



# Just recovery in peril

## HUMAN RIGHTS DEFENDERS FACE INCREASING RISK DURING COVID-19

Since the start of the COVID-19 pandemic attacks against human rights defenders (HRDs) have continued unabated. In fact, many defenders have faced greater risks as some governments have misused the situation to further curtail civil rights to participate in public decision-making, and deploy state forces to repress legitimate, peaceful protests and obstruct access to justice. The pandemic has exacerbated inequalities and highlighted the need for a just recovery where business respects human rights and the crucial role that defenders play. We need their voices at this time, yet in too many countries they are being silenced through threats, intimidation, violence and killings.

Since the onset of COVID-19 (March 2020)<sup>1</sup> until the end of September 2020, Business & Human Rights Resource Centre has tracked 286 cases of attacks against defenders focused on business-related activities, which are part of an ongoing pattern of abuse. There were almost 20 more attacks during this period than on average for the last 5 years during the same period. This represents a 7.5% increase<sup>2</sup> and points to opportunistic repression perpetrated by business, governments and other actors.

<sup>1</sup> For the purpose of this paper, we are considering March 2020 as the onset of COVID-19. We have analysed cases between March 2020 and the end of September 2020, and the corresponding periods in datasets from other years since we started tracking attacks (2015-2019).

<sup>2</sup> We are comparing this period's average to the 5-year average during the same period (March-end of September). The average is 224 cases, and this year's number is 222, which is a 6% increase.

“ In this COVID-19 scenario, we, the indigenous peoples, have been able to organise ourselves in order to deal with the pandemic through our traditional knowledge and our forms of organisation, exercising our right to self-determination... We are the ones who put our bodies and territories as guardians of the natural commons. In this defense of our rights, women have had a leading role... As a preventive measure during the current pandemic, we demand the immediate suspension of all activity that promotes the entry of outsiders into indigenous territories... [and] request a moratorium on all extractive activities within or near our indigenous lands in order to protect our peoples.”

[Declaration of Indigenous Peoples Participating in the 5th Regional Forum on Business and human rights for Latin America and the Caribbean](#)

Defenders play an essential role in creating a more sustainable future for all by flagging risks in company operations and supply chains. They put themselves and their communities at risk by speaking up against business-related harms on people and the environment, and proposing more rights-respecting alternatives to unsustainable business practices. Therefore, prevention of attacks on defenders is crucial for the prevention of business-related human rights abuses now and as we prepare for a post-pandemic, fairer future.

“ Criminalization policies, as well as the violence exercised by States and companies against human rights defenders, who belong to afro-descendant communities, have resulted in a serious increase in cases of assassinations and aggressions against us... In the face of these serious and recurrent violations, we... mobilize with our autonomous organizations...to peacefully claim and defend the guarantee of our ethno-cultural and territorial rights.”

[Joint Declaration of Afro-descendant Communities in the Business Context of Latin America and the Caribbean](#)

The COVID-19 pandemic has shone a light on inequality in societies across the globe, as well as laid bare shortcomings of our current economic systems. It is clear some groups - especially landless farmers, agricultural workers, rural women, indigenous peoples, Black and Afro-descendant communities, migrant workers, female factory workers and gig economy workers - are disproportionately affected by the pandemic due to years of systemic discrimination. [Hundreds of millions](#) of people have lost their jobs, including millions of vulnerable workers in the garment industry, as a result of order cancellations and non-payment by apparel brands. Many workers considered “essential”, already in low-paid, precarious positions, have been put at higher levels of risk through their work in industries such as agriculture and [meatpacking](#). Others, including (mostly female) care workers, have been overlooked and not included in the COVID-19 response programmes of governments. Demands from these workers, communities and civil society supporting them have been met with intimidation, violence, obstruction and wilful disregard.

“ We are already isolated [by] the epidemic. What does this decision [to remove our protest camp] have to do with the struggle against coronavirus? Miners continue to work, but we are removed.”

[Kazdaglari Resisters, environmental activist group, Turkey](#)

**OUR RESEARCH FOUND THAT FROM MARCH – SEPTEMBER 2020:**



**EVERY DAY**

On average, **a defender was attacked every day** during this period for standing up for human rights or environmental protection



**ONE QUARTER**

Almost one quarter of attacks were against **women defenders**



**MORE THAN A THIRD**

Representing more than a third of all cases, **community members and indigenous people** were at highest risk



Attacks happened in almost every business sector. Almost **one in three** were associated with mining, **one in five** with construction and **one in eight** with agribusiness



**Attacks occurred in 44 countries**, most frequently in Latin America (Brazil, Colombia, Guatemala, Honduras and Mexico), followed by Eastern Europe and Central Asia (Russia and Belarus) and Asia (the Philippines and Cambodia)



The most common type of attack was **arbitrary detention, with 108 cases**. Other types of attacks also occurred, including **intimidation and threats (51)**, **killings (46)** and **beatings (15)**



At least **105 out of 286 cases** were linked to **retaliation for advocacy focused on specific companies**. None of these companies have policies that mention the protection of defenders



In **39 out of 286 cases**, there was **more than one actor involved**, indicating there is collusion among powerful actors, including state authorities, the police, companies and in some cases organised crime



**Local and state authorities** were involved in more than **one third of cases**, often in relation to cases brought against defenders in local courts or authorising heavy-handed police interventions in protests



There were at least seven **Strategic Lawsuits Against Public Participation (SLAPPs)** filed against defenders between March and August 2020: one recent victory was the dismissal of a case against journalist, brought by Thammakaset Company in Thailand, which alone has filed 38 criminal or civil complaints against 22 individuals in the past four years

# Case studies

The experiences of labour rights lawyer Susana Prieto, community leaders in Ucayali and journalist Hopewell Chin'ono, show how business-related human rights defense in the context of COVID-19 aggravates risks for defenders and how the pandemic is used as a pretext to silence them and their constituencies.



In June 2020 in Mexico, [Susana Prieto](#), a prominent labour lawyer, was arrested on accusations of inciting violence after she campaigned against policies at *maquiladora* plants in Ciudad Juárez that put workers at risk of contracting COVID-19. She filmed walkouts at plants that refused to shut down or pay their workers in full. Her arrest was met with a strong show of solidarity by workers, including a protest in March by workers at **Tridonex**, who were accompanied by supporters from other plants. Her family members and colleagues denounced her arrest as retribution for organising these workers. The lawyer's daughter, [said](#): “We think this is an attempt to get her out of the picture”. [Tridonex did not comment](#) on the situation.



Land and environmental defenders, in particular indigenous leaders, have also been significantly affected. This includes defenders challenging irresponsible practices by companies in the [mining](#), agribusiness, renewable energy and construction sectors. In many cases, companies in these sectors were allowed to continue operating during the pandemic, with laws passed benefiting these industries while increasing health risks for workers and local communities. [Some companies continued to operate](#) without having proper authorisation.



For example, in June 2020 [Ocho Sur P](#) continued operating its palm oil plantation in Ucayali, despite a rapid COVID-19 testing process allegedly identifying positive results in 90% of workers. The operations continued, despite two previous orders from Peruvian authorities demanding the company [cease operations](#) due to deforestation of the Amazon. The relevant Peruvian authorities also deny that **Ocho Sur P** was granted permission to continue its plantation operations during the national state of emergency decreed in March 2020. In addition, **Ocho Sur P** has been accused of dispossessing the indigenous community of Santa Clara de Uchunya of its ancestral lands. This has driven [fierce competition](#) for land among groups of non-indigenous settlers, exposing community members to intimidation,



threats and attacks, which they claim are linked to the company. These have [continued and worsened](#) during the pandemic. There have been [many threats and attacks](#) on defenders in this area, including most recently against [Miguel Guimaraes Vásquez](#), president of FECONAU (Federation of Indigenous Communities of the Ucayali). This violence is linked to the Peruvian State's failure to legally secure Indigenous territories and to the expansion of agribusiness and extractive industries, as well as to criminal activities such as narcotics production. In September and October, Guimaraes reported receiving [death threats](#) by phone. The latest [threat](#) came one week after he participated in a [virtual public hearing](#) with the Inter-American Commission on Human Rights. The hearing focused on killings of indigenous defenders and alleged corruption. The community, FECONAU and allies are currently [calling upon Peru's Constitutional Tribunal to issue a decision](#) over the community's territorial claim and enforce sanctions against the company. **Ocho Sur P** has been invited to respond to these allegations by the Resource Centre and others. The company did not respond to the news outlet [Mongabay](#) when asked to comment. It responded to the Resource Centre regarding allegations related to deforestation, attacks against defenders and actions during the pandemic. [The response](#) mentioned company actions during COVID-19, including increased pay and other forms of support to offset price collapse during the crisis. Despite multiple alleged abuses, **Ocho Sur P** reportedly supplies fruit to several companies that are part of the [Roundtable on Sustainable Palm Oil](#), which [certifies best practices in this sector](#) and has a [policy](#) on human rights defenders.

Similarly in [Indonesia](#), some companies have reportedly taken advantage of the lull in public and press oversight during the pandemic to intensify land grabbing. In resulting land conflicts, at least two land defenders were killed, four arrested and several seriously injured in Sumatra and Kalimantan. In October 2020, the government passed the controversial Omnibus Law on Job Creation, streamlining business permits, investment requirements and labour laws by simplifying 79 business laws. The law came under criticism from [civic society](#) and also [responsible investors](#), including **Aviva Investors**, **Domini** and **Sumitomo Mitsui Trust Asset Management** who expressed concerns about the law's impact on the environment, saying: *"While the proposed regulatory changes aim to increase foreign investment, they risk contravening international best practice standards intended to prevent unintended harmful consequences from business activities that could deter investors from Indonesian markets."*





Defenders denouncing corruption have also experienced attacks. In Zimbabwe, the government has used COVID-19 as an excuse to disperse mass protests against corrupt practices related to purchasing personal protective equipment (PPE). [Hopewell Chin'ono](#) was one of the defenders that exposed corruption in the government procurement of coronavirus supplies. Chin'ono, a journalist, investigating a fund intended to buy PPE, found that a [Dubai-based company tied to money did not exist, and that US\\$2 million had been wired to Hungary](#). He reported that the son of President Emmerson Mnangagwa was the head of the fictitious company, which was denied by Mr Mnangagwa. Chin'ono was arrested and held for several weeks. In prison, Chin'ono said he [“lived in a 16-person cell that housed 44 people for 17 hours per day with no running water.”](#) On November 3<sup>rd</sup>, he was [rearrested](#) for allegedly breaking bail conditions - an allegation that legal sources described as “nonsense”.



These represent just a few examples of the heightened risk defenders have faced as the pandemic exacerbated tensions and conflicts. Some governments - in collusion with companies - have used the pandemic to slash environmental and labour protections and fast-track approvals of contentious and long-opposed projects. These governments have framed projects by some of these industries as “essential” economic activities, despite the health risks to workers and communities. In response to the pandemic, some countries have also [introduced or increased the presence of military and police in rural areas](#), where indigenous peoples and Afro-descendant communities live, leading to an escalation of violence. This has been compounded by the inability of human rights and environmental organisations to provide [protective accompaniment](#) to communities and defenders at risk. High levels of arrests are particularly worrying as people held in detention are at increased risk of contracting COVID-19 due to overcrowding, poor sanitation, shortage of water and inadequate PPE. Commenting on the situation for indigenous people during the pandemic, indigenous peoples’ representatives [said](#): *“We reaffirm our concern for indigenous human rights defenders, who are persecuted, criminalised and murdered for defending their territories and indigenous rights. We need concrete and joint actions - by states and businesses - to protect and respect human rights defenders. In this sense, we request the recognition and strengthening of individual and collective protection mechanisms.”*

In relation to the apparel and retail sectors, one of the most common types of attacks on defenders has been [layoffs](#) that target unionised workers and labour activists. The Resource Centre has tracked several apparel factories using the pandemic as a cover to attack workers’ freedom of association, publishing [a report on ‘union-busting’](#) in August. Our report found evidence that garment factories supplying major fashion brands are using COVID-19 as a cover to target and dismiss unionised workers in Cambodia, Myanmar, Bangladesh and India. We noted a stark gap between brands’ responses and policy commitments, and the lived realities of workers in their supply chains. These attacks on labour rights defenders are part of a wider crackdown on labour organising in apparel producing countries, including [Mexico](#), [USA](#), [Jordan](#) and [Zimbabwe](#).



Defenders have also been silenced in more subtle ways, by governments making consultations inaccessible or less transparent. In [Colombia](#) for example, free and informed prior consultation (FPIC) with indigenous people ahead of potential business projects has moved online, allegedly to “avoid the spread of COVID-19”. While risks of transmission are real, this move ignores limits to technological and internet connectivity typically experienced by indigenous communities and is inconsistent with their traditional decision-making practices. Commenting on this development, Forest Peoples Programme (FPP) said: *“If disconnected from self-determined development, FPIC loses its integrity and risks being transformed into a disempowering concept... The situation in Colombia is precisely this worst-case scenario... Rather than protect rights, it put them at profound risk.”*



The pandemic is also being used to pass legislation in favour of business interests. In [Slovenia](#), the government has included provisions aimed at deregulating construction and speeding up infrastructure investments during economic recovery as part of its COVID-19 crisis stimulus package, facing strong opposition from civil society. Among other changes, this [would limit civil society](#) participation in construction permits processes, as appeals can no longer be initiated by NGOs that are smaller than 50 members, restricting participation and paving the way for several projects that have long been opposed on environmental grounds. In addition, Slovenia’s strict COVID-19-related limits on freedoms of association and assembly have been questioned by the [Constitutional Court](#).



Most companies and investors are still failing to see that protecting defenders and addressing the risks they face is the only way to do business sustainably and in line with the UN Guiding Principles on Business and Human Rights. While states have a duty to ensure the safety of defenders during a pandemic and accountability and remedy related to abuses of human rights, companies and investors have a responsibility to assess whether their activities pose risks to the work and safety of human rights defenders and show they are taking action to prevent and mitigate harms. Most companies do not do enough to safeguard defenders and may cause, contribute, or be directly linked to attacks. Among the companies ranked by Corporate Human Rights Benchmark (CHRB), half scored zero on due diligence indicators, only [29 out of 200 mention defenders in their policies](#), and even fewer have made any specific commitments to the safety or inclusion of defenders during the pandemic, despite calls for them to do so.

# Good business to protect defenders

Conversely, some business actors acknowledge that protecting the rights of defenders and the prevention of business-related human rights abuses are intertwined and furthermore, that they have the responsibility to respect these rights. For example, the International Finance Corporation (IFC) has [recognised](#) the kinds of heightened risks that defenders face during the pandemic. According to the IFC:

“ ‘Reprisals against project stakeholders who voice opinions or opposition to project activities have grown in visibility worldwide, with the potential to be magnified during the COVID-19 pandemic’ and encouraged the businesses they work with to ‘leverage company messaging, particularly at the board and management level, to reinforce the zero-tolerance [to attacks against environmental and human rights defenders] message to workers, communities and external stakeholders.’”

It was also encouraging that several business associations in [the Philippines](#) have publicly denounced an anti-terror law deemed a threat to civil society, as it opens doors to arbitrary arrests and long prison sentences for people or representatives of organisations that are critical of the government. Several leading business associations from finance and banking, tourism, technology, private education and other sectors stated their opposition:

“ in the strongest possible terms... the enactment at this time of the Anti-Terrorism Act of 2020 ... is highly divisive – because it poses a clear and present danger to human rights enshrined in [the] Constitution.”

In addition, there is increasing recognition of the important role of defenders in law. With its imminent [entry into force](#), Escazú agreement in Latin America will be the first international treaty to explicitly protect the rights of environmental defenders. This will ensure a safe environment for them to act, ensure prevention and prosecution in response to attacks, and grant them access to information and resources. With the rise of mandatory human rights due diligence legislation around the world, the role of defenders focusing on business will only get more important, including through the potential introduction of the [business duty to conduct effective, meaningful and informed consultations](#). This duty would require consultations with both affected and potentially affected rights-holders, including but not limited to communities, workers, trade unions, civil society and women’s organisations, human rights defenders and indigenous peoples.

The inclusion of defenders in business decisions and processes is vital and particularly challenging right now. Greater inclusion depends on defenders’ circumstances and in all cases needs to be determined by defenders themselves. For example, holding consultations with indigenous people in any form during COVID-19 can be [problematic](#), given their very survival depends on their ability to protect themselves from outsiders during this time. Indigenous defenders have emphasised that going forward, consultation instruments must not evolve into a mere formality, implemented solely at the request of judicial decisions, but rather ensure and guarantee substantive rights to consent, including the right to say “no”.



# Just recovery

There are many possible paths to recovery, but a rapid return to business-as-usual will only perpetuate the deep inequalities between companies and the workers and communities they depend on. We have an urgent opportunity to reimagine and rebuild an economy that serves and respects the rights of all its participants. Business commitment to the recognition of communities, defenders and trade unions as social partners, and their systematic inclusion in human rights due diligence are indispensable to this. As Lise Smit at the British Institute of International and Comparative Law (BIICL) [says](#), “*Human rights due diligence should focus on the risks to the rights-holders, and not just on the risks to the company... In this way, it is absolutely essential for civil society to play a role: local civil society and human rights experts are the ones who know what the risks are to rights-holders.*”

As HRDs are at the forefront of protecting human rights and the environment, they are leading experts in building a just and sustainable recovery from this crisis. Some actors are recognising this. The European Trade Union Confederation, for example, is currently calling on EU labour ministers to ensure companies [give workers a say](#) over COVID-19 restructuring, and the [Zero Tolerance Initiative](#) recently stated that “*any response [to COVID-19] must be developed in consultation with indigenous peoples, Afro-descendant and local communities and other human rights defenders.*” The indigenous peoples participating in the 5<sup>th</sup> Regional Forum on Business and Human Rights for Latin America and the Caribbean also [demanded](#) their full participation, in identifying the impacts of business projects and stressed that the way in which these social and environmental studies are currently being implemented do not identify the cultural impacts on our ancestral territories.

Governments, companies and investors need to hear these calls and ensure that defenders are not only protected from attacks but are also leading participants in a just recovery.



Photo by IndustriALL Global Union