

**Will the Confluence Between Human Rights  
and the Environment Continue to Flow?  
Threats to the Rights of Environmental  
Defenders to Collaborate and Speak Out**

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Lawyers and citizen advocates who defend the rights of communities to a healthy environment stand between the people they seek to protect and powerful interests that aim to gain from destroying or polluting natural resources. Environmental defenders are frequently subjected to threats, harassment, and physical violence. Many national governments refuse to investigate or prosecute crimes committed against environmental advocates. But one of the most ubiquitous challenges environmental defenders face is government infringement on their rights to free speech and association. Although international declarations support the rights of environmental advocates to associate freely and to speak out against environmental abuses, domestic laws often undermine these protections.

In 2008, on the tenth anniversary of the adoption of the Declaration on Human Rights Defenders, the United Nations issued a statement prominently warning that, in addition to attacks and physical violence, defenders “face illegitimate restrictions on the exercise of their rights to freedom of opinion and expression, access to information, access to funding, and freedoms of association—including registration—, peaceful assembly, and movement.”<sup>1</sup> This Article will examine the stark contrast between international commitments made by countries to uphold principles essential to effective grassroots advocacy and the failure of these same countries to implement these principles in practice. In focusing on infringements to the rights of free speech and association, we do not intend to diminish the very serious impact that harassment and physical violence have on defenders and their families. Rather, we seek to bring attention to the quieter issues that advocates face and to highlight the formal and informal mechanisms that are available to counter human rights abuses committed against defenders.

Part I of this Article describes the defining characteristics of an environmental defender. Part II reviews the United Nations Declaration on Human Rights Defenders and related regional

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<sup>1</sup> Press Release, United Nations, Special Rapporteur on the Situation of Human Rights Defenders, Ten Years on, Human Rights Defenders Continue to Pay a High Price (Dec. 9, 2008), *available at* <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/8378D3F377DEF832C125751A0051034F?opendocument>.

declarations. Part III examines examples of domestic laws that directly contradict the free speech and association rights of environmental advocates. Part IV briefly discusses the formal and informal mechanisms that defenders use to overcome these obstacles.

## I

### WHO IS AN ENVIRONMENTAL DEFENDER?

Significant progress has been made over the last decade to promote the human right to a clean and healthy environment. Courts in India led the way in the early 1990s by declaring the “[r]ight to life . . . includes the right of enjoyment of pollution free water and air for full enjoyment of life.”<sup>2</sup> India’s constitution also vests in its citizens the duty “to protect and improve the natural environment.”<sup>3</sup> The country’s Supreme Court declared in 1991 that this duty requires environmental education to be taught in schools and through public service announcements.<sup>4</sup> The Republic of Ecuador is the latest in a string of countries that recognize environmental rights in their constitutions.<sup>5</sup> In 2001, the Inter-American Court of Human Rights acknowledged the connection between the environment and human rights when it found that the government of Nicaragua had violated the human rights of the Awas Tingni community by permitting logging on community lands, which seriously affected subsistence activities and the community’s cultural identity.<sup>6</sup>

There is a growing recognition of environmental rights as human rights because of the work of environmental defenders. These defenders include community advocates, environmental lawyers, journalists, and judges who have focused the world’s attention on the plight of communities that lack clean water to drink, clean air to breathe, and uncontaminated soil in which to raise crops.

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<sup>2</sup> Subhash Kumar v. State of Bihar (1991) 1 S.C.R. 5, 6, *available at* <http://www.commonlii.org/in/cases/INSC/1991/3.html>. The case was ultimately dismissed because the court determined that the petitioner was acting in his personal interest and could not rightfully maintain a public interest litigation (PIL).

<sup>3</sup> INDIA CONST. art. 51A(g).

<sup>4</sup> M.C. Mehta v. Union of India (1992) 2 S.C.R. 378, 379, *available at* <http://www.commonlii.org/in/cases/INSC/1991/313.html>.

<sup>5</sup> Constitución Política de República del Ecuador arts. 395–415, *available at* <http://pdba.georgetown.edu/Constitutions/Ecuador/ecuador08.html>; James R. May, *Constituting Fundamental Environmental Rights Worldwide*, 23 PACE ENVTL. L. REV. 113, 131 (2005).

<sup>6</sup> Mayagna (Sumo) Awas Tingni Community v. Nicaragua, 2001 Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).

Quite simply, environmental defenders are human rights defenders. Any person who takes action to protect environmental rights, whether as a professional or paid for such work, is a human rights defender.<sup>7</sup> In 2001, the U.N. Special Representative of the Secretary-General on Human Rights Defenders stated:

In my view the term “human rights defenders” is not restricted only to those seeking protection and promotion of civil and political rights. The Declaration . . . recognizes those striving for the promotion, protection and realization of social, economic and cultural rights as human rights defenders. Therefore, those defending the right to a healthy environment, or promoting the rights of indigenous peoples would, by no means<sup>8</sup> fall outside the ambit of any definition of a human rights defender.

Yet environmental defenders in democratic and non-democratic countries alike not only face significant personal risks, but also contend with laws that undermine their right to seek information, speak out publicly against environmental degradation, collaborate with partners, and petition government for effective remedies. If defenders are unable to work freely without government intrusion and interference, then society cannot expect to maintain any progress in advancing the human right to a clean and healthy environment.

## II

### THE UNITED NATIONS DECLARATION ON HUMAN RIGHTS DEFENDERS AND RELATED REGIONAL DECLARATIONS

Environmental defenders are supported by international and regional declarations that require States to promote and protect the rights of defenders who advocate for change and speak out against environmental abuses. As discussed further in Part IV, the United Nations and a few regional bodies have also created special mechanisms to monitor the situation of defenders and protect them in urgent situations.

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<sup>7</sup> The determination is based on the actions of the person, not his or her title or profession. U.N. Office of the High Comm’r for Human Rights [OHCHR], *Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*, at 6 (Apr. 2004), available at <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf> [hereinafter *Fact Sheet No. 29*].

<sup>8</sup> U.N. ECON. & SOC. COUNCIL [ECOSOC], Comm’n on Human Rights, *Promotion and Protection of Human Rights: Human Rights Defenders*, Annex II, U.N. Doc. E/CN.4/2001/94 (Jan. 26, 2001) (prepared by Hina Jilani).

**A. *The United Nations Declaration on Human Rights Defenders***

It took many years for the international community to formally recognize that the defense of human rights, including the right to a healthy environment, is a right in and of itself. On the fiftieth anniversary of the Universal Declaration of Human Rights in 1998, and after thirteen years of negotiations, the United Nations adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly known as the Declaration on Human Rights Defenders.<sup>9</sup> The Declaration gathers together rights and responsibilities from existing international charters to focus attention on the rights of human rights defenders, including environmental defenders.<sup>10</sup>

The Declaration affirms rights and protections that are critical to effective environmental advocacy. Specific rights accorded to defenders include the right to seek and protect human rights at national and international levels, to petition governmental bodies concerning acts related to human rights, and access to effective remedies.<sup>11</sup> Notably, the Declaration protects the right to act collaboratively, giving specific attention to the freedom to form associations and nongovernmental organizations (NGOs) and to meet and assemble peacefully.<sup>12</sup> The Declaration also imposes specific responsibilities on States to protect human rights and environmental defenders, in addition to duties to promote and uphold all human rights.<sup>13</sup>

**B. *Regional Declarations Protecting Defenders***

The U.N. Declaration on Human Rights Defenders has been closely replicated through regional instruments in Africa, the Americas, and the European Union. The African Commission on Human and Peoples' Rights (ACHPR) adopted the Resolution on the

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<sup>9</sup> Declaration on Human Rights Defenders, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* arts. 1, 8, 9.

<sup>12</sup> *Id.* arts. 3, 6, 7.

<sup>13</sup> *Id.* arts. 2, 9, 12, 14, 15.

Protection of Human Rights Defenders in Africa in 2004.<sup>14</sup> The Resolution calls on member States of the Organization of African Unity “to promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports.”<sup>15</sup>

In the Americas, the rights of environmental defenders are recognized in a 1999 resolution adopted by the General Assembly of the Organization of American States (OAS) declaring the intention to implement the U.N. Declaration on Human Rights Defenders.<sup>16</sup> The Resolution calls on State members “to provide Human Rights Defenders with the necessary guarantees and facilities to continue freely carrying out their work of promoting and protecting human rights,” as well as to adopt “the necessary steps to guarantee their life, liberty, and integrity.”<sup>17</sup> The OAS has adopted similar resolutions every year since.<sup>18</sup>

The Declaration of the Council of Europe on Human Rights Defenders, issued in 2008, reflects the European Union’s commitment to defenders and builds on the European Convention on Human Rights.<sup>19</sup> In addition to mentioning each member State’s duty to respect the work of defenders through appropriate legislation and by

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<sup>14</sup> African Comm’n on Human and Peoples’ Rights [ACHPR], *Resolution on the Protection of Human Rights Defenders in Africa*, ACHPR/Res. 69 (XXXV) (June 4, 2004), available at [http://www.achpr.org/english/\\_info/hrd\\_res\\_appoin\\_3.html](http://www.achpr.org/english/_info/hrd_res_appoin_3.html).

<sup>15</sup> *Id.*

<sup>16</sup> General Assembly of the Organization of American States [OAS], *Human Rights Defenders in the Americas, Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas*, AG/RES. 1671 (XXIX-O/99) (June 7, 1999).

<sup>17</sup> *Id.*

<sup>18</sup> The OAS General Assembly has issued resolutions supporting the rights of defenders annually since the original resolution in 1999, all with the same title. See OAS, AG/RES.1711 (XXX-O/00) (June 5, 2000); OAS, AG/RES. 1818 (XXXI-O/01) (June 5, 2001); OAS, AG/RES. 1842 (XXXII-O/02) (June 4, 2002); OAS, AG/RES. 1920 (XXXIII-O/03) (June 10, 2003); OAS, AG/RES. 2036 (XXXIV-O/04) (June 8, 2004); OAS, AG/RES. 2067 (XXXV-O/05) (June 7, 2005); OAS, AG/RES. 2177 (XXXVI-O/06) (June 6, 2006); OAS, AG/RES. 2280 (XXXVII-O/07) (June 5, 2007); AG/RES. 2412 (XXXVIII-O/08) (June 3, 2008).

<sup>19</sup> Comm. of Ministers of the Council of Eur. [CMCE], *Declaration of the Committee of Ministers on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote their Activities* (Feb. 6, 2008), available at <https://wcd.coe.int/ViewDoc.jsp?id=1245887&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>.

providing access to effective remedies, the declaration calls on States to:

[C]reate an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights.<sup>20</sup>

Despite these international and regional declarations, environmental defenders face physical violence and harassment and must overcome legal obstacles that restrict their ability to represent communities and protect the environment. Rights that many take for granted, such as freedom of speech and association, are frequently targeted because these activities are a key part of grassroots movements. “Freedom of expression and freedom of association are at the heart of an active civil society and are of fundamental importance for the work of human rights defenders. These rights are, however, frequently restricted in multiple ways which seriously hamper their ability to work effectively.”<sup>21</sup> The next Part of this Article will explore the challenges that environmental defenders face on the ground as they advocate to protect environmental rights.

### III

#### DOMESTIC GOVERNMENTS FAIL TO FOLLOW THROUGH ON THEIR COMMITMENTS TO ENVIRONMENTAL AND OTHER HUMAN RIGHTS DEFENDERS

As with many international commitments, implementation is left to domestic governments. The Declaration on Human Rights Defenders states:

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and

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<sup>20</sup> *Id.* ¶ 2(i).

<sup>21</sup> Steering Comm. for Human Rights [CDDH], *Activity Report on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote their Activities*, II, ¶ 5, CM 2008(5) (Jan. 8, 2008), available at [http://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2008\)5&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](http://wcd.coe.int/ViewDoc.jsp?Ref=CM(2008)5&Language=lanEnglish&Ver=add&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75).

effective realization of those rights and freedoms should be conducted.<sup>22</sup>

But the glaring reality for many environmental and other human rights defenders is that the State authorities who bear primary responsibility for assuring their protection are the most common perpetrators of violations against them. Most States have not taken the steps necessary to protect environmental defenders. In fact, many States are adopting laws that further threaten defenders' rights or turn a blind eye to violations, allowing perpetrators to act with impunity. We focus here on three types of domestic laws that infringe defenders' rights to freedom of association and expression: NGO framework laws, sedition laws, and anti-terrorism laws.

#### ***A. Laws that Ban or Restrict Nongovernmental Organizations***

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.<sup>23</sup>

Environmental defenders are often associated with an NGO or work closely with one. The ability to create or join an NGO, or simply to collaborate with other individuals, is an integral part of the freedom of association and fosters effective advocacy. Furthermore, even a loose network of advocates provides a set of eyes and ears that can protect individual defenders who may be at risk of harassment or physical attacks.

In the ten years since the U.N. Declaration on Human Rights Defenders was adopted, at least twenty countries have adopted laws imposing legal and regulatory restraints on NGOs working to protect the environment and human rights.<sup>24</sup> "Anti-NGO" laws stand in direct contrast to Article 5 of the Declaration on Human Rights Defenders, which unequivocally protects the right to freely associate.

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<sup>22</sup> G.A. Res. 53/144, *supra* note 9, art. 3.

<sup>23</sup> *Id.* art. 5.

<sup>24</sup> Int'l Center for Not-for-Profit Law, *Recent Laws and Legislative Proposals to Restrict Civil Society and Civil Society Organizations*, 8 INT'L J. NOT-FOR-PROFIT L. 76 (2006), available at [http://www.icnl.org/knowledge/ijnl/vol8iss4/art\\_1.htm](http://www.icnl.org/knowledge/ijnl/vol8iss4/art_1.htm).



These laws often target one or a combination of elements necessary to sustain civil society organizations, such as the right to freely associate, the right of free speech, and the right to secure financial support. When domestic governments restrict free speech and association, they strike at the heart of public interest advocacy:

The importance of both freedom of association and freedom of assembly is . . . to be found in the fact that they must be seen as a platform for the exercise of other rights. These are . . . the right to freedom of expression, including freedom to receive and impart information and ideas, cultural rights, and the right to participate, on a non-discriminatory basis, in the conduct of public affairs, in appropriate legal forms, consistent with international human rights standards. These rights are therefore crucial for [environmental and other] human rights defenders.<sup>25</sup>

When governments stigmatize and deny recognition of NGOs, each organization's work becomes less effective.<sup>26</sup> As then-U.N. Special Representative on Human Rights Defenders, Hina Jilani, observed in 2006, "the current trend in many countries is to pass laws and regulations restricting the space for human rights activities."<sup>27</sup>

One common method used by domestic governments to restrict free association is through NGO "registration" laws. These laws require organizations and, in some cases, informal citizen groups to be registered with the government before conducting any activities, and impose time-consuming and complicated requirements that effectively prevent organizations from attaining legal status. The Russian NGO law, for example, imposes burdensome registration requirements on nongovernmental organizations that substantially infringe on the right of association.<sup>28</sup> To register under the Russian NGO law, organizations must submit each founder's and member's home address and tax identification number.<sup>29</sup> Within several months

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<sup>25</sup> Steering Comm. for Human Rights [CDDH], *supra* note 21, at II, ¶ 7.

<sup>26</sup> ECOSOC, Comm'n on Human Rights, *Promotion and Protection of Human Rights: Human Rights Defenders*, ¶ 48, U.N. Doc. E/CN.4/2006/95 (Jan. 23, 2006) (prepared by Hina Jilani).

<sup>27</sup> *Id.* ¶ 50.

<sup>28</sup> *Sabranie Zakonodatel'stva Rossiiskoi Federatsii [SZRF] [Russian Collection of Legislation] 2006, No. 18-FZ, (On Introducing Amendments into Certain Legislative Acts of the Russian Federation)* [hereinafter Russian NGO Law]. This law has come to be known as the "Russian NGO Law." In June 2009, President Medvedev introduced new legislation to reduce regulatory burdens on NGOs. See Clifford J. Levy, *Russia: Fewer Hurdles for Nonprofit Organizations*, N.Y. TIMES, June 18, 2009, at A8 (explaining the new legislation).

<sup>29</sup> Russian NGO Law, *supra* note 28.

of the law's enactment in early 2006, forty foreign NGOs had applied for official registration and not one was successful.<sup>30</sup>

Later that year, many major international relief organizations had to suspend operations for failing to comply with registration requirements.<sup>31</sup> A similar situation occurred in Egypt in 2005, where only seven of thirty organizations successfully navigated the country's NGO registration requirements.<sup>32</sup> In addition, many governments simply refuse to register certain organizations, even if the process for registering is simple.

Often, registration laws vest complete discretion with government authorities to decide whether an organization's mission or activities meet vague eligibility requirements. In Malaysia, registration may be denied if "it appears . . . that such local society is . . . likely to be used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia."<sup>33</sup> Tanzania's NGO law allows authorities to deny registration if an organization's activities "are not for public interest."<sup>34</sup> "Public interest" is defined in the law as activities aimed at improving the standard of living and eradicating poverty, and could easily be interpreted to exclude environmental and other human rights activities other than those providing direct aid to citizens.<sup>35</sup> A draft law being considered in Ecuador lacks procedures or timelines concerning government review of registration applications, which would allow officials to delay decisions on registration indefinitely.<sup>36</sup> NGO directors and officers can face significant penalties, or even

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<sup>30</sup> Alison Kamhi, *The Russian NGO Law: Potential Conflicts with International, National, and Foreign Legislation*, 9 INT'L J. NOT-FOR-PROFIT L. 34, 35 (2006).

<sup>31</sup> Charles Digges, *Amnesty International, Human Rights Watch and Others Temporarily Halted by New Russian NGO Law*, BELLONA, Oct. 19, 2006, [http://www.bellona.org/articles/articles\\_2006/Rejected\\_NGOs](http://www.bellona.org/articles/articles_2006/Rejected_NGOs).

<sup>32</sup> Human Rights Watch, *Egypt: Margins of Repression: State Limits on Nongovernmental Organization Activism*, (July 3, 2005), available at <http://www.hrw.org/reports/2005/egypt0705/egypt0705.pdf>.

<sup>33</sup> Societies Act, 1966, Act 335, § 7(3)(a) (Malay.) (revised Oct. 19, 1987, reprinted incorporating all amendments up to Jan. 1, 2006).

<sup>34</sup> The Non-Governmental Organizations Act, 2002, No. 24, § 14(1)(a) (Tanz.).

<sup>35</sup> *Id.* § 2.

<sup>36</sup> Int'l Center for Not-for-Profit Law, *Global Trends in NGO Law: A Quarterly Review of NGO Legal Trends Around the World*, 1 GLOBAL TRENDS NGO L. 1, 6 (Mar. 2009), available at <http://www.icnl.org/knowledge/globaltrends/GloTrends1-1.pdf>.

imprisonment, for failing to follow byzantine registration requirements and NGO framework laws.<sup>37</sup>

Organizations that manage to fulfill registration requirements face the prospect of strict and invasive government oversight of their activities. In Uganda, an organization may not make “any direct contact with the people in [its] area of Uganda unless it has given seven days’ notice in writing of its intention to do so [to local and district authorities].”<sup>38</sup> The Russian NGO Law permits the government to review an organization’s private documents, including those related to financial and policy decisions, and to send a government representative to any organizational meeting, including internal strategic and financial meetings.<sup>39</sup> Other examples include laws that allow the government to intervene in organizational operations to either veto members or introduce members of its own choice, require NGOs to provide officials with membership lists on an annual basis, and grant authority to suspend or disband organizations at the government’s discretion.<sup>40</sup>

Another tactic used by domestic governments to hinder NGOs is to impose funding restrictions, particularly on cross-border giving. Some countries require NGOs to seek permission prior to accepting foreign funding and impose burdensome reporting requirements if organizations accept such funding.<sup>41</sup> Others require foreign exchange to be routed through a particular ministry or government-controlled bank, which allows funding to be slowed or disrupted at the government’s whim.<sup>42</sup> Restrictive financial provisions can seriously

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<sup>37</sup> See, e.g., The Non-Governmental Organizations Act, *supra* note 34, §§ 35–36 (imposing significant penalties and the prospect of jail time, and also placing the burden of proof on the NGO to prove that its actions are not criminal).

<sup>38</sup> The Non-Governmental Organisations Registration Regulations, 2009, § 12 (Uganda).

<sup>39</sup> Kamhi, *supra* note 30, at 37.

<sup>40</sup> See, e.g., Providing for the Organization, Operation and Management of Associations, Decree No. 88/2003/ND-CP, 129 OFFICIAL GAZETTE 4 (Aug. 13, 2003) (Vietnam); Law on Societies, 2008, arts. 14, 16 (Jordan).

<sup>41</sup> See, e.g., Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978, No. XLVI, §§ 3(1), (3) (Bangl.); Law on Societies, 2008, arts. 16–17 (Jordan).

<sup>42</sup> See, e.g., A Proclamation to Determine the Administration of Non-governmental Organizations, 2005, No. 145/2005, art. 6(6) (Eri.). As an extreme example, in September 2007 the Reserve Bank of Zimbabwe directed that all foreign currency deposits of foreign-funded NGOs be held by the bank and that the organizations would have to apply to the bank to access foreign currency. During the spring of 2008, many organizations complained that they could not continue operations because the bank was not releasing funds in a timely manner. *Zimbabwe: NGOs Withering Under Foreign Currency*

hinder important environmental and other human rights work, causing organizations to limit their activities or even close down.

To counter these kinds of restrictions, the European Union adopted a financial aid policy instrument that provides direct funding to NGOs in third countries without the need for consent from the host government or other public authorities.<sup>43</sup> The instrument focuses in part on providing financial support to international and regional entities that protect, promote, and monitor human rights in order to enable civil society organizations to play an active role.<sup>44</sup> The instrument also recognizes the particular challenges faced by environmental and other human rights defenders and authorizes small grants to be made on an ad hoc basis to defenders with urgent protection needs.<sup>45</sup>

Even progressive financial aid policies such as the European Union's can easily be undermined by domestic legislation that simply bans or severely restricts the activities of organizations that receive funding from foreign sources. In January 2009, Ethiopia's parliament passed a law concerning regulation and registration for NGOs.<sup>46</sup> The law defines "foreign charities" to include any organization that receives more than ten percent of its funding from outside the country.<sup>47</sup> The law then prohibits foreign charities from engaging in activities related to governance, human rights, conflict settlement and resolution, and gender, ethnic, and religious equality.<sup>48</sup> Since most NGOs in Ethiopia rely on outside funding, the law will have the practical effect of banning many public-interest organizations working on behalf of communities.<sup>49</sup> Of course the irony of laws restricting foreign contributions on the grounds of protecting national

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*Shortages*, PLUSNEWS, Apr. 24, 2008, <http://www.plusnews.org/Report.aspx?ReportId=77902>.

<sup>43</sup> Parliament and Council Regulation 1889/2006, 2006 O.J. (L 386) 1.

<sup>44</sup> *Id.* art. 2.

<sup>45</sup> *Id.* art. 9.

<sup>46</sup> Proclamation to Provide for the Registration and Regulation of Charities and Societies, No. 621/2009 Fed. Negarit Gazeta 4521 (2009) (Eth.).

<sup>47</sup> *Id.* § 1, ¶ 2(3)–(4), at 4522.

<sup>48</sup> *Id.* § 3, ¶ 14(5), at 4530.

<sup>49</sup> East and Horn of Africa Human Rights Defenders Project [EHAHRDP], *The Situation of Human Rights Defenders in the East and Horn of Africa: Report to the Forum on the Participation of NGOs at the 44th Session of the African Commission on Human and People's Rights (ACHPR)*, 16 (Nov. 2008).

sovereignty is that many of the countries that have enacted these laws accept millions of dollars of aid from foreign governments.<sup>50</sup>

Burdensome registration requirements, government interference, and laws imposing funding restrictions all infringe on the right of free association. These measures are not only inconsistent with the Declaration on Human Rights Defenders, but violate other international covenants such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.<sup>51</sup>

### ***B. Environmental Advocacy—A Crime Against the State . . . ?***

[Everyone has] the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.<sup>52</sup>

Criminal laws are used to deter environmental defenders from speaking out against government decisions or policies that harm the environment. For example, sedition laws criminalize speech or conduct that incites disruption or the overthrow of lawful authority.<sup>53</sup> Sedition laws are often used against environmental and other human rights defenders. Because the crime of sedition in some countries can carry severe penalties (such as life imprisonment or death), even the threat of prosecution can have a chilling effect on free speech and public-interest advocacy.

In Tanzania, two lawyers with Lawyers' Environmental Action Team (LEAT) represented a community that claimed its rights had been violated by the Tanzanian government and a Canadian mining

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<sup>50</sup> United States Agency for International Development [USAID], Fiscal Year 2010 Congressional Budget Justification for Foreign Operations, Summary Tables, Table 2(a) at 323, available at <http://www.usaid.gov/policy/budget/cbj2010/>.

<sup>51</sup> See International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), at 52, art. 22, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (Dec. 16, 1966); Universal Declaration of Human Rights, G.A. Res. 217A, art. 20, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 10, 1948).

<sup>52</sup> G.A. Res. 53/144, *supra* note 9, art. 8.

<sup>53</sup> Sedition is defined as either "An agreement, communication, or other preliminary activity aimed at inciting treason or some lesser commotion against public authority" or "Advocacy aimed at inciting or producing—and likely to incite or produce—imminent lawless action." BLACK'S LAW DICTIONARY 1388 (8th ed. 2004).

company.<sup>54</sup> The lawyers were charged with sedition in the spring of 2002 for lawful activities undertaken in their efforts to obtain an investigation into the deaths of artisanal miners and to protect the rights of communities near the Bulyanhulu gold mine.<sup>55</sup> Attorney Rugemeleza Nshala was charged under the Newspapers Act with the offense of “Publishing Words with Seditious Intention” (related to an open letter to the president) and attorney Tundu Lissu was charged under the same Act with “Uttering Words with Seditious Intention” (related to a statement made at a press conference).<sup>56</sup>

At the time, the U.N. Special Representative on Human Rights Defenders was newly appointed and the African counterpart had not yet been created. NGOs catalyzed a campaign to protect the lawyers’ security.<sup>57</sup> With world attention on the situation, the Tanzanian government stopped aggressively prosecuting the charges, but the case has not been formally dismissed to this day.<sup>58</sup> Nshala and Lissu have been able to continue on with their lives and their work, but the case still hangs over them and the Newspaper Act still remains on the books, chilling civic engagement in Tanzania.

In Ethiopia, human rights defenders Netsanet Demissie and Daniel Bekele were charged as accomplices for the crime of outrage against the constitution and the constitutional order in 2005.<sup>59</sup> Punishment for this crime ranges from three years in jail to the death penalty.<sup>60</sup> The authorities alleged that opposition party leaders had been

<sup>54</sup> IRIN, *Tanzania: Politician, Environmental Lawyers Charged over Bulyanhulu*, May 3, 2002, <http://www.irinnews.org/report.aspx?reportid=31758>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*; The Newspapers Act, 1976, No. 3/76, § 32(1)(b)–(c) (Tanz.) (The penalty for a first-time offense under the Act is a fine of up to 10,000 Tanzanian shillings or imprisonment for up to two years.).

<sup>57</sup> The Environmental Law Alliance Worldwide (ELAW) worked jointly with Lawyers’ Environmental Action Team (LEAT) to spread news of Nshala’s and Lissu’s arrests, which successfully brought global attention to the situation. See Press Release, LEAT/ELAW, *Tanzanian Attorneys Face Charges of Sedition* (May 17, 2002), <http://www.lead.or.tz/about/pr/2002.05.17.sedition.php>; see also *Tanzania: Attorneys Face Charges of Sedition*, ENV’T NEWS SERV., May, 17, 2002, <http://www.ens-news.wire.com/ens/may2002/2002-05-17-19.asp>; MiningWatch Canada, *Tanzanian Environmental Activists Persecuted for Speaking Out Against World Bank Group Gold Mine*, May 10, 2002, <http://www.miningwatch.ca/en/tanzanian-environmental-activists-persecuted-speaking-out-against-world-bank-group-gold-mine>.

<sup>58</sup> E-mail from Rugemeleza Nshala, to Jennifer Gleason (Oct. 14, 2009) (on file with author).

<sup>59</sup> Interviews with Netsanet Demissie, Daniel Bekele (Dec. 22, 2005).

<sup>60</sup> Criminal Code of the Democratic Republic of Ethiopia, 2004, Proclamation No. 414/2004, art. 238 (Eth.).

instigating violence in the streets, threatening the government, and initiating mutiny for the purpose of dismantling the constitution and the constitutional system.<sup>61</sup> Demissie and Bekele, leaders of two human rights organizations, were accused of being accomplices to the opposition leaders.<sup>62</sup> The charges against them alleged that they used their NGOs to carry out these crimes.<sup>63</sup>

### *C. . . . Or Terrorism?*

*Internationally, we are seeing an increasing use of what I call the "T-word"—terrorism—to demonize political opponents, to throttle freedom of speech and the press, and to delegitimize legitimate political grievances.*

—U.N. Secretary-General Kofi Annan<sup>64</sup>

Security and anti-terrorism laws are used by domestic governments to restrict the work of environmental and other human rights defenders, particularly in the realm of free speech and association. In the wake of the September 11, 2001, terrorist attacks in the United States, the U.N. Security Council passed a resolution requiring States to ensure that domestic laws treat terrorist acts as serious criminal offenses.<sup>65</sup> Since then, many States have passed new anti-terrorism laws, which are having an impact on environmental and other human rights defenders. Among other impacts, the laws threaten the right to free speech and association. Many of these laws include vague definitions that could allow authorities to arrest or place under

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<sup>61</sup> Interviews, *supra* note 59.

<sup>62</sup> *Id.*

<sup>63</sup> Demissie and Bekele were declared prisoners of conscience by Amnesty International. Unfortunately, they were found guilty and sentenced to two-and-a-half years in prison. Amnesty International “considers they were convicted solely for their peaceful civil society activism.” Amnesty Int’l, *Ethiopia: Further Information on UA 299/07: Prisoner of Conscience*, AI Index AFR 25/001/2008, Jan. 9, 2008.

<sup>64</sup> Secretary-General, *Statement of Kofi Annan to the 20 January Security Council Ministerial Meeting on Terrorism* (Jan. 20, 2003), available at <http://www.un.org/News/press/docs/2003/sgsm6277.sgsm6277.html>.

<sup>65</sup> S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001). Section 2(e) declares that States shall:

Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts.

surveillance anyone who disagrees with the State. These laws also carry severe penalties. The United Nations observed:

Under the pretext of security reasons, human rights defenders have been banned from leaving their towns, and police and other members of security forces have summoned defenders to their offices, intimidated them and ordered the suspension of all their human rights activities. Defenders have been prosecuted and convicted under vague security legislation and condemned to harsh sentences of imprisonment.<sup>66</sup>

The mere existence of anti-terrorism laws, while certainly essential in many regards, has discouraged people from legitimately and lawfully advocating for environmental and other human rights.

In response to the terrorist acts of September 11, the U.S. Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act in 2001,<sup>67</sup> commonly referred to as the Patriot Act. Among sweeping changes to criminal procedure and penalties, the Act modifies communications laws to provide government officials with expanded authority to track and intercept communications.<sup>68</sup> The Patriot Act and Executive Order 13224,<sup>69</sup> which was issued on September 23, 2001, allow greater scrutiny and control of financial transactions and authorize the U.S. Treasury to freeze foreign assets of “designated” entities.<sup>70</sup>

Several reports document the dire impact of the Patriot Act and related U.S. security laws and regulations on human rights standards around the world. The erosion of human rights in the United States has empowered other governments to follow the United States’ lead in enacting sweeping antiterrorism laws.<sup>71</sup>

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<sup>66</sup> *Fact Sheet No. 29*, *supra* note 7, at 12.

<sup>67</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

<sup>68</sup> CHARLES DOYLE, CONG. RESEARCH SERV. REPORT FOR CONG., THE USA PATRIOT ACT: A SKETCH (Apr. 18, 2002), *available at* [www.fas.org/irp/crs/RS21203.pdf](http://www.fas.org/irp/crs/RS21203.pdf).

<sup>69</sup> Exec. Order No. 13224, 66 Fed. Reg. 49,079 (Sept. 23, 2001).

<sup>70</sup> Section 311 of the Patriot Act authorizes the U.S. Treasury to designate a foreign jurisdiction, foreign financial institution, type of account or class of transactions as a “primary money laundering concern,” thereby enabling the Treasury to impose any one or combination of measures to protect against illicit financing risks associated with the designated entity.

<sup>71</sup> As one report observed:



In 2004, the International Commission of Jurists (ICJ) adopted the Berlin Declaration on Upholding Human Rights while Combating Terrorism and called for the establishment of a panel to study the impact of counter-terrorism measures on human rights.<sup>72</sup> The Declaration acknowledges that “[t]errorism poses a serious threat to human rights,” and that “all states have an obligation to take effective measures against acts of terrorism.”<sup>73</sup> However, the Declaration warns:

Since September 2001 many states have adopted new counter-terrorism measures that are in breach of their international obligations. In some countries, the post-September 2001 climate of insecurity has been exploited to justify long-standing human rights violations carried out in the name of national security.

. . . . The odious nature of terrorist acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights.<sup>74</sup>

In 2005, Nicholas Howen, Secretary General of the ICJ, told the U.N. Commission on Human Rights: “Ever since the terrible events of 11 September 2001, the international community has turned its focus to the compelling objective of tackling domestic and global terrorism. Regrettably, states have compounded the threats posed by terrorism with new dangers to human rights and security brought on by counter-terrorism efforts themselves.”<sup>75</sup>

The ICJ created a panel that spent three years studying counter-terrorism measures and their impacts on human rights. In early 2009, the panel issued its report, finding that in the previous eight years,

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A growing number of countries have adopted sweeping counterterrorism measures into their domestic legal systems, at times significantly expanding on the substance of U.S. measures while explicitly invoking U.S. precedent. Opportunistic governments have been co-opting the U.S. “war on terrorism,” citing support for U.S. counterterrorism policies as a basis for internal repression of domestic opponents.

Lawyers Comm. For Human Rights, *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*, 73 (2003), available at <http://www.humanrightsfirst.org/pubs/descriptions/Assessing/AssessingtheNewNormal.pdf>.

<sup>72</sup> Int’l Comm’n of Jurists [ICJ], *The Berlin Declaration: The ICJ Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism*, Aug. 28, 2004, available at [http://www.icj.org/news.php3?id\\_article=3503&lang=en](http://www.icj.org/news.php3?id_article=3503&lang=en).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> Nicholas Howen, Sec’y Gen., ICJ, Oral Intervention at the U.N. Commission on Human Rights 61st Sess.: Protection of Human Rights and Fundamental Freedoms While Countering Terrorism (Apr. 18, 2005), available at <http://www.icj.org/IMG/pdf/ctos.pdf>.

“many States have responded to terrorism in a manner that threatens the very core of the international human rights framework, that represents perhaps one of the most serious challenges ever posed to the integrity of a system carefully constructed after the Second World War.”<sup>76</sup>

The report explains that some of the laws adopted since 2001 “have extended well beyond the original intention of targeting terrorists, and now are being used against ‘ordinary’ criminals, political opponents, dissenters, and members of minority communities.”<sup>77</sup> In virtually all of the hearings the panel held around the world, people raised the problem of “vague and over-broad definitions surrounding the concept of terrorism or terrorist acts in domestic law.”<sup>78</sup> Specifically, the panel heard complaints about laws from “Algeria, Australia, Chile, Egypt, Germany, India, Jordan, the Maldives, Morocco, Tunisia, the Philippines, the Russian Federation, Sri Lanka, and the UK.”<sup>79</sup> The panel also heard criticism concerning the definitions of terrorism included in the 2002 Council of the European Union’s Framework Decision on Combating Terrorism and the 1998 Arab Convention for the Suppression of Terrorism.<sup>80</sup> The report notes that “[c]omplaints about such laws and the fact that the definitions used are vague or over-broad have been fully documented in reports of the UN Human Rights Committee and other treaty bodies.”<sup>81</sup> Over-broad definitions of “terrorism” have made it difficult to predict what kinds of activities constitute an offense. This uncertainty casts a chilling effect on any work that involves legitimate expressions of dissent, including publicly advocating against government decisions or actions that infringe on the human right to a clean and healthy environment.

Activists challenging a proposed open-pit coal mine in New Zealand were subjected to anti-terror raids in 2007 conducted under the auspices of the country’s Terrorism Suppression Act.<sup>82</sup> In the long-standing dispute between the Chilean government and Mapuche

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<sup>76</sup> ICJ, *Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights*, at v (2009), available at <http://icj.org/IMG/EJP-report.pdf>.

<sup>77</sup> *Id.* at 124.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 125.

<sup>82</sup> TVNZ, *Police Under Fire for Anti-terrorism Raids* (Oct. 16, 2007), <http://tvnz.co.nz/content/1404937>.

communities over land rights, the government invoked an anti-terrorism law in cases against Mapuche activists accused of setting fire to land held by private individuals and logging companies.<sup>83</sup> The law infringes on due process protections by allowing prolonged detention before trial and the use of anonymous witnesses, in addition to imposing harsh penalties for certain acts.<sup>84</sup> Judges who have questioned the applicability of the anti-terrorism law have been disqualified and removed.<sup>85</sup>

The government of Swaziland adopted the Suppression of Terrorism Act (STA) in 2008,<sup>86</sup> which has seriously undermined constitutional rights of free speech and association.<sup>87</sup> The U.S. Department of State reported that harassment, arbitrary detentions, and arrests of journalists, opposition party members, and other activists in Swaziland have occurred under the auspices of the STA.<sup>88</sup> In November 2008, opposition party leader Mario Masuku was arrested and charged under the STA for allegedly uttering statements supportive of a bombing that occurred near the king of Swaziland's palace.<sup>89</sup> Shortly thereafter, the government declared the People's United Democratic Movement of Swaziland (an opposition party), the Swaziland Youth Congress, and other organizations to be terrorist

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<sup>83</sup> See Unrepresented Nations and Peoples Org., *Submission to the UN Office of the High Commissioner for Human Rights, Universal Periodic Review: Chile* (2009), available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/CL/UNPO\\_CHL\\_UPR\\_S5\\_2009\\_UnrepresentedNationsandPeoplesOrganization.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/CL/UNPO_CHL_UPR_S5_2009_UnrepresentedNationsandPeoplesOrganization.pdf) (explaining the antiterrorism law).

<sup>84</sup> *Id.*

<sup>85</sup> Human Rights Watch & Observatorio de Derechos de los Pueblos Indigenas, *Undue Process: Terrorism Trials, Military Courts, and the Mapuche in Southern Chile*, 16 HUM. RTS. WATCH 1, 6 (2004).

<sup>86</sup> The Suppression of Terrorism Act (2008) (Swaz.).

<sup>87</sup> According to Amnesty International, the STA includes an over-broad definition of what constitutes a "terrorist act." Amnesty Int'l & the Int'l Bar Assoc. Human Rights Institute [IBAHRI], *Suppression of Terrorism Act Undermines Human Rights in Swaziland*, AI Index AFR 55/001/2009, Jan. 9, 2009. Amnesty International and the International Bar Association's Human Rights Institute published a report calling for the reform of the STA explaining that it is too broad and is impacting the rights of citizens who want to advocate for human rights. According to the report, the law that allows for removal from Swaziland of anyone *suspected* of an offense under the law, and many other provisions that violate due process and threaten the rights of free association and expression and other fundamental human rights. *Id.* at 8.

<sup>88</sup> BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2008 HUMAN RIGHTS REPORT: SWAZILAND (2008), available at <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119027.htm> [hereinafter SWAZILAND HUMAN RIGHTS REPORT].

<sup>89</sup> *Id.* § 1(e).

entities under the STA.<sup>90</sup> Any person supporting these organizations is subject to a prison term ranging from twenty-five years to life.<sup>91</sup> Almost one year later, in September 2009, the High Court of Swaziland acquitted Masuku for lack of credible evidence supporting the charges against him.<sup>92</sup>

Amnesty International finds that the STA “gravely threatens freedom of expression, association and peaceful assembly” and its “intimidating and silencing effects are . . . being felt by human rights defenders . . . .”<sup>93</sup> A recent Amnesty International report reviewing the implementation of the STA quotes an unnamed person saying, “The Act has been successful in creating a climate of fear. All those who were vocal are quieter now because of the Act.”<sup>94</sup> The report explains that the STA requires an organization declared as a “terrorist group” to prove that it was “not reasonable” for the government to make this declaration.<sup>95</sup> Amnesty International further reports that this designation carries grave consequences: “Not only is the property of the group subject to seizure and forfeiture, but membership of the group also becomes a criminal offence. Other organizations and individuals who have virtually any kind of contact with the group risk being caught up in very broadly defined criminal offences.”<sup>96</sup>

Antiterrorism legislation has also affected the financial operations of NGOs. In 2008, referring to a report on the Patriot Act published by OMB Watch and Grantmakers Without Borders, Maya Schenwar of Truthout explained:

The law grants the government broad new surveillance privileges and access to private property, and protests and demonstrations have been heavily monitored and contained in the wake of 9/11. But according to a new report, the worst effects on nonprofit organizations [NGOs] have garnered little attention. New powers granted to the Treasury Department currently allow the government to shut down charities based on unfounded claims; to bar nonprofits

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<sup>90</sup> *Id.* § 1(e)–(f); *see also* the Suppression of Terrorism Act § 28 (2008) (Swaz.) (describing designation of “specified entities” as organizations associated with or promoting terrorist acts).

<sup>91</sup> SWAZILAND HUMAN RIGHTS REPORT, *supra* note 88, § 1(f).

<sup>92</sup> Press Release, IBAHRI, IBAHRI Welcomes the High Court of Swaziland’s Decision to Acquit Mario Masuku of Terrorism Charges (Sept. 28, 2009), <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=22AE7CFB-9E2D-46DC-9DB8-0EE9B555FE29>.

<sup>93</sup> Amnesty Int’l, *An Atmosphere of Intimidation: Counter-terrorism Legislation Used to Silence Dissent in Swaziland*, at 1, AI Index AFR 55/004/2009, May 2009.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 2.

<sup>96</sup> *Id.*

from operating in some international disaster zones, and to freeze the assets of “designated” charities, leaving large sums of money intended for humanitarian causes to fester indefinitely in Treasury vaults.<sup>97</sup>

One of the report’s authors noted “the government has a free hand to act based purely on suspicion when it comes to the nonprofit sector. Executive Order 13224, which outlaws contact with ‘terrorist organizations,’ is vague about the criteria for how the ‘terrorist’ label—or the ‘terrorist supporter’ label—is to be designated or investigated.”<sup>98</sup> In one particular case applying Executive Order 13224, the U.S. Treasury froze the assets of an Ohio-based charity for over three years without a warrant, or even prior notice and hearing.<sup>99</sup> The charity fought back, and, recently, a federal district judge struck down the Executive Order on constitutional grounds, stating “domestic actions—even when taken in the name of national security—must comport with the Fourth Amendment.”<sup>100</sup>

The brief examples of hardships described above represent just a fraction of the incidents that have occurred, and reflect the serious impediments to basic rights necessary to sustain grassroots advocacy. But defenders have not been completely deterred. As described in the final Part of this Article, some have engaged with the United Nations and regional mechanisms created to help defenders. Other defenders have formed networks to share information and provide security for each other, and several NGOs specifically dedicated to the rights of defenders provide support and bring much-needed international attention to urgent cases.

#### IV FORMAL AND INFORMAL MECHANISMS THAT SUPPORT THE RIGHTS OF ENVIRONMENTAL AND OTHER HUMAN RIGHTS DEFENDERS

Despite a growing climate of government interference with public-interest advocacy, many defenders relentlessly persevere on behalf of communities and the global environment. Many environmental and

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<sup>97</sup> Maya Schenwar, *The PATRIOT Act’s War on Charity*, TRUTHOUT, Aug. 5, 2008, <http://www.truthout.org/article/the-patriot-acts-war-charity>.

<sup>98</sup> *Id.*

<sup>99</sup> *KindHearts for Charitable Human Dev., Inc. v. Geithner*, No. 3:08CV2400, 2009 U.S. Dist. Lexis 80475, at \*3–4 (N.D. Ohio Aug. 18, 2009).

<sup>100</sup> *Id.* at \*15.

other human rights defenders work under extreme circumstances where violence and oppression are the norm. Others advocate under the watchful eye of government. Defenders have found some solutions, however. Individuals and NGOs have brought petitions and requests for protective measures to the tribunals created by the United Nations and several regional human rights bodies. Others have created or utilized networks that not only provide information and resources to support their work, but also provide a measure of safety. Overall, these strategies are shining a light and mobilizing international attention when it is urgently needed.

### *A. The U.N. Special Rapporteur and Complaint Process*

Two years after the U.N. Declaration on Human Rights Defenders was adopted, and in response to a mandate issued by the U.N. Commission on Human Rights,<sup>101</sup> the U.N. Secretary-General appointed a Special Representative on Human Rights Defenders. The position has been renewed several times<sup>102</sup> and, as of 2008, is held by a Special Rapporteur.<sup>103</sup>

The Special Rapporteur's duty is to "report on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection . . . ."<sup>104</sup> Specifically, the Special Rapporteur is empowered to receive specific information on individual cases where human rights violations have been committed against defenders, to work with governments and other parties to promote and implement the Declaration, and to recommend specific strategies to protect human rights defenders.<sup>105</sup>

Perhaps the Special Rapporteur's most important activity is to review complaints concerning individual cases of human rights

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<sup>101</sup> Comm'n on Human Rights Res. 2000/61, ¶ 3 (Apr. 26, 2000), available at <http://www.ohchr.org> (search for "Commission on Human Rights Resolution 2000/61"; then follow "Human Rights Defenders" hyperlink).

<sup>102</sup> Comm'n on Human Rights Res. 2003/64, ¶ 10 (Apr. 24, 2003), available at <http://www.ohchr.org> (search for "Commission on Human Rights Resolution 2003/64"; then follow "Human Rights Defenders" hyperlink); U.N. Human Rights Council [UNHRC] Res. 5/1, ¶ 18, *Institution-building of the United Nations Human Rights Council* (June 18, 2007), available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_5\\_1.doc](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc).

<sup>103</sup> UNHRC Res. 7/8, ¶ 2, *Mandate of the Special Rapporteur on the Situation of Human Rights Defenders* (Mar. 27, 2008), available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_7\\_8.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_8.pdf).

<sup>104</sup> Res. 2000/61, *supra* note 101, ¶ 3.

<sup>105</sup> *Id.*; Res. 7/8, *supra* note 103, ¶ 2.

violations committed against defenders. The complaint process is initiated when a party submits information alleging that a defender's rights have been violated.<sup>106</sup> If the Special Rapporteur determines that the information falls within her mandate and that the allegation is credible, she will make contact with the government of the State where the alleged violation occurred.<sup>107</sup> Depending on the urgency of the allegation, the Special Rapporteur will communicate through an "urgent appeal" letter or an "allegation" letter.<sup>108</sup> These letters are intended to start a communication process in which the State government is informed of the alleged violation and encouraged to take immediate steps to investigate and take action to either prevent or rectify violations against a human rights defender.<sup>109</sup>

Because the Special Rapporteur is limited to using diplomatic means to address alleged violations against defenders, the complaint process is effective only if constructive communication is actually established with the State government.<sup>110</sup> Regrettably, not all domestic governments recognize or respect the Special Rapporteur's mandate or even the Declaration.<sup>111</sup> Between December 2006 and December 2007, then-Special Representative Hina Jilani issued communications in the cases of 835 defenders from seventy-six countries.<sup>112</sup> Ms. Jilani received responses to her communications from only forty-nine countries.<sup>113</sup> This trend continued through 2008

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<sup>106</sup> OHCHR, Submitting Allegations, <http://www2.ohchr.org/english/issues/defenders/complaints.htm> (last visited Oct. 1, 2009).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* "Urgent appeal" letters are used when the complaint alleges information indicating that a human rights violation against a defender is allegedly ongoing or about to occur. The intent is to notify the State government quickly so that steps can be taken to avert or end violations. When violations have already occurred and impact on the defender affected can no longer be changed, the Special Rapporteur will issue an "allegation" letter. *Id.*

<sup>109</sup> UNHRC, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 40, U.N. Doc. A/HRC/7/28 (Jan. 31, 2008) (prepared by Hina Jilani) [hereinafter *Promotion and Protection I*].

<sup>110</sup> *Id.* ¶ 36.

<sup>111</sup> At one point in 2007, while she was actively serving as Special Representative, Ms. Jilani herself was under threat when the Home Department of the Government of Punjab issued an order to place Ms. Jilani under house arrest. See DailyTimes.com, *Hina Jilani Vows to Return Despite House Arrest Threat*, Nov. 16, 2007, [http://www.dailytimes.com.pk/default.asp?page=2007/11/16/story\\_16-11-2007\\_pg7\\_59](http://www.dailytimes.com.pk/default.asp?page=2007/11/16/story_16-11-2007_pg7_59).

<sup>112</sup> *Promotion and Protection I*, *supra* note 109, ¶ 2.

<sup>113</sup> *Id.*

(the latest year for which information is available) with only forty-eight of seventy-nine countries responding to communications.<sup>114</sup> Yet, even when responses are received, the quality of communication is generally considered to be poor because domestic governments often provide no (or irrelevant) information or focus exclusively on the presumed illegality of the defender's actions.<sup>115</sup>

Notwithstanding the limitations of the complaint process, the U.N. Declaration on Human Rights Defenders and the complaint process have brought recognition to the plight of defenders worldwide. They have also shed light on the need for international and regional cooperation to protect the right to defend environmental and other human rights. As described below, the Declaration has prompted the creation of regional tribunals specifically dedicated to protecting environmental and other human rights defenders in Africa, Europe, and the Americas. Progress has yet to be made in Asia and the Middle East, but some signs of change are appearing.

### *B. Africa's Regional Mechanism*

Following adoption of the U.N. Declaration on Human Rights Defenders, the African Commission on Human and Peoples' Rights (ACHPR) was the first regional forum to create a special procedure to protect defenders' rights.<sup>116</sup> The ACHPR adopted the Resolution on the Protection of Human Rights Defenders in Africa in 2004.<sup>117</sup> The Resolution required the appointment of a Special Rapporteur with a similar mandate to that of the U.N. Special Representative: to seek, receive, examine, and act upon information concerning human rights defenders in Africa; to promote strategies to better protect human rights defenders; and to issue reports on the situation of defenders in Africa.<sup>118</sup>

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<sup>114</sup> UNHRC, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, ¶ 5, U.N. Doc A/HRC/10/12 (Feb. 12, 2009) (prepared by Margaret Sekaggya).

<sup>115</sup> *Promotion and Protection I*, *supra* note 109, ¶¶ 44–45.

<sup>116</sup> EAST AND HORN OF AFRICA HUMAN RIGHTS DEFENDERS PROJECT, DEFENDING HUMAN RIGHTS: A RESOURCE BOOK FOR HUMAN RIGHTS DEFENDERS 22 (2007), available at <http://www.defenddefenders.org/documents/Defending%20Human%20Rights%20-%20A%20Resource%20Book.pdf>.

<sup>117</sup> African Comm'n on Human and Peoples' Rights [ACHPR], *Resolution on the Protection of Human Rights Defenders in Africa*, Res. 69 (XXXV) 04 (June 4, 2004), available at [http://www.achpr.org/english/\\_info/hrd\\_res\\_appoin\\_3.html](http://www.achpr.org/english/_info/hrd_res_appoin_3.html).

<sup>118</sup> *Id.*



Under Article 55 of the African Charter on Human and Peoples' Rights, any person may submit a communication concerning an allegation of human rights violations to the ACHPR.<sup>119</sup> The communication will be considered by the ACHPR if a majority of the Commission members agree that it should be considered.<sup>120</sup> In order to be considered, the communication must, among other requirements: identify the authors (although authors may request anonymity); present information about the violation other than that reported by mass media; and, when possible, be submitted to the ACHPR after local remedies have been exhausted.<sup>121</sup>

The Special Rapporteur publishes annual reports on her activities, including "protection activities"—those actions taken in response to communications received regarding the violation of rights of human rights defenders. The 2008 report notes that the Rapporteur received forty-three communications concerning violations in thirteen countries.<sup>122</sup> It is apparent from the Special Rapporteur's description of her diplomatic efforts that the majority of countries do not respond to protection activities or other communications from the Rapporteur.<sup>123</sup> The Special Rapporteur's most recent report notes that "the situation of human rights defenders has deteriorated considerably," with freedom of association and freedom of expression remaining critical problems in Africa.<sup>124</sup>

In addition to communicating with domestic governments, Reine Alapini-Gansou, the current Special Rapporteur on Human Rights Defenders in Africa, works closely with NGOs and individual human

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<sup>119</sup> ACHPR, *Information Sheet No. 3: Communication Procedure*, at 2, available at [http://www.achpr.org/english/\\_info/communications\\_procedure\\_en.html](http://www.achpr.org/english/_info/communications_procedure_en.html).

<sup>120</sup> African Charter on Human and Peoples' Rights, art. 55, June 27, 1981, 1520 U.N.T.S 217 (1982).

<sup>121</sup> *Id.* art. 56.

<sup>122</sup> Reine Alapini-Gansou, *Report of the Special Rapporteur on the Rights of Human Rights Defenders in Africa, Forty-Fourth Intersession Report*, ¶ 19 (Nov. 2008), <http://www.achpr.org/english/Commissioner%27s%20Activity/44th%20OS/Special%20Rapporteurs/Human%20Rights%20Defenders.pdf>. Note that these communications related to all types of human rights defenders; therefore, it is not clear how many of these communications relate directly to environmental defenders.

<sup>123</sup> Reine Alapini-Gansou, *African Comm'n on Human and Peoples' Rights, Forty-Fifth Intersession Report*, at 17 (May 2009), available at <http://www.achpr.org/english/Commissioner%27s%20Activity/45th%20OS/Special%20Mechanisms/Com%20Gansou.pdf>. In the May 2009 report, the Rapporteur notes that some states have claimed that the "communications do not fall into the right hands and worse still some States have even questioned the very existence of the said communications." *Id.*

<sup>124</sup> *Id.* at 14.

rights defenders. In April 2009, she participated in the Johannesburg +10 Human Rights Defenders Conference held in Uganda.<sup>125</sup> The participants at this conference drafted the Kampala Declaration of Human Rights Defenders known as the “Kampala Plan of Action,” which was subsequently adopted in Banjul on May 12, 2009.<sup>126</sup> The Plan of Action includes the goals of enhancing human rights organizations’ active use of the African Commission on Human and Peoples’ Rights and the U.N. Human Rights Council, and implementing the European Guidelines on Human Rights Defenders throughout Africa. The Kampala Declaration calls on African States to ensure that their laws are consistent with regional and international obligations and to domesticate regional and international instruments to protect human rights “without reservations.”<sup>127</sup>

### C. *The Inter-American Mechanism*

Following the example set by the United Nations, the Executive Secretariat for the Inter-American Commission on Human Rights (IACHR) created the Human Rights Defenders Unit in 2001.<sup>128</sup> The role of the Defenders Unit is similar to the role of the U.N. and African Special Rapporteurs.<sup>129</sup> Since its creation, the Defenders Unit has analyzed communications, complaints, urgent actions, other information sent to the Executive Secretariat related to human rights defenders.<sup>130</sup> It has also advised the IACHR on individual petitions

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<sup>125</sup> Johannesburg +10 All Africa Human Rights Defenders Conference, Agenda, Apr. 20–23, 2009, available at [http://www.defenddefenders.org/documents/Agenda\\_19.04.09.pdf](http://www.defenddefenders.org/documents/Agenda_19.04.09.pdf).

<sup>126</sup> Johannesburg +10 All Africa Human Rights Defenders Conference, Kampala, Uganda, Apr. 23, 2009, *Kampala Declaration of Human Rights Defenders*, available at <http://www.defenddefenders.org/documents/Kampala%20Declaration%20ENG%20FINAL.pdf> [hereinafter *Kampala Declaration*]; see also Johannesburg +10 All Africa Human Rights Defenders Conference, Kampala, Uganda, Apr. 23, 2009, *Kampala Plan of Action for Human Rights Defenders*, ¶ 1.

<sup>127</sup> *Kampala Declaration*, *supra* note 126.

<sup>128</sup> OAS Permanent Council, Comm. on Judicial Affairs, Presentation of the IACHR to the Committee on Judicial and Political Affairs on Human Rights Defenders (Oct. 4, 2002).

<sup>129</sup> Hina Jilani, former Special Representative for Human Rights Defenders to the United Nations, is credited with helping to establish the Unit during her tenure at the U.N. See OAS, Inter-Am. Comm’n on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5, ¶ 9 (Mar. 7, 2006) [hereinafter *2006 OAS Report*].

<sup>130</sup> *Id.* ¶ 10.

and publicized incidents that impact the rights of human rights defenders.<sup>131</sup>

The IACHR's primary tool for responding to urgent threats is to issue "precautionary measures"<sup>132</sup> that direct a government to take specific action to protect human rights defenders.<sup>133</sup> The Commission's Rules of Procedure provide that "[i]n serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."<sup>134</sup> A case concerning the alleged danger to a defender need not be pending before the Commission for it to consider and grant a precautionary measure.<sup>135</sup> The "precautionary measure" mechanism enables the Commission to act quickly and broadly, which it has done on numerous occasions,<sup>136</sup> to not only protect individual defenders, but also communities that are at risk of harm.<sup>137</sup>

The Rules of Procedure allow "[a]ny person or group of persons or nongovernmental entity legally recognized in one or more of the Member States of the OAS" to submit a petition to the Commission.<sup>138</sup> This means that the Commission may consider petitions from individuals from a member State that has not ratified the American Convention on Human Rights.

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<sup>131</sup> *Id.*

<sup>132</sup> *Id.* ¶ 233.

<sup>133</sup> Note, however, some observers have pointed out that these precautionary measures are ineffective either due to a lack of political will or because the defenders are victims of violence perpetrated by the very people responsible for their protection. Observatory for the Protection of Human Rights Defenders, *Annual Report 2009*, 145 (2009), available at <http://www.fidh.org/IMG/pdf/AMER-UK.pdf>.

<sup>134</sup> Inter-Am. Comm'n on Human Rights, Rules of Proc. art. 25.

<sup>135</sup> 2006 OAS Report, *supra* note 129, ¶ 238.

<sup>136</sup> See *id.* ¶¶ 249, 251 (stating that in the first four years of the Defenders Unit's existence, the Commission granted ninety-seven precautionary measures aimed at protecting human rights defenders; and stating the majority of these measures related to individuals connected with civil society organizations, including environmental organizations).

<sup>137</sup> See, e.g., Inter-Am. Comm'n on Human Rights, *Precautionary Measures 2007*, ¶ 43, available at <http://www.cidh.oas.org/medidas/2007.eng.htm>; Inter-Am. Comm'n on Human Rights, *Precautionary Measures 2006*, ¶ 25, available at <http://www.cidh.oas.org/medidas/2006.eng.htm>; Inter-Am. Comm'n on Human Rights, *Precautionary Measures 2004*, ¶ 21, available at <http://www.cidh.oas.org/medidas/2004.eng.htm>.

<sup>138</sup> Inter-Am. Comm'n on Human Rights, Rules of Proc. art. 23.

A report published by the Defender's Unit in 2006 explains that some groups of defenders in the Americas face more violations of their rights than others.<sup>139</sup> At least two of those groups include environmental defenders: campesino and community leaders; and the leaders of indigenous and Afro-descendant communities.<sup>140</sup> With regard to campesino and community leaders, the report notes that "increased inequity in the concentration of wealth," and the "struggle for the right to land and the right to a healthy environment" are the primary issues prompting community advocates to stand up for their rights.<sup>141</sup> The IACHR report notes that "in some cases the institutional responses to the acts mentioned have . . . tended to criminalize social protest by police repression and criminal prosecution of the persons involved, distorting the application of the criminal laws of the state, and violating inter-American treaties for the protection of human rights . . ."<sup>142</sup> The report further states:

The conflicts and situations of tension provoked by the inequality in the distribution of natural resources in the vast majority of countries of the hemisphere has given rise to confrontations that create the conditions for excesses to be committed in the repression, and for human rights violations. In many cases, the persons who promote and lead these initiatives to seek redress are the hardest hit, as they are considered targets who can set an example to dissuade others from participating in the protests.<sup>143</sup>

The report observes that indigenous and Afro-descendant leaders who are defending and protecting their territories and natural resources, as well their autonomy and cultural identity, are at greater risk of being subjected to human rights violations.<sup>144</sup> The report states that "[t]he IACHR has noted with concern the frequency of assassinations of and threats against indigenous leaders engaged in the defense of their peoples' rights, and impunity, in the vast majority of cases, for the perpetrators of these serious violations."<sup>145</sup>

The Human Rights Defenders Unit has been an important tool for protecting environmental defenders in the Americas and is likely to

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<sup>139</sup> See 2006 OAS Report, *supra* note 129, ¶ 154.

<sup>140</sup> *Id.* ¶¶ 215–22.

<sup>141</sup> *Id.* ¶ 215.

<sup>142</sup> *Id.* ¶ 216.

<sup>143</sup> *Id.* ¶ 218 (citation omitted).

<sup>144</sup> *Id.* ¶ 220.

<sup>145</sup> *Id.*

become even more important as domestic laws continue to fall behind the international and regional human rights standards.

#### ***D. Small Steps in Asia***

The Asian region has yet to adopt a regional human rights framework or to create any oversight or enforcement mechanisms. Ministers from member countries of the Association of Southeast Asian Nations (ASEAN) recently endorsed the terms of reference to establish the ASEAN Intergovernmental Commission on Human Rights.<sup>146</sup> As the terms are currently written, the Commission will be a consultative body and will undertake efforts to draft a human rights declaration and generally promote human rights throughout the region.<sup>147</sup> The Commission will not have any investigative or enforcement roles.<sup>148</sup>

#### ***E. The European Union Framework***

Within the European Union's general framework for promoting and protecting human rights in third countries are guidelines, adopted in 2004, addressing human rights defenders.<sup>149</sup> The European Guidelines on Human Rights Defenders build upon the U.N. Declaration on Human Rights Defenders and describe the range of activities that may be conducted on behalf of environmental and other human rights defenders under the European Union's Common Foreign and Security Policy (CFSP).<sup>150</sup>

The European Union may act in several ways to protect environmental and other human rights defenders. EU Missions play the most central role in implementing the Guidelines and have important on-the-ground obligations with respect to environmental and other human rights defenders.<sup>151</sup> Heads of Missions are expected to monitor and report on the status of human rights defenders in their

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<sup>146</sup> 14th Assoc. of Southeast Asian Nations (ASEAN) Summit, Thail., 2009, Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights, §§ 3–4 (2009), available at [http://www.14thaseansummit.org/pdf-AMM/25TOR\\_asean\\_human\\_rights\\_body.pdf](http://www.14thaseansummit.org/pdf-AMM/25TOR_asean_human_rights_body.pdf).

<sup>147</sup> *Id.*

<sup>148</sup> *See id.* (describing its structure, mandate, and functions).

<sup>149</sup> *See* Council of the European Union, *Ensuring Protection - European Guidelines on Human Rights Defenders* (2008), available at <http://www.consilium.europa.eu/uedocs/cmsUpload/16332-re02.en08.pdf> [hereinafter *European Guidelines*].

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* ¶ 9.

respective countries of accreditation and to take note of any specific attacks or threats against them.<sup>152</sup> The Guidelines encourage EU Missions to take proactive steps, from organizing meetings and bringing awareness to the rights of defenders to making contact with and providing visible recognition to individual human rights defenders.<sup>153</sup> Visiting human rights defenders, observing trials, or providing physical protection or accompaniment to defenders provides vital recognition to individuals who may be facing immediate or serious risk of harm. These activities are financially supported through the European Instrument for Democracy and Human Rights.<sup>154</sup>

Where appropriate, Heads of Missions also make recommendations to the Council Working Group on Human Rights for action. Recommended action can include demarches (diplomatic protests), declarations concerning defenders who may be at risk of harm, or condemnations against actions or violence that have already occurred.<sup>155</sup>

The EU Presidency or the Troika<sup>156</sup> may issue a confidential demarche requesting that a third-party government respect the human rights of, or lend protection to, a human rights defender.<sup>157</sup> Similarly, they may issue a public declaration to the same effect.<sup>158</sup> During visits to third-party countries, high-level EU officials may engage in informal dialogue with local authorities concerning the situations of human rights and environmental defenders.<sup>159</sup> Finally, if dialogue is unsuccessful, the EU can impose sanctions under the CFSP.<sup>160</sup>

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<sup>152</sup> *Id.* ¶ 8.

<sup>153</sup> *Id.* ¶ 11.

<sup>154</sup> Parliament and Council Regulation 1889/2006, *supra* note 43, art. 19.

<sup>155</sup> *European Guidelines*, *supra* note 149, ¶ 9.

<sup>156</sup> The Troika consists of the Foreign Affairs Minister of the Member State holding the Presidency of the Council of the European Union, the High Representative for the common foreign and security policy, and the Commissioner in charge of external relations. Europa, Glossary, Troika, [http://europa.eu/scadplus/glossary/troika\\_en.htm](http://europa.eu/scadplus/glossary/troika_en.htm) (last visited Dec. 23, 2009).

<sup>157</sup> CHRIS COLLIER, FRONT LINE HANDBOOK FOR HUMAN RIGHTS DEFENDERS: WHAT PROTECTION CAN EU AND NORWEGIAN DIPLOMATIC MISSIONS OFFER? 5 (2007), available at <http://www.frontlinedefenders.org/manuals> (follow "Front Line Handbook for Human Rights Defenders: What Protection Can EU and Norwegian Diplomatic Missions Offer?" hyperlink).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> [T]he Council will impose autonomous EU sanctions in support of efforts . . . to uphold respect for human rights, democracy, the rule of law and good governance.

***F. Collaboration, Networks, and International Nongovernmental Organizations that Protect Defenders***

Defenders are also taking steps to ensure their own safety and looking out for each other. Many environmental defenders find that the best protection is achieved by bringing public awareness to the threats against them. By staying visible and being connected with the outside world, defenders can gain some assurance that someone else will be able to speak out on their behalf if they are silenced.

Several organizations defend the rights of those brave enough to stand up and work for the rights of communities around the world. Organizations such as Amnesty International or Human Rights First are well known and work extensively to protect human rights defenders as part of the organizations' broader human rights objectives. Other organizations, such as Front Line,<sup>161</sup> were created solely to protect "human rights defenders at risk," meaning "people who work, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights."<sup>162</sup> Furthermore, some organizations, such as the Environmental Defender Law Center,<sup>163</sup> have been created with the specific aim of protecting the rights of environmental defenders.

Defenders join networks for many reasons, including connecting with other people who are working on similar issues and obtaining the support they need to do their work. Some networks have been created specifically to protect human rights defenders, such as the East and Horn of Africa Human Rights Defenders Project.<sup>164</sup>

Other networks provide substantive support to organizations working to protect human rights and also work to protect the individual defenders. For example, the International Federation for

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We will do this in accordance with our common foreign and security policy, as set out in Article 11 [of the Treaty of the European Union], and in full conformity with our obligations under international law.

Council of the European Union, *Basic Principles of the Use of Restrictive Measures (Sanctions)*, 10198/1/104 Rev 1, ¶ 3.

<sup>161</sup> Front Line is the international foundation for the protection of human rights defenders. Front Line, About Front Line, <http://www.frontlinedefenders.org/about/frontline> (last visited Jan. 10, 2010).

<sup>162</sup> *Id.*

<sup>163</sup> See Environmental Defender Law Center, <http://www.edlc.org>.

<sup>164</sup> See East and Horn of Africa Human Rights Defenders Project, <http://www.defenddefenders.org/index.html>.

Human Rights (FIDH)<sup>165</sup> connects human rights advocates around the world and provides them with training and support. In 1997, FIDH and the World Organisation Against Torture created the Observatory for the Protection of Human Rights Defenders.<sup>166</sup>

The Environmental Law Alliance Worldwide (ELAW) is a network of public-interest lawyers working to protect the environmental rights of communities around the world.<sup>167</sup> This network is set up to provide substantive legal, scientific, technical, and organizational support. Out of necessity, protecting these courageous defenders has become part of ELAW's core mission.<sup>168</sup> The ELAW network has proven very effective at mobilizing international action on behalf of defenders in peril.

Organizations and networks focusing on any aspect of promoting human rights will unfortunately find themselves protecting a defender at some point in time. When this happens, all other priorities will be put aside and the organization will reach out to anyone who can help. The first call will likely be to one or more of the NGOs or protection mechanisms mentioned above. Subsequent calls will be put out to anyone else who might help. Finding people and organizations to help will depend on the particular facts of the situation. Among the groups that may be engaged are domestic or regional organizations, including government bodies, that are set up to protect human rights. There are other organizations, such as Lawyers Without Borders,<sup>169</sup> that may be able to fill a specific need or focus on issues related to the specific case. Often, media attention or an internet campaign can help shine a light on the situation and keep a defender safe. Choosing the right media outlet or organization depends on factors such as the country the defender lives in and the substance of his or her work. Some organizations have published guides for defenders to help them avoid problems and find solutions when their rights are violated.<sup>170</sup>

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<sup>165</sup> See International Federation for Human Rights [FIDH], <http://www.fidh.org>.

<sup>166</sup> "The activities of the Observatory are based on the belief that strengthening co-operation and solidarity with defenders and their organisations contributes to breaking their isolation and strengthens their protection and security." FIDH, Human Rights Defenders, <http://www.fidh.org/-Human-Rights-Defenders> (last visited Dec. 23, 2009).

<sup>167</sup> See ELAW, <http://www.elaw.org> (last visited Dec. 23, 2009).

<sup>168</sup> ELAW, What We Do, <http://www.elaw.org/what-we-do> (last visited Dec. 23, 2009).

<sup>169</sup> See Lawyers Without Borders, <http://www.lawyerswithoutborders.org>.

<sup>170</sup> See, e.g., ENRIQUE EGUREN, PROTECTION MANUAL FOR HUMAN RIGHTS DEFENDERS (2005), available at [http://www.frontlinedefenders.org/files/en/2312\\_Protection%20Manual%20for%20Human%20Rights%20Defenders.pdf](http://www.frontlinedefenders.org/files/en/2312_Protection%20Manual%20for%20Human%20Rights%20Defenders.pdf); see also EAST AND HORN OF AFRICA HUMAN RIGHTS DEFENDERS PROJECT, *supra* note 116.



### CONCLUSION

Individuals and organizations that work to protect the environmental rights of communities around the world often expose themselves to grave risks. Domestic governments are not doing enough to protect the rights of free speech and association, which are so critical to the work of environmental defenders. International and regional declarations call on governments to ensure the rights of defenders are protected, and several international and regional bodies have set up mechanisms to protect defenders. These mechanisms will continue to bring attention to the rights of environmental and other human rights defenders to speak out, seek effective relief, and raise funds for their important work. Most importantly, we must assertively protect our rights as advocates to collaborate with one another and speak out. We must stand ready to protect each other's human rights. Through formal and informal strategies, these connections will sustain grassroots advocacy to protect the global environment.

