

Thursday, 9 December (9 PM EST): Business operations and reprisals against Indigenous peoples, their defenders and the impact on indigenous women

Statement – Christen Dobson, Business & Human Rights Resource Centre

As you've heard from other speakers, Indigenous peoples are on the frontlines of protecting human rights and our shared planet. They play a vital role in addressing harms from abusive business practices and advocating for companies and investors to comply with business and human rights standards. Indigenous defenders across the globe are protecting water from contamination, their land and territories from extractive projects, and fighting climate change.

And yet, Indigenous defenders are disproportionately facing reprisals because of this vital human rights work. Over the past six years, the Business & Human Rights Resource Centre has been tracking attacks against human rights defenders focused on business. Since 2015 we have [recorded more than 3,660 incidents of such attacks](#).

Even though Indigenous peoples represent about 5% of the world's population, at least 20% of the attacks we've tracked have been against Indigenous defenders. We also know the number is higher, as we rely on publicly available information and many attacks against Indigenous defenders and communities happen in rural and remote areas. Global Witness has also found that in 2020, a third of all fatal attacks against defenders were against Indigenous peoples.

There are a number of drivers of attacks, including:

- Dominance of extractive and exploitative profit-seeking economic models and practices that favour economic interests over the rights of people, communities and nature.
- Deficit in democratic and rights-respecting governance, including lack of respect for the rights of Indigenous peoples to self-determination and the right to free, prior and informed consent (among others), widespread impunity for attacks and corporate harms, and non-existent or inadequate protection mechanisms for HRDs.
- Long-standing racism and discrimination including against Indigenous and Afro-descendent peoples.

Attacks against defenders challenging harmful business practices take many forms. Based on our research, the most common type of attack is judicial harassment, which includes arbitrary detentions and SLAPPs (criminal and civil lawsuits to intimidate and silence critics), followed killings, intimidation and threats, beatings and other forms of violence. While a higher number of attacks against male defenders, there is a gendered nature to some attacks, e.g. stigmatization for not fulfilling socially ascribed gender roles, higher levels of sexual violence, and a greater incidence of threats against their family members.

Over the past two years we have conducted deeper research into the use of SLAPPs against defenders, due to the prevalence of this tactic and have identified more than 360 cases that bear the hallmarks of SLAPPs brought or initiated by business actors since 2015. SLAPPs are an abuse of legal systems that drain the resources of defenders, take time away from human rights defense, and can intimidate others from engaging in legitimate human rights work. [While information about the amount of damages sought in the cases we tracked was only publicly available in 82 of these cases, it totaled more than US\$1.5 billion.]

This is a global problem. Attacks against human rights and Indigenous defenders are happening worldwide, with the highest numbers occurring in Latin America and Southeast Asia.

This is also a problem across business sectors. Highest number of attacks are linked with the mining sector (more than a quarter), followed by agribusiness, oil, gas, and coal, logging, and renewable energy.

Extraction of minerals such as cobalt, lithium, and nickel – a few of the components for renewable energy technology like electric vehicles and solar panels – is expected to rise dramatically as we make progress to a much-needed transition. Yet many of the companies producing these minerals are beset with allegations of human rights abuse.

There are a range of actions governments should take to protect Indigenous peoples and defenders, including implementing the UN Declaration on the Rights of Indigenous Peoples and the UN Declaration on HRDs. This includes ensuring Indigenous peoples' rights to own, manage and develop their traditional lands, territories and resources and passing legislation specifically protecting the rights, and recognizing the roles of human rights defenders, both individual and collective.

[The Geneva Declaration by the Zero Tolerance Initiative, a global coalition led by Indigenous peoples, local community representatives and supportive NGOs working collectively to address the root causes of killings and violence against human rights defenders linked to global supply chains, details numerous recommendations for governments.]

One area we've focused on that I'll specifically highlight:

- Passing mandatory human rights and environmental due diligence legislation

Human rights and environmental due diligence is the ongoing risk management process businesses have responsibility to undertake under UNGPs. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed.

We believe that all governments need to pass mandatory human rights and environmental due diligence legislation that requires companies to engage in meaningful and safe stakeholder engagement throughout their due diligence processes. In our analysis of attacks in 2020, we found that at least one in three attacks recorded against HRDs were linked to a lack of meaningful participation, access to information and consultation, or the failure to secure free, prior and informed consent (FPIC) of Indigenous communities.

While companies already have a responsibility under the UNGPs to do this, it often does not happen in practice, thus governments need to take further action. As recent guidance by the UN Working Group on Business and Human Rights said: "HRDs need to be seen as key partners, who can assist businesses in identifying key human rights impacts, and should be part of a business enterprise's stakeholder engagement, and due diligence processes, instead of being seen as annoyances, troublemakers, obstacles or threats to be disposed of."

We believe that the EU's Sustainable Corporate Governance Initiative, including forthcoming mandatory human rights and environmental due diligence (mHREDD), offers an important opportunity to prioritise environmental protection and the safety of Indigenous defenders and that legislation should make meaningful and safe stakeholder engagement mandatory.

A few business actors are beginning to recognise the important work of HRDs, their responsibility to respect human rights and address risks to defenders in own operations and business relationships, and that engaging with rightsholders and HRDs early in their HRDD processes can mitigate their own legal and financial risks. Some companies and investors are also proactively speaking out in support of HRDs and civic freedoms. As just a few examples:

- At least 30 companies have policies that mention defenders, and some explicitly state a zero-tolerance approach to reprisals, such as Gap, BHP, and Vattenfall.
- Earlier this year, 44 investors with more than 270 billion USD of combined assets [called on companies](#) to take broad, systemic action to protect HRDs, and immediate action to ensure that they do not use or support SLAPPs.
- [Yesterday, 30 investors [released a statement](#) earlier today calling for the full restoration of the democratic transition in Sudan with respect for the rule of law, accountable governance and civic freedoms following the October coup and subsequent agreement between the ousted prime minister and the military.]

In closing, while there are these few positive signs, attacks against Indigenous defenders raising concerns about business continue unabated. States must act to address the drivers of attacks, including ensuring strong legal protection of Indigenous rights and passing mHREDD legislation. All companies and investors need to adopt a zero-tolerance approach on attacks on defenders in their operations, value chains, business relationships, and investments and engage in human rights due diligence, including safe and meaningful stakeholder engagement.