

Harassment of Environmental Defenders

Keywords

- > Human rights
- > Environmental ONG
- > Environmental rights

1. Background

In the framework of the United Nations “Human rights defender” is a term used to describe people who, individually or with others, act to promote or protect human rights.¹ These include all sorts of rights, including the rights to health and food, or the rights to land and natural resources, so the defenders of the environment are a specific subgroup of the defenders of human rights in general.

The frequency of killings and threats against those who defend the environment and the rights of their people, and the subsequent impunity enjoyed by the majority of perpetrators of such serious violations affect the protection of the environment as well as our most fundamental human rights. Human rights violations committed against these environmental defenders or activists are generally directly related to their activities of claiming, defending, and protecting territories and natural resources, or their defence of the right to autonomy and the right to cultural identity:

“Between December 2006 and May 2011, a large number of communications sent during the reporting period (106) concerned alleged violations against defenders and activists working on land and environmental issues. According to the information received, this group is thoroughly heterogeneous. It includes defenders carrying out a vast range of activities related to land and environmental rights, including those working on issues related to extractive industries, and construction and development projects; those working for the rights of indigenous and minority communities; women human rights defenders; and journalists.”²

The right to participation and the right to information constitute two fundamental pillars for the actions undertaken by environmental activists and defenders.



Photograph: Haydn West/Rex - Protesters marching to Kingsnorth power station.

Environmental defenders have been the targets of violence because they have challenged the environmental impacts of a variety of activities, especially those of the extractive industries and their effects on fundamental human rights, such as the right to life and to housing, the right to water and food, the right to property, and the right to free, prior, and informed consent.

Thus, the clear relationship between environmental protection and the effective exercise of human rights cannot be denied. It therefore follows that the work of environmental defenders is a key component in the protection of human rights. These people provide information to society, and it falls upon the state to assume its obligation to guarantee the rights of its people. Environmental defenders also organise communities to fight for their rights and for environmental justice. However, during recent years, environmental defenders have been subjected to threats and violence, and this does not just involve only isolated cases. An increasing pattern of violence is emerging in many parts of the world, as described in this report.

National and multinational companies, especially those dedicated to the extractive industries, are primarily responsible for stigmatising environmental defenders, often with the complicity of state authorities, who prosecute the defenders and levy unjustified civil and criminal penalties for the purpose of shutting down social protest and forcing the environmental movement to focus on trying to free its leaders from incarceration.

¹ *Human Rights Defenders: Protecting the Right to Defend Human Rights*, Fact Sheet N° 29, Office of the United Nations High Commissioner for Human Rights, United Nations Office at Geneva, Geneva, August 2004, p.3.

² “Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya”, United Nations, Human Rights Council; Doc. A/HRC/19/55, 21 December 2011, par.64.



Source: Survival International - Protest against Vedanta's project.

The failure of the state to investigate aggressions and crimes committed against environmental defenders often complements such business activity and helps to weaken their defensive roles. Various practices have been identified: putting obstacles in the way of reporting companies, not recognizing the right to challenge and demand the revocation of state concessions or pursuing environmental claims with a clear lack of diligence, arguing that budgeting does not allow inspections to be performed. Time and time again, victims lose trials for such reasons as their lack of legitimacy, the destruction or deterioration of evidence or the simple unjustified delay of the authorities in solving the case, leading to damages being incurred and the resolutions being issued too late. Added to all of this, even when resolution occurs in favour of those affected, there is often a lack of authority to enforce the legal rulings. In particular, a judicial system that is not impartial can favour impunity and become a mechanism for covering up human rights violations. Claims frequently go uninvestigated, even when evidence is submitted. Furthermore, in cases involving environmental claims, prosecutors and judges who have tried to diligently perform their duties end up being thwarted, transferred, or even removed from their positions.

All of these obstacles create circumstances in which those who oppose environmental pollution, the environmental defenders, must live in a state characterised by defencelessness and personal and legal insecurity.

One clear example is that of Mr. Alexander Nikitin who was awarded the Goldman Environmental Prize in 1997.³ Until 1985 Alexander Nikitin was a naval captain in the Soviet Northern Fleet, where he served on nuclear powered submarines. From 1987 to 1992 he worked for the Department of Defence as the senior inspector for its Nuclear and Radiation Safety Inspection Department. Nikitin joined the Bellona Foundation, a Norwegian non-governmental organization addressing north-western Russia's environmental problems. In 1996 Nikitin co-authored a

report entitled, "The Russian Northern Fleet - Sources of Radioactive Contamination", on the contamination caused by the facilities and submarines of the Russian nuclear fleet, especially in the Kola peninsula, which is one of the regions in the world with the highest levels of radioactive pollution. In 1995 Bellona's Russian office was ransacked by the Federal Security Police (FSB) and all references to the report were confiscated. Nikitin was trying to reconstruct the report when he was suddenly arrested on 6 February 1996. He was imprisoned on charges of high treason and divulging state secrets.

Mr. Nikitin was arrested on 6 February 1996 and sent to the FSB prison in Saint Petersburg. During his first six weeks in prison Nikitin was denied the opportunity to choose his own lawyer. He was held in solitary confinement and denied bail.

The case generated protests the world over. For this reason, Amnesty International, the UN's High Commissioner for Human Rights, and the Helsinki Committee declared Alexander Nikitin to be a prisoner of conscience.⁴ The European Parliament also issued a resolution about the case, asking the Russian authorities to provide a full and detailed explanation of the charges against Alexander Nikitin and a clear schedule for his trial, which must be a public, just trial before a civil court, and requested that he be set free immediately in advance of the trial. This request was made because of the general concern that Nikitin may be judged by a military court, which would impede public access to the proceedings and to information, which would eliminate the possibility of a fair trial.⁵

On December 14 1996 the Attorney General released Nikitin from prison and his case was sent back to the FSB for further investigation. After his release, he was not permitted to leave St. Petersburg. After several months, the FSB completed its investigation and filed additional charges of treason – seven in total – against Nikitin.

In June 1998, Nikitin's case was transferred to the City Court of St.

³ The following information has largely been taken from the website of Goldman Environmental Prize; <http://www.goldmanprize.org/node/139>.

⁴ Also, on 22 November 1998, the Sierra Club granted its Chico Mendes Award to Mr. Nikitin for his activities directed at protecting the environment against the illegal dumping of nuclear waste in Russia.

⁵ Resolutions of 16 November 1995 (DO C 323 of 4.12.1995, page 112) on the harassment of the Bellona Foundation by Russian security forces; of 15 February 1996 (DO C 65 of 4.3.1996, page 162) on the detention of Alexander Nikitin; and the Resolution on the case of Alexander Nikitin. Official Journal no. C 320 of 28/10/1996 p. 0196. Available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51996IP0995:ES:HTML> (viewed on 30 December 2011).



Petersburg. In the first trial against Nikitin, in October 1998, the City Court of St. Petersburg sent the case back to the FSB for additional investigation. The Supreme Court confirmed this decision in February 1999, and the FSB filed new charges in July 1999. The second trial started at the St. Petersburg City Court in November 1999, and ended on December 29 with a full acquittal. The prosecution appealed to the Supreme Court, but the acquittal was confirmed and reached legal force on April 17, 2000.

The Nikitin case illustrates the problem perfectly. This report focuses on some aspects of the problem, which affects numerous areas in a wide range of countries and which will require further development in future work.

2. The Legal Framework

According to the UN's Universal Declaration of Human Rights⁶ of 10 December 1948, "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (Art. 8). Therefore, "no one shall be subjected to arbitrary arrest, detention or exile" (Art. 9). Also, according to article 10, "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his [or her] rights and obligations and of any criminal charge against him [or her]." Furthermore, "everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he[or she] has had all the guarantees necessary for his [or her] defence" (Art. 11).

In practice, most of the complaints about attacks on the rights of environmental defenders are filed in America. The American Convention on Human Rights⁷ recognises that "the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights,

as well as his [or her] civil and political rights." In its article 8, it establishes that "every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him [or her] or for the determination of his [or her] rights and obligations of a civil, labour, fiscal, or any other nature."

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁸ allows the circumstances to be determined of people criminalised and put on trial, who were first victimised when their collective rights have been violated, then later re-victimised when they were punished for complaining about the violation of their rights. This declaration establishes that "Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered" (Art. 4). This declaration also establishes that "informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilised where appropriate to facilitate conciliation and redress for victims" (Art. 7).

Finally, in Article 19 the declaration refers to the idea that "states should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support."

One of the key elements in the protection of defenders has been the official definition of the "defence" of human rights as a right in itself and the recognition of the category of "human rights defenders". On 9 December 1998, resolution 53/144 was adopted by consensus by the General Assembly of the United Nations, thus approving the

⁶ Adopted and declared by General Assembly resolution 217 A (III) of 10 December 1948. Available at: <http://www.un.org/es/documents/udhr/> (viewed 3 January 2012).

⁷ The Convention was adopted at the Inter-American Specialised Conference on Human Rights held in San Jose, Costa Rica from 7 to 22 November 1969. OAS Treaty Series No. 36. Available online at <http://www.oas.org/juridico/english/treaties/b-32.html>. Twenty-five nations have ratified or otherwise adhere to the Convention: Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, The Dominican Republic, Surinam, Trinidad and Tobago, Uruguay, and Venezuela. However, Trinidad and Tobago abandoned the American Convention on Human Rights in 1998.

⁸ A/RES/40/34, 29 November 1985. Available online at: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/485/21/IMG/NR048521.pdf?OpenElement> (viewed on 14 January 2012).



Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms,⁹ which establishes that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels” (Art. 1) and each State “shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed” (Art. 2). For these purposes, in accordance with Article 5, “everyone has the right, individually and in association with others, at the national and international levels: a) To meet or assemble peacefully; b) To form, join and participate in non-governmental organisations, associations or groups; c) To communicate with non-governmental or intergovernmental organisations.” And, article 9 recognises, among other things, 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” and “everyone has the right, individually and in association with others, *inter alia*: To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay.”

And Article 12 states that:

“1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the

protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.”

Moreover, in 2000, the United Nations Human Rights Commission decided to create the figure of the United Nations Special Representative on Human Rights.¹⁰ In August 2000, the Secretary General appointed Ms. Hina Jilani. Her mandate was renewed by the Commission in 2003 and by the Human Rights Council in 2007,¹¹ after the adoption of a new resolution in support of human rights defenders by the General Assembly of the United Nations.¹²

In March 2008, the Human Rights Council decided to pursue their task even further and appointed Ms. Margaret Sekaggya as new *Special Rapporteur on the situation of human rights defenders*.¹³ Her mandate was renewed for three more years in April 2011.¹⁴

The mandate of the Special Rapporteur is:

“(a) To promote the effective and comprehensive implementation of

⁹ *Ibid.*

¹⁰ “Defensores de los derechos humanos”; Resolution by the Human Rights Commission 2000/61, of 26 April 2000.

¹¹ “Defensores de los derechos humanos”; Resolution by the Human Rights Commission 2003/64, of 24 April 2003; Human Rights Council Resolution 5/1. “Institution-building of the United Nations Human Rights Council”, 18 June 2007.

¹² Resolution 62/152, of 18 December 2007. “Declaración sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos”.

¹³ “Human Rights Council, Resolution 7/8. “Mandate of the Special Rapporteur on the situation of human rights defenders”, 27 March 2008.

¹⁴ Human Rights Council. Resolution 16/5, “Mandate of the Special Rapporteur on the situation of human rights defenders, 8 April 2011”. The documents drafted by the Special Rapporteur can be consulted at: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/AnnualReports.aspx>



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the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms through cooperation and constructive dialogue and engagement with Governments, relevant stakeholders and other interested actors;

(b) To study, in a comprehensive manner, trends, developments and challenges in relation to the exercise of the right of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;

(c) To recommend concrete and effective strategies to better protect human rights defenders through the adoption of a universal approach, and to follow up on these recommendations;

(d) To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;

(e) To integrate a gender perspective throughout the work of his/her mandate, paying particular attention to the situation of women human rights defenders;

(f) To work in close coordination with other relevant United Nations bodies, offices, departments and specialized agencies, both at Headquarters and at the country level, and in particular with other special procedures of the Council;

(g) To report regularly to the Human Rights Council and the General Assembly;"

As far as civil society is concerned, another document of interest related to the protection of environmental defenders is the Cartagena Declaration, adopted at the International Conference of Environmental Rights and Human Rights on 16 to 18 September 2003 in Cartagena, Colombia, and organised by Friends of the Earth International, the Transnational Institute, and the Oilwatch network.¹⁵ The declaration aims to safeguard the right of human rights defenders, environmentalists, and those who demonstrate against injustice and war to be free from criminalisation and persecution.¹⁶

3. Cases brought before the Inter-American System of Human Rights: *Kawas Fernández versus Honduras*

On this subject, the Inter-American Commission on Human Rights (IACHR) has expressed concern over clear

¹⁵ Also participating were two hundred and fifty delegates from international organisations, NGOs, and social movements from various parts of the world.

¹⁶ The text of the Declaration can be found online at: <http://wp.cedha.net/wp-content/uploads/2011/05/Declaraci%C3%B3n-de-Cartagena.pdf> (viewed on 14 January 2012).



instances of the persecution of environmental defenders.

For example, the Commission has received and processed claims of human rights violations against the leaders of African-descended communities in Colombia, and has requested that the Inter-American Court protect threatened African-descended leaders.¹⁷

For example, in the case of the *Communities of Jiguamiandó and Curbaradó*, the Court ordered provisional measures to be taken in 2003¹⁸ and renewed these measures in successive resolutions up to 2010.

Another more recent case is that of Teodoro Cabrera García and Rodolfo Montiel Flores against Mexico.¹⁹ In 1998, Teodoro Cabrera García and Rodolfo Montiel Flores, along with other rural workers, established a civil association called the *Campesino Environmentalist Organisation of the Sierra of Petatlán and Coyuca de Catalán (OCESP)*, to stop logging operations in the mountain forests in the state of Guerrero. In their opinion, these operations were threatening the environment and the livelihoods of those in the local rural communities. In 2010, the Court found Mexico guilty of infringing the Convention on a variety of counts: the right to personal freedom, the right to personal integrity, the requirement to investigate alleged acts of torture, the right to justice and judicial protection because information about the alleged tortures had been provided to the military criminal jurisdiction. However, the Court did not consider those aspects that were connected to their status of environmental defenders, insofar as the Inter-American Commission of Human Rights had not taken into account that the main reason for the case was the fact that they were environmental defenders and that they were being repressed.

On 25 October 2010, a general hearing was held before the Inter-American Commission on Human Rights, focused on the circumstances of environmental

defenders in Mesoamerica²⁰. Its aim was to denounce the pattern of violence against environmental defenders in Mexican and Central American mining areas. Environmental defenders from Mexico, Guatemala, Honduras, El Salvador, and Panama denounced violence against environmental activists in the mining areas for two reasons. First, killings, kidnappings, torture, arbitrary detentions, and damage to the private property of environmental defenders have been verified in mining areas. Second, the countries in the region lack adequate legislative means to protect the effective enjoyment of human rights affected by the mining industry. For example, there were no processes in place to obtain prior and informed consent from communities potentially affected by mining activities and environmental inspection and monitoring, which are essential components in guaranteeing the exercise of basic rights, are summarily weak or even non-existent. There is also a lack of effective mechanisms for preventing environmental pollution and ensuring the equitable distribution of profits.

The case of *Kawas Fernández versus Honduras* is representative of the activity that the Inter-American system engages in with respect to environmental defenders.

On 4 February 2008, the Commission submitted a complaint before the Court against the Republic of Honduras, based on the pleading presented on 13 January 2003 by the Centre for Justice and International Law and the Team for Reflection, Research and Communication of the Company of Jesus in Honduras.

The case involved the murder of Blanca Jeannette Kawas Fernández, who was shot and killed in her home. Ms. Kawas was the chair of the Foundation for the Protection of Lancetilla, Punta Sal, Punta Izopo, and Texiguat, an organisation created for the purpose of “improving the quality of life of the populations of the Bahía de Tela watershed (Department of Atlántida, Honduras).” In her role as chair, Ms.

¹⁷ International Court of Human Rights, the cases of the Jiguamiandó and Curbaradó communities, Provisional measure, Resolution of 6 March 2003.

¹⁸ International Court of Human Rights, the cases of the Jiguamiandó and Curbaradó communities, Provisional measure, Resolution of 6 March 2003.

¹⁹ Inter-American Court of Human Rights, Case of Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico, Judgment of 24 June 2009.

²⁰ General Hearing, 140th Regular Session, IACHR, “The Situation of Environmental Defenders in Mesoamerica” 25 October 2010. See “Defensoras y defensores ambientales en peligro: Situación de defensores y defensoras del medio ambiente en Mesoamérica”, Report prepared by the Centre for International Environmental Law for the 25 October 2010 General Hearing during the 140th Regular Session of the Inter-American Commission on Human Rights. Available online at http://www.miningwatch.ca/sites/miningwatch.ca/files/IACHR_Oct_10_Informe_CIEL.pdf (viewed 3 January 2012).



Kawas denounced, among other issues, attempts by individuals and entities to illegally assume power on the Punta Sal Peninsula, as well as the contamination of lakes and the degradation of forests in the region. After her death, serious omissions became evident, showing that State authorities failed to act with due diligence, as they did not adopt all of the measures necessary to support an investigation into the killing that could have resulted in a concrete outcome. As a consequence of the State's failure to perform its duties, victim's family was denied their right to know the truth about what happened and to be compensated for the damages and losses they suffered.

According to the Inter-American Commission, "the materials found in the file establish that there are indeed strong indications to suggest that the State is directly responsible in the alleged victim's loss of life." Consequently, on 13 October 2005, the Commission approved Report No. 67/05²¹, by which the petition was declared admissible. Later, on 20 July 2006, the Commission approved background report No. 63/06²², under the terms of article 50 of the convention, which contained specific recommendations for Honduras.

The State was notified of this report on 4 August 2006. Upon consideration of the information provided by the parties subsequent to the adoption of the background report, and upon "the lack of substantive advances in effective compliance with [its recommendations]," the Commission decided to submit this case to the jurisdiction of the Court.

The Commission alleged that:

"the effects caused by the impunity in the case and the failure to adopt the measures needed to prevent the repetition of the acts have promoted a context of impunity in Honduras for acts of violence committed against defenders of human rights, the environment, and natural resources." Furthermore, it stated that "the case reflects the circumstances of defenders of the

environment and natural resources in Honduras, attacks against such persons, and the obstacles to the investigation of acts of harassment and persecution."

The Commission concluded that the State was responsible for: violations of article 4 of the American Convention (Right to Life) in compliance with the obligations established in its article 1.1; violation of the rights recognised in articles 8 (Legal Guarantees) and 25 (Legal Protections) of the American Convention in relation to its articles 1.1 and 2;. Therefore, the Court was requested to assign international responsibility to the State for the violation of all of the other stipulations.

The victim's representatives submitted their pleadings, motions and evidence under the terms of the Convention. The document alleged that Blanca Jeannette Kawas was a well-known Honduran environmental activist who promoted the protection of natural resources in her country, primarily in Tela, an area located on the Atlantic coast of Honduras, and that this activity was the motive for her murder on 6 February 1995. The representatives reiterated that the death of Ms. Kawas "holds a special symbolism, because she was the first person killed in Honduras for defending natural resources and the environment. After her execution, and because of the impunity that characterised it, a series of assassinations of other environmental defenders occurred in Honduras."

In its ruling of **3 April 2009**,²³ **the Inter-American Court states the following in relation to the issue at hand:**

"States have the duty to provide the necessary means for human rights defenders to conduct their activities freely: to project them when they are subject to threats in order to ward off any attempt on their life or safety: to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity; [...] Given the

²¹ In its admissibility report No. 67/05, the Commission decided to declare petition No. 61/03 admissible in relation to the alleged violation of articles 4, 8, and 25, in accordance with article 1.1 of the American Convention (documents in the appendices of the pleading, appendix 2, page 683, par. 45).

²² See Background Report No. 63/06, documents in the appendices of the pleading, appendix 1, page 672, par. 118.

²³ Inter-American Court of Human Rights Caso Kawas Fernández vs. Honduras (Fondo, Reparaciones y Costas), Ruling of 3 April 2009, Series C No. 196.



importance of the role that human rights defenders play in democratic societies, the free and full exercise of this right places a duty on Status to create legal and real conditions in which they can freely carry out their activities.”²⁴

And it points out that:

“The recognition of the work carried out by the defence of the environment and its relation to human rights is more valid in the countries of the region, where there is an increasing number of reports of threats, acts of violence and murders of environmentalists as a result of their task.”²⁵

The Court condemned Honduras for violating the rights to justice and judicial protection to the detriment of the family; the right to life, to the detriment of Blanca Jeannette Kawas Fernández; the right to personal safety, to the detriment of the family; and freedom of association, to the detriment of Blanca Jeannette Kawas Fernández.

In terms of reparation, the Court ruled that the State of Honduras must provide compensation to the representatives for material and immaterial damages and reimburse costs and expenses, as appropriate, within a period of one year from the date of notification of the decision. It established the need for the State to conclude the criminal proceedings, or to initiate the appropriate ones, for the acts that generated the violations in the case and to resolve these proceedings under the terms established by law and within a reasonable period of time. It also declared the State's obligation to provide psychological assistance to members of Ms. Kawas' family. And in particular:

“it reiterates that the threats and attacks on the safety and life of the human rights defenders and the impunity of such events are particularly serious in a democratic society. [...] the State has the duty to adopt legislative, administrative and judicial measures, or to

improve existing measures, to guarantee the environmental defenders the freedom to carry out their activities; immediate protection for environmental defenders in the face of danger or threats that arise as the result of their work, and the immediate, serious and effective investigation of any acts that endanger the life or the safety of environmental defenders as a result of their work.”

Furthermore, it ordered the State, within a period of two years, to implement a national campaign to promote awareness and knowledge of the importance of the work performed by those who defend the environment in Honduras, and of their contributions to the defence of human rights. Finally, it determined that the State, within a period of one year, should hold a public event in recognition of international responsibility.²⁶

4. Recourse to the courts of opinion: the Ethics tribunal against the criminalisation of defenders of nature, water and Pachamama

The Peoples' Tribunal against Criminalisation was held in Cuenca, Ecuador, on 22-23 June 2011. It was organised on behalf of people, organisations, communities, and ethnic groups who have suffered some type of violation of their fundamental rights because of their defence of collective rights or the rights of nature, and who have been assigned – or who have been threatened with assignment of – criminal or formal administrative penalties after being accused of some type of crime, including in some cases terrorism.

Held within the context of the Continental Conference for Water and Pachamama which took place on 21-23 June in Cuenca, Ecuador, the tribunal was organised by the associations Ecological Action (Acción Ecológica) , the Peoples' Ecological Network (Red de

²⁴ Pars. 145-146.

²⁵ Par. 149.

²⁶ Pars. 213-214.



²⁷ For more information, visit the conference's official web site at: <http://www.aguaypachamama.org/> and also see: <http://movimientos.org/madretierra/pachagua/Convocatoria.pdf>.

²⁸ The jury was made up of Elsie Monge from Ecuador, Raúl Zibechi from Uruguay, Lía Isabel Alvear from Colombia, and María Hamlin from Nicaragua, with Raúl Moscoso, Diana Murcia, and Carlos Poveda acting as Ecuadorian judges.

²⁹ See "Veredicto del Tribunal Ético ante la Criminalización a defensores y defensoras de los derechos humanos y de la naturaleza", Cuenca, Ecuador 22 and 23 June 2011. Available online at: <http://servindi.org/pdf/TribunalEtico23Jun2011.pdf> (viewed 3 January 2012).

Ecologistas Populares), CEDHU, and INREDH.²⁷

The goal of the tribunal²⁸ was to hear testimony regarding the criminalisation of protest, presented by Ecuadorian defenders of human rights and nature. Then, based upon this testimony and the report drawn up by the public defender, to define the situation, expand awareness of it, and issue a verdict that could be applied in national and international cases.

The tribunal²⁹ ruled that the communities, peoples, and social and non-governmental organisations that have fought for collective rights and the rights of nature in Ecuador have been extensively and increasingly victimised by criminalisation and punishment, encouraged by national and transnational companies – particularly in the extractive sector – and carried out by various judicial, police, military, and administrative authorities, as well as by private security forces. The tribunal therefore confirmed the existence of the "systematic practice of criminalisation as a means to punish and eliminate social protest", and that the justice system is used to criminalise the defenders of nature, while remaining passive against the human rights violations where these defenders and nature are the victims.

In its verdict, the Tribunal found evidence that:

1. There is a pattern of criminalisation. The cases demonstrate the systematic practice of criminalisation as a means to punish and eliminate social protest.
2. There is enormous inequality in the application of justice. While the justice system is used to criminalise the defenders of nature, it remains passive against the human rights violations of which these defenders and nature are the victims.
3. The defenders of nature and their families are defenceless. Criminalisation puts the criminalised persons, their families, and their surrounding

communities in a situation of vulnerability, as well as any officials who dare to issue rulings in favour of such defenders.

4. Nature – Pachamama is defenceless when deprived of its defenders. Without defenders, the indigenous way of life – *sumak kawsay* – is impossible.

The Tribunal therefore created a series of individual recommendations for the executive, legislature, and judiciary branches, as well as for other groups.

For the executive branch, it recommended excluding content in speeches or statements that delegitimises or stigmatises the defenders of human rights and nature; to refrain from interfering with decisions made by officials in the judicial branch, especially when these involve criminal proceedings for members of non-governmental organisations; to correct and retract public statements made in the past in which the defenders of human rights and of nature have been insulted or stigmatised, and in the specific case of organisations, a recommendation was issued for repealing any laws that affects them by trying to dissolve them or by becoming involved with their by-laws.

For the legislature, the tribunal recommended that lawmakers refrain from issuing regulations contrary to the National Constitution, particularly those that affect the participation, the free expression, and the discussion of decisions related to human rights, the rights of ethnic group, or the rights of nature. The Tribunal also recommended that they ensure their attributions are strictly constitutional and do not interfere with the affairs of other branches of power or the State's own mechanisms of governance. Finally, the Tribunal recommended eliminating the articles of the penal code that are used to criminalise the defenders of human rights and of nature, particularly those which makes reference to terrorism, as it is disproportional and contrary to the

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Borràs, S. (CEDAT, Universitat Rovira i Virgili), 2012. *The Persecution and Violation of Human Rights of Environmental Defenders*, EJOLT Factsheet No. 48, 10 p.



sumak kawsay.

The judiciary branch was advised to abstain from processing members of organisations or peoples who defend collective rights and the rights of nature, and to apply the principle that criminal charges are to be used as a last resort. It also recommended a willingness to comply with the amnesties granted by the Constitutional Assembly, as well as closure of all of the processes initiated against persons, organisations, and ethnic groups defending human rights and the rights of nature. A recommendation was also issued to order full reparations to the victims of criminalisation, their families, and their communities, including the request for an apology issued by the President of the Republic and a commitment to refrain from criminalising social organisations in the future and to investigate those who have used and continue to use the justice system against social movements.

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