

GLOBAL TRENDS IN NGO LAW

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Environmental Advocacy: Challenges to Environmental Groups' Rights to Assemble, Associate and Express their Opinions

Introduction

As concerns over the environment have intensified over the past decade, so too have the levels of global environmental activism. With increasing awareness of climate change, rising pollution levels, resource scarcity, and habitat destruction, among other concerns, civil society groups with environmental agendas have not only proliferated, but also grown more active, outspoken, and visible in recent years.¹

In response, states have employed a variety of techniques to interfere with the ability of environmental activists and groups to effectively exercise their internationally guaranteed rights

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¹ See, e.g., Ben Block, "Climate Protests Escalate Worldwide," *WorldWatch Institute* (November 2015), <http://www.worldwatch.org/node/5939>; Stuart Leavenworth, "Chinese increasingly protest projects that threaten the environment," *McClatchyDC* (September 16, 2014), <http://www.mcclatchydc.com/news/nation-world/world/article24773314.html>; Angelina Davydova, "In Russia, home-grown environmental activism on the rise," *Thomson Reuters Foundation News* (May 7, 2014) <http://news.trust.org/item/20140507093037-28x6h>.

to association, assembly, and expression.² These techniques include the use and abuse of existing legislation, the passage of new restrictive laws, and the use of extra-legal strategies, including public vilification and violence, to effectively silence or deter the work of environmentalists.

State and private actors, at times working in tandem, have harnessed the legal and policy frameworks governing civil society to their advantage, impeding the work of environmental groups advancing agendas at odds with their own development or investment goals. Increasing concerns about the plight of environmental activists is leading to a heightened awareness of the need to better enforce their guaranteed rights, and to better defend the personal security of individual activists and the organizational existence of environmental groups.³

According to the UN's Special Rapporteur on the situation of human rights defenders, the highest volume of complaints received about the difficulties faced by human rights workers of all varieties around the world involve environmental defenders working in Latin and Central America.⁴ In addition to intimidation, harassment, and stigmatization, environmental activists face the highest risk of assault and death as a result of their work in the region.⁵

Another UN expert, the Special Rapporteur on the rights to freedom of peaceful assembly and association, similarly noted in a 2015 report that organizations involved in environmental protection are among the civil society groups "most at risk"⁶ for mistreatment by states and, as a result, face "heightened risks of restrictions of their rights."⁷

Human rights defenders, including environmental activists "face considerable opposition, harassment, stigmatization and even physical attacks from State and non-State actors in many countries."

Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association

² International Covenant on Civil and Political Rights [ICCPR], Arts. 19, 21, and 22, December 16, 1966, 999 U.N.T.S. 171.

³ Global Witness, "Report: Deadly Environment," (April 15, 2015) <https://www.globalwitness.org/campaigns/environmental-activists/deadly-environment/>; "Call for Action to Curb Attacks on Environmental Campaigners," *IRIN: Humanitarian News and Analysis* (August 2014), <http://www.irinnews.org/report/100518/call-for-action-to-curb-attacks-on-environmental-campaigners>.

⁴ United Nations Human Rights Council, A/HRC/19/55, "Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya," December 21, 2011, para.71 [SR Human Rights Defenders Report].

⁵ *Id.*

⁶ United Nations Human Rights Council, A/HRC/26/29, "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai" April 14, 2014, para. 11, http://www.ohchr.org/Documents/Issues/FAssociation/A-HRC-26-29_en.pdf (stating that environmental activists "face considerable opposition, harassment, stigmatization and even physical attacks from State and non-State actors in many countries.") [SR Report on Groups most at Risk].

⁷ United Nations Human Rights Council, A/HRC/29/25, "Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai," April 28, 2015,) para. 57,

Environmental organizations and activists play a key role in the context of natural resource exploitation and environmental protection. Their opinions are essential to holding powerful economic actors, including states, accountable, pressuring governments and private industries to commit to higher environmental standards, defending marginalized and indigenous populations from land-based exploitation, and exposing projects that could lead to environmental degradation.⁸ Their ability to coalesce peacefully to form associations, whether formal or informal, based on shared concerns, and to voice their concerns publicly, is protected by long standing principles of international law.⁹

This issue of Global Trends will examine common techniques used by governments and corporations to undermine the ability of environmental groups and activists to exercise freely their rights to assemble, associate, and express themselves. In some cases, the law, including criminal law, is used or manipulated to curtail the rights of environmental groups; in other cases, the law is eschewed, ignored, or inequitably applied. In other instances, extra-legal methods are used, such as vilification, stigmatization, surveillance, intimidation, and in some cases, even violence. In the discussion that follows, the most prevalent and concerning among these methods will be described and illustrated through representative examples. We also briefly examine some promising trends and initiatives that emerged in our research, which could potentially counteract some of the negative strategies explored below.

Use of the Law to Restrict Environmentalists

In our global review of state practices, five strategies repeatedly emerged as common ways in which the law is used or manipulated in order to interfere with the ability of environmental groups and activists to carry out their work. They include:

- Criminalizing legitimate activism;
- Labeling environmental groups as “foreign agents” and restricting foreign affiliations;
- Imposing excessive, burdensome, and inequitable applications of the law;
- Restricting environmentalists’ activities and privileges; and
- Engaging in surveillance of groups deemed threatening to the state’s agenda.

<http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/AnnualReports.aspx> [SR Report on Natural Resource Exploitation].

⁸ SR Report on Natural Resource Exploitation, para.39.

⁹ ICCPR, Art. 19, 21 & 22.

Criminalizing Legitimate Activism

Governments use criminal laws and sanctions to silence legitimate opposition by civil society groups advancing environmental claims. Through the use of defamation, hooliganism, sabotage, terrorism, and other criminal charges, legitimate protest by environmental groups is at times equated with criminal activity, and the individual activists as criminals intent on committing wrongdoing against the state. In addition, certain acts of civil disobedience committed by environmentalists that might ordinarily be prosecuted as lower level criminal charges, such as trespass, are at times prosecuted as higher-level criminal offences, such as terrorism. In both instances, severe penalties are prescribed, which silence those convicted, and may also deter a much broader community of environmentalists, fearful of potential prosecution, from organizing in the first place.

- In **Chile**, the Mapuche indigenous peoples, who have long protested the loss of their ancestral land, were charged with violating anti-terrorism laws, though eventually acquitted.¹⁰ According to the UN's Special Rapporteur on human rights and counter-terrorism, the "anti-terrorism law has been used in a manner that discriminates against the Mapuche" and has been applied "in a confused and arbitrary fashion that has resulted in real injustice, has undermined the right to a fair trial, and has been perceived as stigmatizing and de-legitimising the Mapuche land claims and protests."¹¹
- In **Australia**, the Tasmanian Parliament adopted the Workplaces (Protection from Protesters) Bill in November 2014, referred to by opponents as the "anti-protest" bill, along with a variety of other laws and amendments that stifle expressions of environmental opposition.¹² The sweeping new law bars acts taking place on, or inhibiting access to, public or private business premises, including forestry and mining lands, which promote awareness of political, environmental, social, cultural or economic issues.¹³ Violations of the law are subject to significant penalties, including fines of over \$72,000 for organizations (and over \$7,000 for individuals) and prison terms of up to two years. The government conceded that the core purpose of the law was to "send a strong

¹⁰ The Revised Penal Code, Republic Act No. 7890, Section 1, Art. 286.

¹¹ "Chile must stop using anti-terrorism law against Mapuche indigenous group-UN expert," *UN News Centre* (July 31, 2013) <http://www.un.org/apps/news/story.asp?NewsID=45538#.Vuhy8eIrLIU>.

¹² Workplaces (Protection from Protesters) Bill 2014, Act No. 25 of 2014, http://www.parliament.tas.gov.au/bills/Bills2014/15_of_2014.htm. In addition, the Defamation Act of 2005 was amended to allow large companies to sue protesters, and a series of new forestry laws were passed, undermining a 2013 agreement between the forestry industry, government and environmental groups that was hailed by environmentalists.

¹³ "Criminalising dissent: anti-protest law is ominous sign of the times," *The Conversation* (November 28, 2014) <http://theconversation.com/criminalising-dissent-anti-protest-law-is-an-ominous-sign-of-the-times-34790>.

message” to protesters and to “toughen the law” in order “to deter them” [environmental protesters] from opposing business activities on environmental grounds.¹⁴ At least three different UN human rights rapporteurs, and a wide range of legal professionals, have voiced strong opposition to the bill.¹⁵

- Similarly in **Canada**, many environmental activists and groups, particularly those opposing the proposed oil pipelines and oil sands expansion, are fearful of the expanded powers given to the government under the recently adopted Anti-Terrorism Act of 2015. While purportedly adopted to fight growing extremism, the law significantly expands the government’s ability to target activities that could “undermine the security of Canada,” which include any act that interferes with the economic or financial stability of the state.¹⁶ A private intelligence report written by the Canadian police and obtained by a leading environmental group asserted that anti-petroleum activists threaten to undermine Canada’s security and thus should be subject to additional surveillance under the new law.¹⁷ Both the new law and this report have added to environmentalists’ growing fear of increased surveillance, criminal prosecution, and restrictions on their ability to freely voice their concerns.
- In the **Philippines**, activists peacefully protesting the actions of a mining company were charged with ‘grave coercion,’ a criminal offense defined as preventing someone from doing something not prohibited by law that carries a prison sentence and hefty fines.¹⁸

Targeted arrests are used as a way to intimidate activists and to send threatening messages to the broader environmental community.

- In **India**, female protesters peacefully opposing the construction of dams have been arrested for their protest activities on multiple occasions.¹⁹
- In **Cambodia**, three activists affiliated with Mother Nature Cambodia were arrested for leading a campaign against sand dredging. The police, accompanied by members of the

¹⁴ Tasmanian Liberals, *Rebuilding the Forest Industry: Rebuilding the Forest, Cracking down on Illegal Protestors: Building a Tasmania we can all be proud of*, 3.

¹⁵ UN Human Rights Office of the High Commissioner, “UN experts urge Tasmania to drop its anti-protest bill,” September 9, 2014. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15002&LangID=E>.

¹⁶ Criminal Code, RSC 1985, c C-46, as amended by Anti-terrorism Act, 2015, SC 2015, C (2015).

¹⁷ Shawn McCarthy, “Anti-petroleum’ movement a growing security threat to Canada, RCMP says,” *The Globe and Mail* (February 17, 2015).

¹⁸ SR Report on Natural Resource Exploitation, para. 44.

¹⁹ Id. at para. 42, 45.

military, searched the organization's headquarters without a warrant. Members of Mother Nature Cambodia said that the arrests and warrantless search were efforts to intimidate and deter future protests by the organization.²⁰

- In **Colombia**, eighty-four activists in the Rios Vivos Movement were arrested while peacefully demonstrating against a dam project.²¹
- In **Russia**, armed navy commandos arrested twenty-eight Greenpeace environmental activists and two freelance journalists who were protesting oil drilling in the Arctic; they were detained for more than two months on charges of piracy and then hooliganism.²²

Labeling Environmental Groups as “Foreign Agents” and Restricting Foreign Affiliations

States have attempted to undermine the credibility of environmental groups, and thus their ability to operate, by labeling them as “foreign agents” under laws regulating organizations with foreign affiliations. Under these laws, “foreign agents” are typically defined as those accepting some level of foreign funding and engaging in “political” activities, which are often ambiguously defined. States hoping to stifle debate or opposition regarding the environmental impact of a particular project can define environmental activism as “political” in nature, so that environmental organizations accepting any level of foreign funding become “foreign agents” under the law. Because many environmental groups, particularly those working in climates where domestic philanthropy is weak, are forced to accept foreign funding to operate, the label of “foreign agent” can easily attach. Once labeled as such, governments can more easily impose hefty fines, bureaucratic hurdles, and other cumbersome obstacles; and an organization's domestic credibility often diminishes.

- In **Russia**, a 2012 law requires non-governmental organizations (NGOs) to register with the Ministry of Justice as “foreign agents” if they engage in (ambiguously defined) “political activity” and receive foreign funding. Under a 2014 amendment, the government can impose the foreign agent designation without the NGO's consent.²³ Many environmental groups working in Russia have been labeled as “foreign agents,” leading in many cases to fines, cumbersome administrative burdens, a severe decline in

²⁰ Hul Reaksmeay, “Police Raid Headquarters of Arrested Environmentalists,” *Voice of America: Khmer* (August 21, 2015).

²¹ *Land and Environmental Rights Defenders in Danger: An Overview of Recent Cases* (2013) 4-5.

²² John Vida, “Dutch arrest 44 Greenpeace activists blocking Russian Arctic oil tanker,” *The Guardian*, May 1, 2014.

²³ “Russia: Government Against Rights Groups,” Human Rights Watch, October 9, 2015, <https://www.hrw.org/news/2015/10/09/russia-government-against-rights-groups>.

domestic credibility, and in some instances, forced or voluntary closures.²⁴ Examples of affected environmental organizations include Bellona Murmansk, the Northern Environmental Coalition, Kola Eco Centre, and Molodezh, among many others. According to one report, “most NGOs named Foreign Agents by authorities have ceased their activity.”²⁵

Other countries in Eurasia have followed, or are planning to follow, Russia’s lead.²⁶ A law almost identical to Russia’s has also been proposed, for example, in **Kyrgyzstan**.²⁷ And this trend is not isolated to Eurasia:

- In **Bolivia**, the government publicly chastised four well-respected environmental research organizations for using foreign funds to promote a “transnational imperial policy” of environmental protection and to act as “park rangers” for the industrialized north in order to derail development projects in the global south.²⁸ Threats of their expulsion from the country were dropped after forty-three prominent intellectuals and activists from throughout Latin America sent an open letter to the government strongly expressing their disapproval.²⁹

In some cases, governments use laws generally governing foreign contributions to limit or significantly complicate the ability of NGOs to access critical foreign funds.

- In **India**, for example, the government revoked the licenses of nearly 9,000 NGOs in April 2015 for allegedly violating the Foreign Contributions Regulation Act, which requires NGOs to report all foreign contributions to the government.³⁰ One such organization was Greenpeace, a leading international environmental group with over fifteen years of experience in India. Its access to foreign donations has been repeatedly denied in recent

²⁴ Examples include the Consumer Rights and Environment Protection Association “Princip,” Yasavey Manzara Information and Research Center, Sakhalin Environment Watch, the Interregional Social Ecological Foundation “ISAR-Siberia,” the Altai Regional Public Fund for the 21st Century Altai, and the Geblerov Ecological Society, among others.

²⁵ “Jagland calls on Russia to Review Foreign Agent Law,” *The Independent Barents Observer* (November 2015) <http://thebarentsobserver.com/2015/11/jagland-calls-russia-revise-foreign-agent-law>.

²⁶ Sarah Mendelson, “Putin Outs the NGOs: How to Fight Russia’s Civil Society Crackdown,” *Foreign Affairs*, (October 6, 2015) <https://www.foreignaffairs.com/articles/russia-fsu/2015-10-06/putin-outs-ngos>.

²⁷ Human Rights Watch, “Kyrgyzstan: ‘Foreign Agents’ Bill Violates Rights,” May 2015.

²⁸ Emily Achtenberg, “What’s Behind the Bolivian Government’s Attack on NGOs?” *The National American Congress on Latin America* (September 2015) <https://nacla.org/blog/2015/09/03/what-s-behind-bolivian-government-s-attack-ngos>.

²⁹ “Sr. Alvaro García Linera: la crítica intelectual no se combate a fuerza de censura,” *Rebelión* (August 13, 2015) <http://www.rebelion.org/noticia.php?id=202193&titular=%22sr.-alvaro-garc%EDa-linera:-la-cr%EDtica-intelectual-no-se-combate-a-fuerza-de-censura%22->.

³⁰ Katherine Bagley, “What’s Behind India’s Crackdown on Social Justice & Climate Activists,” *Inside Climate News* (May 14, 2015) <http://insideclimatenews.org/news/14052015/whats-behind-indias-crackdown-social-justice-climate-activists>.

years; such denials have typically been overturned by court order.³¹ While such restrictions usually do not result in the dissolution of the affected NGOs or the permanent inaccessibility of foreign funds, they can deter NGOs from pursuing projects at odds with the government's own agenda.

In addition, some states have stifled the work of environmental groups by selectively applying immigration and diplomatic laws to prevent foreigners from being involved with such groups. This can take many forms, including refusing entry, involuntary deportation, or imposing additional administrative and registration burdens on civil society groups that allow foreigners to participate in their work.

- In **Cambodia**, a Spanish environmentalist working with a small environmental organization to peacefully protest a controversial hydroelectric project in the Areng Valley was deported after his residency permit was suddenly revoked. According to reports, while this was technically legal under the country's immigration laws, it was done for retaliatory or threatening purposes.³²

Excessive, Burdensome and Inequitable Applications of the Law

At times, governments have applied the law selectively as a way to burden troublesome environmental groups to the point of voluntary dissolution. Actions have included imposing excessive fees or penalties for alleged minor technical violations that are overlooked for most organizations, or violations purportedly committed in the distant past. As the Special Rapporteur on the rights to freedom of peaceful assembly and association affirmed, groups "that support the Government's position are rarely, if ever, obstructed, while those that oppose the Government's position are at much greater risk for suppression." This is particularly true, according to the Special Rapporteur, "in the context of natural resource exploitation."³³

- In **Bolivia**, the Center for Legal Studies and Investigation (CEJIS), an organization involved in derailing a government-backed project to build a massive highway through the Amazonian rainforest, was suddenly ordered by the government in 2015 to pay nearly \$170,000 in missed fees allegedly incurred more than three decades earlier. CEJIS denied owing the fees, and many suspected this was done for retaliatory purposes. The regulatory body that fined CEJIS relied on a 2013 law providing the government with broad powers over the missions, operations and finances of non-profit organizations,

³¹ Syed Nazakat, "India bars funds for Greenpeace, calling it a threat to economic security," *The Christian Science Monitor*, April 14, 2015.

³² SR Report on Natural Resource Exploitation, para. 63.

³³ *Id.* at para. 39.

including the power to compel payment of any unpaid fees apparently without regard to the number of years that had passed since payment was first imposed. Another organization involved in derailing the highway project waited nearly three years for approval of its required annual registration renewal application. During this time, it lost an approved project valued at over one million euros because it was restricted from accessing funding absent registration.³⁴

- In **Ecuador**, the government involuntarily dissolved the Fundación Pachamama, an organization focused on advancing the rights of indigenous people and protecting the Amazonian rainforest, after it peacefully voiced its opposition to oil drilling in the rainforest. The group was accused of violating Executive Decree No. 16, which grants the government broad dissolution powers in the event that an organization “deviat[es] from the aims and objectives for which it was created” and “engag[es] in political activities reserved for political parties and movements...that affect the public peace...”³⁵

In addition to involuntary dissolution, the law is used to impose burdensome and time-consuming requirements, such as approval processes, registration renewal requirements, or reporting obligations, to deter or preempt the substantive work of certain environmental groups.

- In **Uganda**, NGOs working on oil related issues are required to obtain permission from the Ministry of Energy and Mineral Development before they can meet with grassroots communities. This significantly impedes their ability to operate in an expeditious and collaborative way.³⁶
- In **Bolivia**, under a new law adopted in 2013, all NGOs operating in the country (both foreign and domestic) must undergo a lengthy and protracted renewal process, reveal their funding sources, and ensure that their founding statutes are compatible with certain approved purposes.³⁷ The government has the power to involuntarily dissolve an

³⁴ Alexandra Ellerbeck, “Red tape or repression? NGOs fight for a place in the new Bolivia they helped Evo Morales create,” *Mongabay* (May 22, 2015) <http://news.mongabay.com/2015/05/red-tape-or-repression-ngos-fight-for-a-place-in-the-new-bolivia-they-helped-evo-morales-create/> [“Red Tape or Repression?”]. The Special Rapporteur on the rights to freedom of peaceful assembly and association in his report on Groups Most at Risk noted, “[m]andatory registration, particularly where authorities have broad discretion to grant or deny registration, provides an opportunity for the State to refuse or delay registration to groups that do not espouse ‘favourable’ views.” See SR Report on Groups Most at Risk, para. 54.

³⁵ Ruth McCambridge, “Environmental Nonprofit Invaded and Shut by Government in Ecuador,” *Nonprofit Quarterly* (December 9, 2013) <http://nonprofitquarterly.org/2013/12/09/environmental-nonprofit-invaded-and-shut-by-government-in-ecuador/>. Note, however, that the government offers a different account of this episode. Fidel Narváez, Embassy of Ecuador in the UK, letter to the editor, *The Guardian*, September 15, 2015.

³⁶ SR Report on Natural Resource Exploitation, para. 52.

³⁷ The Law of Legal Entities No. 351/2013 (Ley de Otorgación de Personalidades Jurídicas).

organization without judicial oversight for violations.³⁸ Because of this law, many environmental NGOs operate in a vulnerable state of legal limbo as they attempt to navigate and conform to the new requirements. According to various reports, this law was part of a broader campaign to weaken the environmental sector's opposition of the government's plans to expand the areas of permissible hydrocarbon extraction.³⁹

- In **China**, many environmental groups choose not to formally register with the government, which triggers complicated registration and administrative requirements, as well as hefty tax burdens. According to one report, only 23 percent of environmental groups in China have registered with the state, with the result that the vast majority of such groups are technically illegal.⁴⁰

Laws Restricting Environmental Groups' Activities and Privileges

Another common method that states use to preempt the work of environmentalists is the passage of laws that narrow the scope of permissible activities associated with environmental defense or that strip them of certain privileges, such as tax benefits, typically afforded to other civil society actors.

- In **Australia**, a draft law, if passed, would ban boycotts of companies selling products damaging to the environment.⁴¹
- Also in **Australia**, a recently introduced motion proposes to categorize environmental movements as corporations, making them ineligible for the tax benefits and other privileges associated with their existing charitable status.⁴²
- In **Peru**, Environmental Law No. 30230 minimizes the time frame to conduct environmental impact assessments and reduces the number of natural reserves exempt from exploitation.⁴³

³⁸ Emily Achtenberg, "What's Behind the Bolivian Government's Attack on NGOs?" *The National American Congress on Latin America* (September 2015) <https://nacla.org/blog/2015/09/03/what's-behind-bolivian-government's-attack-ngos>.

³⁹ E.g., Id.; Kevin Munoz, "Corrupted Idealism: Bolivia's Compromise Between Development and the Environment," *Council on Hemispheric Affairs* (June 22, 2015) <http://www.coha.org/corrupted-idealism-bolivias-compromise-between-development-and-the-environment/>.

⁴⁰ Yanfei Wang, "The Challenges Facing Chinese NGOs," *China Dispatch* (September 28, 2014) <http://www.theworldofchinese.com/2014/09/the-challenges-facing-chinese-environmental-ngos/> citing a study done by the All-China Environment Federation.

⁴¹ Lenore Taylor, "Australian government may ban environmental boycotts," *The Guardian*, April 2, 2014.

⁴² Oliver Milman, "Liberal push to strip environmental groups of charitable tax status," *The Guardian*, June 30, 2014.

⁴³ Rights + Resources, "New Law in Peru to Severely Curtail Land Rights for Indigenous People and Smallholder Farmers," August 28, 2014.

- In **Wyoming, in the United States**, a recently passed law makes it a crime to “collect resource data” from any “open land,” significantly complicating the ability of environmentalists and concerned citizens to expose environmental degradation.⁴⁴

Surveillance

Legislation that provides public officials with broad and ambiguous discretion to monitor the activities of CSOs has been used to undermine groups whose work is viewed as threatening to the state or to corporate interests, notably including environmental organizations. According to a UN Special Rapporteur, such legislation poses a “grave risk,” particularly for those highlighting the unsustainable use of natural resources or the effects of natural resource exploitation projects on the rights of indigenous peoples.⁴⁵

- In **Canada**, official documents obtained in 2013 under the Freedom of Information Act showed that the Canadian Security Intelligence Service (CSIS) had increased its surveillance of activists opposed to the Northern Gateway pipeline project on “national security” grounds. According to local reports, information gathered about these activists was “routinely passed” to the energy company overseeing the pipeline project.⁴⁶
- In the **United States**, anti-fracking and anti-Keystone XL pipeline activists have reportedly come under scrutiny by the Federal Bureau of Investigation (FBI) in recent years under an expanded definition of “eco-terrorism.” Though the FBI has affirmed that eco-terrorism is on the decline, surveillance of environmental activists has nevertheless continued. Various environmental activists, including a professor and an author of a book documenting the plight of environmentalists operating in the US, have publicly complained about being interrogated by the FBI, which they describe as “harassment,” because of their non-violent environmental work.⁴⁷ Similarly, internal FBI files released following a Freedom of Information Act request revealed that the FBI secretly monitored and collected information on a coalition of environmental groups, cultivated at least one

⁴⁴ Trespassing to Collect Data, WY Stat §6-3-414 (2015).

⁴⁵ SR Report on Natural Resource Exploitation, para. 42, 45.

⁴⁶ Nafeez Ahmed, “Are you opposed to fracking? Then you might just be a terrorist,” *The Guardian*, January 21, 2014.

⁴⁷ Alexander Reid Ross, “Why is the FBI Harassing Tar Sands Protesters in Washington and Oregon,” *Green is the New Red* (January 6, 2015) <http://www.greenisthenewred.com/blog/fbi-visiting-megaloads-protest-activists/8124/>; Juliet Eilperin, “As eco-terrorism wanes, governments still target activist groups seen as threat,” *The Washington Post*, March 10, 2012. The book mentioned is: Will Potter, *Green is the New Red: An Insider’s Account of a Movement under Siege* (2011).

informant to infiltrate an environmental movement, and gathered insider information in order to prevent planned protests.⁴⁸

- In the **United Kingdom**, Scotland Yard’s National Domestic Extremism and Disorder Intelligence Unit reportedly has a history of equating “domestic extremism” with “single-issue protests,” such as those involving animal rights, anti-globalization, and opposition to genetically modified crops. A report in 2014 found that the British police unit had been covertly monitoring nearly 9,000 British citizens deemed to hold “radical political views,” and that increasingly has “focused its resources on spying on environmental campaigners, particularly those engaged in direct and civil disobedience to protest against climate change.”⁴⁹

Surveillance of environmental groups is also conducted online. In **China**, where the content of postings on social media platforms is routinely censored by public officials, “[t]he level of account closures on Tencent Weibo [China’s equivalent to Twitter] has been unprecedented in recent history,” with online discussions of toxic air pollution and other environmental concerns being among the most likely reasons for the bulk of recent closures.⁵⁰

Extra-Legal Ways to Restrict the Rights of Environmental Groups

As the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted in a report on civil society groups most at risk, the law is not the only way to weaken environmental groups, and “the State is not the only perpetrator of violations relating to peaceful assembly and association.”⁵¹ Many extra-judicial, and in some cases illegal, strategies are used to “exclude or target” groups with agendas at odds with the economic interests of powerful actors, including private individuals and corporations.⁵² Private entities own large portions of natural resources in many countries and consequently, have enormous financial stakes in their exploitation. Environmental activists opposed to certain types of natural resource exploitation can face strong opposition from corporate and private actors, particularly when their interests

⁴⁸ Paul Lewis and Adam Federman, “Revealed: FBI violated its own rules while spying on Keystone XL opponents,” *The Guardian*, May 12, 2015.

⁴⁹ Paul Lewis, Rob Evans, and Vikram Dodd, “National Police Unit Monitors 9,000 ‘Domestic Extremists,’” *The Guardian*, June 26, 2013.

⁵⁰ Yang Fan, “China’s Censors Go After Critical Commentators in Online Crackdown on Debate,” *Radio Free Asia* (March 13, 2015) <http://www.rfa.org/english/news/china/chinas-censors-crack-down-on-online-commentators-03132015122415.html>.

⁵¹ SR Report on Groups Most at Risk, see paragraphs 9, 12, and 17.

⁵² *Id.*

are aligned with the state. In some cases, such opposition can escalate and lead to “heightened risks of human rights abuses,” which can include assault, death threats, and even murder.⁵³

Some of the more common extra-legal tactics used to stifle the work of environmental groups, which range from subtle intimidation to violence and public vilifications, are explored below.

Intimidation and Violence

As the recent murder of Honduran environmental activist Berta Cáceres tragically illustrates, environmentalists all too often carry out their work facing the risk of deadly violence.⁵⁴ A recent report by Global Witness, an organization that tracks attacks and murders of environmentalists around the globe, found that acts of violence committed against members of environmental movements are on the rise.⁵⁵ In 2014 alone, 116 murders of environmental activists were documented, with nearly three-quarters of those occurring in Central and South America.⁵⁶ Because many of these deaths have occurred in remote villages and other areas with little access to communication, this number reflects a crude underestimate at best.⁵⁷ In Brazil, an indigenous watchdog organization reported more than 1,500 deaths of environmentalists protesting deforestation over the past twenty-five years, and another 2,000 death threats.⁵⁸ In 2014 alone, at least 448 environmentalists were killed in Brazil, roughly half of all the known murders of environmentalists worldwide during the same time frame.⁵⁹ The vast majority of these murders go unprosecuted, and it is suspected that many more murders go unreported.

Some of these murders have been conducted by state officials, and others have been committed by private entities. Examples of acts of violence committed by state officials include the shooting of thirty South African miners by the police while on strike,⁶⁰ and the killing of five Peruvians, and

⁵³ Id. at para. 9.

⁵⁴ Elizabeth Malkin and Alberto Arce, “Berta Cáceres, Indigenous Activist, Is Killed in Honduras,” *The New York Times*, March 3, 2016. Cáceres led a campaign against the building of the Agua Zarca Dam, initiated without consultation with and over the objections of the indigenous Lenca people, and won the Goldman Environmental Prize for her work. She had received death threats, and the Inter-American Commission on Human Rights had called on the Honduran government to provide precautionary measures for her safety. Johnathan Blitzer, “The Death of Berta Cáceres,” *The New Yorker* (March 11, 2016) <http://www.newyorker.com/news/news-desk/the-death-of-berta-caceres>. The perpetrators of her killing have not been identified as of this writing.

⁵⁵ Global Witness, Report: *Deadly Environment: A rising death toll on our environmental frontiers is escaping international attention* (2014), 4, <https://www.globalwitness.org/campaigns/environmental-activists/deadly-environment/>.

⁵⁶ Global Witness, Report: *How Many More?* (2015), 4, <https://www.globalwitness.org/campaigns/environmental-activists/how-many-more/>.

⁵⁷ Id.

⁵⁸ “Indonesia: Security guards of Asia Pulp and Paper’s supplier allegedly beat farmer union member to death, environmental groups protest – includes company comments,” *Business and Human Rights Resource Center* (June 10, 2015).

⁵⁹ Michael E. Miller, “Why are Brazil’s Environmentalists being murdered?” *The Washington Post*, August 27, 2015.

⁶⁰ SR Report on Natural Resource Exploitation, para. 47.

the assault of many others, engaged in peacefully protesting the construction of a new gold mine in the country's northern Andean province of Cajamarca.⁶¹ In many cases, however, the perpetrator is unknown.

Leaders or perceived leaders of environmental movements or protests are often subjected to particularly egregious violations of their rights, such as disappearances and arbitrary killings.⁶² A key UN report cites various grim statistics, including the deaths of anti-mining campaigners in India, as well as a variety of prominent environmental activists working in Colombia, the Philippines, and Thailand, among others.⁶³

States have used other acts of intimidation to deter groups from opposing private corporations' development projects.

- In **Myanmar**, activists protesting the devastating impact of mines run by Chinese and Canadian corporations have routinely faced excessive force by the government. Environmental activists have encountered thousands of forced evictions, crop destruction campaigns using state-owned bulldozers, and dispersal of protests by police using toxic explosives. In addition, the ability of environmental groups to form and operate is reportedly near impossible.⁶⁴
- In **Mexico**, the police violently dispersed a crowd peacefully voicing its opposition to a private company's plans for community-owned territory.⁶⁵
- In **Colombia**, protesters opposing the construction of a hydroelectric dam that would privatize and eliminate native territory enjoyed by the community for generations, including Colombia's longest river, have been violently dispersed and dissolved by members of the police.⁶⁶

⁶¹ Mining Watch Canada, "Leading Human Rights and Environmental Groups Urge Peru to Halt Repression and Human Rights Abuses on Mining Protesters," July 11, 2012.

⁶² SR Report on Natural Resource Exploitation, para. 46.

⁶³ *Id.* at paras. 46-47.

⁶⁴ "Myanmar: Foreign Mining Companies Colluding in Serious Abuses and Illegality," *Amnesty International* (February 10, 2015) <https://www.amnesty.org/en/latest/news/2015/02/myanmar-foreign-mining-companies-colluding-serious-abuses-and-illegality/>.

⁶⁵ SR Report on Natural Resource Exploitation, para. 48.

⁶⁶ Carolina Caycedo, "Activists Fight Privatization of Colombia's Longest River," *Popular Resistance* (March 23, 2015) <https://www.popularresistance.org/activists-fight-privatization-of-colombias-longest-river/>.

Public Vilification

In an increasing number of countries, groups that peacefully voice their opposition to development projects or proposals for natural resource exploitation are publicly described in incendiary and condemnatory ways: anti-development activists, inciters, traitors, radicals, and enemies of the state, among others.⁶⁷ Whether such language is acted on or not, an atmosphere infused with negative public rhetoric by government officials can impede the work of environmental groups, tarnish their credibility in the eyes of their domestic audiences, discourage them from pursuing ambitious projects, and deter potential activists and groups from organizing in the first place.

- In **Russia**, Greenpeace activists have been repeatedly chastised as, and in some cases criminally charged with, engaging in “hooliganism.”⁶⁸
- In **Canada**, environmentalists opposing key pipeline projects have been referred to as “radical[s],” “revolutionaries,” and “adversaries” by both government officials and corporate CEOs. According to the Natural Resource Minister, environmentalists opposing a key oil pipeline project, the Northern Gateway Pipeline, “threaten to hijack our [the government’s] regulatory system to achieve their radical ideological agenda.”⁶⁹ The CEO of the Northern Gateway project publicly reported that the environmentalists opposing his project represented a “revolutionary movement” focused on undermining the country’s critical infrastructure and controlling public debate.⁷⁰ Similarly, the Canadian Security Intelligence Service called the environmentalists attempting to block the controversial Keystone XL pipeline “a threat to national security.”⁷¹
- In **Bolivia**, a non-profit Danish development organization, IBIS, was expelled after nearly three decades of human rights, education and environmental work. In connection with

⁶⁷ Id. at paras. 42-43.

⁶⁸ “Russia: ‘Hooliganism’ charges do not apply to peaceful Greenpeace protest,” *Amnesty International* (October 2013) <https://www.amnesty.org/en/latest/news/2013/10/russia-hooliganism-charges-do-not-apply-peaceful-greenpeace-protest/>.

⁶⁹ Will Potter, “7 Ways Canadian Environmental Groups are Being Attacked as ‘Terrorists.’” *Green is the New Red* (September 20, 2012), <http://www.greenisthenewred.com/blog/7-ways-canada-environmental-groups-labeled-terrorists/6374/>.

⁷⁰ Karen Kleiss, “Enbridge CEO says environmental groups have taken control of pipeline debate,” *Edmonton Journal*, August 12, 2012, <http://www.edmontonjournal.com/business/Enbridge+says+environmental+groups+have+taken+control+pipeline+debate/7084411/story.html>.

⁷¹ Shawn McCarthy, “‘Anti-petroleum’ movement a growing security threat to Canada, RCMP say,” *The Globe and Mail*, February 17, 2015, <http://www.theglobeandmail.com/news/politics/anti-petroleum-movement-a-growing-security-threat-to-canada-rcmp-say/article23019252/>.

its sudden and highly publicized expulsion, the government accused the organization of political meddling, causing internal conflict among organizations representing the rights of the indigenous people, and helping to fund an “illegitimate” protest march in defense of Bolivia’s Isiboro-Sécure Indigenous Territory and Natural Park. A top aide to President Evo Morales announced that IBIS’s expulsion should be viewed as a clear warning to other NGOs supporting the rights of the indigenous communities.⁷²

Environmental laws, particularly those used to successfully protect the activities of environmentalists engaged in work at odds with corporate or state interests, have also been the targets of public vitriol by public officials.

- In **Australia**, after environmental groups successfully put a stop to Australia’s largest coal project, the attorney general publicly criticized a key provision in the country’s primary environmental law allowing civil society actors to challenge environmental proposals. According to the attorney general, repeal of this provision is necessary to protect Australian jobs from “radical activists” who bring “vigilante litigation” against the government. If allowed to remain in effect, he claimed, the law would provide “a red carpet for radical activists wanting to use aggressive litigation tactics to disrupt and sabotage important projects.”⁷³

Promising Initiatives

Despite the onslaught of legal and extra-legal reprisals inflicted on environmental groups in recent years, certain trends are promising. Indeed, a variety of national and international initiatives and domestic laws have already been deployed to ensure that environmental activists and groups are not only able, but empowered and encouraged, to form, operate, and express their opinions.

One noteworthy example is the Extractive Industries Transparency Initiative (EITI), a voluntary set of global standards designed to strengthen public accountability and trust surrounding the revenues associated with a country’s natural resources.⁷⁴ Countries that adhere to the EITI agree to report all payments related to the transfer of oil, gas and mineral resources. The reporting

⁷² “Bolivia Expels Danish NGO for Meddling,” *Global Post*, December 20, 2013, <http://www.globalpost.com/dispatch/news/afp/131220/bolivia-expels-danish-ngo-meddling-1>.

⁷³ Samantha Hepburn, “Brandis’ changes to environmental laws would defang the watchdogs,” *The Conversation* (August 18, 2015) <http://theconversation.com/brandis-changes-to-environmental-laws-will-defang-the-watchdogs-46267>.

⁷⁴ Note, however, that some observers have questioned whether governance problems in some countries’ multi-stakeholder groups have contributed to ineffective civil society participation. Publish What You Pay, “Spotlight on the EITI: Improving civil society participation through better multi-stakeholder governance,” (2015), http://www.publishwhatyoupay.org/wp-content/uploads/2015/02/PWYP_Spotlight-on-the-EITI_download.pdf.

process is overseen by a multi-stakeholder coalition of governments, companies and representatives from civil society, with the ultimate goal of informing public debate and enhancing the public's trust in the use and transfer of natural resources. Importantly, to participate in the EITI, countries must ensure that an enabling environment exists for civil society to engage in the process and express views related to natural resource governance.⁷⁵

Other initiatives are more generally designed to empower civil society groups, but are thought to be especially helpful for environmental groups. The Open Government Partnership (OGP) is one such example. Launched in 2011, the OGP helps to promote transparency, accountability and trust between governments and civil society groups by providing a platform for ongoing dialogue between the two. Participating governments commit to the principles contained in the Open Government Declaration, which include protecting the ability of not-for-profit and civil society organizations to freely exercise their rights.⁷⁶ As a UN Special Rapporteur reported, the OGP is important for “enhancing the public's access to information and for reforming government policies that lead to exclusion, inequality and the marginalization of those who should benefit from natural resource exploitation.”⁷⁷ Like the EITI, the OGP can create additional space for civil society to engage with stakeholders in important decisions involving resource exploitation.

Other initiatives include:

- The announcement by the **Colombian** government in July 2014 that it would translate the UN Guiding Principles on Business and Human Rights Public Policy Guidelines into national policy, thus recognizing the need to enforce laws that directly or indirectly regulate businesses' respect for human rights, including environmental laws.⁷⁸
- **Indonesia's** adoption of a new legal framework pertaining to the timber industry, the Timber Legality Assurance System, which protects the rights of independent forest monitors and guarantees any member of the public the right to engage in forest monitoring.⁷⁹
- The creation in **Chile** of an inter-ministerial commission responsible for overseeing the General Consultation Process and the Environmental Impact Evaluation System, which

⁷⁵ Extractive Industries Transparency Initiative: <https://eiti.org/>.

⁷⁶ Open Government Partnership: <http://www.opengovpartnership.org/>.

⁷⁷ SR Report on Natural Resource Exploitation, para. 29.

⁷⁸ Guiding Principles on Business and Human Rights, UN Human Rights Office of the High Commissioner, p. 5.

⁷⁹ The Indonesian Legality Assurance System (INDO-TLAS) (2013).

requires all projects or activities that might cause an environmental impact to be thoroughly assessed before execution.⁸⁰

- The efforts of **Romania** and **Austria** to bolster and ensure community engagement in environmental impact assessments, through laws requiring the state to obtain the public's opinion on proposed projects that might affect protected areas of the natural environment.⁸¹

Conclusion

As concerns about the environment intensify, the ability of environmental activists to freely assemble, organize and voice their opinions is increasingly crucial. Moreover, as the global community continues to debate how to improve environmental practices, to limit opportunities for environmental degradation, and to enforce new national and global environmental standards, the importance of ensuring that a multiplicity of viewpoints are heard and that the full array of stakeholders are involved in these debates is paramount. States, as the primary protectors and enforcers of human rights, play the dominant role in ensuring that these stakeholders can fully participate in these debates, which will become increasingly complex and urgent in coming years. However, private corporations are important actors as well. Their commitment to respecting international and human rights standards by allowing environmental groups to peacefully organize and operate is similarly crucial.

Only through the diligent work of states, private companies and civil society organizations working collaboratively can we hope to protect our shared global environment. The most important first step in ensuring that a harmonious and productive relationship forms among these three sectors is by guaranteeing that each can fully exercise the rights given to them under domestic, international and human rights laws, including the essential rights of peaceful assembly, association and expression.

⁸⁰ Nicolás Eyzaguirre, "Environment 2015: Chile," *Latin Lawyer* (April 2015)
<http://latinlawyer.com/reference/topics/51/jurisdictions/3/chile/>.

⁸¹ SR Report on Natural Resource Exploitation, para. 60; On Romania see: United Nations Development Program, "Effectiveness of environmental impact assessment in Romania and simple means to improve it," (March 2011), 9, undp.ro/libraries/projects/Effectivness_of_EIA_in_Romania_01.pdf; On Austria see: "Austria: Environment 2013," *Mondaq* (November 2012).