

## **Human Rights Defenders Working on Land & Environmental Issues**

### **Assembly and Association Rights In The Context Of Natural Resource Exploitation**

#### **Submission to the United Nations Special Rapporteur**

#### **On the rights to freedom of peaceful assembly and of association: Questionnaire civil society**

### **I. Introduction**

Peace Brigades International (PBI) is an international organization with over 30 years of field and advocacy experience protecting and promoting the work of human rights defenders around the world, including those working on issues related to natural resource exploitation. PBI uses its international presence and global networks to protect, support and enable the work of human right defenders and local activists for peaceful social change.

PBI's signature approach is international protective accompaniment; we send teams of international observers to areas of conflict and repression to provide protective accompaniment to local human rights defenders whose lives and work are under threat. We currently have over 50 international volunteers working in field projects in Guatemala, Mexico, Colombia, Honduras and Kenya, in addition to a monitoring presence in Nepal. Our work is based on the principles of non-partisanship and non-interference in the internal affairs of the local organizations we accompany, because we believe that lasting transformation of conflicts cannot be imposed from outside, but must be based on the capacity and desires of local people. PBI acts only at the express request of local human rights organisations and it is they who determine where our assistance is most needed.

The work that we carry out allows us to affirm that Human Rights Defenders and Women Human Rights Defenders ((W)HRDs) play essential roles in protecting environmental, cultural, social and political rights in the context of natural resource exploitation. Yet too often, (W)HRDs who carry out this work lack basic guarantees for their physical security, are subject to smear campaigns and legal persecution designed to impede their work with rights holders and victims, and have their rights to freedom of peaceful assembly and of association violated.

In response to the Special Rapporteur's request for information, we lay out below examples of the ways in which peaceful demonstrations organized by or with the participation of (W)HRDs are disrupted, at times by public security forces, or by private companies' security forces often with direct or indirect

support of state agents. In addition, we explain how the legal system is often stacked against (W)HRDs, subjecting them to a paradoxical logic in which they can face spurious charges and arbitrary treatment before the law, while at the same time investigations into attacks against defenders themselves tend to languish in impunity. All of these make more difficult the ability of (W)HRDs to carry out their work in defence of human rights defence, and at the same time it can represent a serious deterrent to the exercise of the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation.

The information presented in this document has been informed by our experience in all of the Latin American countries in which we work, and includes specific examples from Colombia, Guatemala, Mexico and Honduras.

**II. What are the particular challenges to exercising assembly and association rights in the context of natural resource exploitation in your country or region? For example, are all stakeholders affected by projects consulted, with their rights and concerns taken into account? Are peaceful assemblies facilitated or viewed as a nuisance? Are companies cooperative and understanding of the need to preserve individuals peaceful assembly and association rights?**

In general, the challenges faced by human rights defenders in the context of natural resource exploitation in the Americas that affect their right to assembly and association include: (i) lack of consultation with the affected communities; (ii) illegal land-grabbing; (iii) lack of independence in carrying out environmental impact assessments; (iv) criminalization of peaceful demonstrations; (v) violent eviction in response to social protest; (vi) persecution of human rights defenders that support the affected communities; and (vii) impunity for, and, at times, state support of, the aforementioned violations.

In **Colombia** for example, the country's extraction of coal has nearly doubled, from 38,242 million tons in the year 2000 to 74,350 million tons in 2010.<sup>1</sup> Similarly, the number of mining concessions has increased at a dizzying pace in recent years, from 1.1 million hectares in 2002 to over 8.4 million hectares in 2009.<sup>2</sup> In the face of this rapid increase in natural resource exploration and exploitation in rural areas, the country is experiencing a period of social resistance: the Centre for

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<sup>1</sup> Colombian Mining Information System, "[Producción y exportaciones de carbón en Colombia](#)", Bogotá, 2011.

<sup>2</sup> Guillermo Rudas, "[Minería, medio ambiente y cambio climático: una señal de alarma](#)", Razón Pública, 16 January 2011.

Research and Popular Education (*Centro de Investigación y Educación Popular - CINEP*) registered 274 social conflicts related to the extraction of petroleum, gold and coal between January 2001 and December 2011.<sup>3</sup>

Various reports have been published recently on transnational mining in Colombia, including about the role of Canadian companies in the Cerrejón coal mine, and the activities of companies such as BHP Billiton (a Canadian-British company), Anglo American (a South African-British company) and Glencore-Xstrata (a Swiss capital funded company). These and other reports on business and human reflect a series of irregularities and human rights violations against the people who live in the areas in which in which natural resources are exploited for profit.<sup>4</sup>

The human rights concerns documented in these reports include to repression of social protest by the application of a new legal framework that criminalize social protest;<sup>5</sup> extra-judicial killings of community leaders who publicly oppose some mining projects;<sup>6</sup> serious abuses of protesters at the hands of security forces;<sup>7</sup> and specious accusations and slander by state agents levelled against organizers of the demonstrations.<sup>8</sup>

In light of this situation, some organizations accompanied by PBI Colombia, like the José Alvear Restrepo Lawyers Collective (*Colectivo de Abogados José Alvear Restrepo – CCAJAR*), the Committee in Solidarity with Political Prisoners (*Comité de Solidaridad con los Presos Políticos – CSPP*), the Luis Carlos Pérez Lawyers Collective (*Colectivo de Abogados Luís Carlos Pérez – CCALCP*), organized a hearing before the Inter-American Commission on Human Rights (IACHR) in October of last year in order to highlight concerns about what they refer to as the closing of space for the exercise of democracy through social protest; further information on the claims presented before the IACHR can be consulted via the hearing video.<sup>9</sup>

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<sup>3</sup> CINEP/PPP, [Minería, conflictos sociales y violación de los derechos humanos en Colombia](#), October 2012.

<sup>4</sup> The following, non-exhaustive list, can be consulted: Pax Christi International, *The Dark Side of Coal*, June 2014; IPC, *La locomotora minera: concentración y despojo*, December 2012; ABColombia, “Giving it away: the consequences of an unsustainable mining policy in Colombia”, November 2012; Working Group on Mining and Human Rights in Latin America, “The impact of Canadian mining in Latin America and Canada’s responsibility”, May 2014; Oxfam, *Divide and purchase: How land ownership is being concentrated in Colombia*, September 2013; Hands off the Land Alliance, *Colombia: Banacol, empresa implicada en paramilitarismo y acaparamiento de tierras en Curvaradó y Jiguamiandó*, May 2012.

<sup>5</sup> Colombia Reports “[2013: The year of social protest and repression in Colombia \(Pt 1\)](#)” November 2013; World Rain Forest Movement “[The criminalization of social protest against mining](#)” 23 December 2013.

<sup>6</sup> Ibid.

<sup>7</sup> Human Rights Verification Mission: “Agresiones de la Fuerza Pública contra la población civil en el marco del paro agrario y popular”, 28 August 2013

<sup>8</sup> IACHR: “[Derechos Humanos y la Protesta social en Colombia](#)”, 31 October 2013.

<sup>9</sup> Ibid.

Similarly, many cases have been recorded of individual and mass arrests and prosecutions of defenders who are exercising their legitimate rights to association and peaceful protest, and of young people participating in student demonstrations. For example, 2013 was a year marked by important social movements: protests by family farmers in the Catatumbo region (June 2013); the National Mining Strike (July 2013); the National Agrarian Strike (August 2013) and the Indigenous Social *Minga* (October 2013). However, human rights organizations denounced that the response by the Colombian State to these mobilizations was largely characterized by stigmatization and repression, resulting in 902 acts of aggression, including 15 assassinations, 7 acts of cruelty or torture including one case of sexual abuse, and 315 arbitrary detentions.<sup>10</sup>

Similarly, the members of the Judicial Freedom Corporation (*Corporación Jurídica Libertad – CJL*), a human rights organization based in Medellín, and its partners in the Rivers Alive Movement (*Movimiento Ríos Vivos*), are facing serious risks for their work in the face of the Hidroituango hydroelectric dam project.<sup>11</sup> In September 2013, the leader of Rivers Alive – Antioquia chapter, Nelson Giraldo Posada, was killed when he visited to the dam site to assist families being displaced by the construction.<sup>12</sup> This happened despite the fact that on 9 September 2013 the Labour Chamber of the Superior Tribunal of Medellín granted precautionary measures in favour of the members of Rivers Alive because of the threats received against their life and physical integrity.<sup>13</sup>

Similarly, in **Guatemala**, on 27 April 2013, in the region of San Rafael Las Flores, the security personnel of the Canadian mining company Tahoe Resources Inc., opened fire upon demonstrators while they were exercising their right to demonstrate and protest in defence of human rights.<sup>14</sup>

The peaceful demonstration took place because of the collective concerns about possible environmental impacts of the mine and the lack of meaningful consultation with local residents. In early April 2013, as a form of protest, residents of San Rafael began peaceful stand-ins on a public road running past the mine. The injured men claim that on 27 April 2013, Tahoe security personnel in riot

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<sup>10</sup> CCEEU and Movice, Informe sobre protesta social y derechos humanos, 31 October 2013. Presented during the 139th period of sessions of the Inter-American Commission on Human Rights.

<sup>11</sup> ODHACO, “Defending the environment – dangerous in Colombia”, February 2014; Radio Nizkor, “Cae asesinado Nelson Giraldo, líder del movimiento Ríos Vivos, contra el megaproyecto Hidroituango”, 22 September 2013.

<sup>12</sup> CIJ “[Asesinado líder del Movimiento Ríos Vivos Antioquia](#)” September 2013; Radio Nizkor “[Cae asesinado Nelson Giraldo, líder del movimiento Ríos Vivos, contra el megaproyecto Hidroituango](#)” September 2013

<sup>13</sup> Ibid

<sup>14</sup> Peace Brigades International, Monthly Information Pack from Guatemala Number 129 – June 2014, page 2; CCIJ, “[Tahoe Resources Inc.](#)” 2014; Prensa Libre, “[Guatemaltecos presentan demanda contra minera](#)”, 19 June 2014

gear emerged from the mine site and opened fire. Even as the men fled, the shooters pursued them down the public road and continued firing. The demonstrators said that the security guards followed them and continued firing as they fled through a public street. Alberto Rotondo, then chief of security for the Escobal mine, is accused in Guatemala of ordering the assassination of seven community leaders who participated in the protest against Tahoe Resources in San Rafael Las Flores. Six of the seven victims of the attack are co-plaintiffs in the criminal case that is being investigated by the Public Ministry Attorney for human rights crimes in Guatemala. Despite these incidents and the community's concerns, Tahoe has continued the development of the mine and began commercial silver production in January 2014.<sup>15</sup>

A similar pattern of aggression took place in June 2013 in the Department of Guatemala, when members of the La Puya Peaceful Resistance were aggressively evicted from their protest camp at the entrance to the El Tambor Mine, a mining project in San José del Golfo.<sup>16</sup> PBI Guatemala publicly expressed its concern over the eviction that it had observed – in particular over the excessive use of force on the part of the public security agents that resulted in a higher number of injuries.<sup>17</sup>

Since March 2012, residents from around the proposed site of the El Tambor Mine had maintained a peaceful, 24-hour blockade at the entrance to the mine, which is owned by the Reno-based engineering firm Kappes, Cassiday & Associates (KCA). Residents are concerned about the health and environmental impacts of the mine and they are committed to defending their right to be consulted — as required under national and international law — about projects in the community that would affect their lives and livelihoods.<sup>18</sup>

Several NGOs denounced that on 23 May 2014, after two years of peaceful struggle, the communities in resistance of La Puya were violently evicted from the entrance to the project; at least twenty people were injured and seven were taken to the hospital in Guatemala City. Since then, the Guatemalan police and military have escorted mining equipment onto the site.<sup>19</sup>

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<sup>15</sup> Ibid

<sup>16</sup> Guatemala Human Right Commission, “[‘La Puya’ Environmental Movement](#)”; Peace Brigades International, Monthly Information Pack from Guatemala Number 129 – June 2014, page 3

<sup>17</sup> PBI Guatemala, “[Desalojo violento de la Resistencia Pacífica de La Puya](#)”, Guatemala, 03.06.2014.

<sup>18</sup> Guatemala Human Right Commission, “[‘La Puya’ Environmental Movement](#)”  
Guatemala Human Right Commission, “[‘La Puya’ Environmental Movement](#)”; NACLA “[‘La Puya Peaceful Mining Resistance Dismantled by Force’ June 2014](#)”; News Vice “[‘In Photos: Police Violently Evict the La Puya Peaceful Mining Resistance’](#)” May 2014; Mi Mundo.org, “[‘Violent Eviction of the La Puya Peaceful Mining Resistance’](#)” 24 May 2014

Another case is that of the Verapaz Union of Campesino Organizations (UVOC), which has suffered from regular intimidation and threats.<sup>20</sup> On 17 September 2014, Central Campesino Chórtí New Day (“CCCND”) and their members were violently attacked, and during their peaceful protest on the bridge on the national strike day, the security forces violently removed the group from the bridge.<sup>21</sup>

On 17 and 18 September, during a national strike in which there were demonstrations across the country, members of the Maya Chórtí communities of Camotán and Jocotán, and members of the CCCND, took part in a demonstration on the Jupilingo bridge (Camotán, Chiquimula). On the morning of the 18th, PBI watched as about 200 police officers (of the National Civil Police) in riot gear moved in to break up the protest and clear the bridge using firearms, tear gas, stones and clubs. Several people were injured (one by a bullet) and the tear gas affected both adults and children. In the press it was reported that five PNC officials were hurt in the confrontation.<sup>22</sup>

In the area, several hydroelectric plants are either planned or already under construction.<sup>23</sup> The CCCND has denounced a lack of transparency about these projects, and that the failure to consult the affected communities has had detrimental effects on the population. The issue tears at the social fabric of the community and promotes situations of conflict and tension. In this context, CCCND members have been the targets of threats and other attacks due to their work in defence of territory and on behalf of the indigenous peoples.<sup>24</sup>

In **Mexico**, PBI has observed that there is increasingly limited space in which civil society may exercise the right to freedom of assembly and association.<sup>25</sup> This is particularly evident in the exploitation of natural resources, where with increasing frequency, those who exercise the aforementioned rights are criminalised.

The case of Betina Cruz, a member of the Assembly of Istmo of Tehuantepec Indigenous Peoples in Defence of Land and Territory (*Asamblea de los Pueblos Indígenas del Istmo de Tehuantepec en Defensa*

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<sup>20</sup> PBI-Guatemala “[Emergency Alert: Threats against UVOC and communities](#)”, 2 June 2014; Roots and Winds International “[In Defense of Human Rights](#)”, 30 March 2012; Peace Brigades International, Monthly Information Pack from Guatemala Number 130 – July 2014, page 3

<sup>21</sup> Front Line Defenders “[Guatemala – Temporary detention, and subsequent release, of human rights defenders following peaceful demonstration against mining activities](#)”, 24 September 2014; Peace Brigades International, Monthly Information Pack from Guatemala Number 132 – September 2014, page 2

<sup>22</sup> PBI-Guatemala, “[Press Release Ch'ortí Nuevo Día Campesino Association](#)”, June 2013, reproduced in PBI-Guatemala Monthly Information Packet No. 117, June 2013. (*Section 6. Non-Governmental Organizations*)

<sup>23</sup> For background information on the issue, see PBI Guatemala, “[Major Development Projects in Chiquimula](#)”, First Bulletin 2010, No. 20

<sup>24</sup> Ibid

<sup>25</sup> PBI Mexico, “[PBI Mexico observes with great concern recent trend to restrict the rights to freedom of expression and social protest in different Mexican states](#)” May, 2014.

*de la Tierra y el Territorio*) exemplifies this worrying trend.<sup>26</sup> The Istmos of Tehuantepec has in recent years attracted a number of large-scale wind-farm projects which have, in many cases, been constructed on indigenous lands, in the absence of consultation processes.<sup>27</sup> As such, a number of persons from the surrounding areas, many of whom are indigenous, organised and participated in peaceful protests to express their opposition to the construction of such wind farms.

Betina Cruz was charged with acts or omissions gravely affecting the “national consumption and national wealth” and with illegally detaining individuals. These charges were brought against her in February 2012, but referred to events that were alleged to have occurred during a peaceful protest ten months previously, in April 2011. In February 2012, Betina Cruz was arrested, held incommunicado for a number of hours, charged, and released on bail two days later. Under the terms of her bail, Betina Cruz was obligated to register with the local prosecutor office once a month until her case was brought before a judge.<sup>28</sup>

In December 2014, a judge ruled in favour of Betina and she was found innocent. This case is emblematic of the current situation in the Istmo of Tehuantepec where it is believed that at least twenty-five other HRDs have arrest warrants issued against them for having participated in similar protests.<sup>29</sup> Indeed, throughout Mexico, civil society is increasingly being criminalised as a result of their participation in peaceful protests within the context of their opposition to natural resource exploitation. This trend has led to greater levels of fear, insecurity, and risk for HRDs exercising their right to freedom of assembly and association.

Since its first visit to **Honduras** in May 2011, PBI has observed an increase in violence caused by the implementation of projects involving the exploitation of natural resources, particularly violence exercised against human rights defenders and community leaders. 140 small-scale farmers have been killed in the last three and a half years, according to data from small-scale farming organisations.<sup>30</sup> The state, meanwhile, has not informed the Inter-American Commission of Human Rights about any specific measures it has made to prevent murders and acts of violence against indigenous leaders and defenders.

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<sup>26</sup>AWID, “[Comunicado De La IM-Defensoras, AWID, JASS Y La Red Nacional De Defensoras De México Sobre La Situación De La Defensora Bettina Cruz](#)” 9 October 2014;

<sup>27</sup>PBI Mexico: Briefing “[Wind Farms and Concerns about Human Rights Violations in Oaxaca](#)” March 2014.

<sup>28</sup>Ibid

<sup>29</sup>Information obtained in a meeting held by PBI and a number of other organisations during an International Civil Observation Mission in November 2014. PBI-Mexico, “[Lack of recognition, criminalization and impunity, the reality for HRDs in Mexico: International Experts](#)”, 24 November 2014.

<sup>30</sup>“Margarita Murillo murió como vivió: sembrando semilla en la tierra por la que siempre lucho”, ERIC, August 29, 2014.

Along with these attacks, it has also been reported that there is a tendency to criminalize this group. According to figures provided by the Committee of Family Members of the Detained and Disappeared in Honduras (*Comité de Familiares Detenidos Desaparecidos en Honduras – COFADEH*), since 2010 there have been 3,064 cases of criminalization as a result of the improper use of criminal law to weaken defenders.<sup>31</sup> This figure includes more than 700 cases of criminal proceedings brought against small-scale farmers in response to land recovery processes.<sup>32</sup> These processes take place amid an institutional weakness in the judiciary due to the lack of firm guarantees for the independence and autonomy of justice operators.<sup>33</sup>

In the case of Chinacla River, which runs through La Paz and Intibucá, and supplies water to communities in seven municipalities, two concessions have been approved for the construction of hydroelectric projects: Aurora SA, in the municipality of San Jose, and Los Encinos SA, in the town of Santa Elena. This has led to tensions between the communities and the authorities in the area. In Santa Elena the project was installed on legally-registered common lands<sup>34</sup> that have been occupied for more than five years by the Lenca indigenous people. The indigenous councils took action to recover the land as established in the Agrarian Reform Law. They oppose the Los Encinos SA project because they were neither informed nor consulted about it. In particular, they expressed serious concerns about violations of their rights to food and access to water, as well as harassment and criminalization against members of the communities that opposed to the projects and their families. They also report an increase in violence and social unrest in the affected communities.

### III. To what extent do these challenges stem from:

- a. Gaps/inadequacies in the domestic or international legal framework (e.g., laws on FOAA rights themselves, environmental laws, labour laws, trade agreements)
- b. Government institutions (e.g., ineffective enforcement, lack of independence, lack of capacity, corruption, lack of political will, independence of the judiciary)?

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<sup>31</sup>“Preliminary Observations concerning the Human Rights Situation in Honduras”, IACHR, December 5, 2014

<sup>32</sup> Presentation of the report and documentary entitled “el rostro femenino e infantil de la criminalización campesina”, Tegucigalpa, 15 October 2014.

<sup>33</sup> IACHR, “[IACHR Condemns Murder of Justice Operators in Honduras](#)”, 24 November 2014; CEJIL “[Protection International and CEJIL applaud the efforts to pass a law protecting human rights defenders, journalists and justice operators in Honduras](#)”, 8 July 2014.

<sup>34</sup>In Honduras land can be classed as national, communal or private property. This is enshrined in the 1982 Constitution of the Republic of Honduras. According to the Law on Agrarian Reform national land can be allocated to farmers and indigenous groups when it can be shown that it is vacant.

- c. **The broader business environment (e.g., lack of voluntary guidelines or industry standards, deregulation/pro-business attitude by governments and the “race to the bottom”, unequal bargaining power for affected communities)**
- d. **Businesses themselves (e.g., focus on profits over rights, lack of interest in consulting local communities, willingness to leverage government corruption)**
- e. **Any other factors**

It is PBI’s assessment that, in general these challenges stem from: (i) inadequacies in the implementation on the existing national framework, lack of implementation of national court orders and the protection measures of international bodies like the Inter-American Commission of Human Rights; (ii) misuse of national laws against the organizations that opposed to some of the projects; (iii) unequal power imbalance between companies and communities; (iv) lack of genuine participation for human rights defenders in national policy spaces on business and human rights; (v) lack of information received by communities that lead to inadequate or non-existent consultation processes; (vi) Impunity; and (vii) lack of administrative sanctions or vetting when laws have been misused and abused by law enforcement agencies.

In **Guatemala** for example, the national constitution, in articles 33 and 34, protects the right to protest and association; however, in practice the free exercise of those rights has been hampered. On regard to the right to demonstration, last year several peaceful protests were forcibly interrupted, and that led to arbitrary detentions.<sup>35</sup> All these situations were documented and denounced to the Inter-American Commission on Human Rights in October 2014.<sup>36</sup>

The right to freedom of association has also been affected in the country because bodies of law targeting organized crime, as well as some articles of the criminal code, have been used to criminalize

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<sup>35</sup> For example, since 2009 the Farmers have been asking for the approval of the law “de Desarrollo Rural Integral”. In 2014, the main claims were: (i) approval of the aforementioned law; (ii) abolition of the law “Túmulos (Executive-Order 8-2014) that prohibits any obstacle that limit the mobility of vehicles and persons; (iii) abolition of the law of “Radiocomunicaciones, Executive-Order 12-2014 (TIGO Law) that allow the instalation of telephonic towers in any place, without taking into consideration private property; See more at: Via Campesina “[Guatemala: Legisladores se niegan a aprobar ley de Desarrollo Rural Integral](#)” 20 September 2014. “[Alerta: Creciente cierre de espacios para la defensa de derechos humanos: Central Campesina Campesina Ch’orti’ Nuevo Día y las Doce Comunidades Kakchikeles de San Juan Sacatepéquez](#)”, October 2014.

<sup>36</sup> IACHR “[Situation of Human Rights Defenders in Guatemala](#)” 28 October 2014; Prensa Libre, “[Denuncian criminalización de protestas en Guatemala](#)”, October 28, 2013.

the association of organizations that are opposed to large scale projects that did not respect the right to consultation of the affected communities.<sup>37</sup>

The report of the Unit of Human Rights Defenders of Guatemala (*Unidad de Defensores y Defensoras de Derechos Humanos de Guatemala* - UDEFEGUA) registered 60 cases of judicial charges against HRDs in 2013,<sup>38</sup> 86 in 2012,<sup>39</sup> and 65 cases in 2011.<sup>40</sup>

PBI Guatemala observes that the (W)HRDs accompanied by the organization are being subject to investigations, and frequently criminal charges are being presented against them for their suspected participation in criminal activities just for the labour of defence that they have been performing.<sup>41</sup> The criminal cases against them are usually characterized by arbitrary detention,<sup>42</sup> defamation,<sup>43</sup> and divulgation of personal information with the aim to affect their professional credibility.<sup>44</sup> Additionally the criminal processes against them are used to stop their participation in public activities and social protests.<sup>45</sup> This tendency was already identified by the International Commission of Jurists in 2010.<sup>46</sup>

In **Mexico**, there is no law that requires the State to conduct a consultation on the entry of a large-scale development projects. However, the Constitutional Reform of 2011 evoked the obligation of the Mexican State to comply with the Convention 169 of the International Labour Organisation (ILO), and as well as with other international legal instruments that establish terms under which a previous consultation and informed consent should be obtained.

Based on our experience working with (W)HRDs who peacefully defend their right to land in the states of Guerrero and Oaxaca, PBI Mexico believes that in the absence of adequate consultation processes and free, prior and informed consent, the level of risk for (W)HRDs seriously increases. Most

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<sup>37</sup> PBI- Guatemala, "[La criminalización de la protesta social continúa](#)", December 2013.

<sup>38</sup> UDEFEGUA, *El acompañante: informe mensual*, Guatemala, octubre 2013.

<sup>39</sup> UDEFEGUA, *Quitémonos el Tabú: Informe sobre situación de Defensoras y Defensores de Derechos Humanos*, Enero a Diciembre de 2012, Guatemala, Enero 2013

<sup>40</sup> CIJ, "Criminalización de la protesta social", Guatemala, 2010.

<sup>41</sup> Illescas, G., *Los síntomas de autoritarismo del General: La violencia política disfrazada de Gobernabilidad*, 'El Observador', Año7, N° 36 y 37, Julio- Noviembre 2012; PBI- Guatemala, "[La criminalización de la protesta social continúa](#)", December 2013.

<sup>42</sup> CIDH, *Principios y Buenas Prácticas sobre la Protección de las Personas Privadas de la Libertad en América Latina*, 13 March 2008; CIDSE, "La criminalización de la protesta social en torno a la industria extractiva en América Latina", *Análisis y Recomendaciones*, June 2011

<sup>43</sup> CIDH, "Segundo informe de la CIDH sobre defensores de derechos humanos", March 2012; PBI Guatemala, *Alerta "Acusaciones legales, órdenes de captura y detención de personas en comunidades Kaqchikeles de San Juan Sacatepéquez"*. Guatemala, Julio 2013; Illescas, G., *Los síntomas de autoritarismo del General: La violencia política disfrazada de Gobernabilidad*, 'El Observador', Año7, N° 36 y 37, Julio- Noviembre 2012.

<sup>44</sup> CIDSE, "La criminalización de la protesta social en torno a la industria extractiva en América Latina", *Análisis y Recomendaciones*, junio de 2011; PBI- Guatemala, "[La criminalización de la protesta social continúa](#)", December 2013.

<sup>45</sup> *Ibid*

<sup>46</sup> CIJ, *Criminalización de la protesta social*, Guatemala, 2010.

recently, in 2014, Mexico approved a number of structural reforms, including an Energy Reform, which stipulates that a consultation process should be held for the entry of mega-projects in the energy sector. In November 2014, the first consultation process to take place under the recent Energy Reform was initiated in Juchitán, Oaxaca. PBI has been present in a number of the sessions held in this consultation process to date, and has observed an increase in the level of risk for (W)HRDs who oppose or question the entry of large-scale project, including threats, death threats, surveillance, harassment, the alleged presence of persons carrying arms within the consultation.<sup>47</sup>

It is also worth mentioning that on a more general level, during 2014 PBI Mexico observed various legislative changes in at least four states that sought to permit the use of force in order to curb protests.<sup>48</sup> In response to the mass protests that have taken place in the context of the disappearance of forty-three students in Guerrero, the State has been severely criticised for responding to such protests with an excessive use of force, arbitrary arrests and detentions, allegations of torture.<sup>49</sup>

**IV. Please provide any specific case studies illustrating natural resource exploitation activities which you believe had a positive or negative impact upon FOAA rights, for example: (1) suppression or facilitation of lawful/peaceful protests regarding a project; (2) harassment or facilitation of civil society or grassroots groups involved in opposing a project; (3) outcomes when consulting – or failing to consult – with affected communities; (4) harassment/violation/sexual abuse committed particularly against women; (5) involvement of private security companies; (6) role of the trade unions in these contexts. We would especially appreciate examples that demonstrate how government or business action helped or hurt the protection and promotion of FOAA rights.**

As we have demonstrated with the above examples, in the countries we work, we have seen that the natural resource exploitation is sometimes linked to life-threatening situation against the human rights defenders that work actively in these matters, and often it remains in impunity.

In **Colombia** for example, Sandra Viviana Cuellar Gallego, a 26-year-old environmental engineer from the city of Cali and a recognized defender of natural resources and the rights of local communities to

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<sup>47</sup> PRODESC, “[Hostigamiento y amenazas obstaculizan el debido desarrollo de consulta sobre proyecto eólico en Juchitán, Oaxaca](#)”, 6 November 2014.

<sup>48</sup> PBI Mexico “[PBI Mexico observes with great concern recent trend to restrict the rights to freedom of expression and social protest in different Mexican states](#)” May, 2014.

<sup>49</sup> Sin Embargo, “[El Cerezo informa que la mayoría de detenidos son estudiantes; exigen liberación con arte](#)” 21 November 2014

decide these resources exploitation projects affect their environment and quality of life, was disappeared on 17 February 2011;<sup>50</sup> Adelinda Gómez Gaviria from Cauca Province, who had an active role in the Mining and Environmental Forum, was assassinated on 30 September 2013.<sup>51</sup>

In another case, César García of the Environmental and Small-Farming Committee of Tolima, a recognized activist against AngloGold Ashanti's gold mining project known as "La Colosa"<sup>52</sup> was shot to death close to his home in November 2014. García had been actively involved in opposing the development of an open-pit gold mining project, had regularly attended environmental meetings, and had helped persuade many farmers in the area not to sell their lands to foreign mining companies.<sup>53</sup>

Similarly, Robinson David Mazo, a member of the Rivers Alive Movement, which opposes the Hidroituango hydroelectric dam project, was assassinated on 30 November 2013,<sup>54</sup> a few months after his colleague Nelson Giraldo Posada was found on the banks of the Cauca River with his throat slit and bullet wounds to his chest and legs (see more on his case, above).<sup>55</sup>

Since January 2014, environmental human rights defenders from Rivers Alive have been facing death threats, surveillance, break-ins, smear campaigns and harassment.<sup>56</sup> Rivers Alice is a movement in the defence of the territories and communities affected by dam constructions and mining projects in Colombia. The movement is constituted by active organisations in four different locations: In Antioquia Department, Living Rivers denounces the negative impacts suffered by communities with the construction of the Hidroituango hydroelectric; In Santander Department, the Movement Sogamoso River integrates the organisation and the community leaders who live in the territory of Sogamoso River; In Huila Department, the Asoquimbo organisation fights against the impacts of the construction of the Quimbo dam.

On July 2014, environmental human rights defender and spokesperson of Rivers Alive, Isabel Cristina Zuleta, received messages on her social media account accusing her of being a member of the Revolutionary Armed Forces of Colombia (FARC) by an account reportedly identified as being part the

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<sup>50</sup> Areito Imagen, "[Desaparecida la ambientalista Sandra Viviana Cuéllar por aquellos que quieren desaparecer la reivindicación social, ecológica, política, en Colombia](#)" 10 March, 2011; El País, "[Se cumplen tres años de la desaparición de la ambientalista Sandra Viviana Cuéllar](#)" 17 February 2014.

<sup>51</sup> Frontline Defenders "[Colombia: Asesinato de la defensora de derechos humanos Sra Adelinda Gómez Gaviria](#)", 3 October 2013; Movimiento de Víctimas de Crímenes de Estado, "[Comunicado Público: Asesinato de Adelinda Gómez Gaviria, lideresa campesina defensora de DDHH](#)", 4 October, 2013.

<sup>52</sup> NACLA, "[Leader Opposed to Colombian Mining Project Murdered](#)", 11 December, 2013

<sup>53</sup> Ibid

<sup>54</sup> OIDHACO, "Defending the environment – dangerous in Colombia", February 2014

<sup>55</sup> Radio Nizkor, "Cae asesinado Nelson Giraldo, líder del movimiento Ríos Vivos, contra el megaproyecto Hidroituango", 22 September 2013

<sup>56</sup> Frontline Defenders, "[Colombia: Threats against environmental rights defenders from Movimiento Ríos Vivos](#)", 18 August, 2014.

National Army. The previous month, on June 20, Ms. Zuleta's house was broken into and a hard disk with information from Rivers Alive was stolen. Since her participation in the social protests in 2012 and 2013 against the construction of the Hidroituango dam, the environmental right defender has been a victim of surveillance, interventions in her communications, death threats and criminalisation.<sup>57</sup>

In **Guatemala**, there are cases of violence against public demonstrations for the projects of Canadian companies Hudbay Minerals and Tahoe Resources. In those demonstrations, security personnel –including retired members of the Guatemalan military- violated the human rights of the people participating in the protest. Particularly alarming is the case of the extrajudicial killing of the community leader Adolfo Ich in Izabal, the rape of eight maya qeqchis women, and the physical harm done to one of the participants in the demonstrations leaving him paralytic. A trial is currently underway against the chief of security; however the process has been extremely slow.<sup>58</sup> In another case, the Canadian companies were sued for using weapons of the security personnel against the members of an affected community that were participating in demonstrations outside of the mine.<sup>59</sup>

In **Honduras**, there is a tendency on lack of implementation and impunity. The UN International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention 169 of the International Labour Organization (ILO) recognize the right of all peoples to freely dispose of their wealth and natural resources, to be informed and consulted and not be deprived, under any circumstances, of their own livelihoods. Moreover, ILO Convention 169 establishes respect for the rights of indigenous peoples to land and territory (art. 13-17); including the right to remain living in their lands, recognition of rights over natural assets and participation in their administration. Here too, the UN Guiding Principles on Internal Displacement (1998) and the Rio Declaration on Environment and Development (1992) establish important international provisions prohibiting arbitrary resettlement and reiterate the obligation to undertake environmental impact assessments for any proposed activities that may have a negative impact on the environment. Even though Honduras has integrated part of these standards into national law, human rights organisations have been complaining about the fact that the legal framework is not respected which results in impunity. In addition to this, according to information received by PBI

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<sup>57</sup> Frontline Defenders, “[Colombia: Threats against environmental rights defenders from Movimiento Ríos Vivos](#)”, 18 August, 2014.

<sup>58</sup> Breaking the Silence et al., “[Comunicado de Prensa: Caso Adolfo Ich y German Chub](#)”, 5 March 2014.

<sup>59</sup> Canadian Centre for International Justice, CCIJ's Public Cases and Interventions “[Tahoe Resources Inc](#)”, 2014

Honduras,<sup>60</sup> the judiciary and the PPO ignore and/or fail to comply with the provisions of international standards recognized and ratified by the State of Honduras as in the case of ILO Convention 169.

Additionally, criminalization has been closing the space available for work to defend human rights, caused by the partial application of legislation coupled with a number of public declarations aimed to questioning the work of human rights defenders.<sup>61</sup>

## V. Conclusion

As demonstrated in this document, the important role played by (W)HRDs in protecting and defending rights in the context of natural resource exploitation is at risk if their rights to freedom of peaceful assembly and of association are not completely guaranteed. Every time that those defenders are victims of abuses while participating in peaceful demonstrations, received life threatening messages, and are accused with unfounded criminal charges, they may be dissuaded from exercising the aforementioned rights.

In light of this situation, it is essential to guarantee enabling environments in which human rights defenders can exercise those rights without fear. In this regard, we concur with the Inter-American Commission of Human Rights that “the right of assembly and freedom of association are fundamental for the existence and functioning of a democratic society”.<sup>62</sup> Further, the protection of those rights entails not only the obligation of states not to interfere with the exercise of the right of assembly or association, but also requires, in certain circumstances, positive measures by states to ensure the effective exercise of liberty, for example, by protecting the participants in a demonstration from the physical violence of those who might hold contrary views.<sup>63</sup>

In the view of the Commission, these rights are fundamental for the defence of human rights, since they protect the means by which the grievances of both human rights defenders are expressed. Accordingly, restrictions on the exercise of these rights are serious obstacles to the people’s

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<sup>60</sup>PBI, Information received from the Broad Movement for Dignity and Justice (Movimiento Amplio por la Dignidad y la Justicia) based on cases presented “to the PO and the judiciary, invoking rights established in ILO Convention 169 which are not even mentioned in its decisions by the Public Prosecutor and judges who know the causes.”, November 2012.

<sup>61</sup> Protection Online “[Criminalization of Honduran activists mirrors regional trend](#)”, 9 October 2013.

<sup>62</sup> IACHR, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr., October 22, 2002, para. 359.

<sup>63</sup> Ibid.

ability to vindicate their rights, make known their petitions, and foster the search for changes or solutions to the problems that affect them.<sup>64</sup>

For these reasons, the Commission upholds that it is difficult to exercise the defence of human rights in contexts where restrictions are placed on the right to peaceful assembly, especially when the exercise of the right to assembly is essential for the exercise of other rights such as freedom of expression and the right to association.<sup>65</sup>

In this regard, the Inter-American Commission has been firmly in recognizing that:

“The exercise of this right means that human rights defenders may freely meet in private locations with the consent of the owners, in public places—in accordance with the applicable regulations—and in places of business, in the case of workers.<sup>66</sup> Human rights defenders have the right to participate in the preparation and direction of a meeting or demonstration, as well as in the event itself.<sup>67</sup>

The state’s obligations to protect and ensure the right to assembly include actions that, if not anticipated, impede the work of defending human rights. Hence, states have the obligation to ensure that no human rights defender is prevented from meeting or publicly expressing him or herself, which means that the state authorities must abstain from preventing the exercise of this right and must also take measures to ensure that others do not prevent it. States also must take the administrative and law enforcement steps necessary to enable defenders to carry out their activities, which includes positive steps such as detouring traffic and providing police protection for demonstrations and rallies, where necessary.”<sup>68</sup>

## VI. Recommendations

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<sup>64</sup> IACHR, “[Report on the situation of human rights defenders in the Americas](#)”, para. 51-52.

<sup>65</sup> Ibid

<sup>66</sup> Committee on Freedom of Association, see for example, Report 211, Case no. 1014 (Dominican Republic), paragraph 512; Report 233, Case No. 1217 (Chile), paragraphs 109 and 110, and Report 246, Cases No. 1129, 1169, 1298, 1344, and 1351, Para. 260.

<sup>67</sup> European Commission on Human Rights, *Christians against Racism and Fascism v. the United Kingdom*, no. 8440/78, Commission decision of 16 July 1980, DR 21, p. 138, p. 148.

<sup>68</sup> As the European Court has stated, “a demonstration may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. The participants must, however, be able to hold the demonstration without having to fear that they will be subjected to physical violence by their opponents; such a fear would be liable to deter associations or other groups supporting common ideas or interests from openly expressing their opinions on highly controversial issues affecting the community. In a democracy, the right to counter-demonstrate cannot extend to inhibit the exercise of the right to demonstrate.” *European Ct. of HR, Case Plattform “Arzte fur das Leben” c. Austria*, Judgment of June 21, 1988, Ser. A, No. 139, para. 32

With the aim to provide an enabling environment in which (W)HRDs can freely express their concerns about natural resource exploitation, States should: (i) agree on more clear and effective laws in matters of extraterritorial control and jurisdiction over national companies' activities; (ii) revise their criminal laws and procedures to avoid unfounded persecutions against human rights defenders simply for exercise of their right to freedom of assembly and of association; and (iii) adopt concrete measures to open spaces for effective defence of human rights and to contribute to the protection of social actors who defend and promote human rights and who, because of this, face threats, various aggression, and repression.

**i) What measures/actions would you recommend that States, businesses and individuals take to enhance the promotion and protection of freedom of peaceful assembly and of association in their policies, projects, goals and other engagements with civil society?**

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

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

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

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

#### *b. Stronger Legal Safeguards to Defend Rights: Countering Criminalisation & Impunity*

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PBI has observed an increasing criminalization of defenders who work on land and natural resource issues, by means of specious detentions and prosecutions. The UN Special Rapporteur for HRDs asserts that basic procedural rights “are often ignored,” pointing to excessively long periods of detention, the filing of investigations and charges without evidence, and the use of unreliable or uncorroborated evidence.<sup>69</sup> Legal persecution is a burden on (W)HRDs and their organization in terms of financial and human resources, reputational damage, and personal wellbeing, and can serve to impede or even paralyse their work. This situation leads to a weakening of the rule of law, a situation that unscrupulous businesses are able to exploit. The IACHR affirms that “often, the owners who manage megaprojects or the staff who work on them are the ones lodging criminal complaints against defenders for the purpose of reducing their activities of defence of their rights.”<sup>70</sup>

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

- Increase efforts to promote and embed the right to a fair trial and due process of law as fundamental rights, especially where the rights of (W)HRDs are violated;
- Promote more effective monitoring and oversight mechanisms to identify, eliminate and redress common abuses of due process and right to a fair trial;

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<sup>69</sup> Minimum standards regarding legislation, p.18 A/67/292, Report of the Special Rapporteur on the situation of human rights defenders, 10 August 2012

<sup>70</sup> IACHR “[Second Report on the Situation of Human Rights Defenders in the Americas](#)”, 2011.

- Clearly outline the responsibility of business enterprises to respect the work of (W)HRDs, including by respecting their right to freedom of expression, assembly, and association.

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

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(W)HRDs play a key role in advising and representing affected communities and individuals in processes of dialogue and consultation with states and companies. They are also an important stakeholder voice in the design and implementation of national policy on issues of development and business and human rights.

However, in practice defenders claim that there is often a lack of political will to meaningfully accommodate their views. In other instances, PBI has observed that defenders who engage in participatory processes are subsequently recipients of intimidation, attacks, criminalization, and smear campaigns intended to undermine their position and to dissuade them from participating. To address this issue, states should:

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