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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[06 September 2018]

* Issued as received, in the language(s) of submission only.



Amnesty International welcomes the study on attacks against and the criminalization of indigenous human rights defenders

In this statement Amnesty International welcomes the initial findings by the United Nations Special Rapporteur on rights of indigenous peoples in her study on attacks against and the criminalization of Indigenous human rights defenders. The study also reflects on available prevention and protection measures.

Root cause and drivers

Amnesty International shares the Special Rapporteur's concerns about the drastic increase "in attacks and acts of violence against, criminalization of and threats aimed at indigenous peoples, particularly those arising in the context of large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging" partially led by corporate actors.¹ In August, Amnesty International issued an Urgent Action calling for threats against human rights defenders of the Temiar Indigenous people in Malaysia to cease. Temiar activists have been protesting the activities of a company developing durian and rubber clone projects on their ancestral lands without their free, prior and informed consent. The community leaders report that the company has issued physical threats and blocked access to the community with a vehicle blockade.²

The Special Rapporteur points out the detrimental effect of lack of land tenure for Indigenous communities, which also undermines their ability to defend their lands and territories. She has also documented how the disregard for Indigenous peoples' land rights "breeds tensions, subsequent violence and criminalization" where Indigenous Peoples become "trespassers or illegal occupants of their own lands".³ Many of the projects take place without obtaining the free, prior and informed consent of Indigenous peoples, and without agreeing necessary compensation and remedies where appropriate. The study notes that states often fail to fulfil their obligation to "give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned"⁴, either when Indigenous HRDs are accused of criminal activity,⁵ or when they are seeking justice for crimes committed against them.⁶

The study points to the risks involved when conservation and climate change mitigation and adaptation projects are implemented on the ancestral lands of Indigenous peoples without obtaining their free, prior and informed consent. Amnesty International's research into violations of the land rights of the Sengwer of Embobut Forest, in Kenya, and threats and violence against Sengwer human rights defenders, shows how the root causes of the problem lay in the failure of the government, and of bilateral and multilateral donors, to ensure that the Sengwer were consulted on the design of projects. In so doing, they failed to learn from the same mistakes made in an earlier project funded by the World Bank.⁷

The Special Rapporteur identifies a significant increase in attacks against Indigenous human rights defenders in Brazil, Colombia, Ecuador, Guatemala, Honduras, India, Kenya, Mexico, Peru and the Philippines. In 2016, Amnesty International noted that in Guatemala, "between 2000 and August 2015 the defenders targeted for the largest number of attacks were those working on Indigenous rights and the environment".⁸

Impact on women human rights defenders

The study notes that "Smear campaigns tend to target indigenous women by spreading rumours that they are dishonourable women of poor reputation who violate indigenous traditions by engaging in public participation and advocacy on community concerns. The aim of such defamation is to disempower and alienate women from their families and communities."⁹ In Guatemala, Amnesty International noted that Indigenous women HRDs were subjected

¹ Paragraphs 4 and 27 ff.

² Malaysia: Further Information: Threats against Indigenous Rights Defenders (<https://www.amnesty.org/en/documents/asa28/8886/2018/en/>)

³ Paragraphs 30 and 2.

⁴ United Nations Declaration on the Rights of Indigenous Peoples, Art. 40.

⁵ Paragraph 50

⁶ Paragraph 24.

⁷ Kenya: Families Torn Apart: Forced Eviction of Indigenous People in Embobut Forest (<https://www.amnesty.org/en/documents/afr32/8340/2018/en/>)

⁸ 'We are Defending the Land with our Blood': Defenders of the Land, Territory and Environment in Honduras and Guatemala (AMR 01/4562/2016), p. 16.

⁹ Paragraph 78.

to gender-based slurs, and that as a result of the risks they faced due to their activism, some had received ultimatums from their partners, demanding that they cease their human rights work.¹⁰

Impact of criminalization measures

Importantly, the Special Rapporteur's study underlines the negative impacts that criminalization measures have on the capacity of Indigenous leaders and activists to defend the human rights of their communities, and hence by extension on their peoples' enjoyment of human rights. The study notes that "[t]he killings of indigenous leaders and community members cause irreparable harm and damage the social fabric of indigenous peoples. Such attacks are undertaken with the express intent to silence their voices, disrupt their organization and impede their ability to express their concerns over matters affecting their communities."¹¹ In January 2018, Amnesty International called for a thorough investigation into the killing of Mithun Chakma, an Indigenous activist in the Chittagong Hill Tracts of Bangladesh.¹² Prior to his killing, Mithun Chakma had had 11 criminal cases brought against him, mostly under the Information and Communication Technology (ICT) Act 2006, which criminalizes legitimate criticism of state actions.¹³ He had stated that the regular court appearances hampered his ability to carry out his work as a human rights defender. No one has been charged or prosecuted for his murder.

Protection mechanisms

Amnesty International particularly welcomes the emphasis in the study on the value of protection programmes for human rights defenders, which "need to be culturally appropriate, consider gender aspects and be developed jointly with the communities concerned"¹⁴. These mechanisms can contribute to the fulfilment by states of the duty to take active measures to protect the right to life of Indigenous human rights defenders.

Amnesty International recommends to the members and observers of the Human Rights Council to carefully study the report of the Special Rapporteur and to take immediate steps to ensure:

- That all development, conservation and climate change mitigation and adaptation projects on lands and territories of Indigenous peoples be designed and implemented after full and effective consultations are held with the affected Indigenous peoples, and their free, prior and informed consent has been obtained, including with regard to strategies and measures to prevent and mitigate negative impacts on human rights defenders, agreeing necessary compensation and remedies where appropriate;
- That protection mechanisms for human rights defenders are developed, following consultations with and the obtaining of free, prior and informed consent of affected Indigenous peoples, drawing on best practice regarding community-based mechanisms such as Indigenous guards or culturally appropriate communications tools;
- Recognition and titling of Indigenous peoples' land rights before implementing projects on their land;
- The role of Indigenous peoples' customary legal systems in the adjudication of any accusations of crimes, either allegedly committed by or against Indigenous persons;
- That while the primary duty-bearer is the state, bilateral and multilateral donors should insist on the inclusion in projects funded by them of a strategy for the prevention, mitigation and remedying of negative impacts on human rights defenders, supported by an appropriate budget; such strategies must be designed after consulting with, and obtaining the free, prior and informed consent of, affected Indigenous peoples.

¹⁰ 'We are Defending the Land with our Blood'; p. 47.

¹¹ Paragraph 71.

¹² Bangladesh: Hold a Full Investigation into the Murder of Indigenous Human Rights Defender Mithun Chakma (<https://www.amnesty.org/en/documents/asa13/7669/2018/en/>)

¹³ Caught Between Fear and Repression: Attacks on Freedom of Expression in Bangladesh (<https://www.amnesty.org/en/documents/asa13/6114/2017/en/>)

¹⁴ Paragraph 82.