

Human Rights Defenders and the Threat of “Criminalization”.

Forst People's Report

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*2017 saw the highest-ever number of murders of human rights defenders. Following the death of **Berta Caceres** in March 2016,(1) there has been heightened awareness of the plight of human rights defenders. Front Line Defenders recorded reports of 312 killings, up from 281 the year before. Murders are, however, just the tip of the iceberg. Criminalisation is, according to Front Line Defenders’ latest annual report(2), once more “the most common strategy to obstruct and delegitimise the work of defenders”.*

Companies can play a key role in improving the situation for human rights defenders but must be mindful of the range of threats faced by defenders.

The Business and Human Rights Resource Centre recorded a 34% increase in attacks on defenders in 2017, including murders, violent attacks, death threats, harassment, sexual assault, enforced disappearances, illegal surveillance, blackmail, cyber-attacks and criminalisation. Many of these attacks are life altering, if not life-threatening.

According to both Front Line Defenders and the Business and Human Rights Resource Centre, the principal threat to defenders is criminalisation of themselves or their work. Criminalisation covers a vast array of actions including judicial harassment, detention on fabricated charges, detention without charge, outlawing peaceful protest, and subjecting defenders to unnecessary, lengthy and expensive legal proceedings.

Theodorus Tekwan, a member of a Dayak community in Indonesian Borneo, was arrested and jailed without charge for 109 days in 2014, after resisting logging on his community’s ancestral land.(3) The arrest was particularly traumatic

“I heard a lot of boats coming, then I saw them, a whole swat team fully kitted out... It was like they were arresting a terrorist.”(4)

The intent here was clear; to intimidate the community and force them to halt their fight and it worked; for two years after Tekwan’s arrest the community was successfully deterred from putting up any formal resistance.(5)

Abusing criminal law to intimidate defenders is a common strategy yet it is important to recognise that criminalisation targets defenders in many ways. **Criminalisation might be used, for example, not to intimidate, but to distract defenders from their cause by tying them up in undue legal processes.** Criminalised defenders can be forced to

put inordinate amounts of time and money into battling in the courts, leaving them with little time or resources for their original fight. Even worse, some defenders, who are detained for lengthy periods of time, like Tekwan, are rendered physically unable to continue their work.

Criminalisation such as fabricating criminal charges is often part of a wider strategy to discredit defenders. In order to brand them as untrustworthy, so that their views are more easily dismissed, defenders can be subject to smear campaigns. False allegations splashed across newspapers, even if later rescinded, can severely damage the reputation of defenders, and ultimately impair their ability to defend human rights.

The Sengwer indigenous people of Kenya have been branded “criminals and cattle-rustlers”(6) by the Kenyan government in a bid to justify the continuation of violent evictions of the community from their ancestral land. Despite years of protestation from the Sengwer, the EU only suspended their funding for the WaTER project (Water Towers Protection and Climate Change Mitigation and Adaption), which was situated on Sengwer land, after community member **Robert Kirokich** was killed in January. Indigenous defenders, like the Sengwer, are particularly at risk as, frequently, it is their way of life that is criminalised.

In the Democratic Republic of Congo, a 17-year-old Batwa boy, **Christian Mbone Nakulire**, and his father, **Munganga Nakulire**, were shot by an eco-guard while collecting medicinal plants on their ancestral land in Kahuzi Bièga National Park in August. Christian was killed and Munganga was seriously injured. Christian’s killer has yet to be brought to justice.

The Front Line Defenders report also highlights the increased use of anti-terrorism legislation to target defenders. Emergency laws which are brought in to legitimise exceptional national security powers after, or in the anticipation of, terrorist acts are increasingly being used to target defenders.

Vicky Tauli-Corpuz, the UN Special Rapporteur on the rights of indigenous people, found herself victim to this exact tactic in early 2017, when she was named a terrorist by the government of her native Philippines in retaliation for speaking out about the treatment of the indigenous Lumad peoples.

Although national governments have the ultimate responsibility for addressing the criminalisation of defenders, corporate actors can also take steps to improve the situation. Investor Alliance for Human Rights recently released recommendations for immediate measures companies should take including:

- Assessing the situation of civic freedoms and human rights defenders in the countries in which they operate, identifying gaps between international standards and national laws and practice;
- Ensuring that their policy commitments on human rights reflect the critical role that defenders play in bringing human rights issues to their attention and address the risks they face in doing so;
- Actively engaging with defenders and grass-roots civil society organisations in the elaboration of their human rights policies;
- Establishing and implementing processes for the remediation of adverse human rights impacts arising in any area of operations. (7)

The Roundtable on Sustainable Palm Oil (RSPO) is leading the way in supporting human rights defenders by adopting a policy for ensuring the anonymity and security of defenders who make complaints. Physical protection must be a key aspect of this policy, given the increase in attacks on defenders, and to guarantee that making a complaint to the RSPO doesn't cause the defender further harm, but given the findings of Front Line Defenders and the Business and Human Rights Group presented here, the RSPO also needs to be mindful of the range of threats faced by defenders, including criminalisation.

In 2016, the Observatory for the Protection of Human Rights Defenders released a report stressing the involvement of businesses in the criminalisation of defenders in Latin America. The lack of impartiality of the judiciary was a key issue, but it was businesses who initiated nearly all the criminal cases against defenders. Businesses who strive to adhere to international standards on human rights need to take bold actions to separate themselves from these actions. By being publicly supportive of human rights defenders, acknowledging the importance of their role, and making strong policy commitments on human rights, companies can make it clear to national governments and other actors that they do not support retaliation against defenders.

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Notes

[1]

<https://www.theguardian.com/world/2016/mar/03/honduras-berta-caceres-murder-environment-activist-human-rights>

[2] https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf

[3] <http://www.forestpeoples.org/en/legal-human-rights/report/2017/protecting-forest-defenders>

[4] <http://www.forestpeoples.org/en/legal-human-rights/report/2017/protecting-forest-defenders>

[5] Fortunately, they have since resumed their fight and recently successfully halted logging on their land

<http://www.forestpeoples.org/en/rights-land-natural-resources-responsible-finance-timber-pulpwood-and-fsc/press-release/2018/press>

[6] <https://www.amnesty.org/download/Documents/AFR3278682018ENGLISH.pdf>

[7] https://www.iccr.org/sites/default/files/resources_attachments/investor_alliance_for_human_rights_hrs_sign-on_final04.23.18.pdf

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