

# Protecting the Defenders: Exploring the Role of Global Corporations and Treaties

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## Protecting the Defenders: Exploring the Role of Global Corporations and Treaties

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IAN GRANIT, JUL 8 2020

The killing and human rights abuses against environmental defenders are increasing rapidly (Butt et al., 2019). Latin America has the highest prevalence of human rights abuses and murders of environmental defenders, stemming out of a wide array of connected causes (Glazebrook & Opoku, 2018). One of the significant root-causes of the killing and abuse of environmental defenders in Latin America is the presence of large global corporations. Global corporations engage in projects that cause environmental degradation and exacerbate the process, which forces opposition from people and communities who depend on the environment for their survival (Global Witness, 2019a). Global corporations are thus often involved in human rights abuses against environmental defenders who oppose their business activities (Glazebrook & Opoku, 2018). Global corporations are, however, seldom held accountable for their involvement in human rights abuses. The main issue causing the lack of accountability is how global corporations often circumvent national laws, and the current vacuum for global corporations and human rights abuses in international law (Khan & Khan, 2017; Jonge, 2011). This essay will examine the role of global corporations and other business enterprises in the human rights abuses of environmental defenders, and why global corporations must be held accountable for their human rights abuses against environmental defenders. Moreover, this essay analyzes the role regional and international treaties play to fulfill the lack of adequate representation of environmental defenders in international law and how governments can use the corona crisis to implement new treaties to protect environmental defenders.

### Human Rights Abuses Against Environmental Defenders

Environmental defenders seek to protect nature from anthropogenic threats causing environmental degradation to their local communities, homes, or livelihoods. The threats to the environment are often due to large-scale projects from powerful actors, which makes the defending of the environment increasingly dangerous. The number of environmental defenders killed as a consequence of defending nature against environmentally degrading projects increases at an alarming rate. During the past 15 years, environmental defenders' killing has doubled from two per week to four per week (Butt, Lambrick, Menton & Renwick, 2019). However, the number is likely to be much larger as many people lose their lives in more anonymous and individual struggles that go unreported (Middeldorp & Le Billion, 2019). The problem is especially prevalent in Latin America, where 60 per cent of the total global murders of environmental defenders occur (Glazebrook & Opoku, 2018).

Moreover, besides the horrific killings of environmental defenders, between 20 to 100 times more people suffer from harassment, unlawful arrests, and lawsuits related to their defense of nature (UN Environment; Rall, 2018; Human Rights Watch, 2018). Governments with high numbers of environmental defenders often resort to criminalizing their activities since the environmental defenders oppose large-scale extractive industries which the government profit from (Glazebrook & Opoku, 2018). The resistance movements against large-scale extractive industries are framed to be against the nation's development and portrayed as a threat to internal security. The impact of this hence brands environmental defenders as criminals, which often leads to justifications for their adverse treatment (Rasch, 2017; Glazebrook & Opoku, 2018).

The environmental defenders who oppose extractive industries in Latin America are primarily from poor communities

# Protecting the Defenders: Exploring the Role of Global Corporations and Treaties

Written by Ian Granit

who depend on the environment for survival. The majority of environmental defenders who oppose extractive industries hence do it because their livelihood depends on it, leaving them with no choice but to stand up against large-scale extractive industries (Glazebrook & Opoku, 2018; Global Witness, 2019a). The criminalization of environmental defenders furthers the adverse effects experienced by the communities subject to substantial industrial-scale environmental degradation. The criminalization and harassment of environmental defenders hinder their work, while their financial resources and energy go to legal defense. In addition, the criminalization of their environmental activism leads to alienation from the mainstream (Birss, 2017).

Moreover, the majority of Latin American countries are a mix of authoritarianism and democracy, and governments often depend on environmentally degrading activities for economic growth (Tilzey, 2019; Kingsbury, Kramarz & Jacques, 2019; Lust, 2019; Rincon & Fernandes, 2018; Tetreault, 2020). Deadly escalations and harassment of environmental defenders are thus often a result of controversial politics, the uncertainty of how to address social movements opposing extractive industries, corruption, and lack of security. The impact of adverse politics and dependency on environmentally degrading projects hence leads to an unwillingness or incapability for governments to create negotiating conflict settlements for environmental defenders (Middeldorp & Le Billion, 2019).

## The Role of Large Global Corporations and Businesses

Large global corporations create immense economic growth and thus have the ability to shape values of different societies and international norms (Vaca, 2018). Global corporations can, therefore, offer a quick way for countries to achieve economic growth. However, in countries with lesser restrictions or weaker legislative powers, global corporations are often involved in human rights abuses and immense environmental degradations (Hopke, 2012). Moreover, the organization against environmental degradation and subsequent defense of the environment is widespread throughout the Latin American region. Environmental crimes are, however, seen as a non-priority while large corporations, often connected to environmental crimes, are not seen as formal criminal subjects (Vaca, 2018). It is thus easy for bias to infiltrate the national legal system in semi-authoritarian democracies who favour global corporations' expansion to create national economic growth, no matter the cost to its own country's population (Global Witness, 2019a). Even though the reporting of environmental defenders subject to human rights abuses by large corporations grows, the situations are exacerbating at a rapid pace (UNGA, 2020).

The root cause of the killing, abuse, and criminalization of environmental defenders is the imposition of environmentally degrading large-scale projects (Global Witness, 2019a). The higher demand for natural resources by profit-seeking global enterprises leads to a higher demand for land, which causes conflict with the communities living on these lands (IUCN, 2020). Large global corporations, with global connections and investors, force groups away from their land to gain the ability to extract more natural resources; if the people oppose the projects, they are often subject to human rights abuses instead (Global Witness, 2019a). Global corporations have increasingly become linked to development-related violence and human rights abuse due to the power of such enterprises and willingness to follow the same structure of oppression as the regimes they do business in (Ghazoul & Kleinschroth, 2018; Mbembe, 2001). Businesses and investors have a significant role in the killing and harassment of environmental defenders. The collapse of the rule of law and the failure to uphold traditional community land rights in local disputed areas are ultimately profitable for major international corporations that can extract natural resources or use the land for their business purposes (Global Witness, 2019a). Global Witness (2019a) found that three activists were killed every week in 2018 in attempts to defend their land or community against invasions from industries such as mining, logging, and agribusiness.

However, the involvement of large global corporations in the killing and abuse of environmental defenders is often not always direct. In several Latin American countries, Presidents often resort to natural resource extraction to create an impression of successful development in their countries (Tilzey, 2019; Kingsbury, Kramarz & Jacques, 2019; Lust, 2019; Rincon & Fernandes, 2018; Tetreault, 2020). Latin American leaders hence favour the large-scale extractive industries of global corporations instead of the defending of the environment by local communities. Furthermore, in Latin America paramilitary groups, local political authorities, the military, organized crime, or combinations of these actors control natural resource extraction sites (Rasch, 2017). Global corporations wishing to do business in Latin American countries hence often become an associate of the violence and human rights abuse of environmental

# Protecting the Defenders: Exploring the Role of Global Corporations and Treaties

Written by Ian Granit

defenders as a consequence of already violent and oppressive local factors (Ghazoul & Kleinschroth, 2018). Investments and actions in Latin America by global corporations often neglect the local conflict, which is further exacerbated by the global corporations extractive industries and thus underpin the violence against environmental defenders (Ghazoul & Kleinschroth, 2018). Global corporations, therefore, capitalize on already adverse and violent social structures to acquire more land for their business projects (Vaca 2018; Middeldorp & Le Billion, 2019).

Moreover, the power, resources, and information available to global enterprises far exceed that of environmental defenders, thus contributing to the disparity in power relations (UN Environment, 2017). Businesses and governments often fail to gain consent, inform, or provide a substitute to the communities adversely affected by large-scale projects, forcing the defending of the communities' homes and livelihoods to occur (Global Witness, 2019). The competition for natural resources between groups hence leads to companies with more power to be able to expropriate land from the local communities, especially in countries with weak legal authorities and enforcement (UN Environment, 2017; Ghazoul & Kleinschroth, 2018). An increasing number of people thus find themselves defending their communities and the surrounding environment against powerful global companies who work with armed forces, politicians, or organized criminal groups to conduct their business activities (UN Environment, 2017; Rasch, 2017). Moreover, governments that fail to live up to transnational corporations (TNCs) expectation of profits have since the 1990s been subject to investor-state dispute settlements (ISDS), where TNCs can blame the governments for the country's in which the TNC operates for failure to extract the amount of profits as the TNC anticipated. The ISDS system has awarded billions of dollars to TNCs through such claims, creating a scenario where the government must help the TNCs to achieve maximum profits (Eberhardt & Olivet, 2018).

## The Role of International Treaties to Protect Environmental Defenders

From the cases of environmental harm corporations cause, approximately a third have a corresponding impact on human rights. However, the law has not fully acknowledged the inextricable link between corporations, environmental harm, and human rights violations, nor has it made any substantial attempt to understand its underpinnings (Vaca, 2018). The large part of obligations which govern the activities of global corporations connection to human rights abuses today are indirect and often require the incorporation within domestic law, whereas domestic law often does not consider global corporations as being under its domain (Pantazopoulos, 2014; Khan & Khan, 2017). In Latin America, the criminal justice system and national legislations are largely ineffective for protecting environmental defenders, which further exacerbates the problem (Ghazoul & Kleinschroth, 2018). At the same time, global corporations are protected from their host government's expropriation of their assets, especially in developing countries, allowing large global corporations to escape from social and environmental national legislation (Jonge, 2011).

The national power of large global corporations and the lack of considering global corporations as under the domain of national law leads global corporations to come under the domain of international law (Khan & Khan, 2017). Fifty-two of the top 100 largest economies are corporations, many with connections to severe human rights abuses (Echeverry, 2018). Rule imposing responsibilities on large global enterprises have, however, not kept up with the development and expanding reach of businesses, and primarily focus on trade regulations (Jonge, 2011). The lack of adequate regulations of global corporations in international law stems from World War II. Human rights law emerged to protect individuals from arbitrary abuses from states since states had been involved in severe human rights abuses and were the most powerful actors on the international level after the second world war. Non-state actors such as corporations were thus not considered a priority (Maassarani, Drakos & Pajkowska, 2007).

Several attempts to hold global corporations accountable for human rights abuses and environmental degradations have been made since World War II. The United Nations Economic and Social Council first created the UN Commission on Transnational Corporations in the 1970s, drafting a Code of Conduct for Transnational Corporations (UNCCTC). UNCCTC was, however, stalled, and negotiations collapsed in 1992. Soft-law guidelines, such as the UN Global Compact was gaining momentum in 2000 but is still in the negotiating stage. Further attempts have been met with a reduction in political efforts and declined endorsement of the UNCHR (Vaca, 2018). There is currently no internationally binding legal obligation for corporations operating on a transnational level in terms of human rights. Thus, global corporations operate in a legal vacuum, allowing them to be involved in human rights abuses without

# Protecting the Defenders: Exploring the Role of Global Corporations and Treaties

Written by Ian Granit

adequate accountability (Jonge, 2011).

Providing safety for environmental defenders requires the root causes of their abuse to be addressed (Global Witness, 2019b). The causes of human rights abuses against environmental defenders are complex and range from lack of adequate governance, insecurity, inconsistent legal systems, and lack of accountability (Middeldorp & Le Billion, 2019). One major root-cause is, however, that large global enterprises are hard to hold accountable due to the lack of international treaties regarding human rights and global corporations and confusion and inconsistency within domestic law, allowing global corporations to further exacerbate local conflicts (Jonge, 2011; Khan & Khan, 2017; Ghazoul & Kleinschroth, 2018). Furthermore, in developing countries which depends on the activities of global corporations to achieve economic growth and development, bias favouring the global corporations often infiltrate the domestic legal process making nations hesitant or unwilling to hold powerful corporations accountable for their wrongdoings (Vaca, 2018; Global Witness, 2019a). Moreover, environmental defenders often lack adequate resources to effectively defend themselves in legal battles against global enterprises (UN Environment, 2017). Regional or international treaties aiming to protect environmental defenders and hold global enterprises accountable can help countries that lack effective national legal systems to create better protection for environmental defenders and hold those who abuse and kill environmental defenders accountable by filling the current vacuum in international law (Vaca, 2018).

## **A Way Forward: Implementing the Escazú Agreement and the Proposed International Treaty to Regulate Global Corporations and Business Enterprises**

Two comprehensive treaties could provide further safety for environmental defenders in Latin America, and ensure that global corporations are held accountable for their involvement in human rights abuses. Latin American and Caribbean countries signed the Escazú Agreement on March 4, 2018, which is the first environmental treaty for the Latin American and Caribbean regions (UN Environment, 2018b; UNTC, 2020). The main focus of the Escazú Agreement is to provide “rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters” (UN Environment, 2018b). Public participation in decision-making processes and information about environmental matters are a crucial aspect of achieving environmental sustainability and justice, while access to justice is one of the critical aspects which environmental defenders are currently lacking. (Middeldrop & Le Billion, 2019; Global Witness, 2019a). The Escazú Agreement effectively aims to address the lack access to information, public participation and justice in Latin America, which would help to create protection for the environment and for the environmental defenders (UN Environment, 2018a).

In the Escazú Agreement, environmental rights are given the same status as human rights, and it is the first time a legal agreement includes an Article focusing solely on environmental defenders (UN Environment, 2018b; UNTC, 2020). The Escazú Agreement aims to combat the inequality and the “deep-rooted culture of privilege” while contributing towards a new development model (UNTC, 2020, pp. 8). The treaty recognizes environmental defenders and the vital work they do, which is an essential factor to provide safety and support for environmental defenders (UNTC, 2020, pp. 13; Stec & Jendroska, 2019). Article 9 of the Escazú Agreement refers specifically to human rights defenders stating that they should be able to “act free from threat, restriction, and insecurity”, while measures should be taken to “to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer” (UNTC, 2020, pp. 29). The Escazú Agreement hence adequately recognizes the role environmental defenders play in protecting the environment while clearly stating that the human rights abuses of environmental defenders must stop which would force nations to address the current human rights abuses of environmental defenders (UNTC, 2020).

Due to the substantial influence of global corporations in socio-economic, political and legal aspects in Latin America, there is a need to create increasing accountability for businesses on an international level in addition to the Escazú Agreement, if environmental defenders ought to be adequately protected (Borras et al., 2012; Hopke, 2012). Latin American countries are often dependent on foreign investments through global corporations, limiting their ability to enforce and impose just environmental or social standards within their borders (Borras et al., 2019). An international legally binding treaty could help nations hold global corporations accountable for their human rights abuses, or force

# Protecting the Defenders: Exploring the Role of Global Corporations and Treaties

Written by Ian Granit

nations to do so through international legal repercussions (Jonge, 2011). Since global corporations can circumvent national legislation, have substantial influence in Latin America, and the way TNCs can sue governments if they do not reach desired profits, a treaty focusing on holding global corporations accountable is crucial to supplement the Escazú Agreement (Khan & Khan; Vaca, 2018; Eberhardt & Olivet, 2018).

On June 26 2014, the Human Rights Council established in its resolution 26/9 to elaborate an internationally legally binding instrument to regulate, within international human rights law, the way global corporations and other business enterprises operate concerning human rights (UNGA, 2014; UNGA, 2020). The legally binding treaty under Resolution 26/9 could be a way toward supplementing a just and effective implementation of the Escazú Agreement and provide safety for environmental defenders under international law. Negotiations for the legally binding treaty are currently taking place, and a draft was published on July 16, 2019 (OIEGWG, 2019). The draft binds human rights abuses of business activities to international law in Article 4 and refers to environmental remediation and ecological restoration where environmentally degrading activities have occurred (OIEGWG, 2019, pp. 5). Article 4 would thus fill the current vacuum of global corporations accountability for human rights abuses in international law, while environmental defenders would be able to gain substitution for the environmental degradation global corporations have caused in their communities (Jonge, 2011; OIEGWG, 2019).

Moreover, the draft treaty incorporates human rights abuses committed by business enterprises “through acts or omissions in the context of business activities, against any person or group of persons, individually or collectively, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their human rights, including environmental rights.” (OIEGWG, 2019, pp. 4). The involvement of global corporations is not always direct since the use of military, paramilitary, local, or criminal organizations might be the ones carrying out the human rights abuses against environmental defenders (Rasch, 2017). Since the treaty draft states “in the contest of business activities” regarding human rights abuses, global corporations could be held accountable for their involvement with groups who carry out human rights abuses to acquire land for extractive industries, even if the global corporations’ employees are not directly carrying out the human rights abuses themselves (OIEGWG, 2019). Implementing the International Treaty to Regulate Global Corporations would hence complement the Escazú Agreement by creating a possibility of holding global corporations accountable, even if their involvement with the human rights abuses of environmental defenders is indirect. The International Treaty to Regulate Global Corporations and other Business Enterprises is currently under negotiations. At the same time, the Escazú Agreement has only been ratified by six countries while needing the ratification of 11 countries to enter into force, thus showcasing the need for further support and recognition of the importance of implementing these regional and international treaties (UNGA, 2020; UNTC, 2020; United Nations, 2018).

## Coronavirus: A Greener and More Just Recovery

The emergence of the coronavirus has adversely altered human life, severely affecting all people. From mass death tolls to a severe economic recession and subsequent social issues, the coronavirus’s negative impacts are clear (Nicola et al., 2020). The coronavirus has, therefore, created a need for recovery packages, which gives governments and businesses the possibility to change the current world trends towards the better (European Commission, 2020). Many have been advocating for a more inclusive and greener recovery plan to create improvements in societies across the world (Gurría, 2020; European Commission, 2020), while others have raised the point that the coronavirus might mark a new beginning for societies (Tisdall, 2020). Moreover, the coronavirus’s economic and geopolitical shock has been described as a historical marker between the first and second phase of globalization (Kaplan, 2020). The power of countries is evident throughout the crisis by their ability to completely close national borders, call for national emergencies to gain more power, and stop exports and imports at will, even if it hurts business (Skey & Jiménez-Martínez, 2020; Fontaine, 2020).

During the corona crisis, the human rights abuses of environmental defenders are increasing further. Businesses use government lockdowns to further violate environmental defenders’ human rights, and governments have given industries a free pass (Forst & Taylor, 2020). Since states gain increasing power and leverage through economic aid packages and the ability to do what they think is in the best interest of their citizens, it also serves as an opportunity for new treaties to be negotiated. The recognized need for an improved environment and increased focus on social

# Protecting the Defenders: Exploring the Role of Global Corporations and Treaties

Written by Ian Granit

justice should thus include ways of holding large global corporations accountable for their wrongdoings, especially since the economic shock and scale-down of globalization during the pandemic undermines the powers of global corporations temporarily. States should thus capitalize on their current increase of power and use their power to provide better provisions for human rights and environmental sustainability. impact of this provides an opportunity to implement treaties to create better protection for environmental defenders. The Escazú Agreement in Latin America and the International Treaty to Regulate Global Corporations and Other Business Enterprises would help provide a greener and just recovery for the world, ensuring and providing further capability for states to maintain and reinforce their promises of protecting environmental defenders.

## Conclusion

The killing and human rights abuses of environmental defenders increase rapidly in Latin America. A wide array of interconnected causes drives the horrific treatment of environmental defenders stemming from disputes about using land for natural resource extraction. In semi-authoritarian countries, large global corporations and businesses often follow the same structure of oppression as the regimes. The global corporations are likely not to be punished within the national jurisdictions of the semi-authoritarian country for human rights abuses while avoiding international law due to the lack of international legally binding obligations for corporations regarding human rights. The Escazú Agreement and the International Treaty to Regulate Global Corporations and other business enterprises would offer a way for Latin America to unite in protecting environmental defenders while allowing the international community to hold global corporations accountable for human rights abuses. The coronavirus has adversely affected humans, but it offers a way towards a greener and more just future. The Escazú Agreement in Latin America and the International Treaty to Regulate Global Corporations and Other Business Enterprises should be incorporated in the coronavirus recovery plans to ensure the protection of environmental defenders.

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Written by Ian Granit

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# Protecting the Defenders: Exploring the Role of Global Corporations and Treaties

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