



# DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

## Suggested elements for a resolution on human rights defenders (HRDs) with a focus on environmental HRDs

Briefing paper, January 2019

Ahead of the 40<sup>th</sup> session of the UN Human Rights Council (“the Council” or “the HRC”), which will take place from 25 February-22 March 2019, DefendDefenders calls on Member and Observer States of the Council to support the development and adoption of a substantive resolution on human rights defenders (HRDs) working on human rights relating to the enjoyment of a clean, healthy, safe and sustainable environment (hereafter “environmental rights defenders” or “environmental HRDs”).

In December 2018, DefendDefenders published a report that examines the important role played by marginalised HRDs in East Africa (Uganda, Kenya, and Tanzania). In order to better understand and address the marginalisation that three categories of HRDs (indigenous, women, and LGBT+ defenders) face, “*To Them, We’re Not Even Human*”<sup>2</sup> examines the challenges they encounter in their work, as well as their needs.

Indigenous HRDs, many of whom are grassroots activists, are the backbone of establishing sustainable human rights systems in the region, but their work often goes unnoticed. Much of their work is relevant to, and results in characterising them as, environmental HRDs – the focus of the next Council resolution on HRDs. In the present paper, based on its latest findings, DefendDefenders suggests a number of elements that should be part of a resolution on environmental HRDs.

### 1. Situation of environmental HRDs

In 2016, UN Special Rapporteur on the situation of HRDs Michel Forst highlighted that economic, social and cultural rights (ESCR) defenders were among the most at-risk HRDs. Throughout the world, ESCR defenders work to promote and protect human rights that are related to life, health, land, food, water, clean air, adequate housing, work, social security, culture or traditional ways of life (in particular for indigenous peoples). Using methods that range from investigation to reporting and advocacy, they denounce the adverse human rights impact of business operations, investment projects or trade agreements; lack of meaningful consultation with affected people and communities; discrimination and disenfranchisement; land grabbing, forced evictions and land tenure insecurity; lack of recognition of customary land and other rights; lack of due diligence;

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<sup>1</sup> While resolutions on human rights and the environment use the expression “human rights relating to the enjoyment of a clean, healthy, safe and sustainable environment,” the present paper refers to “environmental rights defenders” or “environmental HRDs.”

In 2016, the UN Special Rapporteur on the situation of HRDs noted: “For the purposes of the present report, the term ‘environmental human rights defenders’ refers to individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna. Land and environmental rights are interlinked and are often inseparable. As a result, the two broad categories of defenders advocating for the environment and for land rights are often characterized as “land and environmental rights defenders”, “environmental rights defenders”, or just “environmental activists”. The report defines those defenders through the inclusive term “environmental human rights defenders” [...] Environmental human rights defenders are identified above all by what they do. They are characterized as such through their actions to protect environmental and land rights.” See report No. A/71/281, paras. 7-10), available at: [www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx](http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx) (accessed on 10 January 2019).

<sup>2</sup> “‘To Them, We’re Not Even Human’: Marginalised human rights defenders in Uganda, Kenya, and Tanzania,” December 2018, [www.defenddefenders.org/wp-content/uploads/2018/12/Marginalised-HRDs\\_FINAL-REPORT.pdf](http://www.defenddefenders.org/wp-content/uploads/2018/12/Marginalised-HRDs_FINAL-REPORT.pdf) (accessed on 11 January 2019).

inadequate human rights impact assessments; lack of legal safeguards and protection and grievance mechanisms; lack of access to justice; inadequate or sub-standard compensation or remedies; corruption; and protection gaps.

As pressure on the environment and biodiversity and competition for access to, and exploitation of, natural resources increase, environmental HRDs face particularly acute challenges. They face stigmatisation (sometimes being referred to as “enemies of development” or “traitors” when they raise the alarm about the adverse impact of development projects), intimidation, threats, physical attacks from state and non-state actors (which may include acts of torture and ill-treatment or even enforced disappearances and extrajudicial killings), as well as judicial harassment, including arbitrary arrest, arbitrary detention, and sham trials on the basis of spurious charges.<sup>3</sup> These risks sometimes extend to HRDs’ family members and associates.

In a number of countries, laws, policies, and practices – some of them adopted under the pretext of national security, counter-terrorism, or economic development – aim at, or result in, restricting civic space, including the right to freedom of expression, access to information, freedoms of peaceful assembly and association, and political participation.

DefendDefenders’ latest report shows that already marginalised groups, including indigenous communities, are often further disenfranchised by the large-scale exploitation of natural resources on land tied to their cultural heritage and traditional livelihood systems.<sup>4</sup> A large number of environmental HRDs, who because of their work already find themselves in a vulnerable situation, face intersecting forms of discrimination, threats, and violence. Women HRDs (WHRDs) or indigenous HRDs working on environmental rights are particularly at risk.

## **2. Need for recognition and legitimisation**

At its 31<sup>st</sup> session, in March 2016, the Council adopted a landmark resolution addressing the situation and protection needs of HRDs working on economic, social and cultural rights.<sup>5</sup> Attempts to weaken the text through hostile amendments were overwhelmingly defeated, and the resolution was widely acclaimed. Indeed, it put a crucial issue on the agenda, just weeks after the assassination of several HRDs, including high-profile activist Berta Cáceres in Honduras.

Three years later, as civic space has further shrunk in a number of countries and many HRDs are in a dire situation, environmental HRDs need to be specifically recognised, legitimised, and protected. Their work, which falls within the framework of the UN Declaration on Human Rights Defenders<sup>6</sup> and is based upon the recognition that all human rights are universal, indivisible and interdependent and interrelated, is intimately linked with both human rights and the protection of the environment, ecosystems, and biodiversity – undoubtedly a global issue.

Environmental HRDs play an essential role in promoting, protecting, and contributing to the realisation of environmental rights and broader ESC rights, in particular for marginalised and vulnerable individuals and groups, such as indigenous communities, who often feel the consequences of environmental damage most acutely. They also work to promote sustainable development and respect by the corporate sector of the business responsibility to respect human rights, as per the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>7</sup> Their work, like that of other HRDs, is key to documenting and exposing violations and abuses, as well as patterns of violations, denouncing impunity and pushing for accountability, advocating legal and policy reform, as well as dialogue and inclusiveness, achieving justice and securing redress, compensation, and non-recurrence for the victims.

Because they work on issues relating to natural resources, ecosystems and livelihoods, they also defend the cultural rights of members of communities (chiefly indigenous communities) whose way of life is intertwined with their natural environment.

A resolution on environmental HRDs should therefore recognise the legitimate and essential role of environmental HRDs in promoting and protecting environmental rights and working towards the common good: protection of the environment, natural resources, public goods such as clean air and water, livelihoods, and cultural rights.

<sup>3</sup> For the East African context, see “‘To Them, We’re Not Even Human’,” *op. cit.*, pp. 12-33.

<sup>4</sup> “‘To Them, We’re Not Even Human’,” *op. cit.*, p. 12.

<sup>5</sup> HRC resolution 31/32, available at: [ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/31/32](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/31/32) (accessed on 10 January 2019).

<sup>6</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 10 December 1998, available at: [www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx](http://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx) (accessed on 9 January 2019).

<sup>7</sup> See the Second Pillar of the UNGPs, on the corporate responsibility to respect human rights, [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (accessed on 9 January 2019).

The resolution should stress that any attack against environmental HRDs is an attack against environmental rights themselves.<sup>8</sup> It should highlight the legitimate work carried out by environmental HRDs, often in challenging contexts, and the need to protect them from stigmatisation, intimidation, threats, attacks, reprisals, and harassment by state and non-state actors. Additionally, it should highlight the need to legitimise the work of environmental HRDs, including by providing the latter with public expressions of support, including at the highest political level, as well as technical and financial support where needed. This means that states should not discriminatorily impose restrictions on sources of funding aiming at supporting the work of HRDs, in line with paragraph 9(b) of HRC resolution 22/6.

### **3. Protection needs**

Impunity for attacks against environmental HRDs is widespread. Swift, thorough, credible, transparent, impartial and independent investigations remain rare, and many perpetrators of such attacks evade accountability. Impunity encourages repetition – a vicious circle that must be put to an end not only by strengthening law enforcement and judicial systems but also by publicly denouncing impunity for cases of attacks and reprisals against HRDs.

The resolution on environmental HRDs should list the multifaceted risks and threats facing environmental rights defenders.<sup>9</sup> It should condemn restrictions and attacks against them by state and non-state actors, including business enterprises, and condemn impunity for such attacks. It should urge states to hold those responsible for attacks and reprisals accountable, and to provide the victims with effective remedies, access to justice and other adequate grievance and redress mechanisms, and guarantees of non-recurrence. The Council should also condemn discrimination against HRDs on any grounds and urge states to desist from discriminatory measures against them, including intimidation, profiling, confiscation of assets, suspension of activities and exclusion from national consultative processes.

The resolution should outline a plan of action for states by recommending them to, *inter alia*, develop and set up HRD protection mechanisms, including at the legislative level (HRD protection laws); thoroughly investigate attacks and reprisals against HRDs; ensure accountability for such acts; and provide victims with remedies and access to justice and other grievance and redress mechanisms. Guarantees of non-recurrence rest on ensuring criminal and other forms of accountability and publicly expressing support for environmental HRDs and their work, as well as desisting from any discourse aiming to delegitimise them, such as branding them “enemies of development.” Laws that criminalise their work or restrict the civic space within which they operate, or have such effect, should be reviewed and amended or repealed. States should create and maintain a safe and enabling environment in which HRDs can operate free from hindrance and insecurity.

In order to comprehensively address all issues facing environmental HRDs, the resolution should also reiterate the corporate responsibility to respect human rights and obligations to refrain from attacking or otherwise interfering with the work of HRDs, and to undertake due diligence ahead of any project that may adversely impact human rights and during operations.

The resolution should pave the way for more work on environmental HRDs at the regional and international levels, in a holistic manner and taking into account developments at the diplomatic, legal and policy levels in the human rights and environmental fields. It should clearly outline obligations, as per international standards, of duty-bearers, including the primary duty-bearers, i.e., states.

### **4. The nexus between environmental HRDs, environmental rights, and civic space**

Successive Council resolutions on “human rights and the environment,” including those that extended the mandate of the UN Special Rapporteur on human rights and the environment<sup>10</sup> have made clear (i) that the protection of a safe, clean, healthy and sustainable environment and the preservation and ecosystems and biodiversity were central to human existence; (ii) that states have human rights obligations relating to the environment; and (iii) that the realisation of environmental rights is closely intertwined with the realisation of other rights, including civil and poli-

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<sup>8</sup> Amendments that would run counter to the objectives of a resolution on environmental HRDs would amount to attacks against environmental rights themselves. In 2016, during HRC31, more than 30 hostile amendments were put forward by a small group of states, and ultimately rejected. Attempts to delegitimise HRDs must cease.

<sup>9</sup> See Section 1 of the present paper.

<sup>10</sup> Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, see [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Overview.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Overview.aspx) (accessed 10 January 2019).

tical rights. These resolutions have also (iv) recognised the important role played by HRDs with regard to human rights and the environment, and (v) referenced the Sustainable Development Goals (SDGs) and UN and global efforts to fight climate change and preserve the environment.<sup>11</sup>

At its 40<sup>th</sup> session, the Council should build on these efforts and adopt a resolution that approaches the protection of HRDs and the protection of a clean, healthy, safe and sustainable environment in a holistic manner through:

- Recognising the essential role played by HRDs with regard to the promotion, protection and realisation of human rights relating to a clean, healthy, safe and sustainable environment;
- Reiterating and outlining the vital necessity of ensuring sustainable development and protecting the environment at the global, regional, national, and local levels, as well as human rights obligations relating to the enjoyment of a clean, healthy, safe and sustainable environment;<sup>12</sup> and
- Reiterating that the exercise of human rights and fundamental freedoms relating to civic space (the freedom to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and in consultations and decision-making processes, and the right to freedoms of peaceful assembly and association) and protection of, and support for, all HRDs are vital to the protection of environmental rights. States should create and maintain a safe and enabling environment in which environmental HRDs can operate free from hindrance and insecurity.

Additionally, the resolution should focus on some of the specific roles of environmental HRDs, namely:

- Their pivotal role in making sure that the principle of consultation with affected people and communities and that their free, prior and informed consent (FPIC) prior to the launch of projects that may affect their rights and livelihoods are upheld;
- Their role in ensuring that due diligence is applied and that human rights impact assessments (HRIAs) are conducted prior to the start of business operations, activities or projects that may affect their rights and livelihoods, and that business enterprises apply a human rights-based approach to their operations;
- Their role in securing fair compensation in the event human rights are adversely affected by such operations, activities or projects; and
- Their role in ensuring transparency, access to information, human rights education and awareness-raising, as well as good governance and oversight of public policies and both government and business behaviour.

All stakeholders – states, parliaments, public authorities (including law enforcement services and judiciaries), business enterprises, national human rights institutions (NHRIs), and citizens – should act to protect environmental HRDs. The Human Rights Council should lead by adopting a substantive resolution and stand ready to further assist other stakeholders.

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<sup>11</sup> HRC resolutions 19/10, 25/21, 28/11, 31/8, 34/20, and 37/8. See the list at “Resolutions on human rights and the environment”, available at: [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Resolutions.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Resolutions.aspx) (accessed 10 January 2019).

These resolutions have made reference to, among other things, the Agenda 2030, the 2012 UN Conference on Sustainable Development, the 2015 Paris Agreement adopted under the UN Framework Convention on Climate Change (UNFCCC), and successive Conferences of the Parties of UNFCCC.

<sup>12</sup> See for instance the last iteration of such elements and their intertwinement in the preambular part of HRC resolution 37/8, available at: [ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/37/8](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/37/8) (accessed on 11 January 2019).