

Submission to the United Nations Special Rapporteur on the situation of Human Rights Defenders

Thematic study on environmental defenders

International Rivers welcomes the important and timely initiative of the UN Special Rapporteur on the situation of Human Rights Defenders to conduct a thematic study on the issue of environmental defenders. We are pleased to contribute this submission on the issues faced by environmental defenders working in defense of rivers, lands and resources threatened by hydropower dam projects and other large-scale developments.

International Rivers is a non-profit, non-governmental environmental and human rights organization based in Berkeley, California, United States. Since 1985, International Rivers has been at the heart of the global struggle to protect rivers and the rights of communities that depend on them. We work with an international network of dam-affected people, grassroots organizations, environmentalists, human rights advocates and others who are committed to stopping destructive river projects and promoting better options. Based in the United States, Latin America, Asia and Africa, our staff have expertise in big dams, energy and water policy, climate change, and international financial institutions. We support partner organizations and dam-affected people by providing advice, training and technical assistance, and advocating on their behalf with governments, banks, companies and international agencies.

Threats facing environmental defenders linked to hydropower development

The recent high profile killing of Berta Cáceres, a grassroots indigenous activist who successfully led opposition to the Agua Zarca dam in Honduras, was tragic and deplorable. It was also emblematic of the increased and deadly threats faced by environmental defenders around the world. This trend has been well documented in the reports of organizations such as Global Witness and Frontline Defenders, and in previous reports of the UN Special Rapporteur.

In a recent report, Global Witness documented a shocking 59% increase in killings of environmental defenders in 2015 compared to the previous year: the highest annual toll on record, with 40% of those killed indigenous people.¹ Frontline Defenders reported that 45% of all killings of human rights defenders in 2015 were linked to the defense of environmental, land and indigenous peoples' rights. Central and South America had the highest number of murders of environmental defenders, while Southeast Asia had the second highest. Killings of environmental defenders amounted to 67% of all reported killings of human rights defenders in Asia and 41% of those reported in Central and South America.² According to Global Witness, 2014 saw a spike in killings relating to hydropower development. Land conflicts, including those related to land confiscation for dams and mega-projects, formed the backdrop to most killings.³

¹ Global Witness, 'On Dangerous Ground', June 2016: www.globalwitness.org/en/reports/dangerous-ground.

² Frontline Defenders, 'Annual Report 2016': www.frontlinedefenders.org/en/resource-publication/2016-annual-report.

³ Global Witness, 'How Many More?' April 2015: www.globalwitness.org/en-gb/campaigns/environmental-activists/how-many-more.

The risks to environmental defenders from large-scale hydropower construction are likely to increase. A growth in energy demand worldwide, and the commitments made by states at the 2015 Climate Change Conference in Paris (COP21) towards renewable energy sources and away from fossil fuels, means that numerous developing countries are increasing investment in hydropower dams in the name of ‘clean energy’.⁴ This is despite an overall decrease in hydropower development globally – in 2013-2015 new capacity dwindled from 38 to 22 GW.⁵ Furthermore, recent studies show that large dams in tropical basins are a major source of methane emissions contributing to climate change,⁶ in addition to other serious social and environmental consequences,⁷ and are economically unviable, with costs overrun averaging 96%.⁸

The upward trend in hydropower construction in some countries should be closely monitored for its human rights impacts and threats to environmental defenders. This is especially so where dams are built in countries with weak legal regimes, repressive governments and rampant corruption, and on lands and territories belonging to indigenous and ethnic minority peoples and other marginalized groups. Construction of large-scale dam projects often entails the loss of large swathes of community land which is submerged under reservoirs and reclaimed for resettlement sites, as well as extensive depredation of species and ecosystems and the livelihoods and cultures of those dependent on them. Moreover, hydropower construction is occurring in the global context of intensifying natural resource conflicts, as land and fresh water resources become increasingly scarce and new areas are opened up to exploitation, often by private sector domestic and multinational corporations financed by international development banks and private financial institutions.

Murders and killings represent just one end of spectrum encompassing a broad range of harms – from threats of death and violence to criminalization and restrictions on freedoms of movement and association.⁹ In each of the regions in which we work, community leaders, activists and human rights defenders working to protect their rights against the threats of forced displacement, loss of lands and resources, deprivation of livelihoods and violence due to hydropower dams and other large-scale developments, face harassment, intimidation, legal threats, violence, forced disappearances, and killings. The perpetrators of these human rights violations have included politicians, government officials, state military and police and the private security forces of dam construction companies. Threats, violence and harm typically go uninvestigated and unpunished.

Largescale hydropower projects are prone to corruption, due to the vast financial resources required for their development. In many countries, graft and non-transparent governance processes result in decision-making on projects behind closed doors, with limited or no access to information and opportunities for participation in decisions by affected communities and the public. The regulatory frameworks containing environmental and social safeguards are often weak or ill-enforced, and can

⁴ Medilyn Manibo, ‘Are mega dams a solution or burden to climate change?’ *Eco-business*, 4 May 2016: www.eco-business.com/news/are-mega-dams-a-solution-or-burden-to-climate-change.

⁵ Peter Bosshard, ‘Have we passed the era of peak dam?’ *International Rivers*, 1 June 2016: www.internationalrivers.org/node/11483.

⁶ Paul Brown, ‘Drowned Tropical Forests Exacerbate Climate Change’, *Scientific American*, 11 September 2014. www.scientificamerican.com/article/drowned-tropical-forests-exacerbate-climate-change.

⁷ See ‘10 Reasons Why Climate Initiatives Should Not Include Large Hydropower Projects’ 3 December 2015: www.internationalrivers.org/node/9204.

⁸ A. Ansar, B. Flyvbjerg, A. Budzier, & D. Lunn, Should We Build More Large Dams? The Actual Costs of Hydropower Megaproject Development’, *Energy Policy*, March 2014, pp.1-14.

⁹ Global Witness, June 2016.

be overridden in favor of narrow economic and political interests. Legal protections and land policies covering rights to land of indigenous people, farmers and local communities are absent, lacking clarity or incomplete in many jurisdictions.¹⁰

Conflicting policies and weak protection enables the development of mega-projects in the absence of adequate environmental and social impact assessment, or clear plans for monitoring and mitigation of impacts. Projects are often approved without consulting local people or obtaining their free, prior and informed consent. Impacts to affected communities, such as damage to local water sources, fisheries and farmlands, health and livelihood impacts due to water pollution, forced displacement and involuntary resettlement¹¹, are inadequately identified and managed. The social impacts of dams, including their extensive destruction on downstream livelihoods, are chronically understudied and under-assessed.¹² Hydropower development, by stimulating migration and land speculation, providing a new source of energy and opening commercial waterways and roads, frequently occurs in tandem with other high-impact activities, such as energy-intensive mining and large-scale export-oriented agribusiness.¹³

Each of these issues increases the risk of conflict between communities and developers and heightens the threats to environmental defenders. Furthermore, environmental defenders, often people who are fighting to protect their communities and lands, face particular vulnerabilities. Many are indigenous people and women, and face intersectional discrimination, as has been previously noted by the UN Special Rapporteur.¹⁴

Those we work with often live in remote areas with limited access to information, communications, or avenues to seek protection or justice for the threats they face. They are fighting for basic needs -- access to food and livelihoods, identity, and survival as a community or as a people -- against powerful economic and political interests, limiting the avenues available to them and exposing them to heightened risks. Many do not seek protection due to the very nature of these vulnerabilities. Environmental defenders opposing hydropower dams and other mega development projects are often marginalized and branded by authorities and the public as anti-nationalist, anti-development or as opposing the government or pursuing political objectives. They may be denied legal protections or face legal threats and intimidation as a result of this categorization.

¹⁰ Brent Millikan, 'The Amazon: Dirty Dams, Dirty Politics and the Myth of Clean Energy', *International Rivers*, 6 June 2012: www.internationalrivers.org/node/7495.

¹¹ See: Anthony Oliver-Smith, *Defying Displacement: Grassroots Resistance and the Critique of Development*, University of Texas Press, 2011.

¹² Julian Kirchher, 'Why we urgently need more research on the social impacts of dams', *Water*, University of Oxford, June 2016: www.water.ox.ac.uk/why-we-urgently-need-more-research-on-the-social-impacts-of-dams.

¹³ Global Witness, April 2015.

¹⁴ United Nations Human Rights Council, 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', 21 December 2011, A/HRC/19/55, para. 63; United Nations Human Rights Council, 'Report submitted by the Special Representative of the Secretary General on the situation of human rights defenders, Hina Jilani: Mission to Brazil', 19 December 2006, A/HRC/4/37, paras. 41-42; 'UN envoy warns of environmental activist murder "epidemic"', *The Guardian*, 18 March 2016: www.theguardian.com/environment/2016/mar/18/un-envoy-warns-of-environmental-activist-epidemic.

Global snapshots of environmental defenders

A brief look at some recent incidences in regions in which we work highlights many of these issues. According to a Global Witness report, Brazil is the most dangerous place to be defending rights to land and the environment, with 448 reported cases of abuses against environmental defenders in 2013, followed by Honduras (109 reported cases) and the Philippines (67 reported cases).¹⁵

On 21 June 2016, the body of environmental defender Nilce de Souza Magalhães was discovered near the Usina Hidrelétrica (UHE) dam in Jirau, Porto Velho, Brazil. Nilce was a leader of the Movement of People Affected by Dams (MAB) and active in denouncing the human rights abuses perpetrated on her community due to the construction of the UHE project. She initially went missing on 7 January 2016, and despite a confession and subsequent escape of her alleged killer, the authorities have yet to ensure a full and impartial investigation.¹⁶

In her recent visit to Brazil this year by the UN Special Rapporteur on Indigenous Peoples highlighted the threats faced by environmental defenders, many of them indigenous peoples protecting territories, lands and resources threatened by hydropower development, including the massive Belo Monte Dam and planned dams in the Tapajos Basin in the Amazon.¹⁷ The Special Rapporteur noted, *inter alia*: on-going evictions and constant threats of further evictions; profound and ever increasing impacts of mega-projects in or near indigenous peoples' territories; violence, killings, threats and intimidation perpetuated with impunity against indigenous peoples; and a lack of consultation in relation to policies, legislation and projects impacting on indigenous peoples' rights. The efforts of indigenous peoples to protect or reclaim their lands places them in conflict situations, with 138 indigenous leaders killed in 2014; yet most of the attacks remain un-investigated.¹⁸

Recent events in Honduras have placed a spotlight on the situation for environmental defenders in the country. Following the brutal killings of Berta Cáceres and Nelson Garcia in March, the abandoned body of Lesbia Janeth Urquía, another indigenous activist and member of the Council of Indigenous Peoples of Honduras (Copinh) was discovered in July 2016. Prior to her disappearance, Lesbia had been working to stop a hydropower project in western La Paz department. Environmental defenders in Honduras are systematically targeted and exposed to serious threats to their lives. The risks to defenders are exacerbated by high levels of endemic corruption and weakly implemented laws, including those protecting customary rights to land and resources. Hydropower development has been pushed forward by powerful political elites in the absence of adequate environmental impact assessments and compliance with licensing requirements.

Despite these issues, and well-known threats to defenders, international financiers including European development banks FMO and FinnFund continued to finance the Agua Zarca hydropower project, eventually withdrawing financial support following Berta Cáceres' murder.

¹⁵ Global Witness, 'Deadly Environment: The Dramatic Rise in Killings of Environmental and Land Defenders' 15 April 2014: www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment.

¹⁶ Frontline Defenders, 'Case History: Nilce de Souza Magalhães': www.frontlinedefenders.org/en/case/Case-History-Nilce-de-Souza-Magalhaes.

¹⁷ Victoria Tauli-Corpuz, United Nations Special Rapporteur on the Rights of Indigenous Peoples – Brazil: End of Mission Statement, 17 March 2016: <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/123-end-mission-brazil>.

¹⁸ Victoria Tauli-Corpuz, March 2016.

Sadly, this is not the first time that FMO and other financiers have supported destructive dams and other projects that led to killings and other serious human rights violations.¹⁹

The UN Special Rapporteur has previously highlighted the threats to human rights defenders in India engaged in denouncing development projects that threaten or destroy land, natural resources and the livelihoods of affected communities. In a 2012 report, the Special Rapporteur noted that defenders are routinely stigmatized and branded as “anti-government” or “Naxalite sympathizers” and in many instances arrested and ill-treated. Individuals in India have been killed after filing petitions under the Right to Information Act denouncing violations connected to illegal hydroelectric power operations.²⁰

In northeast India, in May 2016, in the Mon-Tawang Region of Arunachal Pradesh, police shot dead students Tenpa and Nima Wangde and injured many others protesting against the arrest of Lama Lobsang Gyatso, Secretary of Save Mon Region Federation (SMRF), an organization of the Monpa community and a vocal opponent of hydropower development in Arunachal Pradesh. Lama Lobsang Gyatso had been previously arrested on trumped up charges in relation to his role in leading protests against proposed dams on the Brahmaputra.²¹

In Southeast Asia, massive hydropower development is on the rise, together with threats to environmental defenders. In Laos, Sombath Somphone, a peaceful environmental and community development worker, disappeared three years ago. CCTV footage shows Sombath being stopped by police on the night of his disappearance. Sombath Somphone is internationally recognized for his work in supporting the rural poor in agricultural initiatives. In the lead-up to his disappearance, Sombath was active in drawing attention to the human rights impacts of hydropower dams and related land confiscation and food security challenges. Despite significant international pressure and outcry, the Lao government has continued to deny involvement in his disappearance, while refusing to conduct transparent and independent investigations or provide information.²²

Community members and activists in Laos continue to face disappearances, deportation or harassment for their activities. Many incidents go unreported. Given Laos’s plans to construct a total of 124 dams across the country, and the significant impacts of these projects on rights to land, food and housing, ongoing investigation and monitoring of the situation for environmental defenders is urgently needed.

In Cambodia, community members and civil society activists have faced intimidation and threats of arrests and violence in relation to hydropower development. Cambodian activists involved in protest activities against the Lower Sesan 2 dam, now under construction in Cambodia’s northeast, and the proposed Cheay Areng dam, which would damage protected forest and biodiversity and submerge indigenous lands in Koh Kong province, have been subjected to threats and legal charges. A foreign

¹⁹ Peter Bosshard, ‘Funders Exit Agua Zarca Dam, But Struggle Continues’ International Rivers, 9 May 2016: www.internationalrivers.org/blogs/227/funders-exit-agua-zarca-dam-but-struggle-continues.

²⁰ United Nations Human Rights Council, ‘Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya: Addendum Mission to India (10–21 January 2011)’ 6 February 2012, A/HRC/19/55/Add.1.

²¹ The Third Pole, ‘Two anti-dam activists killed by police in Arunachal’, 3 May 2016: www.thethirdpole.net/2016/05/03/two-anti-dam-activists-killed-by-police-in-arunachal.

²² Amnesty International, ‘Laos: Caught on Camera: the enforced disappearance of Sombath Somphone,’ United Kingdom 2013. See information on Sombath Somphone’s disappearance and associated actions and concerns: <http://sombath.org>.

activist, Alejandro Gonzalez-Davidson, prominent in public opposition to the destructive Cheay Areng dam, was refused a visa extension and expelled from the country. A community leader who opposed the project was arrested for ‘forest crimes’ and held without trial for nearly a year, before being released on a suspended sentence.²³ Numerous environmental defenders have been assassinated in Cambodia in recent years.²⁴ The recent shooting in July of prominent political analyst, Dr. Kem Ley, has placed a further chill on the activities of those who oppose hydropower dams and other developments promoted as policy priorities of the Cambodian People’s Party (CPP)-led government.²⁵

In Myanmar, dams are proposed on the Salween and Irrawaddy Rivers in the territories of ethnic minority and indigenous peoples, in areas that have been subjected to conflict and massive displacement for decades. Some of the planned dams are located in or near active conflict zones, or in areas with newly negotiated ceasefire agreements.²⁶ The construction of dams in these areas threatens to jeopardize the fragile peace process of the longest civil war in the world. Attempts to wrest control of dam sites has resulted in increased militarization and sparked numerous skirmishes between the Burma army and ethnic military groups, causing tensions which create further threats for affected communities and environmental defenders.

On the African continent, environmental defenders opposing hydropower projects and other largescale developments face threats, violence and killings. Many threats to environmental defenders in Africa go unreported or underreported, and legal threats and criminalization of environmental defenders is on the rise.²⁷ For example, in Sudan, a wide range of tactics have been used to oppress and disburse Nubian people in northern Sudan protesting the constructions of dams, including live ammunition and shootings, tear gas, killings, beatings, arrests and torture. The NISS (National Intelligence and Security Services) have in recent years detained and tortured students, villagers and others protesting dam development. On multiple occasions the NISS have intercepted and arrested journalists and Nubian activists on their way to cover peaceful protests against dams. Systematic operations have been carried out to routinely round up and detain anti-dam activists for extended periods without charge.²⁸

Recommendations

- Many of the acts perpetrated against environmental defenders are intended to instil fear into other community campaigners and to silence critics of destructive projects. To counter this, it is vitally important that the Special Rapporteur highlight the need for public scrutiny of violations of the rights of environmental defenders and raise the visibility of their role in defending their communities and countries, including in relation to mega dams and other harmful projects.

²³ Aun Pheap & Peter Ford, ‘Areng Valley Dam Protester Jailed on Charges of Logging’ The Cambodia Daily, 8 October 2015: www.cambodiadaily.com/news/areng-valley-dam-protester-jailed-on-charges-of-logging-96841.

²⁴ Global Witness, April 2014.

²⁵ Ouch Sony & Alex Willemyns, ‘Prominent Political Analyst Kem Ley Slain,’ The Cambodia Daily, 11 July 2016: www.cambodiadaily.com/news/prominent-political-analyst-kem-ley-slain-115265.

²⁶ International Rivers, ‘Current Status of Dam Projects on the Salween River’ March 2016: www.internationalrivers.org/files/attached-files/salween_factsheet_2016.pdf.

²⁷ Global Witness, June 2016

²⁸ Information submitted by: Musa Ahmed Ga’afar, Activist against Dams, Indiana, United States.

- The Special Rapporteur should recommend further studies to understand the extent and scale of attacks on environmental defenders and the risks inherent in particular sectors, such as hydropower. Such a study should go beyond important work that has already been done on documenting killings of defenders to examine broader issues of criminalization and intimidation and the role of state and non-state actors involved in these acts as perpetrators. The link between violations of the rights of environmental defenders and conflict situations linked to mega dams and other largescale development projects should also be scrutinized.
- The Special Rapporteur should analyze the legal gaps, deficits and loopholes that heighten risks for environmental defenders, including weak environmental standards and laws protecting the rights of indigenous peoples, land rights and customary title to territories and resources.
- The upward trend of threats to environmental defenders associated with hydropower development should be monitored and tracked. The Special Rapporteur should consider the development of an environmental rights defender database to track defenders at risk and to link them to initiatives by organizations monitoring cases and providing protection.
- The Special Rapporteur should analyze the developments in transnational investment in hydropower dams and other largescale development projects and the increased risks to environmental defenders due to such developments. For example, hydropower projects in Southeast Asia are increasingly developed and financed by private sector agencies and state-owned banks from within the region. In contrast to multilateral development banks and other international financiers, these entities lack human rights and environmental safeguard policies and grievance mechanisms accessible by project-affected communities, increasing the lack of accountability and the risks faced by environmental defenders. Such an initiative would benefit from close collaboration with the Working Group on Business and Human Rights and other Special Rapporteurs, notably the Special Rapporteur on the Rights of Indigenous Peoples.
- The role and responsibilities of private sector actors and business enterprises must be emphasized, and specific steps outlined that business enterprises must take to fulfil their legal and ethical obligations, including rigorous human rights due diligence, monitoring and reporting procedures. All dam developers and financiers must respect the right of indigenous peoples to free, prior informed consent regarding projects that affect their territories and livelihoods, and adopt strict due diligence processes for the respect of human rights, in line with the recommendations of the UN Guiding Principles on Business and Human Rights.
- International financial institutions and other financiers must explicitly tie their continuing support for development projects to the implementation of safeguards for human rights. Multinational businesses should ensure and make clear through both policies and action that they do not undertake projects in countries where these basic protections are flouted or absent.
- The particular vulnerabilities and characteristics of environmental defenders must be taken into account, as indigenous peoples, representatives of rural and marginalised communities, often lacking access to resources and channels of communication and redress. Protection mechanisms should be developed taking into account these vulnerabilities in consultation with environmental defenders.