

Latin America Briefing

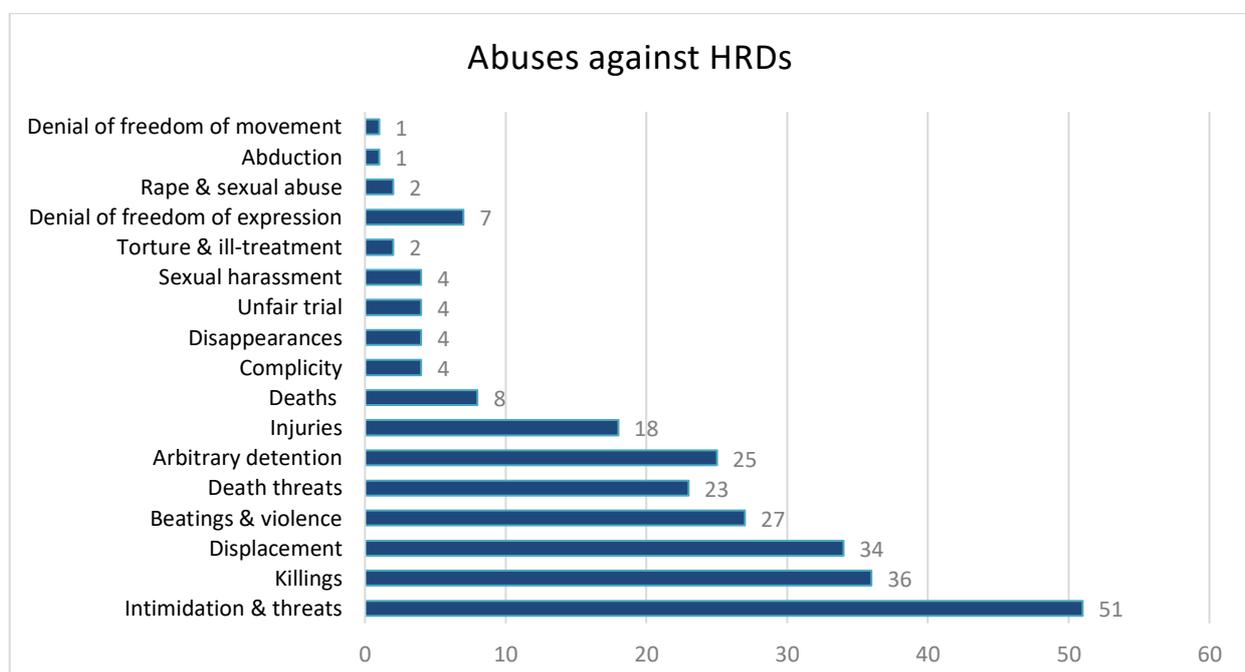
Focus on Human Rights Defenders under threat & attack

Briefing Note | January 2017

This briefing highlights one of the most serious issues in the region in the field of business & human rights in the last years: the attack on civic freedom and Human Rights Defenders (HRDs). Latin America has experienced an alarming rise in the number of cases involving violence and criminalisation against individuals, community leaders, trade unionists, and organizations. A [2016 Global Witness report](#) stated that 185 environmental activists were killed worldwide in 2015; two thirds in Latin America, “by far the highest annual death toll on record”. This has happened while there have also been some advances across Latin America in business and human rights. Governments and companies have engaged with the UN Guiding Principles on Business and Human Rights, five countries started processes to elaborate National Action Plans on business and human rights, and Ecuador has led discussions around the proposed international binding treaty on business and human rights.

From September 2013 until December 2016 we approached companies 156 times to respond to alleged abuses against HRDs, which represents 43.8% of the total number of invitations we sent to companies to respond to allegations of abuses in Latin America. The sector with significantly more allegations of abuses against HRDs is the energy sector (including oil, gas and coal as well as renewables, especially dams) with 41% of the invitations sent out. In second place is the mining sector (27%), followed by construction (13%) and agriculture, food and beverage sector (12%).

Regarding the types of abuses committed against HRDs, the most common abuses were:



In our sample, the most dangerous countries for HRDs were Colombia (40%), Mexico (22%), Guatemala (10%), Honduras (7.5%), and Brazil (7.5%). Below we provide a selection of recent examples that aim to showcase the extent and typology of the problem, followed by a set of conclusions and recommendations to companies and governments.

Physical attacks

“As demand for products like minerals, timber and palm oil continues, governments, companies and criminal gangs are seizing land in defiance of the people who live on it...Communities that take a stand are increasingly finding themselves in the firing line of companies’ private security, state forces and a thriving market for contract killers.” - Global Witness 2016 [report](#). Similar conclusions have been reached in recent reports by [Peace Brigades International](#) and [Front Line Defenders](#).

For instance, in early 2016 in **Brazil**, Nilce Souza Magalhães, Nicinha, [was killed](#) for campaigning on the socio-environmental damage of dams in the state of Rondônia. Another woman leader, [Marinalva Manoel, was raped and stabbed to death](#) in 2014 for campaigning to protect her Guarani community’s lands against illegal occupation of sugar cane, soya and cattle rangers. And in the state of Pernambuco, in 2015, we [received a response from Industrial and Harbor Complex of Suape \(CIPS\)](#) to accusations of harassing communities affected by its operations, and threats against the lawyers who represented the communities, following reports of abuses by the coalition of NGOs Forum Suape. According to a [2014 report](#) 29 defenders died in **Brazil fighting for environmental and land rights**. A telling example is the case of fishermen of Associação de Homens e Mulheres do Mar – Ahomar. Its president, Alexandre, has brought complaints against Petrobras and other companies for the damage to fishermen’s livelihoods caused by the rupture of pipelines in the bay of Guanabara, and the construction of a petrochemical complex. Alexandre is still under a [protection program offered by the federal government due to death threats that he has received](#). Other fishermen who were protesting with Alexandre have been killed. In December 2013, [we invited Petrobras to respond to the allegations; the company denied any involvement](#).

In 2014 in **Guatemala**, armed men who identified themselves as workers of Cementos Progreso opened fire at a local gathering protesting the company and killed a villager; indigenous communities have been opposing the cement plant there for a long time. The clashes that ensued resulted in [11 people killed and several injured](#). In a public statement the company denied any involvement. In a separate case, civil society [requested an investigation into the armed attack](#) that killed Topacio Reynoso and severely injured Alex Reynoso. Both father and daughter had been at the forefront of the peaceful resistance to Tahoe Resources’ Escobal mine. [We invited Tahoe Resources to respond](#); it energetically denied any involvement. Brenda Marleni Estrada Tambito, [was killed in 2016](#) – she was a member of the Coalition of Workers’ Unions of Guatemala (UNSITRAGUA). In September 2015, [Rigoberto Lima Choc](#), who denounced the toxic spill of Repsa in the Pasión River, in Petén, was murdered outside the Sayaxché courthouse. Repsa, part of Grupo Hame, [denied any involvement](#) in the assassination.

Honduras is the country with the highest rate per capita of assassinations of HRDs opposing to mining, hydroelectric and agribusiness projects, according to a 2015 Global Witness report. [111 of these activists have been killed since 2002](#). In 2016 the well-known and Goldman prize winner defender [Berta Caceres was murdered](#); she was the general coordinator of COPINH, an organization of Lenca indigenous communities. Berta had been previously discredited, imprisoned and threatened for fighting against the Agua Zarca hydroelectric dam, but none of the threats were investigated by the State; the [companies involved in the dam responded to the killing](#). Since then, at least [two other members of COPINH](#) have also been killed. Separately, [Juan Francisco Martínez was killed in 2015](#). He was part of a local indigenous resistance movement against the dam Los Encinos. Since 2009, there have been [29](#)

[killings and two abductions](#) reported around Corporación Dinant's palm oil project in in Bajo Aguán. Dinant's response to Human Rights Watch is [here](#).

In **Colombia** in 2016 dozens of HRDs were killed, many in connection to business & human rights issues. For instance, Erley Monroy, who lead the opposition against the fracking industry in Caquetá, [was killed](#), and a colleague of his suffered an assassination attempt; an Afro Colombian leader opposing mining operations in Cesar, including by Drummond, was killed - the [company denied any responsibility in the case](#); a lawyer representing informal miners was [shot dead](#) in Antioquia – the company that was involved in negotiations with the group he represented, Gran Colombia Gold, didn't comment on the case. According to the [Inter-American Commission on Human Rights, only in 2015, 54 HRDs](#) were killed in **Colombia** and dozens have been subject to death threats, in a context in which peace talks advanced and a series of reforms, including granting land rights to millions of internally displaced people, involved many companies with claims to those lands.

In **Mexico** in 2016 a coalition of NGOs [documented 67 cases](#) of human rights abuses in which companies were allegedly involved. In 32 of these cases abuses against HRDs were documented, including 4 cases of assassinations. In 2015, the founders of a local organization working with indigenous communities were [intimidated](#) and another activist [had to flee](#) after receiving threats for opposing Gabfer's mining project. In 2015, [another local defender had to leave the state of Chihuahua](#) due to threats; he had been opposing the mining activities of Mag Silver. In 2016, local NGOs denounced that private companies working for the train company Ferromex, part of Grupo México, were [killing Central American migrants](#) in transit through Mexico. We invited the company to respond, but it did not. [Fidh and other international human rights organizations](#) claimed in a 2014 report that community leaders defending their land rights were being indiscriminately attacked in **Mexico, Guatemala, Nicaragua** and other countries. Amongst the companies involved there were Abengoa, Bonatti, Enagas, Elecnor, B2Gold, Gas Natural and Exmingua (part of Kappes, Cassidy & Associates). Only [Abengoa](#) and [Gas Natural responded](#) to the allegations.

In **Peru** the National Ombudsman's reports count up to [47 people killed](#) in the past 3 years in conflicts involving mining and oil companies, such as Candente Copper, Southern Cross and Las Bambas. All of them were local community members opposing mining operations over lack of free, prior & informed consent, access to water and land rights. In 2016 renowned environmentalist Maxima Acuña and her partner [were severely hurt in an attack](#) by alleged hitmen hired by mining firm Yanacocha; the company [said it was the victim](#) of attacks by the couple. Two community members died in violent clashes with the Police [when protesting against Horizonte mining project in November 2016](#).

Various lawsuits have been filed about this type of abuse. In **Brazil** in 2015 [a court found Syngenta responsible](#) for an armed attack targeting activists who were denouncing experiments on genetically modified corn in a protective boundary zone of the Iguaçu National Park. In 2014, seven **Guatemalan** men filed [a lawsuit against Tahoe Resources](#) in **Canada** for injuries suffered during protests. Also in Canada, in 2011, three [lawsuits were filed against Hudbay Minerals](#) and its subsidiary HMI Nickel for alleged gang rape, assassination and injuries in Guatemala; all three lawsuits are ongoing. A trade union leader [sued BP in a UK court in 2014](#) over alleged complicity of the oil company with his kidnapping and torture by paramilitary groups in **Colombia**. Following the Kiobel vs. Shell decision by the US Supreme Court of Justice, a case against [Chiquita](#) on its alleged collaborations with illegal armed groups in **Colombia** to kill trade unionists and others was dismissed in the **US** in 2015, but a Florida court in 2016 [allowed the case against the company to move forward](#) to trial, including taking testimony from Chiquita's executives. A case against Drummond also over killings in Colombia was initially also [dismissed](#), but on appeal a higher court in 2016 [reversed in part and affirmed in part](#) the dismissal. A court in Colombia [sentenced a former contractor of Drummond](#) to 38 years in prison in 2013, and in 2015 a former executive of Drummond was charged with the murder of two trade unionists. Drummond has now [filed a criminal case against the plaintiffs' lawyers and related NGOs](#).

Other attacks including arbitrary detention, unfair trial, criminalization, legal harassment, surveillance, and restrictions of freedom of movement, expression & association

“There is a worrying perversion of the judicial system taking place in order to suffocate the work of human rights defenders, especially their efforts to draw attention to the violations carried out by multinational companies...” - [Bettina Cruz](#), defender of indigenous peoples rights against wind farms in Oaxaca, Mexico, 2015

In **Chile**, Mapuche indigenous peoples have been subject to arbitrary detention and unfair trials, since 2012, as the Inter American Court [has also confirmed](#). They opposed water privatisation and industrial logging in their ancestral lands, involving companies like Central Hidroéctrica Osorno (part of Empresa Eléctrica Pilmaiquén).

Arbitrary detention and false accusations were used in **Guatemala** in the case of the [Cambalam hydroelectric dam of Hidro Santa Cruz \(part of Hidralia\)](#). We invited [Hidro Santa Cruz to respond](#); they said the majority of the community supports the dam and denied their involvement in the detentions. During 2014 and 2015 authorities responded to protest of the Ch’orti’ community to the [hydroelectric projects of America Trans Group](#) with repression, criminalization and detention. [America Trans Group responded](#) to these allegations. For many years local people, led by women, had been peacefully protesting against a Kappes, Cassidy & Associates’ gold mine in El Tambor. [In 2014 a violent eviction took place resulting in many being injured and four detained.](#)

In **Ecuador**, a leader of the opposition to a mine project by [Enami-EP](#), Javier Ramírez, was charged with “rebellion” and sentenced to 12 months in prison in 2015; in a separate trial, two community leaders opposed to the Hidrotambo hydroelectric plant [were accused in 2016 of “terrorist acts”](#) over an alleged attack on a security vehicle in 2012 in the context of community protests against the plant. America Yasunidos is a group campaigning against oil exploitation in the Amazonian region and in 2015 [reports revealed](#) that the National Secretariat of Intelligence had thoroughly analysed the group’s internal organisation and methods, as well as its activists’ identities, calls and whereabouts, without a judicial warrant. In 2016, the Shuar indigenous communities opposing an mining project by Chinese-owned Corriente Resources suffered an [escalation](#) when the government declared the state of emergency and detained several leaders. In parallel the government started administrative procedures [to close Accion Ecologica](#), an environmental and human rights NGO that has vocally supported the indigenous protesters and criticizes the extractivist economic model.

In **Peru** an environmentalist defender was arrested and [accused of promoting the planting of trees](#) at the property of Yanacocha mining company, and later released; the company denied any involvement. A group of 16 community members were legally [accused of kidnapping and other crimes](#) apparently because of their opposition to an expansion of Yanacocha mine.

In some cases, journalists reporting on companies’ abuses have also been victims of criminalization and lawsuits that seem designed to silence them. In **Mexico**, Exploraciones Oceánicas, Odyssey Marine Explorations, [presented criminal charges](#) against a journalist who denounced in 2014 possible negative impacts of their extractive activities. In **Nicaragua**, [journalists reporting on the protests against the inter-oceanic canal, a project of HKND](#), were harassed and abused by police officers.

Following social conflicts, some of which descend into violence, Latin American governments impose restrictions to the population’s freedoms of movement, expression & association. In **Venezuela** this happened to [protesting workers of Sidor](#) and other state-owned companies; in **Colombia** to demonstrators against [Isagen’s Hidrosogamoso dam](#), which also suffered the disappearance of a leader; in **Peru** to indigenous peoples protesting against [oil pollution by Pluspetrol in the Amazon](#); in **Paraguay** to [Ayoreo indigenous peoples protesting](#) against land-grabbing by Yaguareté Porã and

Carlos Casado cattle ranchers & soy bean agribusiness; in **Nicaragua** workers of South Korean textile company Tecnotex [protested for better worker conditions](#), resulting in the police detaining some workers and putting them on trial.

Conclusions

Despite this litany of abuse, there are also some reasons for hope. There have been companies that have taken proactive positive actions, like the 8 apparel companies which issued [a statement in 2015](#) calling on the Mexican Government to take actions to respect freedom of association. Investors are growing more aware of the legal, reputational and other financial risks of not considering human rights issues in their investment decisions and are exercising more pressure on companies in their portfolios to respect human rights and HRDs, as [FMO](#) did in the Agua Zarca case.

However, these steps are few and far between. The last 3 years in Latin America have been largely characterized by a worrying and sharp increase in criminalization and attacks against organisations and communities that are defending and promoting human rights in the face of largescale investments and labour rights abuses, as the cases in this briefing show (and it is far from an exhaustive list).

Too often human rights defenders lack the basic guarantees of security and they are subject to smear campaigns and legal persecution designed to obstruct their work upholding the principles of human rights and the right of victims. The UN Special Rapporteur on human rights defenders has, on several occasions, highlighted that this group of individuals is one of the most vulnerable. Reports by various observer organizations monitoring the situation of HRDs in general coincide in highlighting the plight of defenders caught in the context of increased competition for control of land and natural resources. The cases above exemplify the trends and methods, and the particularly grave vulnerability of indigenous and women defenders.

The sad conclusion is that the attacks have become systematic, strategic and intrinsic to conducting business in many sectors and regions of Latin America. There are countries, and zones within countries, where the repression is particularly egregious. In addition, governments have introduced laws that limit civic freedoms in the region. Draconian regulations and tendentious laws against those opposing projects and investments are routinely used across the region to dissuade others from protesting, regardless of the possible negative consequences these projects could bring.

Despite all this, alongside the moral imperative for companies to avoid abuse and repression, there is also a clear business case. Abuse leads to protest, suspensions and lawsuits with potentially huge financial losses. In our age of global social media, companies are also increasingly exposed to public scrutiny and the reputation risk that comes with abuse. This can shatter a company's social license to operate, increase the cost of capital, alienate talent which is a turnkey for greater competitiveness, and attract global campaign opprobrium.

This situation has to change. Our recommendations for companies are:

- When domestic legislation is on a lower standard than relevant international law, comply with the highest possible standard. This will help the company not only to avoid being involved in human rights abuses, but also avoid potentially disastrous lawsuits and negative campaigns.
- Take action in order to protect and assist in the defence of HRDs' work. Their work ultimately will also guarantee an environment of respect for the rule of law where business can thrive. Businesses have significant influence on government and hence taking a stance, publicly or privately, when HRDs are attacked can make a real, positive difference.

- Companies should consider developing a policy commitment to respecting and supporting civil society, civic freedoms and HRDs (as [Adidas has done](#)), or include clauses regarding HRDs in their existing policies.
- Guarantee that individuals and communities affected by infrastructure and extractive projects can have free, prior and informed consultation, and can even withhold consent to natural resources projects affecting them directly. If things go wrong, they should receive just and prompt compensation, including activities to remediate environmental and social harms.
- Promote a culture of respect of human rights by conducting human rights due diligence before any investment is carried out, with particular attention to regions that have been suffered previous violence and armed conflicts.

Our recommendations for Latin American governments are:

- Meet their obligations to respect, protect and promote human rights, per the UN Guiding Principles on Business and Human Rights and other mandatory international regulations. Promote National Action Plans to internalize the Guiding Principles that include explicit guarantees and protection measures for the work of HRDs. These should also cover what is expected from their companies operating in other countries. During consultation processes, ensure that affected people, victims' perspectives are taken into account in a safe and free environment.
- Governments must urgently intervene to stop the spiralling violence against HRDs. This includes stopping the stigmatization of HRDs, strengthening laws of protection, guaranteeing that the judicial and administrative procedures are unbiased, efficient and accessible to all, ensuring that those responsible for abuses against HRDs are brought to justice, and ensuring the right to freedom of expression for critics of business projects, investigative journalists, and whistle blowers.
- Guaranteeing transparency in allocation of licences and contracts, and only after the affected communities views have been heard and considered. This will bring long-term benefits to the country in the form of just royalties and taxes that are fairly distributed, including to the communities directly affected by the projects.
- Produce regulatory norms to strengthen and implement legislation that protects the rights of victims of human rights abuses by companies. For instance, governments should include human rights clauses in public procurements with private companies and trade agreements.