revisit relevant frameworks and recommendations as outlined in this report to gain a full understanding of their responsibilities.

### **Company quotes**

*"A company has certain responsibilities to defend civic freedoms. We believe the other bodies (governments, international organisations, etc.) that have more ability and capacity to influence local governments fail to defend [these freedoms]."*

*"Rule of law and civic freedoms is critical for stable governments and operating environments. It is in the best interests of business from a moral and business point of view to take active steps."*

*"Human rights defenders play a crucial role in protecting human rights, as well as providing first-hand reports of human rights impacts in our value chain. As a responsible company we have a role to play in ensuring that their rights as human rights defenders are protected."*

*"The sector would benefit from a clearer understanding of the role of human rights defenders. Working collaboratively with stakeholders has been proven to support positive improvements of human rights issues – this can be developed further."*

*"It is in everyone's interest, no matter what sector, to ensure a thriving civil society, and we in the business sector in particular want to be kept accountable."*

*"For each geographical area, businesses should make a materiality analysis regarding human rights. For us, the conclusion of such an analysis was that our services are an enabler for people (incl. defenders) to organise themselves, but governments can also use intercepts of communication and historical communications data to persecute them. Hence the issue for defenders, in particular within the scope of our industry, is part of a larger issue of undue invasion of the privacy of all citizens (e.g. mandatory mass retention of location and communications data). Nonetheless, the issue is more pressing for defenders. To avoid negative impacts on defenders, an active approach from the industry is required to fight against undue invasions of privacy by governments."*



## Positive examples of company engagement with defenders

In response to threats and attacks against civil society, an increasing number of companies are taking active measures to protect and support human rights defenders at risk.

### **Active support from food brands**

In 2013, a report released by the civil society organisation Finnwatch revealed serious labour rights violations against workers in the production of pineapple juice in Thailand. After the publication of the report, British human rights defender Andy Hall, who had conducted the research, was charged with several counts of defamation, considered to be a very serious offense in Thailand. A representative from Finnish retail and service group S Group testified on Hall's behalf at his Bangkok trial in 2016, and the company has also made a donation to the Freedom Fund, which supports his court appeal. Since Andy Hall was convicted, S Group has raised his case at the European Parliament and the UN. S Group has also clearly stated that if suppliers think they can sue human rights defenders who audit or investigate them, this will jeopardise their responsible sourcing. Other companies sourcing from Thailand, such as British Tesco and Swedish Axfood, have joined these initiatives by S Group.<sup>155</sup>

### **Joint efforts by jewellery companies**

In May 2015, criminal defamation charges against Angolan journalist and activist Rafael Marques de Morais, who had reported on widespread human rights abuses in the Angolan diamond industry, were dropped following a joint campaign by leading human rights organisations and a number of well-known jewellery companies. Following a call from human rights organisations, the jewellers Tiffany & Co, Leber Jeweler and Brilliant Earth issued an open statement expressing their concern over efforts by the Angolan government to criminally prosecute Marques de Morais on charges of libel against a number of Angolan generals. The statement urged the government to drop all charges and establish an independent commission to fairly and objectively investigate the alleged human rights abuses against artisanal diamond mining communities reported by Marques de Morais.<sup>156</sup>

### **Statements in support of defenders**

In June 2016, German sportswear company Adidas issued a corporate policy statement in support of human rights defenders, one of the first of its kind. Since then, several other companies and business associations have published similar statements. Following the publication of the report *Shared Space under Pressure* by the International Service for Human Rights (ISHR) and Business and Human Rights Resource Centre, international companies including Unilever, Adidas, Primark, ABN AMRO, Anglo American, Leber Jeweler, Domini and the Investors Alliance on Human Rights published a joint statement in December 2018 stressing that when human rights defenders are under attack, so is sustainable and profitable business.<sup>157</sup>

### **Companies urged government to respect labour rights**

In 2016, a group representing some of the largest apparel brands in the US and Europe, including Gap, H&M and ASOS, expressed growing concern over several controversial labour laws and ongoing court cases against union members in Cambodia. In an open letter to the Cambodian prime minister, the companies, which included the US-based trade group American Apparel & Footwear Association and the UK-based multi-stakeholder initiative Ethical Trading Initiative, warned that restrictions on freedom of association “will make Cambodia an unattractive and expensive place to do business”. The group also called for an end to the harassment of labour rights defenders facing criminal charges.<sup>158</sup> In 2019, 21 major US, Canadian, European and Hong Kong brands once again called on Cambodia’s prime minister to respond to concerns regarding the country’s labour and human rights situation, which according to them threatened trade preferences for Cambodia.<sup>159</sup> Several politically motivated charges against defenders were later dropped.<sup>160</sup>

### **Joint company initiative condemned violence**

In May 2019, the joint company initiative Bettercoal, working for sustainability in the global coal supply chain, published a statement strongly rejecting the increased death threats against defenders in Colombia made by the paramilitary armed group Águilas Negras (Black Eagles) following the 2016 peace agreement between the FARC guerrilla group and the Colombian government. Bettercoal had been informed by both Colombian trade union leaders and the American mining company Drummond that death threats had been made against Drummond employees and union leaders after the company began negotiations with the unions. Bettercoal publicly condemned the threats and called upon Colombian authorities to take them seriously and to do everything in their power to find the perpetrators and keep the targeted workers and their families safe.<sup>161</sup>

### **Food companies supported defender in banana sector**

In June 2019, six Swedish companies sourcing bananas from Ecuador – Axfood, Coop, Everfresh, Greenfood, Martin & Servera, and Menigo – released a joint statement to the Ecuadorian government in support of human rights defender Jorge Acosta, the coordinator of the banana workers’ union ASTAC (Asociación Sindical de Trabajadores Agrícolas y Campesinos) in Ecuador following an invitation by Swed-watch to show their support. Jorge Acosta was accused of “creating economic panic” in Ecuador, a crime chargeable with 5–7 years in prison. In their joint statement, the companies emphasised that they rely on human rights defenders to be able to speak freely about challenges in the supply chains and called upon the Ecuadorian government to guarantee respect for human rights and fundamental freedoms, and to provide full protection for all human rights defenders. The companies also called on actors in the Ecuadorian agricultural sectors to guarantee respect for human rights and fundamental freedoms in their operations and to address any violations of such rights and freedoms within their sphere of influence.<sup>162</sup>

## 6. Conclusions

Defenders who seek to address risks and impacts on human rights and the environment associated with business activities are currently the victims of an unprecedented level of threats and attacks. States and businesses have critical roles to play in addressing this negative trend and moving towards the systematic protection of and respect for defenders as a cornerstone of any democratic society. This includes the protection of the fundamental rights to the freedoms of expression, association and peaceful assembly. These freedoms are all prerequisites for the fulfilment of the SDGs – in particular Goal 16, which aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.<sup>163</sup> Supporting defenders – including environmental, women and indigenous defenders – and listening to their perspectives is also crucial for addressing global threats such as climate change, rising inequality and conflicts. Without their active contribution, the fulfilment of the SDGs is at risk.

States have the primary duty to protect human rights and defenders, including by adopting legal and other measures where necessary. This is clearly stipulated in the 1998 UN Declaration on Human Rights Defenders, in several UN resolutions on human rights defenders and civic space, and in the first pillar of the UNGPs. According to these resolutions, norms and guidelines, companies also have a responsibility to respect human rights and to ensure that they do not infringe upon defenders' rights. Following the trend of increased threats and attacks, the UN has also repeatedly encouraged businesses to publicly support defenders.

The recent increase in attacks strengthens the argument for companies to take a more active role in ensuring a safe and enabling environment for defenders. Companies should address risks to their employees in their capacity as defenders, as well as external defenders, and their possibilities to safely address business-related human rights grievances. Companies should proactively and systematically use their leverage to help address rights violations when they are linked to the company's operations or business partners. If companies do not use this leverage, they may contribute to negative human rights impacts as outlined in the UNGPs, which implies a higher level of responsibility to provide remedy to victims.

A key aspect of responsible company engagement on this urgent issue is consulting and continuously engaging in meaningful dialogue with defenders, including as part of HRDD processes. If properly done, such processes can identify risks to defenders at an early stage.

Civil society actors often have valuable insights into local human rights concerns that companies may overlook, and can offer valuable information on both general human rights risks and specific risks to defenders. Dialogue with defenders can also benefit the company as it can help mitigate financial and reputational risks and thereby company sustainability and, by extension, their ability to contribute positively to the fulfilment of the SDGs.

However, there are several challenges to overcome, including a deeply rooted mistrust between civil society and the business sector that prevails in many countries. As this report shows, local economic and political elites often accuse civil society actors that seek to address business impacts on human rights or the environment of being anti-development, extremists or even terrorists in an attempt to silence critical voices. The defenders seen as the most uncomfortable to work with in the local context may be the most relevant for companies to engage with. Civil society also has an important role to play in offering companies the right contacts, but dialogue has to be meaningful and help to build trust in order to be useful.

Although the issue has begun to find its way onto many companies' sustainability agendas, corporate engagement with defenders remains too low. In order to address the urgent situation, companies need to integrate respect of (and dialogue with) defenders into their HRDD processes and align these with their efforts to contribute to the fulfilment of the SDGs. They should actively support defenders by adopting a zero-tolerance principle against any kind of attacks against them and – to the extent possible – include such a principle in contracts with business partners. The urgent situation for defenders worldwide in relation to business activities has made it clear to an increasing number of stakeholders, including progressive companies, that legislation is needed to ensure that companies respect human rights, the environment and defenders in their operations and throughout their value chains.<sup>164</sup>

## Methodology

This report presents findings from interviews with human rights defenders from nine countries, representing a variety of local contexts and business sectors. The defenders portrayed in the report have agreed to have their names and pictures published (see Section 4) except one who chose to be anonymous. A risk assessment was conducted prior to the publication.

The report also presents findings from analyses of the 22 company responses to Swedwatch's online survey (sent to a total of 60 companies). These firms represent some of the largest companies in the high-risk sectors: mining, renewable energy, food and agriculture, apparel and footwear, and ICT. While Swedwatch agreed not to publish the responses of individual companies, Section 5, Swedwatch's company survey, summarises the results.

Swedwatch conducted an extensive literature overview of publications as part of background research for the report. Expert input has been incorporated from the UN Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst; Ana Zbona, an expert on human rights defenders at the Business and Human Rights Resource Centre and from defenders from various countries. Input has also been received from Swedwatch's member organisations, which stand behind the report and its recommendations. The member organisations are ACT Church of Sweden, The Swedish Society for Nature Conservation, Diakonia, Afrikagrupperna, Solidarity Sweden-Latin America and Fair Action.

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