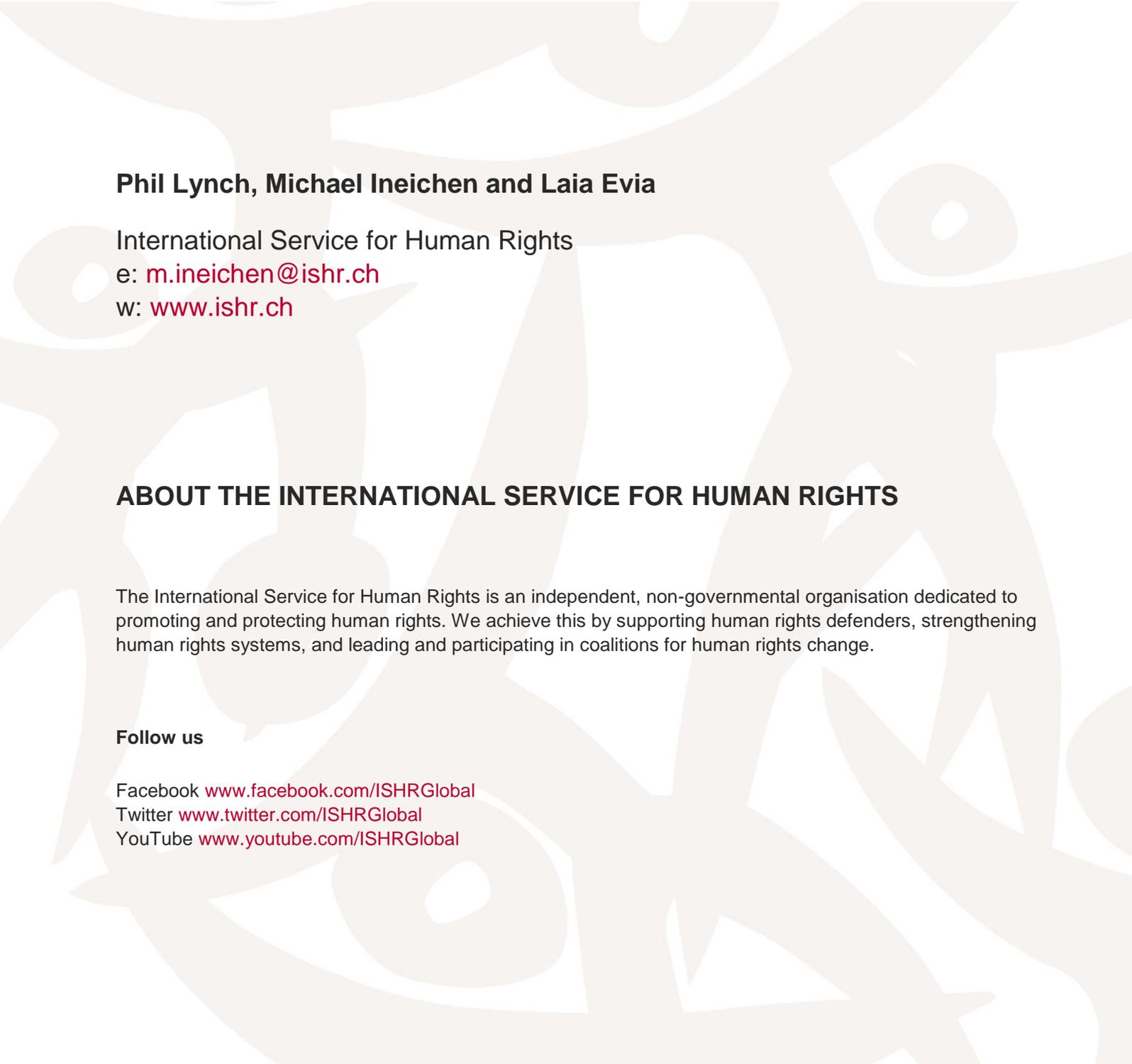


Protecting freedom of assembly and association in the context of natural resource exploitation

**Submission to the Special Rapporteur on the rights to
freedom of peaceful assembly and of association**



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1. Introduction

ISHR submits this document to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, in response to the mandate's call for contributions on the rights to peaceful assembly and association in the context of natural resource exploitation.¹

2. Challenges and Causes (original questions 1, 2 and 4)

Human rights defenders, civil society actors and affected communities face many challenges when it comes to exercising assembly and association rights in the context of major development projects and business operations, including in particular extractive and development projects.

As noted in the final report of the former UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, there is a growing body of evidence that 'private corporations are involved in violations against defenders, including stigmatization, threats, harassment, attacks, death threats and killings.'² That report identified 'defenders working on land and environmental issues in connection with extractive industries and construction and development projects' as facing particularly 'high risk of violations'³ and also expressed deep 'concern about the increased criminalization of social protest often in connection with the peaceful expression of opposition to public or private development projects'.⁴

The incidence and severity of these trends and threats is confirmed by ISHR's own activities, together with information from many civil society and intergovernmental sources.⁵

In many cases, defenders are labelled as 'enemies of the State', 'anti-government' or 'against development' if they oppose business and development projects.⁶ In this context, defenders working on access to land, natural resources and environmental issues, and those campaigning against illegal or forced evictions in the context of mega-projects, are at particular risk. In fact, defenders working on land and natural resource issues are among those defenders at the highest risk of being killed, according to the current UN Special Rapporteur on human rights defenders, Michel Forst.⁷ This is confirmed by extensive documentation and research by civil society.⁸

Women human rights defenders working in such contexts are particularly vulnerable as they often work in isolated communities and have to face pressure and violence, often gender-based violence, from their own communities or vested interests.⁹

¹ <http://bit.ly/1ETrOtc>.

² 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/25/55 (2013), para 103.

³ *Ibid*, para 93.

⁴ *Ibid*, para 96.

⁵ <http://www.ishr.ch/news/end-attacks-human-rights-defenders-who-protest-against-business-operations-and-development>.

⁶ Michel Forst, 'Supporting and protecting defenders who work on business and human rights', available at <http://www.ishr.ch/news/supporting-and-protecting-defenders-who-work-business-and-human-rights>.

⁷ *Ibid*.

⁸ See, eg, Alice Harrison (Global Witness), 'The deadly environment for human rights defenders' (2014) available at <http://www.ishr.ch/news/deadly-environment-human-rights-defenders>. See also: ISHR et al, 'Land and environment rights defenders in danger: An overview of recent cases' (2013) available at <http://www.ishr.ch/news/new-report-documents-violations-against-human-rights-defenders-working-land-and-environmental>.

⁹ See, eg, Alejandra Ancheita, 'The challenges for women defenders working on business and human rights' (2014), available at <http://www.ishr.ch/news/challenges-women-defenders-working-business-and-human-rights>.

While the right to freedom of peaceful assembly and protest is protected under various international and regional instruments, together with many national laws and constitutions, in practice, the exercise of this right is limited in many of these jurisdictions by legislative provisions, such as those which:

- unnecessarily require the notification or authorisation of protests, often weeks in advance;¹⁰
- afford police or other officials a wide discretion to impose undue restrictions or conditions on the time, place or conduct of an assembly;¹¹
- substantially restrict the times or places in which a protest can take place;¹²
- afford the State a wide discretion to declare a protest unlawful or a threat to public order or security, often without the right to judicial review;¹³
- permit the use of force in relation to unauthorised gatherings or assemblies that are deemed to breach the peace;¹⁴
- punish or criminalise the organisers of an assembly for the conduct of third party participants in that assembly;¹⁵ and
- prohibit the dissemination of information about assemblies deemed 'unauthorised' in contravention of international human rights law.¹⁶

In some countries, such as Australia, specific legislation has been enacted which has the purpose or effect of limiting the right to peaceful protest, and the exercise of the rights to freedom of association and assembly, in relation to the mining and natural resource industries.¹⁷

A further source of challenges for civil society, particularly in the case of countries or States in transition, is the lack of capacity or independence of governmental institutions. For example, on many occasions, repression or attacks on demonstrators in the context of major development projects are perpetrated by or with the acquiescence of the actual corporations, whether through private security forces or the provision of weapons and vehicles to repress demonstrations.¹⁸ This indicates a lack of willingness by the State to protect those exercising their right to freedom of assembly, as well as a lack of capacity to effectively do so.

According to the UN Special Rapporteur on the situation of human rights defenders, security guards employed by oil and mining companies have allegedly threatened to kill, harassed and attacked

¹⁰ See, eg, South Africa *Regulation of Gatherings Act 1993*, section 3; Colombia *National Police Code*, Article 102; Spain *Organic Law 1/1992 on the Protection of Public Safety*; Russia *Federal Law on Rallies and Decree of the President of the Russian Federation of 25 May 1992 'On procedure of conduct of meetings, rallies, marches and pickets'*; Myanmar *Right to Peaceful Assembly and Peaceful Procession Act 2011*; Sierra Leone *Public Order Act 1965*, s 17(1). Note that not all notification requirements are unlawful, with the UN Human Rights Committee in *Auli Kivenmaa v Finland* (UN Doc CCPR/C/50/D/412/1990) stipulating the circumstances in which notification requirements may be compatible with Article 21 of the International Covenant on Civil and Political Rights.

¹¹ See, eg, Malaysia *Peaceful Assembly Act 2012*, read together with the *Police Act 1967* and the *Local Government Act 1975*. See also Uganda *Public Order Management Act 2013*, read together with the *Police Act*, sections 35-36 and the *Penal Code Act 1950*, section 69; Myanmar *Right to Peaceful Assembly and Peaceful Procession Act 2011*; Sierra Leone *Public Order Act 1965*, section 17(2).

¹² See, eg, Sierra Leone *Public Order Act 1965*, section 10(1), which criminalises the use of a drum or other instrument in a procession before 4pm or after 9pm, and section 23(4), which criminalises any procession, or call to convene a procession, of more than 50 people within one mile of the House of Representatives.

¹³ See, eg, South Sudan *Criminal Procedure Act 2008*, section 158(2), which provides that assemblies that threaten the safety and soundness of South Sudan, its government and state institutions and public welfare can be deemed unlawful. See also Sierra Leone *Public Order Act of 1965*, sections 17(3) and 18(1)-(2).

¹⁴ See, eg, Uganda *Public Order Management Act 2013*, read together with the *Police Act*, sections 35-36 and the *Penal Code Act 1950*, section 69. See also South Africa *Regulation of Gatherings Act 1993*, section 9(2); Colombia *National Police Code*, Article 104.

¹⁵ See, eg, Uganda *Public Order Management Act 2013*.

¹⁶ See, eg, Russia *Federal Law 'On information, information technologies and protection of Information'* No 149-Φ3 of 27.07.2006 (ed. 28.12.2013); Sierra Leone *Public Order Act of 1965*, section 23(4).

¹⁷ See, eg, the *Workplaces (Protection from Protesters) Act 2014* (Tas), recently enacted in the Australian state of Tasmania and discussed further below.

¹⁸ Interview with Mr Clement Voule, expert member of the Working Group on Extractive industries, environment and human rights violations of the African Commission on Human and People's Rights, in January 2015.

human rights defenders during peaceful protests. There have also been cases where local authorities have allegedly colluded with the private sector, and cases in which private companies had aided and abetted the commission of violations against human rights defenders. The affected communities and those defending their rights in this context are in dire need of protection and they also need access to appropriate remedy.¹⁹

A non-exhaustive list of relevant or emblematic cases is set out below.

3. Relevant Cases

Mexico

On 28 January 2014 the protest camp of the Asamblea Popular del Pueblo de Juchitán (APPJ) in Oaxaca, Mexico, was burned to the ground. The APPJ was formed in February 2013 to protest against the construction of a major wind-farm, Bif Hioxo, by Spanish venture capital firm Gas Natural Fenosa. According to Frontline Defenders, members of the APPJ have been subject to 'a pattern of serious harassment and surveillance over the course of their legitimate and peaceful opposition to Bif Hioxo', with one member, Héctor Regalado Jiménez, shot dead on 1 August 2013.²⁰

Ecuador

The situation of environmental defenders and indigenous communities in resistance can be illustrated through the criminalisation case of Ecuador's Pachamama Foundation, which has previously been discussed by the Special Rapporteur on freedom of peaceful assembly and of association.

Civil society noted as a primary difficulty the vague framing of Ecuador's Executive Decree 16, which regulates NGOs and which is open to arbitrary interpretation and application. Ecuador's targeting of defenders working to challenge abuses by transnational corporations is inconsistent with its role in promoting the development of a legally binding treaty to regulate the work of transnational corporations and to provide appropriate protection, justice and remedy to the victims of abuses.²¹

Peru and the United Kingdom

Monterrico is a mining company incorporated in the UK. A claim was brought in the UK High Court against the company concerning protests which took place in Peru in 2005 about its proposals to build a copper mine there. The claimant protesters sought compensation for torture which they suffered at the hands of the Peruvian police, allegedly incited by mine management. The protesters were hooded, bound and detained over a period of days. Two women alleged that they were sexually assaulted. One protester died.

Monterrico denied that its officers had any involvement in the mistreatment of the protesters but nonetheless settled the claim out of court in 2011 just months before the case was due to be heard at trial. They did so without admission of liability. The claimants had won a preliminary legal point the previous year when they successfully applied for a freezing injunction which ensured that £5 million of the company's assets remained in the UK, sufficient funds to cover the level of damages sought by the claimants and their costs.²² Lawyers for the company had sought to argue that there was no justification for freezing its assets as the claimants did not have an arguable case against Monterrico. This argument was rejected.

¹⁹ Michel Forst, 'Supporting and protecting defenders who work on business and human rights', available at <http://www.ishr.ch/news/supporting-and-protecting-defenders-who-work-business-and-human-rights>.

²⁰ <http://www.frontlinedefenders.org/node/24826>.

²¹ <http://www.ishr.ch/news/during-its-150th-session-public-hearings-inter-american-commission-tested-and-stands-strong>.

²² *Guerrero and others v Monterrico Metals plc and another* [2009] EWHC 2475 (QB).

Guatemala

During a consultation with human rights defenders held in January 2015 in Guatemala City, participants testified that judicial harassment and physical attacks by public and private security forces are tools frequently used to silence and criminalise those advocating for corporate accountability and in relation to large-scale development projects. They also expressed grave concern at the lack of genuine and informed consultation on the impact of major business and development projects prior to the commencement of such projects.

The threats affecting these defenders have an even greater impact on indigenous communities and women human rights defenders. Further, the so called 'Ley de Tumulos', and expressions such as 'states of siege' and 'states of emergency,' have been invoked to justify legal and physical attacks against communities which protest or resist the adverse human rights impacts of large-scale development.²³

Australia

In November 2014, the Australian state of Tasmania enacted the *Workplaces (Protection from Protesters) Act 2014*.²⁴ The Act specifically targets those who protest against the business activities or operations of mining, resource and forestry companies. In contravention of articles 19 and 21 of the International Covenant on Civil and Political Rights, the Act makes it a criminal offence for a person to participate in a protest on business premises or on any road, footpath or public land used to access the business premises where to do so may 'prevent, hinder or obstruct' business activity or access to the premises.²⁵ Protesters may be issued with on-the-spot fines, subject to police orders to 'move on', and even subject to jail sentences of up to four years.²⁶ The Act also confers additional powers on police, including the power to remove, arrest and use force against peaceful protesters.²⁷

According to the UN Special Rapporteur on freedom of opinion and expression, 'The law itself and the penalties imposed are disproportionate and unnecessary in balancing the rights to free expression and peaceful assembly and the government's interests in preserving economic or business interests.'²⁸ In the Special Rapporteur's view, the Act is likely to 'have the chilling effect of silencing dissenters and outlawing speech protected by international human rights law.'

The Tasmanian Government has also recently announced plans to enact legislation to provide corporations with the right to sue protesters and advocates, with such legislation particularly targeted at land and environment defenders.²⁹

Uganda

The pattern of attacks against human rights defenders protesting major development projects is also evidenced in Uganda. For example, a [Human Rights Watch report](#) on the impact of mining on human rights in Uganda found that 'the government's increased focus on seeking foreign investment has been marked by increased hostility to civil society working on environmental, land, and corruption issues.' The report documents a range of attacks against NGOs, such as the Uganda Land Alliance, and concludes that 'NGOs seeking to educate the public about the value of their land, community

²³ <http://www.ishr.ch/news/guatemala-protect-human-rights-defenders-working-corporate-accountability-and-land-rights>.

²⁴ See http://www.austlii.edu.au/au/legis/tas/num_act/wfpa201425o2014498/.

²⁵ *Workplaces (Protection from Protesters) Act 2014* (Tas), Part 2.

²⁶ *Workplaces (Protection from Protesters) Act 2014* (Tas), Part 4.

²⁷ *Workplaces (Protection from Protesters) Act 2014* (Tas), Part 3.

²⁸ 'UN experts urge Tasmania to drop its anti-protest bill', 9 September 2014, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15002&LangID=E>.

²⁹ Michael Safi, 'Tasmania moves to allow corporations to sue protesters for defamation', *The Guardian*, 7 January 2015, at <http://www.theguardian.com/politics/2015/jan/07/tasmania-moves-to-allow-corporations-to-sue-protesters-for-defamation>.

processes, and compensation rights face a variety of problems from government officials, including threats of deregistration, accusations of sabotaging government programs, and arrest.³⁰

Niger

On the day of French President François Hollande's visit to Niger in July 2014, several members of Niger's civil society were arrested in Niamey after having urged greater transparency and fairness in dealings between the government and extractive industries, in particular the French nuclear firm Areva.

The arrests of these human rights defenders appear to have been directed at stifling or silencing their advocacy in relation to business and human rights, particularly the conduct of French and other transnational corporations, and was the subject of a joint civil society statement to the governments of France and Niger and Areva.³¹

Sierra Leone

African Minerals Limited (AML) operates a major iron ore mine in Sierra Leone, and is one of the country's largest private employers. AML's operations have allegedly resulted in several instances of human rights violations principally regarding workers' labour rights and freedom of association and the rights of local populations that have been relocated.

In 2010, AML leased land from the government for mining iron ore near Bumbuna. The leased area was populated by hundreds of families. AML worked through a local customary official to evict the families from the area and relocate them to an arid location near the town's quarry. The official did not appear to consult the affected residents. The affected residents received a small amount of compensation from AML. Human Rights Watch found that the relocation had 'a major negative impact' on the livelihoods, food security, and access to water of those relocated.

AML allegedly employed local workers in violation of Sierra Leone's labour laws regarding terms and benefits of employment. The Sierra Leone government protected a certain entrenched union, and effectively denied AML workers the ability to form or join a different union to resist AML's practices. In 2012, workers in the Bumbuna mine went on strike. Local police called for reinforcements and confronted the protesters. Police sprayed teargas and opened fire, killing one woman and wounding eight others. 29 people were arrested and held for a day, before being released without charge. Human Rights Watch found that the police acted to protect AML's interests at the expense of the rights of the workers and protestors.³²

Zimbabwe

In 2011, international diamond mining companies operating in the Marange area of Zimbabwe alleged that artisanal miners were illegally operating in the area.³³ The companies' private security firms patrolled the areas jointly with Zimbabwe police in order to suppress the illegal mining. Human Rights Watch found evidence that local miners who had strayed into the concessions owned by the international companies had been beaten by private security guards and attacked by their dogs. Police had also shot at the miners as they fled.

Russian Federation

Human rights defenders protesting against business operations have been subject to legal restrictions and harassment. In 2013, a number of Russian civil society activists protesting against deforestation

³⁰ <http://www.hrw.org/node/122714>.

³¹ <http://www.ishr.ch/news/niger-protect-human-rights-defenders-working-issues-corporate-transparency-and-accountability>.

³² Human Rights Watch, *Whose Development? Human Rights Abuses in Sierra Leone's Mining Boom* (Report, 2014) pp 1-6, available at http://www.hrw.org/sites/default/files/reports/sierraleone0214_ForUpload_0.pdf.

³³ Human Rights Watch, 'Zimbabwe: Rampant Abuses in Marange Diamond Fields' (30 August 2011), available at <http://www.hrw.org/news/2011/08/30/zimbabwe-rampant-abuses-marange-diamond-fields>.

and environmental damage associated with construction projects for the Sochi Olympics were arrested and charged with offences such as 'petty hooliganism'. [Amnesty International has reported](#) that one of the defenders, prominent environmental activist Evgeny Vitishko, has already been sentenced to a period of administrative detention after which it is feared that he will be moved to a prison colony.³⁴

Mongolia

According to human rights defenders in Mongolia, abusive practices by corporations, with government complicity, are made possible due to the lack of knowledge in Mongolia about corporate responsibility as well as environmental and human rights standards.

The example of Ts Munkhbayar (2007 Goldman Environmental Prize), who is a former nomadic herder who lost access to traditional pasture and water resources as a result of mining operations. He organised a nationwide movement to develop and push through parliament a law protecting sensitive ecosystems from mining and deforestation, and was subsequently jailed for seven years in attempts to safeguard this law from problematic amendments.

On 12 August 2014, Eugene Simonov (Environmental Whitley Fund), was deported from Mongolia for requesting access to technical documents of hydro-engineering projects financed by a World Bank loan under the Mining Infrastructure Investment Support (MINIS) project. All three hydro projects have the potential to cause harm to UN-protected sites in Mongolia, Russia and China. He was not informed of his deportation until he tried to make his way back to Mongolia from China.

Four members of the local community of Govi-Altai aimag were taken to court by an iron ore mining company for briefing a government working group on the negative impacts of the mine on their community. They were part of the briefing due to their public service roles: a Bagh governor (smallest administrative-territorial unit), a medical doctor, a kindergarten manager and the head of a cooperative.³⁵

Myanmar

As another example, Myanmar has laws which unreasonably restrict the right to freedom of expression and assembly and which appear to be increasingly used to criminalise human rights defenders and censor journalists who promote corporate respect for human rights and protest major development projects and associated land grabs.

In January, Myanmar's National Human Rights Commission issued a statement on the death of Daw Khin Win, a 53 year old villager killed by a gunshot allegedly fired by police during a protest against the copper mine on 22 December 2014. The Commission found that police and security forces did not take adequate steps to de-escalate or disperse the protest before resorting to force. Eleven other villagers were also injured, including two others who received gunshot wounds.³⁶

4. Recommendations (original questions 3 and 5)

- **Governments, corporations** and the **United Nations** should act to address the disturbing global pattern of attacks and repression against defenders who protest against business operations and major development projects by providing a safe and enabling environment for their work.
- As the Human Rights Council requested in its resolution 22/6, **States** should enact specific laws to protect and support human rights defenders and tailor laws of general application to

³⁴ <http://www.amnesty.org/en/news/russia-civil-society-activist-arrested-ahead-start-sochi-olympics-2014-02-03>.

³⁵ <http://www.ishr.ch/news/sukhgerel-dugersuren-defender-working-corporate-accountability-mongolia>.

³⁶ <http://www.ishr.ch/news/myanmar-end-restrictions-reprisals-and-use-force-against-protesters-and-human-rights-defenders>.

enable their work. States should also ensure that laws are not used or abused to criminalise, stigmatise, restrict or hinder such work.³⁷

- Again as requested by the same resolution, **States** should take concrete steps to prevent and stop the use of legislation to hinder or limit unduly the ability of human rights defenders to undertake their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law'.³⁸
- **States** should take specific measures to protect and support the work of human rights defenders who work on issues of corporate accountability, who claim and seek to exercise their right to participate in decision-making processes, or who voice their opposition to business activities or development projects, including by guaranteeing their right to peaceful protest and to freedom of expression, association and assembly.
- **States** should enact specific laws and policies to effectively implement the Declaration on Human Rights Defenders at the national level.
- **States** should also develop, implement and monitor National Action Plans on Business and Human Rights in close consultation with human rights defenders. Such National Action Plans should include concrete steps and measures to ensure that human rights defenders and others who advocate or protest in relation to corporate accountability issues, particularly in relation to the extractive sector, are protected and supported.
- **States** should repeal requirements of authorisation (as opposed to notification) in order to convene a peaceful assembly, and establish and safeguard the ability to convene public, peaceful assemblies without notice in exceptional circumstances.
- **States** should prohibit the excessive use of force against protesters and prohibit the use of any force merely because a protest is 'unauthorised' or has not complied with notification requirements where they exist.
- **Corporations** should protect human rights defenders, including by consulting and engaging with them so as to identify, mitigate and remedy the adverse human rights impacts of their operations.
- **Corporations** must respect the right of human rights defenders and other civil society actors to protest against business activities and refrain from obstructing or interfering with their legitimate activities in this regard. This extends to ensuring that private security firms acting for or on behalf of the corporation are not involved in attacks against human rights defenders or other human rights abuses and, in the case of investors, should include due diligence to ensure they are not indirectly financing any such attacks or abuses.
- **Corporations** must comply with the UN Guiding Principles on Business and Human Rights and, in the case of corporations working in the extractive and resource sectors, fully implement the Voluntary Principles on Security and Human Rights, a multi-stakeholder initiative to address the risk of human rights abuses arising from security arrangements in the oil, gas and mining industries.
- **Corporations** must also engage in meaningful consultations with 'potentially affected groups and other relevant stakeholders' to identify the human rights impacts of their work, including by recognising their right to freedom of association.

³⁷ 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, para 13. See also 'Mandate of the Special Rapporteur on the situation of human rights defenders', UN Doc A/HRC/Res/25/18 (28 March 2014).

³⁸ 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, pream para 15 and operative para 22. See also 'Mandate of the Special Rapporteur on the situation of human rights defenders', UN Doc A/HRC/Res/25/18 (28 March 2014).

- **Investors** should, as part of their human rights impact assessment, consult with human rights defenders, and ensure that they do not invest in projects that result in violations of human rights, or undermine the rights of human rights defenders and affected communities, including their rights to freedom of assembly and of association.
- All relevant stakeholders, including **States, corporations, investors, and civil society**, with expert input and leadership from the two UN Special Rapporteur's on human rights defenders and on freedom of association and assembly as well as their regional counterparts should initiate a process towards the development of best practice guidelines on extractive industry engagement with human rights defenders. These should include, but not be limited to, project conceptualisation and approval, human rights impact assessments and human rights due diligence, monitoring and remediation.