



20 YEARS OF

**Business & Human Rights
Resource Centre**



Guardians at risk

**CONFRONTING CORPORATE ABUSE
IN LATIN AMERICA & THE CARIBBEAN**

SEPTEMBER 2023

Contents

Foreword	3
Executive summary	4
Scope and scale of attacks	6
Overview	6
Most dangerous sectors	8
Types of attacks	9
Perpetrators of attacks	11
Attacks against Indigenous Peoples	12
Opportunities for advancing the protection of HRDs	15
UN Working Group on Business and Human Rights' Guidance on Ensuring Respect for Human Rights Defenders	15
Latest draft of the legally binding instrument	16
Escazú Agreement	16
Esperanza Protocol	16
Forthcoming Advisory Opinion on Climate Change by the Inter-American Court	17
Recommendations for governments	19



Foreword

Viviana Krsticevic, Executive Director,
Centre for Justice and International Law (CEJIL)

Violence against human rights defenders is a cause of great concern globally – and particularly in the Americas. Latin America and the Caribbean, according to various sources including this report, continues to be the most dangerous region in the world for human rights defenders, particularly those associated with the defence of the environment.

People who defend their rights and the rights of others are vital for the effective guarantee of human rights, democracy, the rule of law and the environment. They play a fundamental role in their communities and in society. Defenders document, protest, inform, raise awareness, litigate, educate, organise, investigate and resist through art, science, journalism, law and protest, facing abuses and threats from diverse sectors, including those linked to business spaces that seek to curb their vital work.

This report by the Business & Human Rights Resource Centre (the Resource Centre) reveals the various types of attacks and violence faced by defenders in our region. This effort by the Resource Centre also demonstrates that the perpetrators of violence against defenders are often linked to powerful economic and spurious business interests, frequently allied with sectors within the state or with criminal groups. These, in turn, fuel a cycle of violence exacerbated by patterns of structural and historic discrimination against marginalised groups of defenders such as women, Indigenous Peoples and communities, and Afro-descendants, among others.

In recent years, various initiatives by civil society and the international community around the world have contributed to supporting the work of defenders, recognising the violence they face and attempting to mitigate risks. For example, the human rights

movement in Latin America has insisted on the need to protect environmental defenders in the context of their resistance to devastation linked to economic and corporate activities that aggravate the climate crisis, deforest the Amazon and attack environmental defenders.

Efforts like report and other initiatives, such as the Esperanza Protocol, the Escazú Agreement and the upcoming Advisory Opinion on climate emergency and human rights by the Inter-American Court of Human Rights, are essential to outline a course of action that enables open spaces for the defence of human rights in the face of spurious business interests. These recent and ongoing initiatives demonstrate the need to guarantee public policies that ensure an enabling environment for the defence of human rights, as well as laws to prevent violence and overcome impunity for crimes against human rights defenders, including by private actors linked to businesses. Particularly in the context of the Americas, this must include institutional and regulatory frameworks to prevent criminalisation and other illegitimate uses of the law to perpetuate human rights abuses against defenders.

I especially recognise the valuable work of the Resource Centre in amplifying the voices of human rights defenders, as well as documenting and condemning violence against those who defend human rights when confronted with irresponsible business. The figures on attacks in our region, while devastating, demonstrate the need to continue advancing comprehensive strategies for the effective protection of those who defend our rights at a very high cost. For each of those people, their communities, our nations, and for the rights of future generations.

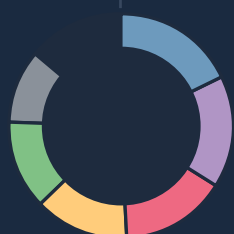
Executive summary

Every day, hidden heroes are standing up to big businesses – raising the alarm about how their activities are harming human rights and the environment while advocating for companies operating in their communities to adopt rights-respecting practices. At the same time, they are calling on governments to fulfil their duty to protect human rights and support sustainable development. From fighting deforestation and illegal mining in the Amazon to raising concerns about the impacts of megaprojects in Mexico and protecting sacred Indigenous sites in Nicaragua, communities, workers and individuals are courageously protecting their rights and environments across the region.

Unfortunately, in doing this important work, they face significant risks, particularly in Latin America and the Caribbean – the most dangerous region in the world for human rights defenders (HRDs).

Between January 2015 and December 2022 (inclusive), the Business & Human Rights Resource Centre (the Resource Centre) identified nearly **2,000 attacks against HRDs in Latin America and the Caribbean**, representing 42% of total attacks (4,700) recorded worldwide. This included killings, judicial harassment, death threats, disappearances and other forms of intimidation. Indigenous defenders experience a disproportionately high level of attacks and, while defenders of all genders are targeted due to their human rights work, women defenders often face specifically gendered attacks. Given this research is based on publicly available information – and official government data on attacks is extremely limited – the problem is undoubtedly more severe than these figures suggest.

KEY FINDINGS



6 countries accounted for 86% of attacks in the region:

- 18% Honduras
- 16% Mexico
- 15% Brazil
- 14% Colombia
- 13% Peru
- 10% Guatemala

5 most dangerous business sectors for human rights defenders (HRDs) are related to natural resources:



28% of the recorded cases were **killings**

29% of attacks involved **judicial harassment**

35% of attacks were against **Indigenous defenders**

85% of attacks targeted HRDs protecting their **land rights and right to a clean, healthy & sustainable environment**

Many attacks against HRDs in the region involve collusion between states, [security forces](#), companies and other non-state actors, including [illegal miners](#) and loggers, paramilitary forces and [organised criminal groups](#) who often facilitate harmful business operations. [Organised crime](#) in the region [has put significant pressure](#) on those defending their land and territories, taking advantage of corrupt institutions, weak rule of law and informal economies.

The high number of attacks [occurs in the context](#) of centuries of colonisation, patriarchy, exploitation of natural resources, denial of rights to land and territories, and racism and discrimination against Indigenous and Afro-descendant Peoples and peasant communities in the region. Structural racism and discrimination are embedded in government policy and practice – and economic interests often take priority over protecting human rights, with a widespread lack of respect for the self-determination and autonomy of Indigenous Peoples and their right to free, prior and informed consent (FPIC).

The scale of lethal and non-lethal attacks against those protecting their rights, natural resources and the environment from business-related harms reveals the [failure of governments in Latin America and the Caribbean to fulfil their duty to protect human rights and the insufficiency of voluntary corporate action to respect human rights.](#)

Unfortunately, the true scale of the problem is obscured due to governments in the region failing to monitor attacks on defenders, despite this being an expectation of the [Sustainable Development Goals](#) (SDGs). While some governments have made substantial efforts to [develop national mechanisms](#) to protect HRDs (including Colombia, Mexico, Honduras and Guatemala) and others have passed legislation to do the same (including Peru and Ecuador), this analysis reveals these mechanisms and legislations are not effectively implemented and more must be done to prevent attacks.

Despite the current scale of attacks, there are positive developments and opportunities to progress protections for HRDs, including the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean ([Escazú Agreement](#)). In particular, the upcoming Advisory Opinion on Climate Change by the Inter-American Court of Human Rights presents a critical opportunity for the Court to develop standards for states to safeguard HRDs in the context of harmful business operations connected to the climate crisis and recognise core expectations under international law for business actors to protect defenders.

In addition, states in Latin America and the Caribbean should adopt legislation recognising the rights of defenders and their vital role in promoting human rights, sustainable development and a healthy environment – and commit to zero-tolerance for attacks. Our analysis shows it is crucial for states in the region to:

- ➔ Accede to or, where already ratified, fully implement key international and regional standards which protect the rights of defenders raising concerns about harmful business practices, including the Escazú Agreement.
- ➔ Enact and/or strengthen national protection mechanisms for defenders, ensuring investigations into those responsible for the attacks, access to effective remedies and facilitation of data collection.
- ➔ Reform any laws criminalising or penalising freedom of expression, assembly and association, including passing anti-SLAPP legislation.

Scope and scale of attacks

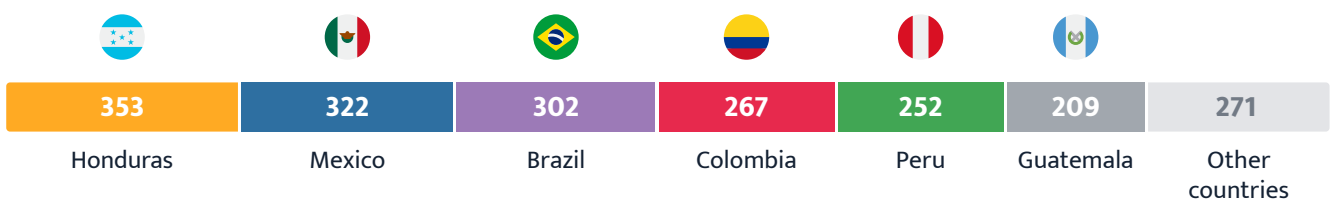
Overview

Between January 2015 and December 2022 (inclusive), the Resource Centre documented more than 4,700 attacks worldwide against HRDs raising concerns about harmful business practices. Latin America is the most dangerous region for HRDs, representing **42% of all attacks recorded globally (1,976)**. As this research is based on publicly available information, and many attacks go unreported, the problem is even more severe than these figures indicate. There is a particular gap in available data about attacks on HRDs in the Caribbean, which contributes to the invisibility of violence against HRDs and perpetrates impunity of those responsible for the attacks. More information about how we collect this data can be found in [our research methodology](#).

In addition, governments in the region are almost entirely failing to monitor attacks on defenders, despite it being an expectation of the [Sustainable Development Goals](#) (SDGs). In 2022, Uruguay was the only state in the region to report (in its Voluntary National Review) at least one HRD had been killed or attacked in the past 12 months. This lack of state-reported data severely undermines the capacity of all actors to prevent violence against HRDs.

While attacks occur across Latin America, 86% of attacks are **concentrated in just six countries**: Honduras (353), Mexico (322), Brazil (302), [Colombia](#) (267), Peru (252) and Guatemala (209).

WHERE DID ATTACKS TAKE PLACE?



Megaprojects in Mexico linked to attacks against defenders

“ The Isthmus of Tehuantepec will not be the same as it was. Our companions who have been killed, who will bring them back to us? Who will deliver us justice? Who will return the environment we had before? Nothing will be the same because the pollution of the rivers, of the water, the destruction of plants, of the flora and fauna – nobody is going to give it back to us.”

Juana Ramírez Villegas, Indigenous Ayuuk woman of San Juan Guichicovi, part of the Union of Indigenous Communities of the Northern Isthmus (Ucizoni)

Mexico is one of the most dangerous countries in the world for HRDs, particularly for those defending their territories and natural resources against business interests. In recent years, Mexico has experienced a boom in “megaprojects” – industrialisation of large areas of the country – supported by the Federal Government. Among these projects is the Interoceanic Corridor of the Isthmus of Tehuantepec (Corredor Interoceánico del Istmo de Tehuantepec [CIIT]), which is comprised of a highway and railway connecting the Gulf of Mexico with the Pacific Ocean, industrial parks and a gas pipeline, and the [Morelos Integral Project](#) (PIM), which includes the construction of two large-capacity combined-cycle thermoelectric plants, a gas pipeline and an aqueduct. Communities and civil society groups are protesting both projects due to concerns about environmental impacts, harm to local livelihoods, overuse of water resources and the criminalisation of human rights defenders. Several HRDs raising these concerns have experienced attacks, including stigmatisation by state authorities which undermines the important work of defenders, often referring to them as obstacles to economic development in the region.

In July 2023, an [observation mission](#) comprising 27 local and international civil society organisations, including the Resource Centre, visited four communities affected by the CIIT and documented serious human rights violations including threats and intimidation, judicial harassment and killings. This included attacks against [Carlos Beas Torres](#) and the Union of Indigenous communities from the North of the Isthmus ([Unión de Comunidades Indígenas de la Zona Norte del Istmo](#) [Ucizoni]), as well as against [individuals from Indigenous communities](#) involved in protests against the development of the project. At present, the project is moving forward despite the lack of consultation and free, prior and informed consent (FPIC) from affected Indigenous communities.

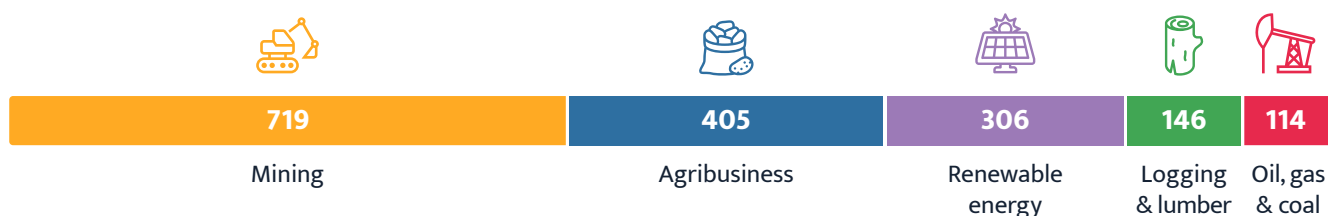
HRDs raising concerns about the PIM have also been attacked. In 2019, [Samir Flores](#), an Indigenous leader and opponent of the PIM, was assassinated. [Juan Carlos Solís](#) and [Myriam Vargas Teutle](#), members of the Peoples’ Front in Defence of Land and Water (Frente de Pueblos en Defensa de la Tierra y el Agua), an organisation supporting Indigenous peoples in Puebla, Morelos and Tlaxcala, [suffered multiple attacks during 2022](#). These attacks show there are still [significant challenges](#) with implementing Mexico’s [mechanism](#) for the protection of HRDs and journalists. More information about attacks against HRDs in Mexico can be found [here](#).



Most dangerous sectors

The five most dangerous sectors for HRDs in the region are based on natural resources: **mining**, **agribusiness**, **renewable energy**,¹ **logging & lumber**, and **oil, gas & coal**.

FIVE MOST DANGEROUS SECTORS FOR DEFENDERS RAISING CONCERNS ABOUT BUSINESS IN LATIN AMERICA AND THE CARIBBEAN (JANUARY 2015 – DECEMBER 2022)



Short-term profit-driven extractive approaches, which have underpinned the global energy model, are core drivers of attacks on defenders and have not provided many of the economic benefits or development typically promised to communities and countries. Data from the Resource Centre's [Transition Minerals Tracker](#) reveals the extraction of six commodities vital to the clean energy transition (cobalt, copper, lithium, manganese, nickel and zinc) are [often linked to attacks against HRDs](#), highlighting the urgent need for a shift away from the extractive sector's historical model of operation, particularly in the context of the global energy transition.

South America's Andes region is rich in both fossil fuels and minerals essential for green energy technology. As one example, [Bolivia recently announced](#) its lithium reserves increased to 23 million metric tons, making it the global leader in reserves of this commodity. The Resource Centre's [research on renewable energy value chains in the Andes](#) shows a history of lax state regulation and poor or non-existent company due diligence in extractive and renewable energy industries, leading to significant environmental damage and attacks against defenders.

Given the anticipated scale of mineral extraction required to aid the energy transition – and mining being the most dangerous sector for HRDs – there is an urgent need for governments across Latin America and the Caribbean to adopt legislation recognising the vital role of HRDs and their right to defend rights. They must also strengthen or implement protection mechanisms for HRDs and public human rights policies for mining operations which comply with Inter-American and UN human rights standards. Further information about the human rights impacts of transition mineral mining can be found in our [Transition Minerals Tracker](#).

¹ Our data includes attacks on human rights defenders in connection with renewable energy projects in the wind, solar, hydropower, biomass and geothermal sectors. The Resource Centre recognises that many communities do not view hydropower or biomass as renewable sources. Its inclusion in our analysis reflects its presence in government climate action plans and aims to provide a comprehensive overview of salient risks linked to the energy transition.

Wayúu people under attack in Colombia

For decades, the Wayúu people in La Guajira, Colombia have [raised concerns](#) about the human rights and environmental harms associated with Cerrejón's open pit coal mine, which has been operating in their territory for more than 35 years. Between 2015 to December 2022, the Resource Centre recorded 22 attacks on human rights defenders from the Wayúu Indigenous group. This included an attack in May 2022 against [Luz Ángela Uriana](#), a Wayúu leader from the Provincial Indigenous reservation in the municipality of Hatonuevo in the region of La Guajira, by armed men who shot at her home. Cerrejón [issued a statement](#) condemning the attack on the leader and calling for the necessary investigations to clarify the facts and prosecute those responsible for the attack. The Resource Centre approached Cerrejón regarding the situation in La Guajira; its responses are available [here](#).

La Guajira is also now the epicentre of the energy transition in Colombia and [concerns have been raised](#) about lack of FPIC related to wind and solar projects. The Resource Centre recorded four attacks against Wayúu human rights defenders in 2022.



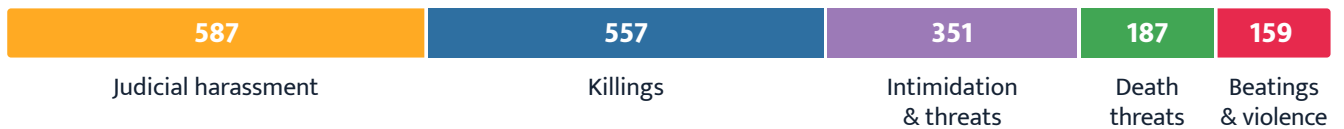
Types of attacks

Between January 2015 and December 2022, more than 550 people in Latin America and the Caribbean were targeted in killings related to their protection of human rights and the environment. This constituted more than a quarter (28%) of recorded cases in the region, compared to killings comprising 18% of attacks on a global level, showing the severity of violence in the region and the urgent need to address root causes of lethal attacks. Judicial harassment, which includes arbitrary arrests and detention, unfair trials and [strategic lawsuits against public participation](#) (SLAPPs), constituted **three in 10 attacks (30%)**. Since January 2015, at least 164 cases bearing the hallmarks of SLAPPs were brought or initiated by companies against activists, journalists and CSOs in the region.

Many attacks are accompanied by other forms of intimidation – such as stigmatisation and defamation campaigns which aim to discredit HRDs' human rights work – and often precede fatal violence. A lack of both investigation into attacks and punishment of those responsible leads to their repetition.

Climate, land and environmental defenders in Latin America are particularly at risk. Since January 2015, nearly 86% of attacks have been against HRDs **protecting their land rights and right to a clean, healthy and sustainable environment in the face of harmful business practice**. They are combating deforestation, pollution, water scarcity, destruction of livelihoods and biodiversity, as well as and protecting cultural heritage.

FIVE MOST COMMON TYPES OF ATTACKS AGAINST DEFENDERS IN LATIN AMERICA AND THE CARIBBEAN (JANUARY 2015 – DECEMBER 2022)



Eighteen people killed on sacred site in Nicaragua

On 23 August 2021, at least [18 people, including Miskito and Mayangna defenders, were killed](#) in the Bosawas reserve in Nicaragua on Kiwakumbaih (Devil’s Rock in Mayangna), a sacred Indigenous site popular for hunting and fishing. They were attacked with machetes and guns by settlers (non-Indigenous people). The Bosawas Biosphere Reserve in Nicaragua is the territory of the Miskitos and Mayangnas Indigenous Peoples. They have suffered systematic attacks by settlers who invade the territory to carry out economic activities, including illegal mining and logging, despite it being a protected area. These illegally extracted resources often end up in the supply chains of global companies. Since political demonstrations were declared illegal and dozens of protesters killed in violent crackdowns by police in 2018, thousands of Nicaraguan HRDs have been threatened and intimidated, with many forced into exile. Although communities defending their land and territories are in an increasingly vulnerable position, the Nicaraguan Government has not responded to this violence, leaving communities exposed and unprotected.

Attacks in the region are carried out against individuals, organisations and groups, resulting in physical and psychological harm, impeding progress on human rights work and draining HRDs’ resources. Fundamental freedoms and progress toward sustainable, inclusive and peaceful societies are being threatened. Attacks against individuals also undermine collective movements, fragmenting resistance against the imposition of economic projects and damaging the social fabric that sustains civil society and communities.



Perpetrators of attacks

Many attacks against HRDs in Latin America involve collusion between the state, private sector and other non-state actors, including illegal miners, loggers, paramilitary forces and organised criminal groups which often facilitate harmful business operations. [Corporate capture](#) in the region means that powerful companies can undermine the protection of human rights and the environment by influencing governments, decision-makers and regulatory agencies to adopt policies and laws benefiting corporate interests without consideration for human rights and environmental impacts.

Afro-descendant leaders under threat in Brazil

Afro-descendant leaders and communities are particularly at risk of rights violations and attacks. They face ongoing racism and discrimination which results in additional obstacles to protecting their rights and holding perpetrators accountable. In [Brazil](#), agribusiness, illegal logging and other forms of exploitation of natural resources threaten traditional communities, such as the Quilombolas. In Maranhão, where the Amazon rainforest accounts for 34% of the territory, seven Quilombola people have been killed since 2020. This includes [Edvaldo Pereira Rocha](#), president of the Quilombolas Association of the Jacarezinho settlement, who was killed in April 2022, just days before the planned publication of a statement criticising illegal logging in the area.

Examples of ways in which companies with operations or supply chains in Latin America and the Caribbean have been involved with attacks on HRDs include:

- ➔ Calling police or state security forces to disperse a peaceful protest their operations;
- ➔ Threatening, firing or calling for the arrest of union leaders;
- ➔ Cooperating with state repression, such as by providing services or products that enable surveillance of journalists and other defenders;
- ➔ Initiating lawsuits against defenders for defamation, damages or incitement to commit a felony;
- ➔ Lobbying for policies that restrict civic freedoms, such as “anti-protest” laws and actions that lead to criminalisation of defenders.



Attacks against Indigenous Peoples

[More than 800 Indigenous communities live in Latin America and the Caribbean](#) with an estimated population of 58 million people. Indigenous Peoples have experienced racism, discrimination and violence for more than 500 years and are particularly at risk of attack when defending their rights, lands and territories.

Since January 2015, nearly 35% of attacks (701) against HRDs in the region have been against Indigenous defenders, despite Indigenous Peoples making up approximately 10% of the population. Many attacks related to lack of respect for collective land rights, right to self-determination and autonomy, and right to FPIC – which are rights protected by international law, including the [American Declaration on the Rights of Indigenous Peoples](#) and [ILO Convention 169](#). **More than 95% of attacks against Indigenous HRDs in Latin America and the Caribbean related to protection of their lands and territories and right to a clean, healthy and sustainable environment.**

Between January 2015 and December 2022, more than 200 Indigenous defenders in Latin America and the Caribbean were killed in relation to their human rights work challenging harmful business practices. The second most common type of attack was judicial harassment (24%), followed by various forms of intimidation and threats (17%).

More than one-fifth of total attacks against HRDs in the region were against women defenders; **38% of these attacks were against Indigenous women.** While defenders of all genders are targeted due to their human rights work, women HRDs challenging corporate power and patriarchal gender norms often face specifically gendered attacks. The [Inter-American Commission for Human Rights](#) has noted women defenders face different forms of threats and specific challenges due to their gender, such as rape and sexual harassment, physical and psychological violence, discrimination, economic marginalisation and stigmatisation or misogynist defamation, which must be analysed and understood through an intersectional lens. In the extractive sector, [research has identified](#) women's participation in consultation processes is poor across Latin America and the Caribbean. Indigenous women experience multiple forms of discrimination and violence as they challenge patriarchy, racism and extractivist economic practices that threaten their lands, territories, livelihoods and cultural and spiritual practices.

Women Garífuna leaders in Honduras

The Honduran Black Fraternal Organisation (OFRANEH) is an organisation that works for the Garífuna people in their permanent struggle to make effective their collective social, economic, cultural and territorial rights, and for their autonomy. OFRANEH members have suffered multiple attacks and aggressions due to their active resistance against the imposition of various economic projects, with attacks including killings, forced disappearances and serious criminalisation processes. Women Garífuna leaders, who represent the cornerstone of the movement, have been hugely impacted.

The Resource Centre has tracked at least 15 attacks against Garífuna women – a figure which only represents the tip of the iceberg – including police intimidation of participants in the “Viva Berta” [feminist camp](#), set up in 2021 to accompany the justice process for the murder of Berta Cáceres. Miriam Miranda, leader and coordinator of OFRANEH, received death threats in [2017](#), [2019](#) and [2022](#) in relation to her work defending Garífuna land and ancestral culture. In 2014, she faced a [kidnapping](#) with [attempted murder](#), along with Karen García, also a member of OFRANEH. Criminalisation processes stand out as a particular issue for Garífuna leaders, including a case opened in 2017 by the owner of a tourism and hospitality company accusing [Miriam Miranda](#), [Madeline Martina David](#), [Neny Heydy Ávila](#) and [Lety Bernárez](#) of libel and slander. Garífuna leaders including [Melisa Martínez](#) and sisters [Jennifer](#) and [Marianela Solórzano](#) have also experienced criminalisation and been accused of land usurpation.



Indigenous People fighting illegal mining in Peru

“ *Illegal activities, such as drug trafficking, are invading our territories and because of the complaints we make to the authorities we are being persecuted, threatened, in some cases assassinated – for the sole reason of defending our forests, which is our only source of livelihood. Flor de Ucayali, Santa Clara de Uchunya and other communities continue to be threatened by drug traffickers and illegal loggers. We are prisoners in our own territory. We cannot walk freely; we live in a very difficult situation.*”

Miguel Guimaraes, President of the Federation for Ucayali and Afluentes Native Communities (FECONAU), Peru

On 17 July 2022, the headquarters of the Organización de Desarrollo de las Comunidades Fronterizas del Cenepa (ODECOFROC) in Peru [was attacked](#) and several of its leaders and public officials were held hostage by around 150 illegal miners. The attack occurred during a general assembly to coordinate actions against illegal mining. [Another attack](#) took place at the headquarters in October 2022. ODECOFROC represents Awajun communities and is an affiliate of the Inter-ethnic Association for the Development of the Forest (Asociación Interétnica de Desarrollo de la Selva Peruana, or AIDSESP), the national representative organisation of Indigenous Peoples in Peru. Indigenous groups and organisations [have demanded](#) the Peruvian Government respect, support and publicly value communities for their work protecting the Amazon region and effectively implement mechanisms to safeguard Indigenous defenders.

Protecting biodiversity and natural resources in Latin America is vital to address the climate crisis and shield biodiversity. The Amazon River basin is the largest in the world and corresponds to approximately 20% of the world's freshwater surface. It represents 5% of the world's continental area, covering part of Bolivia, Brazil, Colombia, Ecuador, Guyana, French Guyana, Peru, Suriname and Venezuela. This area has changed rapidly in recent years due to economic activities implemented in the region, including agribusiness, mining, logging and lumber, and oil and gas industries, leading to environmental degradation of Indigenous Peoples' lands and territories and their forced displacement. [Studies have identified](#) more than 2,000 illegal mining sites across 22 areas in the Amazon. The majority are located in Venezuela, Brazil, Ecuador and Peru. The Amazon region is also acutely vulnerable to climate catastrophe, putting local communities and environments at significant risk. As one example, [recent research shows](#) more than 800 million trees have been cut down in the Amazon rainforest linked to cattle farming in Brazil.

Indigenous defender killed after participating in Brazil Amazon Summit

In September 2022, [Janildo Oliveira Guajajara](#), environmental Indigenous defender and member of the collective Guardiães da Floresta (Guardians of the Forest), was killed near the Araribóia Indigenous territory while returning from an Indigenous celebration. Janildo was fighting against logging in Indigenous territories. Weeks before his killing, Janildo participated in a week-long assembly attended by Indigenous community members and activists to discuss information and strategies for rainforest protection and measures to prevent invasions by illegal loggers. The summit was originally organised by Indigenous defender [Bruno Pereira](#), who was killed in June 2022 along with Guardian journalist [Dom Phillips](#), after meeting with a Union of Indigenous Peoples of the Javari Valley patrol team and Indigenous community members in western Amazonas state.



Opportunities for advancing the protection of HRDs

Despite the significant risks HRDs are experiencing in Latin America and the Caribbean, the following advances in international law and guidance represent an important opportunity to increase protection of defenders and strengthen access to remedy in the region.

UN Working Group on Business and Human Rights' Guidance on Ensuring Respect for Human Rights Defenders

In 2021, the [seminal interpretation](#) of the UN Guiding Principles on Business and Human Rights (UNGPs) by the UN Working Group on Business and Human Rights clarified the normative responsibility of business actors to respect the rights of defenders and highlighted the critical role they play in human rights due diligence processes and in enabling business enterprises to understand the concerns of affected stakeholders. Under the [UNGPs](#) and this [subsequent guidance](#), states must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This includes protecting freedom of expression and association and creating a safe environment where they can speak freely without retaliation. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

Companies and investors also have a responsibility to avoid infringing on the rights of others and to identify, prevent and remedy any harm against HRDs – and proactively engage with them and any stakeholders who might be affected by their operations. Even in cases where there are no apparent direct links between companies or investors and attacks, business actors with operations, supply chains, business relationships and/or investments are expected to proactively [use their leverage](#) to promote respect for the rights of defenders and civic freedoms.

In this context, governments across Latin America and the Caribbean region must ensure defenders' work is not being limited or obstructed and the legal system is not being used to criminalise the legitimate activities of human rights defenders.

Latest draft of the legally binding instrument

In July 2023, an [updated draft](#) of the legally binding instrument to regulate the activities of transnational corporations and other business enterprises was released. Its publication comes ahead of the October 2023 session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. This treaty process represents a significant opportunity to create a binding instrument to hold companies accountable for human rights abuses. The [latest draft](#) emphasises human rights defenders have an important and legitimate role in promoting the respect of human rights by business enterprises and that states have the obligation to take “all appropriate measures to ensure an enabling and safe environment for the exercise of such role.” It is crucial to ensure rightsholders are at the centre of negotiations so that the treaty reflects the needs of those experiencing the most harms and includes provisions to protect HRDs. More information about the process can be found on the Resource Centre’s [Binding Treaty Portal](#).

Escazú Agreement

The [Escazú Agreement](#), which entered into force in April 2021 after years of advocacy by civil society and [Indigenous communities](#), brings hope for improvement in the protection of HRDs in Latin America and the Caribbean. The treaty strengthens the link between human rights and the protection of the environment by stipulating clear obligations on state parties, including for states to ensure a safe and enabling environment for defenders, adopt adequate and effective measures to recognise, protect and promote all their rights and investigate and punish any attacks HRDs experience while doing their work. In April 2023, the election of [six public representatives](#) and the [support committee for implementation and compliance](#) marked an important milestone towards the implementation of the agreement. As a critical next step, [an action plan](#) to enforce the Agreement should be approved.

As of August 2023, 15 countries in Latin America and the Caribbean have ratified the Escazú Agreement: Antigua and Barbuda, Argentina, Belize, Bolivia, Chile, Ecuador, Grenada, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia and Uruguay. **More countries in the region must urgently ratify the agreement and those who have already ratified, must engage in effective implementation.**

Esperanza Protocol

The [Esperanza Protocol](#), launched in December 2021 by civil society organisations and experts in international law, presents another opportunity to strengthen protection of HRDs in Latin America and the Caribbean. It provides guidelines based on international human rights law to support the investigation, prosecution and punishment of threats against HRDs by governments and create an enabling environment for the protection of human rights worldwide. While the protocol primarily focuses on the duty of states, it also notes business actors must ensure their activities, actions and omissions do not lead to threats against defenders and address any harm done to them.

Forthcoming Advisory Opinion on Climate Change by the Inter-American Court

The forthcoming Advisory Opinion on Climate Change by the Inter-American Court of Human Rights represents an important opportunity to establish key obligations for states and business actors to protect HRDs protecting the environment and recognise their crucial role advancing human rights in the context of the climate crisis.

Based on current international human rights law, the Inter-American Court should:

- ➔ Reiterate that states in the region must implement legislation safeguarding HRDs, ensure access to information and public participation in decisions concerning environmental issues and eliminate any laws criminalising or penalising freedom of expression, assembly and association (including civil laws).
- ➔ Call for the respect of the right to free, prior, and informed consent (FPIC) of Indigenous and Afro-descendant communities according to the ILO Convention 169.
- ➔ Specify duties to protect women defenders, including in alignment with Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [General Recommendation 39 on Indigenous Women and Girls](#) and adopt an intersectional lens in the protection of other HRDs, including elderly people, people with disabilities, LBGTQ+ defenders, youth and children.
- ➔ Consider the standards of protection recognised under the [UNPGs](#) and subsequent [UN Working Group's guidance on defenders](#).
- ➔ Mandate that under international human rights standards, there is a duty to ensure effective remedy for violations against defenders, including by strengthening judicial systems to hold businesses accountable for retaliation against defenders and ensure they actively participate in the investigation and prosecution of those responsible for attacks.
- ➔ Establish that states must develop and sustain mechanisms to collect and report data on non-lethal and lethal attacks against defenders, which includes disaggregated data on gender and ethnicity, types of attacks and actors involved (state, non-states and businesses). This data collection must also record the dates of attacks, which would help inform more effective policies and protection mechanisms to reduce attacks on defenders, including those policies being developed under the Escazú Agreement.

The Inter-American Court must also consider key expectations under international law for business actors to:

- ➔ Adopt and implement policy commitments recognising the valuable role of HRDs and the risks they face, ensure effective consultation with HRDs at all stages of the due diligence process and commit to zero-tolerance for reprisals throughout the company's operations, supply chains and business relationships.
- ➔ Publicly recognise that defenders have a right to defend human rights and are essential allies in helping businesses adhere to their responsibilities under the UNGPs.
- ➔ Engage in robust human rights and environmental due diligence and ensure effective access to remedy for those harmed by business activity in accordance with the [UNGP](#)s and the UN Working Group on Business and Human Rights' [guidance on ensuring respect for HRDs](#).
- ➔ Recognise that Indigenous and Afro-descendant defenders are disproportionately at risk and respect Indigenous Peoples' rights, grounded in their rights to self-determination (lands, territories and resources) and right to FPIC, including their right to define the process by which FPIC is achieved and to withhold consent (more detailed recommendations available [here](#)).
- ➔ Acknowledge the increased risks defenders face in conflict-affected areas, conduct a conflict analysis and engage in heightened human rights and environmental due diligence to prevent and mitigate harm. They must also ensure effective access to remedy for those harmed by business activity, in accordance with the UNGPs and the Human Rights Council report on defenders operating in conflict and post-conflict situations ([A/HRC/43/51](#)).



Recommendations for governments

The scale and severity of attacks against HRDs challenging harms caused by business activities in Latin America and the Caribbean, emphasise the need for immediate government action. States must fulfil their duty to protect HRDs by acting on the following recommendations:

- ➔ Pass and implement legislation recognising the right to defend rights and the vital role of defenders, both individual and collective, in promoting human rights, sustainable development and a healthy environment, including committing to zero-tolerance for attacks (more detailed recommendations available [here](#)). States must also adopt legal recognition of the specific rights of Indigenous and Afro-descendant peoples (more detailed recommendations available [here](#)).
- ➔ Accede to or, if already ratified, fully implement key international guidelines, such as the UNGPs, and regional standards protecting the rights of defenders raising concerns about harmful business practice, including the Escazú Agreement.
- ➔ Enact and/or strengthen national protection mechanisms in alignment with Inter-American human rights standards, which include both collective and individual protection and account for differing needs.
- ➔ Ensure effective remedy for violations when they occur, including by strengthening judicial systems to hold businesses accountable for retaliation against HRDs and actively participating in investigation and prosecution of those responsible for attacks – in line with the recommendations set out in the Esperanza Protocol.
- ➔ Reform any laws criminalising or penalising freedom of expression, assembly and association, including passing anti-SLAPP legislation to prevent companies from silencing defenders (more detailed recommendations available [here](#)).
- ➔ Collect and publish data on non-lethal and lethal attacks to inform more effective protection mechanisms, including those being developed under the Escazú Agreement.





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Business & Human Rights Resource Centre is an international NGO which tracks the human rights impacts of over 10,000 companies in over 180 countries, making information available on our 10-language website.

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