

# RESPONSIBLE SOURCING

**Ali Hines**

- *How businesses can protect land and environmental defenders and indigenous communities' rights to land and resources* •

## ABSTRACT

*More than three people lost their lives each week in 2018 for peacefully defending their land and environment in the face of large-scale resource extraction projects. For companies with agricultural, timber and mineral supply chains and their investors, there is a strategic and moral imperative to act to protect the human rights of all people defending communities' rights to land and resources. This article gives an overview of the response from States and the private sector in respecting and protecting land and environmental defenders, including several case studies involving businesses. It also sets out the due diligence process that businesses should be undertaking in order to identify and mitigate threats against defenders in their value chain.*

## KEYWORDS

Defenders | Human rights | Land | Criminalisation | Killings

## 1 • The global picture

Despite the growing awareness of the role of human rights defenders (HRDs) in sustainable development, those defending their land and environment are increasingly under attack. Back in 2012, Global Witness found that over 711 activists, journalists and community members had been killed in the last decade defending their rights to land, forests and rivers.<sup>1</sup> By 2018, this death toll had risen to over 1,400.<sup>2</sup> This equates to more than three such people murdered on average every week in 2018 with attacks driven by industries like mining, logging and agribusiness. The true figure is likely to be far higher: reliable evidence is extremely hard to find or verify, and many murders go unreported, particularly in rural areas or countries where civil society space is restricted.

## 2 • How companies and investors can impact land and environmental defenders

Companies whose supply chains are reliant upon natural resource exploitation often depend on the conversion of sensitive natural habitats, which not only damages the local environment and furthers carbon emissions, but also normally results in disputes with local communities.

Corruption and impunity also underlie the growing number of conflicts around the exploitation of nature and large-scale development projects, owing partly to the fact that the majority of such projects require vast financial investments, which can fall prey to corruption. This situation is particularly evident in countries with poor and non-transparent governance processes, weak rule of law and weak land rights, which lead to collusion at the expense of the public good.<sup>3</sup>

Defenders who work on land and environmental issues face specific and heightened risks because they are seen as a threat to profit as well as power. In the vast majority of cases, they are killed because they have questioned or opposed a business enterprise – one usually linked to the extraction of natural resources, such as mining, large-scale agriculture or logging. Global Witness' data shows that in almost all cases, one of the prime reasons for the loss of defenders' lives is their clash with political, business and criminal interests who prioritise their scramble for natural resources over the economic, social and health interests of local communities and the environment.

The killing of land and environmental defenders is only the tip of the iceberg. Environmental human rights defenders face numerous threats and violations, including violent attacks and threats to their families, enforced disappearances, illegal surveillance, travel bans, blackmail, sexual harassment, judicial harassment and use of force to dispel peaceful protests. Such violations are committed by State and non-State actors, and take place in the context of the overall stigmatisation, demonisation and delegitimisation of defenders.<sup>4</sup>

While murder is the most visible and violent threat that defenders face, statistics on killings only tell a small part of the story. Away from the media spotlight, governments and companies use countries' courts and legal systems as instruments of oppression and intimidation against those who threaten their power and interests.

Criminalisation refers to “the process by which behaviours and individuals are transformed into crime and criminals.” In the context of defenders, criminalisation stems from the ‘intent to discredit, sabotage or impede the work of HRDs through the misuse of the legal system and through a targeted manipulation of the public discourse within a country.’<sup>5</sup> It is one of the main abuses that defenders face and it takes many different forms. Legal threats can be used by governments and companies to intimidate defenders, tarnish their reputations and lock them into costly court battles which hamper their work.

These legal battles are generally heavily mismatched. Armies of well-paid lawyers often face off against farmers or indigenous leaders of remote communities, who may have little formal education or knowledge of their rights. Once charged, defenders are stigmatised publicly and branded as terrorists or criminals by their government and the media that it often controls.

### 3 • The current state of play: land and environmental defenders and international norm

Under the UN Guiding Principles on Business and Human Rights (UNGPs), governments have the primary duty to protect human rights while businesses have a separate and independent responsibility to respect human rights.<sup>6</sup>

Under this guidance, the business responsibility to respect includes refraining from harming defenders, restricting their rights or interfering with their activities. The UNGPs also require companies to engage with defenders to identify, mitigate and remedy any adverse human rights violations that may arise from their operations.<sup>7</sup> In these cases, companies should exert leverage through their business and supplier relationships to address the impact. Additionally, private security firms or contractors acting for or on behalf of financed businesses should not be involved in attacks on defenders.<sup>8</sup>

An increasing number of businesses are making efforts to promote human rights in their supply chains and in communities impacted by their operations, particularly in response to threats to civic freedoms and human rights defenders.<sup>9</sup> For example, in 2015, three jewellery companies (understood not to have direct links to Angola), including Tiffany and Co., released statements calling on Angola to drop charges against Rafael Marques, a journalist on trial for defamation after exposing supply chain abuses in the diamond industry. These companies were keen for this to be seen as a collective, business-led push to drive systemic change and create ‘a global diamond supply chain free from human rights abuses.’<sup>10</sup>

The UNGPs state that ‘Because business enterprises can have an impact on virtually the entire spectrum of internationally recognised human rights, their responsibility to respect applies to all such rights.’ This includes respecting land and environmental defenders’ rights, as laid out in the UN Declaration on Human Rights Defenders (UNDHRD).<sup>11</sup> The UNDHRD bolsters the UNGPs alongside the Organization for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises and the UN Sustainable Development Goals.<sup>12</sup>

Beyond these corporate responsibility guidelines, national and international standards also exist to protect defenders’ rights. In 2016, Canada published guidelines for its government and diplomats on supporting defenders at risk.<sup>13</sup> These guidelines allow embassies to deny trade support to companies associated with threats against defenders – an important step given the abuses frequently reported by activists opposing Canadian mining interests.<sup>14</sup>

France recently passed the most comprehensive human rights focused due diligence requirements through the Duty of Vigilance Law in February 2017.<sup>15</sup> The law requires companies, including banks and investors, to identify and act on their most serious exposure to human rights abuses, which may include threats to and killings of defenders.

European investors such as banks, pension funds and insurers are also now bound by due diligence legislation. An agreement made between the European Parliament and Council in 2019 means that investors must disclose the steps they have taken to address any adverse social and environmental impacts of their investment decisions.<sup>16</sup>

In addition, Global Witness is part of a NGO coalition calling for the EU to introduce effective and robust legislation that establishes cross-sectoral, mandatory, human rights, environmental and governance due diligence obligations for all companies – including those in the financial sector – operating in the EU. This includes access to remedy for victims of corporate abuse and effective sanctions. As a result, in May this year, the European Commissioner for Justice made a public commitment to bring in a new EU law on mandatory corporate due diligence on human rights, environmental and governance issues, including corruption, as part of the European Green New Deal.<sup>17</sup>

## 4 • Global Witness investigation in the Philippines

Last year, Global Witness revealed that in 2018, 30 land and environmental defenders were killed in the Philippines, making it the country with the highest number of such killings in the world.<sup>18</sup> Our two-year investigation showed how mining, agribusiness, logging and coal plants are driving attacks against environmental activists. It found that internationally recognised firms including Del Monte Philippines, San Miguel Corporation, Standard Chartered, Dole Philippines, and the World Bank are connected to attacks against defenders through their business activities in the Philippines.<sup>19</sup>

In 2016, Gloria Capitan was killed after opposing coal storage facilities and a San Miguel Corporation-owned coal power plant, backed by Standard Chartered and the World Bank, which were polluting her community in Bataan.<sup>20</sup>

Renato Anglao was murdered after he protested the grabbing of indigenous land in Bukidnon, which a local landowner and mayor used to produce fruit for Del Monte Philippines until 2019. This followed our previous investigation, which had showed that another major agribusiness company, Dole Philippines, had subleased land to grow bananas from a notorious gun dealer accused of using fraud and coercion to gain rights to indigenous land.<sup>21</sup>

In recent statements, Del Monte Philippines, Dole Philippines and the International Finance Corporation (IFC) outlined positive action taken on the back of our report.<sup>22</sup>

The agribusiness companies acknowledged the need for clear and concrete internal policies to address the issue of reprisals against those speaking out about their projects. Dole Philippines announced that the company has “undertaken a review of its internal processes to better ensure that it shall not be a party to... violence against environmental defenders and/or indigenous people”, and committed to “outlining more concrete company policies”.<sup>23</sup>

Del Monte Philippines have gone a step further, engaging with civil society organisations as they review their “impact assessment and due diligence processes”, while “identifying areas of no compromise or zero tolerance.” The company committed to “preventing and responding to any reprisals against persons who voice out issues about any of the businesses our company is involved in,” and to translating these commitments “into concrete action steps.”<sup>24</sup>

The IFC confirmed that, following its 2018 Position Statement on Non-Retaliation, the lender is “developing internal protocols and guidance for staff on reprisals screening, prevention, and response”. In December, the IFC launched a new “contextual risk tool” which will be included as part of due diligence processes across all investments. The IFC told Global Witness that the tool includes a “reprisals-specific dimension... to screen for project contexts with high risks of retaliation and violence”.<sup>25</sup> They also announced the creation of a “Stakeholder Grievance Response team” that reports directly to the CEO and is committed to bringing forward new guidance on “stakeholder engagement practices” and to “engag[ing] with its clients or other appropriate parties” when allegations of reprisals are raised.<sup>26</sup>

The challenge for all three business actors now is to use the next six months to turn intent into action, including by ensuring transparent consultations with a diverse range of civil society organisations; reporting publicly on the implementation of new policies throughout their operations, and providing redress for the victims of any abuses and environmental harm associated with their operations.

## 5 • Developing a due diligence process that ensures the respect and protection of LEDs' rights

The following is an overview of the due diligence process that businesses should undertake to address defender-related risks in their value chain:

**1. Embed responsible business conduct into policies and management systems** – Companies should develop, publish and implement a policy position on Land and Environmental Defenders (LED) that includes a zero-tolerance stance on threats and violence against LEDs as well as on illegal land acquisitions, and also requires free, prior and informed consent of local communities.

**2. Identify and assess adverse impacts in operations, value chains and business relationships** – Conduct regular assessments of risks to affected communities and LEDs, for example as part of wider environmental, social and human rights impact assessments. Risk assessments should be conducted at three levels in key sourcing countries: at the national, supplier and project levels.

**3. Cease, prevent or mitigate adverse impacts** – Where adverse impacts are identified, work with LEDs, communities and experts to identify effective mitigation measures. Identify and use the company's commercial and political leverage to maximise mitigation efforts and be prepared to stop operations/sourcing where necessary.

**4. Track implementation and results** – Regularly monitor the effectiveness of LED-related due diligence processes through consultation with LEDs' representatives and independent experts, and as part of regular human rights impact assessments.

**5. Communicate how impacts are addressed** – Publicly disclose risks faced by LEDs and the due diligence measures used to identify and address these risks, for example through annual, sustainability or corporate responsibility reports.

**6. Provide for or cooperate in remediation when appropriate** – Ensure that the business's existing grievance mechanisms are accessible to local communities and LEDs and that they address risks to LEDs, land and the environment. Assess whether these existing grievance mechanisms are rapid enough and provide sufficient levels of protection to deal with LED grievances and if not, set up specific LED grievance mechanisms that provide rapid response and high levels of security and protection for users. Co-operate where required with other legitimate grievance mechanisms such as state judicial processes.

Finally, businesses should champion LED issues with governments to achieve positive outcomes for LEDs, pressing for greater respect for their rights, supporting them in public and pushing governments to ensure that those responsible for attacks are brought to justice.

## 6 • Business as usual and a fear for the future

The world as we know it is changing at an exponential rate. The impact of Covid-19 on global health and financial systems will ripple for decades.

It is widely recognised that deforestation and the loss of wildlife are two key contributors to the rise in infectious diseases.<sup>27</sup> In order to avert a future pandemic, decision makers will need to listen to environmentalists, indigenous leaders and community activists taking a stand to protect nature. Front-line activists can also be a key voice in tackling the inequalities that have exacerbated the virus's impact and in proposing more sustainable ways of doing business in future. But only if they are safe enough to do so.

As is the case for other types of human rights defenders, threats and attacks against land and environmental activists have not slowed in this Covid-19 crisis period. In fact, they appear to have accelerated.<sup>28</sup>

A sustainable, resilient and fair response to the pandemic will be one in which rights are upheld and those who defend them are listened to, but civil society will need to be vigilant.

Inspirationally, even under the heightened pressure and restrictions, human rights and environmental organisations around the world are pulling together to find creative responses and to pool documentation. NGOs are tracking threats to civil liberties and Covid-19's impact upon indigenous peoples, as well as responses to the crisis by business and the UN.

If we want to build a more resilient and fairer planet once this crisis passes, it is crucial that land and environmental defenders are better protected.

In the long term, it is crucial that we consider how responsible business can operate in a way that puts local communities and defenders at the centre of decision-making, rather than at risk.

In the short term, governments and business should:

- Use public and private communications to emphasise that the role of land and environmental defenders is as important as ever and that reprisals against them will not be tolerated.
- Dedicate resources to identifying increased reprisals-related risks across investments, operations and supply chains, and take action to prevent and mitigate any risks identified and to support land and environmental defenders globally.
- Use secure channels to ensure that information on the environmental or human rights impact of potential business projects reaches those affected, allowing them the opportunity to engage in decision-making in a safe way.

- Commit to putting land and environmental rights and those who protect them at the centre of all responses to Covid-19.

## NOTES

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