PROTECTING DEFENDERS

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SCIENCE FOR ACTION

Global LAND Programme

INTERNATIONAL LAND COALITION

PROTECTING DEFENDERS

The Science for Action Series is jointly coordinated by the International Land Coalition (ILC) and the Global Land Programme (GLP). It brings together key findings from research networks relevant to ILC'S ten commitments to People-Centred Land Governance. The Series facilitates, the exchange of knowledge between scientists, civil society and grassroots organisations to strengthen the efforts of land users, practitioners and policy-makers to bring about positive change in land governance.

This Brief refers to Commitment Ten: Respect and protect the civil and political rights of human rights defenders working on land issues, combat the stigmatisation and criminalisation of peaceful protest and land rights activism, and end impunity for human rights violations, including harassment, threats, violence and political imprisonment.

The brief is based on research carried out by Trócaire, an agency of the Irish Catholic Church and member organisation of the ILC.

Land and environmental defenders (LEDs) are human rights defenders (HRD) that promote and peacefully defend human rights in connection with territories, natural resources, livelihoods and climate. The ILC seeks to protect their rights and lands and, together with partners such as Trócaire, support them in their fight for justice.

WHO ARE LEDS?

Ordinary people are increasingly finding themselves on the frontlines of a battle to defend their land and territories from corporate or state abuse and exploitation. Many violations are invisible, as competition for land conditions and access to natural resources drives large-scale land acquisitions and pressures arising from additional claims to land for carbon mitigation and biodiversity conservation, further intensifying global inequality. In this context, LEDs are struggling to defend their rights to land and territories.

FACING CHALLENGES

INCREASING COMPETITION FOR LAND

Competition for land has increased dramatically in recent years, with over 49 million hectares of smallholder or community land being acquired by large corporations for commercial use since the early 2000s.[1] Small-scale land users are vulnerable to abuse by governments and large corporations that operate across national borders. These actions fail to recognise the rights of marginalised groups, such as smallholders and local communities, and the legal frameworks that should protect their rights.[1]

VIOLENCE AND INTIMIDATION

Communities protecting their territories and lands often face threats of violence and intimidation by governments and large corporations intent on large-scale commercial exploitation of their lands for mining, logging and large-scale agricultural production, as well as hydroelectric and large infrastructure. There are patterns with which companies tend to enter a territory (such as co-optation of leadership, corruption or threats) that result in intra-community disintegration and confrontation, and further deepen the dynamics of corruption of public institutions involved (economy of capture).

Between 2002 and 2018, more than 1,734 people worldwide were reportedly killed defending their lands.[2] LEDs are particularly vulnerable to threats to their safety and freedoms, with statistics showing that they are three times more vulnerable than other HRDs.[1] In 2020, among 919 reported violations, Frontline Defenders (a network founded in Dublin to protect at-risk human rights defenders) identified detention or arrest, legal action and physical attack as the most common.[3] These attacks on LEDs and their human rights perpetuate a cycle of violence and repression.

POWER IMBALANCES AND IMPUNITY

Many LEDs find themselves persecuted by states that have often been found to be linked with corporate interests that target and criminalise defenders in sustained campaigns.[1,3] Some countries have implemented legal reforms that, for example, legalise unlawful encroachment on community and indigenous lands or expand use rights or concession access to both domestic and foreign investors. Human rights NGOs working on LED issues are often branded as organisations involved in terrorism, and several have been forced to close based on these accusations.[2]

Transnational companies wield enormous economic and political power that tends to align with the agendas of major political players or national governments. Legal frameworks are often developed to attract and maintain investment, leaving little recourse for the victims to access justice.[1,4] Corporations operating in industries such as logging, mining, energy, dam construction, and agribusiness pose the greatest threat to LEDs.[3]

The perpetrators of such abuse are often undeterred in their actions due to ineffective implementation of laws and poor support for resolution mechanisms. As a result, violations of the principle of Free Prior and Informed Consent (FPIC) and an endless cycle of human rights violations threaten local communities and their lands.[1]

Photo credit: Trócaire

GENDER DISCRIMINATION AND SEXUAL ASSAULT

Female LEDs are particularly targeted through smear campaigns and threats of sexual violence. Gender-oriented intimidation campaigns are often levelled against women campaigners, questioning their familial roles, sexuality and morals. They are threatened with sexual assault and rape.[4,5] Gender discrimination and sexual assault, as well as threats to LED children's safety and integrity, are often used as tools of intimidation in efforts to repress those who defend their lands and communities, which can result in psycho-emotional impacts (stress, anxiety, insomnia, trauma, permanent fear of violence, etc.). In addition, female LEDs are sometimes discriminated against by their partners, families and communities for working on such issues, and, in some cases, communities/organisations do not want to deal with gender discrimination or gender-based violence (GBV) as it has the potential to divide the community against big projects. ▶

A GLOBAL CIRCLE OF SUPPORT

Groups are working to raise awareness of violations against LEDs, such as the Alliance for Land, Indigenous and Environmental Defenders (ALLIED*). With upward of 80 members, including Trócaire and the ILC, the ALLIED aims to offer a space for sharing, learning and joint advocacy planning with the goal of better protecting and supporting LEDs.

The ALLIED hosts a number of working groups, including the Data Working Group (DWG) co-led by the ILC. Harmonising and aligning incident reporting methodologies, the DWG is currently building a joint online database beyond killings. The Supports Working Group, of which Trócaire is a member, is focused on collating resources for LEDs both at an international and national level. The Legal and Advocacy Working Group also coordinates with diplomatic missions, businesses and other bodies. The ALLIED works jointly to promote and provide integrated protection for defenders. Contributing to this work, the ILC has set up regional emergency funds that respond to the urgent needs of defenders under threat. Currently, two such funds are in place, one for Latin America and the Caribbean, and one for Africa.[6]

* Formerly known as Defending Land and Environmental Defenders Coalition (DDCoalition)

FINDING SOLUTIONS - EFFECTIVE SUPPORT

A number of local, regional and international organisations have been established to provide legal, financial and practical assistance to LEDs. Legal support, including strategic litigation and integrated support for criminalised LEDs in national and international courts, and in communities' cases against corporations, is particularly important for beleaguered LEDs.[7]

RAISING AWARENESS

Raising awareness of the unique risks faced by LEDs is a first step in ensuring their protection and holding those who perpetrate violations against them accountable. Campaigns that raise awareness of individual and community cases of dispossession and human rights infringements can leverage support from the local, regional and even the international community. Petitioning governments as well as international bodies can also be a useful awareness building strategy.

Engagement with media, social media included, is a powerful way to engage a wider audience and make visible the attacks on LEDs. This can be critical in raising financial and other types of assistance for LEDs. By bringing cases to the attention of a wider audience, it is possible to highlight instances of human rights violations, putting more pressure on local legal systems and authorities to curb the impunity of companies and national governments.

INVOLVEMENT OF GLOBAL AND NATIONAL ACTORS

Direct involvement of transnational actors in competition over land resources affects people and landscapes throughout the world. It necessitates the establishment of new, global regulatory norms that prevent 'offshoring' of waste and/or establishment of polluting industries, as well as expansion of logging, mining and large-scale agricultural production into community landscapes without free prior informed consent (FPIC) and compensation mechanisms for the environmental damage caused. In addition, supply chain sustainability commitments by major corporations can better assure that human rights and environmental protections are respected.

Engaging high-profile actors and authorities from outside the community, for example diplomats or international human-rights organisations, that operate at national or international levels, helps to increase pressure on companies and home states to comply with human rights guidelines.

Coordinating other donors, networks or NGOs on cases is another avenue of assistance. Where a complaint must be lodged with a UN or regional protection mechanism, CSOs that provide assistance in this area offer experience and background knowledge of the legal and regulatory procedures involved in putting forward cases against human rights violators. This can greatly enhance the likelihood of success of legal mechanisms for protection.

TRAINING COMMUNITIES AND PROTECTING RIGHTS

Training communities on their legal rights to access land, as well as how to defend their claims to it, can be incredibly empowering. Trócaire and other organisations also provide psycho-social support for LEDs as well as their families and communities, with particular emphasis on the needs of women's rights defenders.[1]

FPIC forms part of the universal right to self-regulation. It is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and aims to establish consultation with, and bottom-up participation from, indigenous populations and local communities on matters

Photo credit: Gerard McCarthy for Trócaire

Photo credit: Jason Taylor/ ILC

that impact on their communities and territories. It was established to ensure that indigenous peoples' rights to self-governance and self-determination are protected in relation to projects that impact on their lives.[8] This is a useful mechanism that governments and international organisations can utilise to strengthen the resource rights of indigenous and local communities.[1]

Trócaire provides community training to campaigners and families, promoting a better understanding of their rights and critical communication and advocacy skills. It also works to bear witness to the dangers faced by LEDs and communities in countries such as Guatemala, Honduras and Myanmar, where indigenous populations have been evicted from their lands to make way for land expansion to benefit corporations.[9] ▶

FINDING SOLUTIONS – LOCAL AND GLOBAL RESPONSES

Abelino Chub Caal in Guatemala
Abelino Chub Caal worked in conjunction with Fundación Guillermo Toriello (FGT), a Trócaire partner, to assist the Maya Q'eqchi communities in securing their land rights when an African plantation company sought to evict them from their land. He was subject to attempted bribery and criminalisation by the African plantation company in collusion with the justice system. Trócaire provided holistic support, including logistical, economic, medical and psycho-social assistance, complemented by effective legal, policy, advocacy, campaigning and communication strategies. This resulted in a Court decision that led to an investigation into the company's anomalous/irregular land purchase and a major victory in a crucial land rights case for the community and country.[10]

The UN and the Irish Government
Trócaire has called for a legally binding UN treaty on business and human rights to be established to enforce corporation and government accountability and ensure that human and environmental rights are respected. They are working with the Irish Government to outline a framework to prevent these violations and abuses, and protect communities and HRDs (including LEDs) through a UN treaty that would regulate the activities of businesses, including transnational corporations. They are also working to ensure that the EU is actively involved in the treaty process and supports the international regulation of companies.

FINDING SOLUTIONS - BETTER GOVERANCE

SUSTAINING SUPPORT FROM THE GLOBAL COMMUNITY FOR SAFE AND SECURE FUTURE FOR DEFENDERS AND THEIR COMMUNITIES

One way in which international bodies such as the UN Human Rights Council address issues like defending LEDs is through international agreements and guidance. The UN Guiding Principles on Business and Human Rights (UNGPs) sets a global standard on business and human rights, and targets states and corporations with guidance on how to enhance operational practices in relation to business and human rights.[1] Similarly, the Indigenous and Tribal Peoples Convention 169 was established by the International Labour Organization as a binding international convention designed to ensure the involvement of Indigenous Peoples in matters relating to their livelihoods and resources.[11]

Facilitating communications to elicit support from regional and international bodies such as the UN, foreign governments and embassies or advocacy organisations is an indispensable source of assistance to LEDs. Key ways for the global community to increase accountability and help curb violence include improved contact with government officials and diplomatic missions, as well as robust national human rights protection mechanisms.

Where many LEDs operate on a local level and may not have the international contacts to support their message, CSOs, even at a grassroots level, can leverage a much wider level of influence and open avenues to promote a particular campaign and provide valuable support to the LEDs.

RECOGNISING LAND RIGHTS AND CUSTOMARY PRACTICES

Further work in implementing practical solutions needs to be undertaken and several additional steps would promote greater security for defenders. Such actions would add considerable legal backing to the communities and individuals fighting for land and environmental rights.

Formally and legally recognising the customary practices and indigenous peoples' ancestral land rights is critical. Women are a particularly vulnerable subgroup as many cultures and regions do not recognise women's legal rights to hold property. Thus, the livelihoods of women and their children are entirely dependent on that of husbands, fathers and other male relatives.[12] Widows, single mothers and women fleeing abusive relationships or seeking to avoid enforced marriage face poverty, abuse and social exclusion as a result of their lack of security. Formally and legally recognising customary practices and indigenous peoples' ancestral land rights would help to secure land tenancy, which is not only important for indigenous communities but is also vital for women in these communities.

Pushing for the results of the ILO Convention 169 consultations to be made legally binding at a national level, as well as promoting women's participation at the consultations would offer significant support for defenders.[1] Ensuring that community leaders, paralegals and lawyers are trained in strategic litigation can also help strengthen the support offered to LEDs. ●

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LOOKING TO THE FUTURE

Securing the safety and security of LEDs requires that those that support them:

- Provide holistic support for communities as well as individual defenders.
- Avoid the "hero" narrative. Although each case may centre on the abuse targeted at one individual, the focus should be on the affected communities.
- Ensure representation and support of women and other minority groups to address the impact of abuses on them as large-scale land grabs affect different sub-populations within communities in different ways.
- Disseminate important research results, tailored to the needs of key audiences, such as governments and companies. This will allow these actors to gain a rounded understanding of the changes needed.
- Support recognition of land rights. Individuals within an indigenous communities holding or seeking legal tenure should be offered training to inform, motivate and empower them towards better understanding of their rights. This factor has a big impact on successful strategic litigation where it becomes necessary in obtaining land rights.

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- Against the Odds: Women Leading the Struggle for Global Justice, Trócaire (2018), pp. 17-23, https://www.trocaire.org/documents/against-the-odds-women-leading-the-struggle-for-global-justice
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REFERENCES

For a full list of references please refer to the Annex - End Notes

Science for Action is a jointly coordinated series of ILC and GLP, gathering key research findings on land governance and land science from researchers in their networks.

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