



Women Human Rights Defenders Confronting Extractive Industries

An Overview of Critical Risks and Human Rights
Obligations



The Association for Women's Rights in Development (AWID) is an international feminist, membership organization committed to achieving gender equality, sustainable development and women's human rights. AWID's mission is to strengthen the voice, impact and influence of women's rights advocates, organizations and movements internationally to effectively advance the rights of women.

www.awid.org

The Women Human Rights Defenders International Coalition (WHRDIC) is a resource and advocacy network for the protection and support of women human rights defenders worldwide. An international initiative created out of the international campaign on women human rights defenders launched in 2005, the Coalition calls attention to the recognition of women human rights defenders.

www.defendingwomen-defendingrights.org

Author: Inmaculada Barcia

Editors: Tracy Doig, Inna Michaeli, Susan Tolmay

Additional contributors: Daniela Fonkatz, Hakima Abbas

Production: Susan Tolmay, Laila Malik

Design and Layout: Storm. Diseño + Comunicación

AWID gratefully acknowledges the generous support of the Count Me In! Consortium funded by the Dutch Ministry of Foreign Affairs, Ford Foundation, Foundation for a Just Society, Hivos, Levi Strauss Foundation, Norwegian Ministry of Foreign Affairs, Oak Foundation, Swedish International Development Cooperation Agency (Sida), and an anonymous contributor.

2017 AWID and Women Human Rights Defenders International Coalition.

This publication may be redistributed non-commercially in any media, unchanged and in whole, with credit given to AWID and the authors.



www.creativecommons.org

This report is dedicated to all women human rights defenders who struggle daily in defense of their land and communities and in memory of all women defenders who have lost their lives in the struggle for rights and justice. Your activism continues to inspire action and resistance.



CONTENTS

Executive Summary	5
Introduction	7
Approach	8
What are Extractive Industries and Why Confront Them?	10
Critical Risks faced by Women Human Rights Defenders	13
“Nameless and faceless” - Exclusion from negotiations and decision-making	14
Criminalization: a political tool to deter resistance	17
Stigmatization, smear campaigns and the media	20
Militarization and public and private security	23
Marginalization in communities and movements	26
The International Legal Framework for Business and Human Rights	29
Recommendations	33

EXECUTIVE SUMMARY



Violence against Women Human Rights Defenders (WHRDs) continues to grow. WHRDs confronting unfettered corporate power in pursuit of human rights face particular situations of risk and threats. Criminalization, violence, sexual abuse, intimidation and reprisals against WHRDs who act in defense of their land, territory and the environment have been recorded across the globe.

Whilst the extractive industry is only one manifestation of corporate power, its excesses are particularly bold - conflict (often bloody) with affected communities, environmental degradation and stark power imbalance between corporations and local communities that hinders people's access to justice.

Women defending their lands, communities, and the environment face critical risks and gender-specific challenges. Often, WHRDs who confront extractive industries are not only challenging corporate power, but also a deeply rooted patriarchy. As a result, they are targeted both as defenders of rights, land and natural resources, and as women defying gender norms. In these struggles, women experience all the hardships

of human rights defenders, but also cope with gender-specific violence and risks.

In interviews and consultations, WHRDs outlined the threats, risks and violence that they confront, including:

- Barriers to participation in decision-making processes.
- Criminalization.
- Stigmatization.
- Militarization and armed forces.
- Marginalization within their own movements and communities.

WHRDs describe how factors like gender, race, ethnicity, class, marital status and sexual orientation, shape power relations in their societies, and increase their vulnerability to violence.

Common experiences of WHRDs across regions reflect global trends of repression and gender-specific violence perpetrated by corporate, state and non-state actors: corporations and private companies, state and local authorities, military and police forces, private security services, but at times

also women's own family members, communities and social movements. This report illustrates that **violence against WHRDs in the public and private spheres is inter-linked, and always rooted in social, economic and political power relations.**

States are obliged by national, regional and international human rights standards to respect, protect and fulfill the rights of women human rights defenders and their communities, and provide an enabling environment for the peaceful defense of their lands and territories. If violations occur, states have an obligation to provide victims with access to effective judicial remedies and reparation.

States have the obligation to ensure the meaningful participation of people and communities in decision-making concerning their territories, natural resources and environment. Policies need to be developed to eliminate obstacles to the participation of all affected people in decision-making about control of their territories and resources, including barriers based on gender, race or ethnicity, economic status or any other factor.

Corporations also have a responsibility to ensure that their engagements with affected communities are conducted in good faith and in compliance with international and regional human rights standards, including the International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Indigenous Peoples and voluntary initiatives aimed at clarifying the responsibility of businesses to protect human rights, such as the United Nations Guiding Principles on Business and Human Rights. However, overwhelming data on corporate human rights abuses indicate that current tools are ineffective in holding corporations accountable.

The lack of a comprehensive legally binding international instrument to address human rights

abuses by transnational corporations coupled with gaps in national legislation and inefficient judicial systems, means that violations committed against communities and WHRDs often go unpunished.

Current efforts by the intergovernmental working group established by the United Nations Human Rights Council to elaborate an international legally binding instrument is an important step towards ensuring safer, enabling environments for women to exercise power and decide on the future of their resources, their lands and their communities. However, countries in the Global North have so far expressed limited support for this process. This must change, if human rights are to prevail over corporate interests.

Ultimately, the violations against defenders are inseparable from the extractive model of development. Research demonstrates that extractive industries do not deliver the development they promise; instead, they disrupt people's lands and livelihoods, displace communities, deepen economic, social and gender inequalities, and cause irreversible environmental damage.

WHRDs make clear that alternative models of truly sustainable development are possible. These models would allow communities to decide on the future of their territories, to sustain their ways of living, and respect their cultural and spiritual attachments to their land and resources.

States and corporations should publically recognize the important and legitimate work of defenders working to defend territories and natural resources, and refrain from attacking, harassing and/or intimidating those who oppose extractive projects. Importantly, in addition to providing a safe, enabling environment for WHRDs, state actors, development agencies, and other stakeholders should also provide political and financial support for community-based visions of development.

INTRODUCTION



his report aims to be a useful tool for Women Human Rights Defenders (WHRDs), States, corporations, human rights policy makers and mechanisms and other stakeholders, to end threats and violence against WHRDs confronting extractive industries. The recommendations of this report are designed to contribute to safer, enabling environments for WHRDs to exercise power and decide on the future of their resources, their lands and their communities.

The report examines the critical risks and gender-specific challenges faced by WHRDs confronting extractive industries. WHRDs are targeted both as defenders of rights, land and natural resources, and as women challenging gender norms.

For this research, AWID and the Women Human Rights Defenders International Coalition (WHRDIC) worked with WHRDs across regions to produce knowledge that builds on their experiences and is relevant to their lives and their work. Research methods include: review of academic literature and reports by development agencies on extractives industries, women, and gender; **interviews** and

regional consultations in Mexico (June 2015), Philippines (July 2015) and Kenya (October 2015) with the participation of **48 WHRDs** from **22 countries** in Latin America, Africa and Asia to produce collective reflection and analysis.

This report is divided into four chapters:

- Chapter 1 provides information on the scale and scope of women's active roles and leadership in defense of their territories and opposition to extractive industries.
- Chapter 2 describes the threats, risks and violence that WHRDs are confronting, focuses on specific challenges and refers to relevant human rights standards.
- Chapter 3 presents a brief overview of the existing legal framework regulating the conduct of business and underscores the many gaps and needs in this area.
- Chapter 4 provides a set of recommendations for States, corporations, human rights mechanisms and donors to improve the recognition and protection of WHRDs in this area.

»» **APPROACH**

»» **Who are Women Human Rights Defenders?** ««

According to the Special Rapporteur on the situation of human rights defenders, Women Human Rights Defenders are “both female human rights defenders, and any other human rights defenders who work in the defence of women’s rights or on gender issues” (A/HRC/16/44)¹.

AWID and WHRDIC broadly understand WHRDs to encompass individuals who defend rights and are subject to gender-specific risks and threats due to their human rights work and/or as a direct consequence of their gender identity or sexual orientation.

For the purposes of this report, the term ‘Woman Human Rights Defender’ (WHRD) refers to women working for rights and justice, including individual and collective rights of people and planet.



Whether individuals work within formal organizations, in loose networks, or as community leaders and activists, those who work to uphold rights are Human Rights Defenders and must be recognized as such.

The United Nations Declaration on Human Rights Defenders² identifies defenders as rights holders, and outlines States’ obligations in protecting them and preventing violations of their rights. The Human Rights Defender framework incorporates protection mechanisms from various human rights systems,

1. United Nations Human Rights Office of the High Commissioner. “Women human rights defenders.” United Nations Human Rights Office of the High Commissioner. <http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/HRDefenders.aspx>.

including regional bodies, like the European Union (and its guidelines on Human Rights Defenders), the Inter-American Commission on Human Rights (and its Rapporteur on Human Rights Defenders), and the African Commission for Human and People's Rights (and its Special Rapporteur on Human Rights Defenders).

Although States bear the main responsibility for protecting defenders, the Special Rapporteur on the situation of human rights defenders has stated, that Article 10 of the Declaration on Human Rights Defenders establishes that non-state actors, including individuals, groups and organs of society “have a responsibility to promote and respect the rights enshrined in the Declaration and, consequently, the rights of human rights defenders.”³

The Women Human Rights Defenders framework adjusts the HRD framework to analyze realities and challenges of women defending human rights. This framework acknowledges that patriarchy and gender oppression are deeply rooted and normalized in societies, in forms of violence, and sometimes even in rights-based frameworks.

The WHRD framework validates the work of WHRDs, recognizes the particular forms of violence they face because of their gender identity and their struggles for rights and justice, and provides gender-sensitive mechanisms for protection and redress.

-
2. The full name is: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
 3. Margaret Sekaggya. *Report of the Special Rapporteur on the situation of human rights defenders*, (A/65/223). 4 August, 2010, para. 2.



WHAT ARE EXTRACTIVE INDUSTRIES AND WHY CONFRONT THEM?



Extractive operations can be described as any that 'extract' or otherwise exploit raw materials from the earth. Mining, timber, gas and oil industries are just some examples. Extractivism is a term that describes "an economic and political model based on the unbridled commodification and exploitation of nature"⁴. Not all extractive operations fall under this model. It is in fact important to recognize the potential value of small-scale artisanal mining and other extractive operations carried out by indigenous communities in responsible and sustainable ways, centering social and environmental considerations rather than sheer profit. Nonetheless, extractivism is the dominant model of extractive operations and the global capitalist economy, and the subject of this report.

WHRDs consistently voice their opposition to extractivism. Globally, extractivism intensifies the inequality between global North companies and countries that profit the most from the extraction of resources, and the global South, where resources

are being extracted, communities' livelihoods taken away in exchange for temporary precarious employment, and the environment harmed; it is essentially a neocolonial model. Locally, extractivism fails to deliver the development that it promises, and instead inflicts poverty and deepens economic, social and gender inequalities in societies and communities.

WHRDs argue for sustainable, holistic and community-based visions and models of development. These alternatives assume the right of communities to assert power on the future of their territories, to decide on their ways of living, and to sustain ancestral, cultural and spiritual relations to their lands. Such models are rooted in what development means for members of the community - economically, socially and culturally- and consider both short-term and long-term impacts of operations.

Women experience disproportionate harm from extractive operations. They often are the first to experience what is happening to the water, how

4. Urgent Action Fund For Latin America and The Caribbean. *Extractivism in Latin America: Impact on Women's Lives and Proposals for the Defense of Territory* (Bogotá: Alternativa Gráfica, 2016) 6. <http://www.urgentactionfund-latinamerica.org/publicaciones>

their lands are being contaminated, and the impact of polluted environments on their health and the health of their families. Where women are the primary caretakers, environmental damage increases their workload and impacts their ability to provide food and clean water for their families and communities.⁵

The issue of water affects women directly. Access to water is becoming scarce and policies regulating the use are absolutely precarious. While the mining industry in the area spends millions of liters of water in related mining activities, women do not even have enough water for personal hygiene.

—Dora Arias, Colombia

Extractive industries also generate far-reaching economic and social re-structuring of communities. While this impacts everyone, gender-specific

consequences like increased domestic violence are extensively documented in research on mining communities.⁶ Community displacement is also particularly burdensome for primary caregivers, mostly women, who must cope with the physical and psychological distress it causes to children and other dependents as well as themselves.⁷

Rural and indigenous communities often describe land as a source of life. Women have specific ancestral and spiritual ties to lands and territories. Mama Aleta Baun, an indigenous woman from Indonesia, relates how women obtain textiles and dyes from their land to make the traditional dress, which signify the identity of each community. In strong identification and rootedness in their lands, women also claim the sovereignty over their territories as inherently linked to the sovereignty of their bodies. Their struggle to free their bodies from oppression and violence resonates with the struggle to resist the exploitation of their lands and resources.

Women confront extractive industries for different reasons. Some have decided to take action because of seeing the negative impact of extractive operations on people and nature. Others have long been human rights defenders, struggling for social, economic and environmental justice for their communities. Many indigenous and Black

5. Oxfam Australia. *Women ,communities and mining: The gender impacts of mining and the role of gender impact assessment* (Victoria:Oxfam Australia, 2009)
See also: Asia Pacific Forum on Women, Law and Development (APWLD). *Mining and Women in Asia: Experiences of women protecting their communities and human rights against corporate mining* (Chiang Mai:Asia Pacific Forum on Women, Law and Development (APWLD), 2009) 3.
See also: Bermúdez Rico, Rosa Emilia ,Karol Ivonne Zambrano Corredor and Lilia Tatiana Roa Avendaño. *LOS TERRITORIOS, LA MINERÍA Y NOSOTRAS: LAS MUJERES NOS PREGUNTAMOS GUÍA DE TRABAJO*, (Bogota: Censat Agua Viva – Amigos de la Tierra Colombia, 2014) 24. Translated into English from the Spanish version.
6. Chatiza, Kudzai, Davison Muchadenyika, Dorcas Makaza, Fanny Nyaunga, Ronnie James K. Murungu, and Lillian Matsika. “When Extractives Come Home: An Action Research on the Impact of the Extractives Sector on Women in Selected Mining Communities in Zimbabwe.” *OIDA International Journal of Sustainable Development* 8, no. 12 (2015): 45-72.
7. Jenkins, Katy. “Women, mining and development: an emerging research agenda.” *The Extractive Industries and Society* 1.2 (2014): 329-339.

women and communities have suffered land grabs and dispossession since the colonial period. They clearly identify that the current rights violations by extractive operations are enabled by the legal-administrative, social and economic mechanisms enacted at the time of colonization, and maintained by the state apparatus.

The high profits of extractivism mean that interests are powerful, and any opposition can be a dangerous endeavor. Not only are violations against WHRDs common, they take place in a sophisticated architecture of impunity. This impunity is the result of weak and ineffective judicial systems, as well as government alliances with foreign and national corporate interests. It is perpetuated by other local or national forces such as religious or 'traditional' institutions aiming to prevent the assertion of women and peoples' self-determination, and access to justice for abuses. This web of power is captured by the term corporate power.

Impunity in many cases is compounded by the lack of recognition of HRDs as such, and WHRDs in particular. Governments, corporations and in some cases their own communities, organizations and movements have collectively failed to recognize the

status of WHRDs, and to address their integrated protection.

Women community leaders, organizers and activists may themselves not be familiar with human rights frameworks and may also not identify as human rights defenders. But, however they choose to identify themselves, it is the legal obligation of state actors to recognize all people defending human rights as human rights defenders, in all their diversity.

The political participation of women is a break away from patriarchal gender stereotypes and redefines their roles in their communities. Assuming responsibility for the rights and future of their communities, women challenge their exclusion from the public sphere. By organizing and leading their communities, women are redefining social and gender roles.⁸

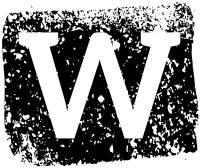
While opposing extractive industries, women human rights defenders are advancing alternative economic and social models based on the stewardship of land and common resources in order to preserve life, thereby contributing to the emergence of new paradigms.⁹

8. Bermúdez Rico, Zambrano Corredor, Roa. *LOS TERRITORIOS, LA MINERÍA Y NOSOTRAS*, 20.

9. Miriam Gator, "América Latina: El feminismo reactiva la lucha contra la explotación de recursos naturales" *Tiempo de Mujeres* (blog), February 22, 2014, <https://mujeresporlademocracia.blogspot.com/2014/02/america-latina-el-feminismo-reactiva-la.html>
See also: Bermúdez Rico, Zambrano Corredor, Roa. *LOS TERRITORIOS, LA MINERÍA Y NOSOTRAS*, 20-21.



CRITICAL RISKS FACED BY WOMEN HUMAN RIGHTS DEFENDERS



Women Human Rights Defenders (WHRDs) confronting extractive industries around the world are regularly harassed and threatened.

Violations include violence, intimidation and threats against WHRDs, as well as members of their families. Rape, sexual harassment and abuse are used to exercise power over women and their communities.¹⁰ WHRDs are more likely to be slandered, discredited and exposed to stigmatization, exclusion and public repudiation by state actors and corporations, as well as members of their communities.

Extractive operations have forced many WHRDs to abandon their communities because of threats against their lives. Such threats come from security forces, private security companies and paramilitary groups. This forced displacement severely impacts the lives of WHRDs, their families and communities. WHRDs who are primary caretakers are forced to

either take their children with them or leave them behind, moving away and losing the support of their families and communities. At the community level, such displacement generates an organizing vacuum, increases a sense of vulnerability and insecurity among community members and WHRDs, and weakens their collective capacity to realize their rights.

Threats against children of WHRDs are not uncommon. These terrorizing tactics are often used to intimidate and pressure WHRDs to stop their work. A defender from Thailand received the message: “*We know where your daughter’s kindergarten is, so be careful when you go to pick up your daughter, you won’t see her.*”

Violations can become further aggravated when gender intersects with racial and ethnic discrimination. Lolita Chavez, an indigenous WHRD from Guatemala, explains:

¹⁰. Asia Pacific Forum on Women, Law and Development (APWLD). *Mining and Women in Asia*, 4.

When they threaten me, they say that they will kill me, but before they kill me they will rape me. They don't say that to my male colleagues. These threats are very specific to indigenous women. There is also a very strong racism against us. They refer to us as those rebel Indian women that have nothing to do, and they consider us less human.

The following sections illustrate some of the challenges that WHRDs who confront extractive operations in their communities face in relation to their lives, work and safety.

“Nameless and faceless”¹¹

- Exclusion from negotiations and decision-making

Women's right to participate in decision-making processes, including decisions related to development projects, is made explicit in several international human rights instruments.¹² The extractive industries however tend to exclude local communities from decision making processes concerning their lands and resources.

When there are attempts at community consultations, it is common for companies to primarily consult with traditional leadership about proposed plans. These traditional, which often excludes women.

Corporations and state actors can become the driving force in excluding women from negotiation processes and reinforcing existing gender hierarchies. For example a mining company in La Guajira, Colombia ignored the elected community representative — an indigenous woman — and initiated talks with men from the same community, creating a parallel male leadership. When community members complained, the local government still did not recognize her position as the community representative.

Angeline Leguuto from Kenya explains:

Women in Samburu don't take part in negotiations [...]. There is still the sentiment that a woman's place is the kitchen. Issues of the community are discussed in men only spaces where women have no access and this is used as a reason to exclude women from discussions about resources.

¹¹ Description from interview with Cristina Karapatan. Philippines, August 5, 2014.

¹² Such as the United Nations Declaration on Human Rights Defenders, the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Rights of Indigenous Peoples. The Beijing Declaration and Platform of Action also highlight the need to ensure women's participation in decision-making processes related to the environment. Report of the Fourth World Conference on Women, Beijing. 4-15 September 1995, para. 253.a. Available at: <http://beijing20.unwomen.org/en/in-focus/environment>.

WHRDs draw attention to other factors that intersect with gender in their exclusion from negotiations. Economic oppression also compounds gendered oppression in excluding women from discussion and negotiation. Lack of access to formal education and the inaccessible technical language used by extractive corporations in communication with communities present a substantial challenge to participation.

Racism permeates relationships between local communities, corporations and state. In Guatemala, for example, indigenous Mayan women face exclusion by male leaders in their communities and also by state agents and company officials. These actors hold prejudice against indigenous women, doubt their capacity for good judgement, and believe that their participation would diminish the substance of the negotiations.

Despite the barriers that WHRDs face in their efforts to be included in consultations, they have made significant breakthroughs. Wendy Wanja Mutege, a human rights lawyer and community organizer defending indigenous and environmental rights in Kenya, explained her role working with the council of elders to ensure that women's leadership was made possible:

I made up my mind that I was not going to be compromised and in the public forum [...] I actually made it very clear that the people who suffer most by the loss of the natural resources are the women ... So, I asked them to incorporate women in the board of trustees and I made sure and insisted that for every meeting held, we have to have some women in the meeting [...] now we have six women in the leadership position.

Participation in negotiations should be a means to exercise influence, although it is often manipulated to manufacture 'consent'. As corporations use misinformation and other strategies to prevent the meaningful participation of communities, or enter negotiations in bad faith, WHRDs may refuse to negotiate if they perceive the projects to be damaging or the negotiations futile.

» WHAT ARE THE HUMAN RIGHTS STANDARDS IN THIS AREA? «

The right to participate in decision-making processes is well recognized in numerous international human rights instruments.

The **United Nations Declaration on Human Rights Defenders** provides in article 8 that “everyone has the right, individually or in association with others and on a non-discriminatory basis, to participate in the conduct of public affairs. That right is said to include the right to submit

to governmental bodies and agencies concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.”¹³

The **United Nations Declaration on the Rights of Indigenous Peoples** (article 18) recognizes the right of indigenous people “to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”

Article 32 further asserts “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their *free and informed consent* prior to the approval of any project affecting their lands or territories and other resources ...”

Article 25 (a) of the **International Covenant on Civil and Political Rights** recognizes the right to take part, directly or indirectly and without unreasonable restrictions, in the conduct of public affairs. More specifically, the **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) also includes the right of women to participate in the formulation of government policy (article 7(b)) and further clarifies that women in rural areas have the right to participate in the elaboration and implementation of development planning at all levels (article 14.2(a)).

Article 15 of the International Labour Organisation (ILO) **Indigenous and Tribal Peoples Convention**, 1989 (No. 169) states “1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. ...2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands.”¹⁴

At the regional level, similar rights are recognized in several instruments, including the **Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (article 4)** and the **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women** (article 9).

The **Rio Declaration on Environment and Development** also recognizes in Principle 20 that “Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.”

13. Sekaggya, Margaret. *Report of the Special Rapporteur on the situation of human rights defenders* (A/68/262) 5 August 2013, para. 27.

14. International Labour Organisation, C169 - Indigenous and Tribal Peoples Convention, 1989, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314

Criminalization: a political tool to deter resistance

Criminalization is a form of state repression that uses the legal system in a country to deter defenders from human rights work. It takes the form of civil and criminal legal proceedings against individuals and movements, and frames the exercise of legitimate rights — such as participation in peaceful demonstrations, community organizing and documentation of human rights violations — as illegitimate activities to be punished through the judicial system. Criminalizing HRDs is also a political strategy that seeks to delegitimize human rights struggles and to reduce public support for them.

Criminal and civil cases are brought against HRDs based on vague definitions of crimes by extractive corporations, and in some cases, by state or local authorities collaborating with corporations to repress community opposition to extractive projects. Charges can include “rebellion, terrorism, violence, usurpation, trespassing, disobedience or resistance to an official order, obstructing public officers, abduction, outrage to national symbols, criminal damage, causing injury, coercion, disturbance or other public order offences including obstructing roads.”¹⁵

In many countries, emergency and security legislation is used to crack down on those organizing protests and public meetings critical of profit-driven “development” projects.

The use of ‘emergency’ security legislation allows the State to disperse protesters, waive the need for consultations, and detain activists, among others. The exceptional state of affairs also creates a permissive environment in which women defenders are intimidated, sexually assaulted, and vilified as ‘terrorists’.¹⁶

Criminalization diverts time, efforts and resources of HRDs to dealing with the charges against them. Cases can be dragged out within the system for a long time to demoralize and demobilize HRDs. Civil society organizations need to be on standby every time there are protests, as people are abused by the criminal justice system, using additional resources.

Criminalization affects WHRDs in specific ways. The disadvantaged social and economic conditions of women increase their vulnerability to criminalization. This is compounded by property laws that subvert pre-colonial traditions of communal tenure of land in favor of private ownership. In this model, women’s legal ownership is further restricted. WHRDs, especially those living in rural areas, carry out their human rights work on a voluntary basis or receive very low financial compensation.¹⁷ The expenses generated from

15. Front Line Defenders. *Environmental Rights Defenders at Risk in Peru*. June 2014, 2.

16. Asoka, Kaavya. *Global Report on the Situation of Women Human Rights Defenders*. January 2012, 47.

17. Immaculada Barcia. *Our Right to Safety: Women Human Rights Defenders’ Holistic Approach to Protection* (Toronto: Association for Women’s Rights in Development (AWID), 2014) 13.

legal proceedings may further aggravate the precariousness of their economic situation.

Lina Solano, a WHRD from Ecuador, explains that in some cases, women need to sell the family's resources, such as their cattle, in order to pay legal expenses. This situation can generate family and community conflicts and bring blame to WHRDs for deviating from traditional gender roles. In these cases, many WHRDs must rely on women's groups and networks for this type of support. Bail requirements can be quite burdensome and people may have to turn to informal moneylenders, with women often being charged higher interest rates. All these factors aim to deter WHRDs from continuing with their activism.

Criminalization of individual WHRDs may trigger public condemnation and hinders the participation of all women in public life and decision-making.

Lastly, illegal arrest and detention can have gender-specific physical and psychological effects. WHRDs describe harassment and abuse characterized by misogyny and sexism, and report frequent sexual harassment in these situations and the denial of basic sanitary conditions and medical care.

Facing judgment wears out the defenders. It has a great impact on other women; they see that they have family conflicts, that everyone criticizes her and that the husband leaves her ... They do not want to be in that place, with so much conflict and that inhibits them [...].

—Lina Solano

In November 2015, two pregnant land-rights WHRDs from the Philippines - Andrea Rosal and Maria Miradel Torres - were imprisoned for allegedly "taking part in criminal activities". Both women were denied immediate medical attention, leading to the death of Andrea's two-day-old daughter and to health complications for Maria Miradel.¹⁸

For WHRDs who are the main caregivers in their families, imprisonment can generate fear and stress associated with not being able to take care of their children and other family members.

18. Protection International. "Human Rights honored after Indonesian activist Eva Bande is released from prison." PROTECTIONLINE by protection international. <http://protectionline.org/2015/01/07/human-rights-honored-after-indonesian-activist-eva-bande-is-released-from-prison/>

» WHAT ARE THE HUMAN RIGHTS STANDARDS IN THIS AREA? «

The State has a positive obligation to facilitate peaceful assemblies.¹⁹ In resolution 24/5, the Human Rights Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including ... human rights defenders, ... seeking to exercise or to promote those rights.²⁰

The **United Nations Declaration on Human Rights Defenders** provides in Article 12.2 that states have an obligation to protect defenders from “pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights.” Accordingly, the Special Rapporteur on human rights defenders has recommended States to “refrain from criminalizing defenders’ peaceful and legitimate activities.”²¹

Arbitrary detention is prohibited in all circumstances, including during armed conflict and other emergencies. The Human Rights Committee states, “Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant [on Civil and Political Rights] is arbitrary, including freedom of opinion and expression (art. 19), freedom of assembly (art. 21), freedom of association (art. 22), freedom of religion (art. 18) and the right to privacy (art. 17).”²²

The **Inter-American Commission on Human Rights** has also established that “The initiation of baseless criminal actions may violate the rights to personal integrity, judicial protection, and judicial guarantees, as well as the honor and dignity of human rights defenders”²³ as protected under the **American Convention on Human Rights** (articles 5, 8, 25 and 11). Provisions protecting similar rights can be found in the **International Covenant on Civil and Political Rights** (articles 2, 7, 14 and 17), the **European Convention on Human Rights** (articles 3, 6, 8 and 13) and the **African Charter on Human and Peoples’ Rights** (articles 5 and 7).

The **Inter-American Commission** has further established that “defining a crime in a way that is ambiguous or runs contrary to democratic standards so as to criminalize legitimate actions carried out by defenders would also constitute a violation of the principle of legality.”²⁴

19. Kiai, Maina. *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association* (A/HRC/20/27). 21 May 2012, para. 27.

20. Kiai, Maina. *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, (A/HRC/26/29). 14 April 2014, para. 22.

21. Sekaggya, Margaret. *Report of the Special Rapporteur on the situation of human rights defenders* (A/HRC/25/55) 23 December, 2013, para.131 (a).

22. UN Human Rights Committee. *General comment No. 35, Article 19* (CCPR/C/GC/35). 16 December 2014, para. 17.

23. Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, (OEA/Ser.L/V/II) Doc.66. 31 December 2011, para. 81.

24. Ibid.

Stigmatization, smear campaigns and the media

The media also criminalizes us. They try to rob us of our credibility. They say that we belong to armed groups, that we attack private investment, that we do not exist, that we belong to dysfunctional families, that we are whores and corrupt.²⁵

—Berta Cáceres, Honduras

Smear campaigns systematically undermine the credibility of human rights work and WHRDs themselves. This stigmatization is promoted by corporations and public officials through media outlets related to governments or affiliated entities. But even if not directly controlled by the government, mainstream media outlets often internalize and reproduce dominant ideologies and discourses of development that accuse HRDs of being “against development”. They present them as unpatriotic, disturbing public order and undermining the generation of employment and better living conditions for the community. Such hostile media coverage and smear campaigns can lead to the loss of legitimacy, isolation and rejection of HRDs by the community.

Smear campaigns against WHRDs often involve attacks based on their sexuality and their roles in the family and the community, reinforcing gender stereotypes and invading private and family spheres of the WHRDs.

The type of accusations and the insulting language make evident how patriarchal ideologies are used to delegitimize WHRDs through their sexuality. Women are accused of sexual “promiscuity” and called “prostitutes”. For example, in addition to being accused of defending ‘terrorists’, a lawyer and WHRD from Peru was also referred to as a “madam of the leftist brothel calling herself National Coordinator of Human Rights.”²⁶

When men are criminalized, they are portrayed as rebels, thieves, but when it is the women, they are also presented as rebels but add in a few extras – questioning her role as a mother and including her responsibilities in the family, like ‘what kind of a woman joins rallies instead of attending to her children?’ The attack is more personal and the impact is more psychological.

—Danica Castillo, Philippines

25. Win, Thin Lei. “Berta Cáceres Women activists defy danger to protect the environment” Thomson Reuters Foundation News. <http://news.trust.org/item/20140805084308-4q693/>

26. Bobadilla Ramírez, Dante. “Por corrupto, asesino y ladrón”. *CATARSIS Y HARAKIRI (blog)*, June 4, 2013, <http://www.blogcyh.com/2013/06/por-corrupto-asesino-y-ladron.html>

In some cases, these smear campaigns are promoted from within communities. WHRDs are accused of being involved in things they shouldn't, and of neglecting their children and husbands. Rumors that circulate in communities, that their husbands cannot 'control' them, can lead to domestic violence.

Stigmatization of WHRDs undermines their working environment. It can lead family and community members to pressure WHRDs to abandon their struggles. Smear campaigns can cause fissures within social movements, for example by questioning women's leadership capacities.

» WHAT ARE THE HUMAN RIGHTS STANDARDS IN THIS AREA? «

Article 17.1 of the **International Covenant on Civil and Political Rights** states that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” The **Inter-American Convention on Human Rights** (Article 11.2) and the **European Convention on Human Rights** (Article 8) also protect against such interferences in private life.

In this regard, the Special Rapporteur on the situation of human rights defenders has stated that “Defending human rights is not only a legitimate and honorable activity, but a right in itself”²⁷ and has recommended that States “refrain from stigmatizing communities affected by large-scale development projects and those who defend their rights, and recognize that their concerns are legitimate and necessary components of a process aimed at securing sustainable human development.”²⁸

Similarly, the **Inter-American Commission on Human Rights** (IACHR) has recommended that public officials “refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because of engaging in their work to promote and protect human rights.”²⁹

Specifically, in the case of women human rights defenders, the IACHR has recommended that States in the region ensure their security especially “whenever they are at risk of attack through specific mechanisms because of their gender, and to undertake measures to obtain recognition of the importance of their role within the movement to defend human rights”³⁰

The **African Commission on Human and People’s Rights** identifies that character assassination is frequent for WHRDs, “together with threats, warnings and ultimatums, bullying, blackmail and extortion, sexual harassment, “sexuality-baiting”, slander, defamation, “labelling”, categorization, smear campaigns, incitement to hatred, stigmatization, segregation and ostracism.”³¹ State parties are recommended to take measures for an enabling environment for WHRDs, including “a response to the religious and cultural norms that subjugate women in general and women human rights defenders in particular”³².

27. Sekaggya, Margaret. *Report of the Special Rapporteur on the situation of human rights defenders* (A/HRC/25/55) 23 December 2013, para. 128.

28. Sekaggya, Margaret. *Report of the Special Rapporteur on the situation of human rights defenders* (A/68/262) 5 August 2013, para. 81(d).

29. Inter-American Commission on Human Rights. *Report on the Situation of Human Rights Defenders in the Americas* (OEA/Ser.L/V/II.124) Doc. 5 rev.1. 7 March 2006, para. 342-10.

30. *Ibid.*, para. 342-10.

31. African Commission on Human and People’s Rights. *Report of the Study on the Situation of Women Human Rights Defenders in Africa*, 51, Article 116 <http://www.achpr.org/mechanisms/human-rights-defenders/Study-Women-HR-Defenders/>

32. *Ibid.* 67, Article 179.

Militarization and public and private security

In areas of armed conflict and violence, it is common to deploy security forces against community opposition to extractive projects. Security forces' operations put the life and safety of HRDs under severe threat. Women face higher risk of sexual violence and rape. In militarized areas, armed groups displace HRDs and restrict their freedom of movement. Classification of HRDs as *enemies of the state* makes them a legitimate target for security forces.

Violations can take the form of threats, harassment and espionage by private security companies. In Peru, a local environmental organization GRUFIDES was subjected to a surveillance operation by a private security company hired by the extractive corporation. GRUFIDES found evidence of this in photographs of female staff taken by the security company, and in documents reporting whether they were single or had any romantic relationship. GRUFIDES knew that as part of this operation, the company had tried to infiltrate someone to initiate intimate relations with one of the WHRDs in the organization

In other cases, the army and paramilitary groups are used to protect the economic interests of corporations. The Philippines has established a specialized unit within the army, Investment Defense Force (IDF) whose sole purpose is the protection of investment projects. Any person who raises their voice to protest a project can be

labelled as a rebel or terrorist, and thus a target for the IDF. "Any form of resistance from indigenous peoples is immediately quashed through the deployment of military and paramilitary forces. Indigenous men, women and children are being tortured, harassed, raped and murdered."³³

WHRDs from all regions highlight the use of public security forces to protect the interests of corporations. In Peru, a report from 2013 reveals several mining companies and the national police had an arrangement, permitted by national legislation, to allow mining companies to request, amongst other things, "the rapid deployment of larger police units in the case of social protests".³⁴ In Papua New Guinea, the security department of a mining company hired personnel with police or military background to provide security for their operations. "Some are police reservists, and at least a few are regular police officers who have taken extended leave from their jobs to accept better-paid positions."³⁵

WHRDs point out that the severity and immorality of this practice, as state authorities and the companies are using public forces financed by citizens' taxes "to cover these private companies and allow all the destruction and violation of human rights they generate."³⁶

In Colombia, armed groups have found mining projects to be an economic resource to help sustain the war and strengthen their military capacity, while the government has promoted industrial mining as the "engine" of development.

33. Mining and Women in Asia: Experiences of women protecting their communities and human rights against corporate mining, Asia Pacific Forum on Women, Law and Development (APWLD), 2009, 121.

34. Frontline Defenders, Environmental Rights Defenders at Risk in Peru, June 2014.

35. Human Rights Watch, Gold's Costly Dividend Human Rights Impacts of Papua New Guinea's Porgera Gold Mine, February 2011, 44.

36. Interview with Antonia Melo (Movimento Xingu Vivo para Sempre), Brazil, and interview with Rocio Silva, Peru, 2014-08-30.

Paramilitary groups have been linked directly to mining activities; guerrillas, especially the FARC, collected fines and taxes from miners without proper permits.

In the Philippines, WHRDs denounce tactics used by the military to integrate into communities, such as marrying or maintaining personal relationships with women in the community or their families: going out drinking with their husbands, or 'sponsoring' children. All these tactics are used to dissipate resistance to the corporations.

Militarisation deeply affects the social and cultural lives of communities, glorifies force and violent masculinity, and invalidates nonviolent struggles

for rights and justice. This creates a difficult and dangerous environment for human rights defenders, particularly WHRDs.

Ultimately, WHRDs stress the culture of impunity that prevails in relation to violations against them, and especially against indigenous and grassroots community organizers. The alliances between the military, corporations and state authorities; the failure to conduct investigations; and the systematic delays in the justice system, discourage WHRDs from filing complaints. In addition, many women do not report cases of sexual violence for fear of stigmatization and culture of victim-blaming. Thus, militarization both increases gender-based and sexual violence, and undermines the capacity to address it.

» WHAT ARE THE HUMAN RIGHTS STANDARDS IN THIS AREA? «

The **Universal Declaration of Human Rights** (Article 3) and the **International Covenant on Civil and Political Rights** (articles 6 (1) and 9 (1)) establish the State's responsibility to protect the right to life, liberty and security of person. This obligation is also emphasized in the **UN Declaration on Human Rights Defenders** (articles 2, 9 and 12). At the regional level, the **American Convention on Human Rights** (articles 4 (1) and 7(1)), the **European Convention on Human Rights** (articles 2 (1) and 5 (1)) and the **African Charter on Human and Peoples' Rights** (articles 4 and 6) also protect these rights.

States responsibilities in this area include negative and positive aspects. The Special Rapporteur on the situation of human rights defenders states, "On the one hand, States must refrain from violating the rights of human rights defenders; on the other hand, they should act with due diligence to prevent, investigate and bring to justice the perpetrators of any violation of the rights enshrined in the Declaration on Human Rights Defenders. Moreover, States bear the primary responsibility for protecting individuals, including human rights defenders, under their jurisdiction, regardless of the status of the alleged perpetrators (A/HRC/13/22, para. 42)."³⁷

The Human Rights Committee states "The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors."³⁸

The **International Covenant on Civil and Political Rights** also provides for the right to an effective remedy (article 2 (3) (a)). This right is also protected under regional instruments, including, the **American Convention on Human Rights** (article 25) and the **European Convention on Human Rights** (article 13). Article 25(a) of the **Protocol to the African Charter on the Rights of Women** requires states to 'provide for appropriate remedies to any woman whose rights or freedoms . . . have been violated'.

Similarly, the **Declaration on Human Rights Defenders** (Article 9) recognizes that "everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights."

The Special Rapporteur and the Special Representative on the situation of human rights defenders have further underlined "that prompt and impartial investigations into alleged violations, prosecution of the perpetrators regardless of their status, provision of redress, including appropriate compensation to victims, and enforcement of the decisions or judgments are fundamental actions that must be taken in order to protect the right to an effective remedy. They have observed that failure to take these actions leads to further attacks against human rights defenders and further violations of their rights (see A/58/380, para. 73, and A/65/223, para. 44)."³⁹

37. Report of the Special Rapporteur on the situation of human rights defenders, A/68/262, para. 30.

38. Human Rights Committee, General comment No. 35 CCPR/C/GC/35, 16 December 2014, p. 2, para 9.

39. Report of the Special Rapporteur on the situation of human rights defenders, A/68/262, para. 31.

Marginalization in communities and movements

The marginalization WHRDs face within their own families, communities, organizations and social movements includes a wide range of violations and oppressive practices. It ranges from failure to recognize the leadership and human rights work of WHRDs to attacks on their reputation in order to delegitimize their work and even physical assaults. These attacks affect individual WHRDs, but also threaten women's civil and political participation more broadly, and undermine the sustainability of human rights organizations and movements.

Human rights organizations and social movements are also not immune to patriarchal culture. Despite their commitment to rights and justice, they can also violate the rights of women and perpetuate gendered oppression. This is evident in the persistent reluctance of organizations and movements to address gender-based violence, discrimination and marginalization of women in the broader society, as well as in their own structures and practices. On the other hand, women's rights organizations under urban leadership, often with class privilege, may also contribute to the marginalization of rural, indigenous, and Black women's struggles for economic justice, land and territory.

WHRDs highlight the tensions that arise in their organizations and movements upon bringing up gender equality. As Lina Solano from Ecuador explains:

“Patriarchy and the capitalist system is reproduced at all levels of the family and movements and organizations [...] those who cook and confront the police are women, and those who are in the media and are visible are the men”.

Everyday practices that disadvantage WHRDs are also common. For example, it is often women who prepare food or take notes at meetings and assemblies. It is a multiplicity of practices “that without being very remarkable, violate and undermine, insidiously and repeatedly, the autonomy, dignity and psychic balance of women.”⁴⁰

The role of women can be minimized, less appreciated or taken for granted in male dominated organizational structures. Although women actively organize and mobilize their communities, they are often excluded from decision making. “Men always want to maintain their leadership, [...] often there is even a rejection of women's organizing and visibility, as men try to strengthen their own leadership.”⁴¹

In some cases, tensions have resulted in attacks against WHRDs and fragmentations within organizations and movements. Berta Cáceres, a prominent indigenous and feminist activist, leader

40. MICROMACHISMOS, La violencia invisible en la pareja, Luis Bonino Mendez. Available in Spanish at: http://www.berdingune.euskadi.eus/contenidos/informacion/material/es_gizonduz/adjuntos/micromachismos.pdf.

41. Interview with Lina Solano, Ecuador, 2015-03-17.

of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), noted that although her organization identifies with the anti-patriarchal struggle, women's leadership has generated an internal split resulting in the departure of some members.⁴² The oppression and marginalization WHRDs experience in gender-mixed social movements, in other instances, has lead them to establishing their own organizations that acknowledge establishing women's leadership, for example Women's Front of Pachamama.

These tensions can be compounded by the lack of support for WHRDs within their families and communities. WHRDs bearing primary responsibility for the household, childcare, subsistence farming and livestock have limited time to attend meetings and cannot easily travel to activities in other regions or countries. It is common for spouses and other family members to question women's political participation and accuse them of neglecting domestic responsibilities. This attitude, rooted in patriarchal confinement of women to the domestic sphere, can put WHRDs under enormous psychological pressure and trigger heavy feelings of guilt. Under these conditions, WHRDs are forced to abandon their activism or to play a much more passive role.

When we are the leader of a committee and we are leading a campaign or an advocacy activity, we spend most of our time in the committee and the advocacy so we lose our role as mother as housewives. Sometimes we also cause our family concern for our security, as women rights activists or human rights activists in Cambodia are not safe. We know this when we join an advocacy campaign, but we have no choice. [...] if we are silent, if we do not do anything, if we do not join the action, it means that we will lose our home, we lose our land, and it means that we will lose our lives as well.

—Yorm Bopha—Cambodia

⁴² Berta Caceres was assassinated in March 2016. Her life was in grave danger for a long time; she received countless death threats and was constantly harassed due to her human rights work and as an indigenous woman.

» WHAT ARE THE HUMAN RIGHTS STANDARDS IN THIS AREA? «

Although States are mainly responsible for protecting defenders, the **Declaration on Human Rights Defenders** is also addressed to non-state actors, including individuals, groups and organs of society. Article 10 of the Declaration establishes that “no one shall participate, by act or by failure to act [...], in violating human rights and fundamental freedoms.”⁴³ Accordingly, non-state actors also “have a responsibility to promote and respect the rights enshrined in the Declaration and, consequently, the rights of human rights defenders.”⁴⁴ The Special Rapporteur on human rights defenders has clarified that non-state actors encompass “people, organizations, groups and corporations not composed of State agents or not being State organs.”⁴⁵

The **Convention on the Elimination of All Forms of Discrimination against Women** also imposes an obligation on States parties to prevent discrimination against women by private actors.⁴⁶ The Committee on the Elimination of Discrimination against Women, which monitors the implementation of the Convention, has established that this obligation includes the need to take “steps to prevent, prohibit and punish violations of the Convention by third parties, including in the home and in the community, and to provide reparation to the victims of such violations.”⁴⁷

Article 5 of the **International Convention on the Elimination of All Forms of Racial Discrimination** imposes an obligation on States Parties to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: equal treatment before the tribunals and all other organs administering justice (a); security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution (b); freedom of opinion and expression (d)(viii); freedom of peaceful assembly and association (d)(ix).

43. As quoted in the Report of the Special Rapporteur on the situation of human rights defenders, A/65/223, para 2.

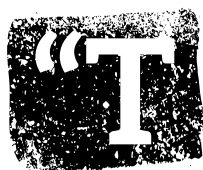
44. Report of the Special Rapporteur on the situation of human rights defenders, A/65/223, para 2.

45. Report of the Special Rapporteur on the situation of human rights defenders, A/65/223, para 1.

46. Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, para 13.

47. Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, para 37.

THE INTERNATIONAL LEGAL FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS



“The collusion of government with private enterprise for mutual economic benefit has also meant that women defenders advocating on land issues are caught in between these actors, with limited or no access to redress.”⁴⁸

There is no comprehensive legally binding international framework to monitor, review, hold to account and redress the activities of business and multinational corporations. Coupled with gaps in national legislation, inefficient judicial systems, as well as the frequent absence of political will to prosecute offenders, this lack of an overarching legal framework means that violations committed against communities and WHRDs often go unpunished.⁴⁹ Additionally, the complexity of

ensuring responsibility for violations committed by corporations within and beyond their borders contributes to perpetuate impunity for these violations.

To guarantee the protection of WHRDs working in defense of their territories and natural resources, it is critical to strengthen the regulatory framework for businesses’ behavior on the one hand, and ensure equal access to justice on the other. It essentially requires a legal framework that recognizes the role that WHRDs play in the promotion of corporate accountability and guarantees an enabling environment for them to carry on with their work. It also requires setting down clear standards on how corporations should deal with the risk that their subsidiaries might violate human rights in conflict regions and weak or authoritarian states.”⁵⁰

48. Women Human Rights Defenders International Coalition, Global Report on the Situation of Women Human Rights Defenders, January 2012, 43.

49. Women Human Rights Defenders International Coalition, Global Report on the Situation of Women Human Rights Defenders, January 2012, 42. See also in Spanish El impacto de la minería canadiense en América Latina y la responsabilidad de Canadá, Resumen Ejecutivo del Informe presentado a la Comisión Interamericana de Derechos Humanos, Grupo de Trabajo sobre Minería y Derechos Humanos en América Latina, 23.

50. European Center for Constitutional and Human Rights, Human rights violations committed overseas: European companies liable for subsidiaries, ECCHR Policy Paper, August 2014. Available at: http://www.ecchr.eu/en/our_work/business-and-human-rights/publications.html.

At present, the existing international consensus in this area is set out in the **United Nations Guiding Principles on Business and Human Rights**, which were adopted by the UN Human Rights Council in 2011.⁵¹

The Guiding Principles rest on three main pillars:

- The first pillar outlines the State duty to protect against human rights abuses by third parties, including businesses.
- The second pillar addresses the corporate responsibility to respect human rights. This responsibility has two components - avoid causing harm and exercise due diligence “to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services.”⁵²
- The third pillar deals with access to effective remedies for the victims of business-related human rights violations.

Today there is widespread recognition that the Guiding Principles are inadequate in meeting these objectives, particularly in providing access to effective remedy.⁵³

In addition to the Guiding Principles, there are other voluntary initiatives aimed at clarifying the responsibility of businesses to protect human rights. For example, under the **UN Global Compact** companies can pledge “to align strategies and operations with universal principles on human rights, labor, environment and anti-corruption.”⁵⁴ These principles are drawn from the Universal Declaration of Human Rights, the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption.⁵⁵

However, the Global Compact does not “provide clarity on how these responsibilities should be fulfilled, nor does it contain effective protection mechanisms for those affected.”⁵⁶ Despite its large membership, with over 12,000 signatories from 170 countries,⁵⁷ some critics point out that it has served more as a public relations strategy than an effective tool to improve corporate accountability for human rights abuses.⁵⁸

Two other initiatives specifically related to the extractive industries include **the Extractive Industries Transparency Initiative (EITI)** and the **Voluntary Principles on Security and Human**

51. ECCHR, Holding Companies Accountable – Lessons from transnational human rights litigation, 5. Available at: http://www.corporatejustice.org/IMG/pdf/booklet_holdingcompaniesaccountable.pdf/.

52. Guiding Principles on Business and Human Rights: Principle 13. See also White Paper: Options for a Treaty on Business and Human Rights, prepared for the American Bar Association, Center for Human Rights and The Law Society of England and Wales by Professor Douglass Cassel and Anita Ramasastry, May 2015, 4.

53. White Paper: Options for a Treaty on Business and Human Rights, prepared for the American Bar Association, Center for Human Rights and The Law Society of England and Wales by Professor Douglass Cassel and Anita Ramasastry, May 2015, 7.

54. The United Nations Global Compact. Available at: <https://www.unglobalcompact.org/what-is-gc>.

55. The Ten Principles of the UN Global Compact. Available at: <https://www.unglobalcompact.org/what-is-gc/mission/principles>.

56. PODER, Evaluating the Human Rights Impact of Investment Projects, Background, Best Practices and Opportunities, December 2014, 8.

57. What is UN Global Compact? Available at: <https://www.unglobalcompact.org/what-is-gc>.

58. PODER, Evaluating the Human Rights Impact of Investment Projects, Background, Best Practices and Opportunities, December 2014, 9.

Rights (Voluntary Principles). The EITI is a coalition of governments, companies and civil society organizations that promote the transparency of the extractive sector.⁵⁹ Under the EITI governments should “disclose how much they receive from extractive companies operating in their country and these companies disclose how much they pay.”⁶⁰

The Voluntary Principles are a set of principles aimed at guiding companies “on the relationship between extractive companies and the public or private security forces they rely on for protection. They focus on how companies should seek to prevent human rights abuses by those security forces as well as on how companies should respond when abuses do occur.”⁶¹

Although these frameworks represent progress in the long road to regulating the conduct of businesses, they have proven inadequate to protect individual and communities against human rights abuses.

A further positive step against impunity was taken in September 2016 with the announcement by the Prosecutor of the International Criminal Court (ICC) that the ICC had included on its priority list of investigation, crimes that result in “illegal exploitation of natural resources, land grabbing or the destruction of the environment”.⁶² This

expansion of focus by the ICC has the potential to hold company and government officials criminally responsible under international law for crimes linked to land grabbing and environmental destruction. Given that many of the states that host corporations are not party to the ICC however, this avenue also has its limitations.

A BINDING TREATY: AN OPPORTUNITY FOR ACCOUNTABILITY

In June 2014, the Human Rights Council passed a resolution establishing an intergovernmental working group “to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”⁶³ Twenty out of the 47 Member States of the Council supported the resolution, led by Ecuador and South Africa. Civil society organizations have been very active in the debates and have formed an alliance of more than 600 groups and movements to support the development of the treaty.⁶⁴

The resolution is the outcome of many months of debate within the human rights community and among States over the pros and cons of a treaty on business and human rights.⁶⁵ The debate is still at

59. EITI: FAQ. Available at: <https://eiti.org/faqs>.

60. EITI: FAQ. Available at: <https://eiti.org/faqs>.

61. Gold's Costly Dividend, Human Rights Impacts of Papua New Guinea's Porgera Gold Mine, Human Rights Watch, 2010, 60-61. The Voluntary Principles on Security and Human Rights, <http://voluntaryprinciples.org/>.

62. Office of the Prosecutor, International Criminal Court, Policy Paper on Case Selection and Prioritisation, 15 September 2016, 5.. Available at https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

63. Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, A/HRC/RES/26/9, 14 July 2014.

64. International Federation for Human Rights (FIDH), Unprecedented Discussions at the UN on a Business and Human Rights Treaty: Will States Walk the Talk? 13 July 2015. Available at <https://www.escri-net.org/node/366398>.

65. High tide in Lake Geneva. Business and human rights events at the 26, Irene Pietropaoli, Business and Human Rights Resource Centre, 27 June 2014. Available at http://business-humanrights.org/sites/default/files/media/high_tide_in_lake_geneva.pdf. See also White Paper: Options for a Treaty on Business and Human Rights, prepared for the American Bar Association, Center for Human Rights and The Law Society of England and Wales by Douglass Cassel and Anita Ramasastry, May 2015, 7.

an early stage and there are many key issues to be negotiated. For example, would the treaty regulate only transnational or also national businesses? Would the treaty require States to investigate and prosecute violations committed by companies outside their territories? What human rights abuses should this treaty cover?⁶⁶

To answer these and many other questions and find common ground on some of the divisive issues that this treaty is trying to address will take many years.

WHRDs can take this long drafting process as an opportunity to raise awareness about the specific impact that business operations have in their lives, work and security. This negotiation process could also provide a space for States, businesses and other stakeholders to recognize the legitimacy of defenders working to hold companies accountable for human rights abuses and to ensure that WHRDs can meaningfully participate in shaping the process and the treaty.

66. Ibid. ES-6.

RECOMMENDATIONS



Extractive industries impact women in gender-specific ways: increased violence, additional workload and exclusion from decision-making processes concerning the future of their communities, territories and natural resources.

Women Human Rights Defenders (WHRDs) are resisting extractive operations in pursuit of rights and justice for their communities and in defense of the territories and the environment. By taking action, WHRDs confront corporate power and defy patriarchal gender norms, and as a result, are exposed to an array of gender-specific violations, risks and threats.

In order to contribute towards a safe, enabling environments for WHRDs as they peacefully exercise power and define visions of development for themselves and their communities, AWID and the Women Human Rights Defender International Coalition (WHRDIC) have the following recommendations:

TO STATES AND NATIONAL AND TRANSNATIONAL CORPORATIONS

- Publically recognize the important and legitimate work of WHRDs working in defense of territories and natural resources. Such recognition should extend to WHRDs in all their diversity.
- Refrain from attacking, harassing and/or intimidating WHRDs who oppose extractive projects including but not limited to physical attacks, smear campaigns, gender-based attacks against WHRDs and their roles in the family and community.
- Ensure equal participation of WHRDs in decision making concerning control and sustainable development of their territories, natural resources and environment.
- Develop policies to eliminate obstacles to the participation of WHRDs in decision-making regarding control of their territories, including

those barriers based on their gender status, race or ethnicity, economic status or any other real or perceived status or identity.

- › Ensure that both public officials and company officials do not misuse judicial systems to criminalize the legitimate activities of WHRDs who oppose extractive projects in their communities and territories.
- › Ensure respect for the United Nations Guiding Principles on Business and Human Rights, and its use as a minimal standard for developing laws, policies and plans related to operations of extractive industries.

TO STATES

- › Ensure the protection of WHRDs working to defend territories and natural resources, and provide an enabling environment free from violence in accordance with international human rights standards.
- › Investigate thoroughly and independently violations against WHRDs by all perpetrators, and ensure that such violations do not go unpunished. The State should provide victims with access to effective judicial remedies and reparation.
- › Participate constructively in developing a binding treaty on business and human rights, and ensure the necessary conditions for WHRDs to participate in the negotiations of this treaty.
- › Ensure that contractual engagements between state authorities and corporations do not

violate the rights of communities and human rights defenders, and safeguard the right to defend rights.

- › Effectively freeze extractive operations contested by any community and ensure that an effective dispute resolution process is held.
- › Ensure that bilateral and multilateral trade agreements safeguard human rights and include protection of WHRDs, communities and the environment and incorporate mechanisms that provide remedy for violations.
- › Develop and strengthen statutory regulation of private security actors in line with international human rights standards, and establish appropriate reporting mechanisms for complaints of violations, including both the threat and the occurrence of violence and sexual assault, committed by such actors.

TO NATIONAL AND TRANSNATIONAL COMPANIES

- › Ensure that free, prior and informed consent is received from all sections of the affected community, for all prospective extractive operations, and withdraw from operations resisted by the community.
- › Ensure that the conduct of private security actors employed by the company is in line with international human rights standards, including the Voluntary Principles on Security and Human Rights, and establish appropriate reporting mechanisms for complaints of violations committed by such actors.

TO REGIONAL AND INTERNATIONAL MECHANISMS TO PROTECT HUMAN RIGHTS

- › Monitor and document violations against WHRDs, their organizations and movements working to defend territories and natural resources, and generate information on violence and gender-specific impacts against WHRDs.
- › Integrate a gender perspective into reports, resolutions, recommendations and other work-related documents, and in the protection of HRDs working to defend territories and the environment .
- › Make specific recommendations to states and companies so that they respect and fulfill human rights obligations and contribute to an enabling environment for human rights defenders.

TO DONORS

- › Provide long-term support to WHRDs and women's organizing through flexible multi-year funding, including core and emergency funds, which can be used for integrated security measures and building institutional capacity, networks and outreach.
- › Allocate resources to support WHRDs facing criminalization and judicial processes. These resources should not only be designed to cover legal costs, but also other costs related to legal processes such as transport, accommodation and costs related to the care of the family.
- › Support women and community initiatives advancing feminist and alternative visions and models of development.

