

Patterns of Criminalization and Limitations on the Effective Participation of Women who Defend Environmental Rights, Territory, and Nature in the Americas.

REGIONAL REPORT 2015



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Introduction

Women who defend environmental rights, territory, and nature in the Americas are subject to criminalization, as evidenced by the prosecution of activists, their stigmatization, and by diverse forms of harassment related to their gender.

The Urgent Action Fund of Latin America and the Caribbean- UAF-LA, the Fund for Women of the South- FMS (for acronym in Spanish) of Argentina, the Alquimia Fund of Chile, the Latin-American Women's Union- Red ULAM (for acronym in Spanish), the Association for Women's Rights and Development- AWID, Just Associates-JASS, the Mesoamerican Initiative of Women Human Rights Defenders, the member organizations of Ecological Action of Ecuador, Mothers of Itzaingó of Argentina, the national Coordination of Organizations of Rural Working and Indigenous Women- CONAMURI (for acronym in Spanish) of Paraguay, and Women Defenders of the Pilmaiken River in Chile agreed to prepare this report in order to highlight patterns of criminalization. This is a collective contribution designed to bring to light the state of affairs in the region, particularly before the Inter-American Commission on Human Rights- IACHR.

Structure

The document is structured in the following manner: in the first section, the context of aggression against women who defend environmental rights, territory, and nature in the region will be taken up; in the second, we will detail the definition of criminalization and its modalities in the light of specific cases; in the third section we will point out the differentiated impacts of criminalization on women's lives. And finally, we will provide several recommendations and conclude with petitions directed to the IACDH.

We argue that criminalization is applied as a way of neutralizing the struggles of communities and peasant, indigenous, Afro-descendent, women's, environmental, and ecological organizations by State authorities to the benefit of industries and companies. In addition, we are extremely concerned about the lack of visibility of the differentiated impacts on the lives of women.

We should note that the universe of cases regarding the criminalization of women defending territory, the environment, and nature does not end with this report. We have only included those cases about which we have direct knowledge-

organizations which promote the rights of women and nature and which we consider to be emblematic, our goal being to bring to light the situation of hundreds of women throughout the region.

Our Background

The Urgent Action Fund of Latin America- UAF LA- is a feminist, civil society organization that promotes and defends the human rights of the diversity of women and their organizations in all countries on the continent, coordinated from our office in Bogotá, Colombia. We respond to requests from indigenous, Afro-descendent, peasant, and rural and urban women in situation of displacement; from LBTTI groups; feminist NGOs and networks; as well as from women's organizations that defend the environment.

Based on requests for Rapid Response Grants (RRGs), the UAF-LA created the Collaborative Initiative, *Women, Territory, and the Environment*, with the goal of responding to the needs of defenders of the rights of Mother Earth and of environmental organizations. In this line of work, we support initiatives to strengthen indigenous women's organizations and the defense of their territories, and women's resistance to large-scale mining; as well as actions against the effects of environmental destruction on women, and the prevention of violence resulting from defense of the environment.

Women's Fund of the South is a foundation that mobilizes financial and technical resources in support of women's rights in Argentina, Uruguay, and Paraguay. Our Mission is to ensure that resources are available to women's groups on the ground, providing support to their organizational initiatives. Resources benefit organized women whose objective is to promote gender equality as a main strategy for social change.

We work in the following areas of women's rights: Social, Economic, and Labor Rights; Cultural and Environmental Rights; Sexual and Reproductive Rights; Rights to Political Participation and Non-discrimination; and Girls' and Adolescents' Rights.

The Foundation Collective Alquimia Fund for Women (Alquimia Fund) is a not-for-profit organization, whose objective is to mobilize resources to strengthen the women's movement and the organizations of women and feminists working for the autonomy, freedoms, and human rights of women and girls in Chile.

The Alquimia Fund provides financial resources to partner organizations for the implementation of their work plans; delivers capacity-building programs in organizational and activist sustainability, human rights, and communication; and promotes networking among the organizations it supports and among other women's organizations defending human rights.

The Association for Women's Rights and Development (AWID) is an international, feminist, membership organization. For over 30 years, we have been part of the incredible eco-system of movements for the rights of women which work to achieve gender equality, sustainable development, and the human rights of women throughout the world.

Our mission is to be a prime mover within the world community of feminists and activists, and organizations and movements for the rights of women, strengthening our voice, our impact, and our collective influence in order to transform power structures and decision-making, and to move forward on human rights, gender justice, and environmental sustainability everywhere. Collaborative work is key if women's rights and gender justice is to become a real and lived experience for people. We support feminist organizations and those working for women's human rights so they may work together effectively on various thematic, and in various regions and working groups.

The ULAM Network is a regional network involving groups and organizations led by women for the benefit of rural and indigenous women who are socially, culturally, and economically affected by mining practices and policies. Our conviction is that we must struggle together collectively so the negative impact of mining on women is recognized, and so measures are taken to curb and prevent these impacts. This is what unites us as sisters in the network.

We support groups of women and facilitate the development of regional goals; we monitor and document violations of women's human rights; we research cases of human rights violations; we promote international activism and create opportunities for women to disseminate their experiences and to consolidate alliances.

The Mesoamerican Initiative of Women Human Rights Defenders (MI-Defenders) was founded in 2010 and is formed by organizations, networks, and national coordinations of women defenders from Honduras, Mexico, Guatemala, El Salvador, and Nicaragua, which in total includes more than 691 women from the region.

We promote a holistic model of integral protection, from a gender perspective. It is rooted in the construction and support of networks and coordinations of women human rights defenders who participate in a variety of social movements. Our objective is to prevent and to respond to the increase in attacks in Mexico and Central America, thereby contributing to women's efforts for equality, justice, and peace, as well as providing nourishment for the strengthening and continuation of these movements. Additional strategies are also part of this holistic model of protection:- a Rapid Response Fund for Security and Self-Care; three Welcoming and Self-Care Houses; Urgent Actions and national, regional, and international Advocacy; and a Regional Information Monitoring System that supports the

preparation of analysis, reports, and statistical data from a gender perspective, about attacks on women defenders and their needs for protection.

JASS (Just Associates) was founded in 2003 by activists, organizers, popular educators, and academics on five continents, united in their commitment to human rights and shared political struggles, from Central America to Zimbabwe and Indonesia.

JASS is committed to strengthening women's voice, visibility, and collective power so a just and sustainable world may be created for all. We produce cutting-edge knowledge related to power, movements, and change in order to back up theory, practice, and policies, whilst promoting women's rights and democratic transformation. Working with women and diverse organizations in 27 countries, JASS's structure and flexible processes at the regional and international levels support base-level organizing as well as solidarity and action from the local-to-global level, while at the same time ensuring that front-line activists and their agendas are the central axis of our social justice work.

Ecological Action is an Ecuadorean ecological organization, founded in 1986. It is committed to promoting the defense of nature with the goal of ensuring the preservation of a healthy environment; to disseminating information about issues related to the use, and especially to the contamination, of rivers, oceans, air, and land; to delivering training and educational programs in rural and marginal urban areas of the country on themes of environmental education and preservation. We also support research and the dissemination of technologies appropriate to the environmental, social, and economic realities of each locale, and we collaborate with public and private, national and foreign, institutions in the defense and protection of the environment.

The organization, Mothers of the Ituizangó Neighborhood, was created in 2002 in Cordoba, Argentina after witnessing a very high number of cancer cases in the neighborhood located next to extensive soya crops. Several neighborhood women took on the task of denouncing the situation, promoting health care for the sick, and dialoguing with authorities for improvements in public services and control over an industry that was affecting their health.

Currently, they are spear-heading mobilizations against genetically modified crops, agricultural pesticides, and all that seriously impacts human rights.

The National Coordination of Organizations of Rural Working and Indigenous Women- CONAMURI-(for acronym in Spanish) was founded in 1999 with a mandate to initiate the construction of a national women's organization that would articulate women's demands and proposals from the two sectors.

Our organization came into being as a response to the need for peasant and indigenous women to have their own space to defend their rights; and to find alternatives to the distressing situation of poverty (mboriahu), discrimination (ñemboyke), and exclusion (ñemboykete) for reasons of class, ethnic roots, and gender.

Women Defenders of the Pilmaiken River belong to a collective of ancestral Mapuche Williche communities of the Pilmaiken. It is a space led by women defenders of water, land, and life, who are mainly women of Mapuche origin. Along with active members of the communities of the Pilmaiken River and the community of Roble Carimallín, Region of Los Ríos in the South of Chile, the Women Defenders are resisting the possible construction of the Osorno hydroelectric dam involving transnational capital, a dam that would inundate a sacred ceremonial space of vital importance for the Mapuche people.

Our work is based on the protection and safety of the area, given the imminent arrival of resource-extraction projects that would destroy our ceremonial center, a place we have inhabited ancestrally. We also promote the rights of indigenous peoples, as well as the related obligations of the Chilean State to respect, protect, and guarantee these rights.

Inputs for the elaboration of this report come from our organizations' documentation in relation to cases we are familiar with and have accompanied. Writing was the responsibility of Diana Milena Murcia Riaño, lawyer and defender of human rights and nature.

1. Context

The exploitation of mining, hydrocarbon and agroforestry resources, as well as infrastructure construction projects, such as roads and dams, are current factors causing enormous instability in rural community life in the Americas. The resistance offered by communities and their organizations in defense of their communal life projects is labelled “environmental conflict”. Meanwhile, the response from public and private agents (State and companies), far from restraining emerging threats, is accentuating the aggressions and human rights impacts.

Negative impacts on the right to home ownership in secure conditions, on health and food autonomy, and on the degradation of the environment and nature, appear to be inherent to industries that set up in the territories. Community members who act as leaders of diverse resistances, besides the effects already alluded to, must also suffer the abuse of power and the manipulation of the law in order to neutralize their role.

The IACHR noted that *“the attacks, aggression and harassment targeted at defenders of the environment have become more pronounced in some States of the hemisphere, mainly where there are serious tensions between the sectors that support certain industrial activities, like the extractive industries, which have enormous economic interests at stake, and those sectors that resist the implementation of projects”*¹. Brazil, El Salvador, Guatemala, Honduras, México, Ecuador, Panama y Peru were identified as the countries most at risk for defenders of the environment and territory.

Initiatives like that of EJOLT² point out that conflicts of a social-environmental nature in Latin America have reached more than three hundred and are mainly localized in Colombia, Brazil, Ecuador, Argentina, Chile, Peru, and Mexico. Global Witness, which mapped the state of aggression against this particular group of people, found that the number of assassinations of defenders of the environment and land has sharply increased during the last four years and that *“the most dangerous place for defenders of the right to land and the environment is Brazil with a total of 448 cases. Next is Honduras (109) and the Philippines (67)”*³.

Threats against their lives, security, or mobility emanate from a multiplicity of actors, such as companies, military forces, delinquency, paramilitary groups, and even members of their own communities who are in agreement with the projects.

At the same time, Front Line Defenders⁴ revealed an increase in attacks against defenders of rights associated with the environment: *“these cases accounted for over a third of the assistance provided by Front Line Defenders in 2013, representing a marked increase over previous years”*, and added *“it is clear that the international approach taken to business and human rights until now has not ensured that those concerned about the human rights impact of corporate activities can speak out safely”*.

Special Rapporteurs on the situation of human rights defenders have identified defenders of the environment and those involved in exposing issues related to companies as among the most-at-risk groups.⁵

In studies concerning these issues, even though patterns of conduct by States and Companies in relation to communities have been characterized, the majority have not taken the care to disaggregate data and analysis, taking gender differences into account. We believe, as does Margaret Sekaggya, ex-United Nations Special

¹ Inter-American Commission on Human Rights (IACHR). Second Report on the Situation of Human Rights Defenders in the Americas. December, 2011. Par. 312

² Environmental Justice Organizations, Liabilities and Trade. At: <http://ejatlas.org/country>

³ Global Witness: <http://www.globalwitness.org/sites/default/files/library/Medio%20ambiente%20mortal.pdf>

⁴ Front Line defenders, Annual Report, 2014.

⁵ Frost, Michel. Special Rapporteur on the situation of human rights defenders. Report A/HRC/28/63 of December 29, 2014. Par. 124-f.

Rapporteur on the situation of Human Rights Defenders, *“that women defenders need specific and enhanced protection, and targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and supporting one⁶”*.

Our organizations can confirm that a significant number of women have been attacked within a context of social-environmental conflicts. In 2012, the Mesoamerican Initiative of Women Human Rights Defenders (MI-Women Defenders) registered a total of 414 attacks against women human rights defenders in Mexico, Honduras, El Salvador, and Guatemala, and according to their registry, the women who confront the greatest risks are those working in rural areas (33.2%), and especially those defending land, territory and natural resources (37.9%)⁷.

For the most part, women defenders belong to groups, movements and organizations that oppose an economic model which deepens social inequalities; they oppose militarization and racism, corruption and the patriarchal system that subordinates, excludes, violates, and kills women. This is to say, their struggles are substantial ones and, as a result, they touch the vital interests of national and transnational economic elites, of organized crime, of central and local political power, and of military power. Besides, where misogyny has found its maximum expression in the crime of femicide in countries like Mexico, Guatemala, and Honduras⁸, women defenders and activists are exposed to physical and verbal aggression, assassination attempts, implicit or explicit death threats, and sexual violation⁹.

Sekaggya has stated that women human rights defenders in the Americas, especially defenders of indigenous peoples’ and environmental rights, defenders of land and territory, are at the greatest risk of being assassinated or suffering attacks against their lives¹⁰.

It is with profound concern that we register the assassination of many women defenders of territory: in Mexico Fabiola Osorio was assassinated in May, 2012 and Betty Cariño in April, 2010; in Guatemala, María Margarita Chub Ché in June, 2011; in El Salvador, Dora Alicia Recinos in December, 2010; in Honduras, María Enriqueta Matute in August, 2013, María Teresa Flores in August, 2010, and Jeannette Kawas in February, 1995; in Costa Rica, Kimberly Blackwell in

⁶ Report A/HRC/25/55 of December 23, 2013. Par. 100

⁷ Report: Violence against Women Human Rights Defenders in Mesoamerica, Summary Findings 2012; Mesoamerican Women Human Rights Defenders Initiative.

⁸ INACIF reported 774 cases of violent deaths of women. 1,236 denouncements of femicide were presented, as well as 281 cases for other forms of violence against women. Specialized tribunals on femicide and violence against women handed down 1,400 sentences, compared to 779 in 2013. Report: UNOHCHR, 2014, Par. 51.

⁹ Papadopoulou, Christina. Criminalization of the Defense of Human Rights in Guatemala: three emblematic cases. International Platform against Impunity, Guatemala, 2015. P. 26

¹⁰ Report of the Special Rapporteur A/HRC/16/44, December 20, 2010

November, 2012 and María del Mar Cordero in December, 1994; in Colombia, Edith Santos was assassinated in August, 2014 and Adelinda Gómez in September, 2013 while Sandra Viviana Cuéllar remains disappeared since February, 2011; and in Brazil, María do Espírito Santo in May, 2011, to name just some of the cases.

Amnesty International highlights that “often attacks have been preceded by character defamation and public accusations of women defenders as *subversives or enemies of progress*”¹¹. This scenario, indicative of patterns of behavior by States and companies, requires us to highlight issues such as excessive use of force, intimidation, psychological harassment, abuse of power, public shaming, and other threats and attacks confronted by women defenders of rights to territory, the environment, and nature, and particularly those subjected to diverse forms of criminalization (harassment, stigmatization, and prosecution).

Given this panorama, the United Nations General Assembly has, for example, expressed its concern for the abuse of norms “against human rights defenders, among them, women human rights defenders and defenders of the rights of women¹²”, and has recommended “that the promotion and protection of human rights not be typified as a crime¹³” and that independence of the judiciary be promoted.

¹¹ Amnesty International. Transforming Pain into Hope. Human Rights Defenders in the Americas.

¹² Resolution 68/181 of January 30, 2014. Protection of Women Human Rights Defenders and the Defenders of Women’s Human Rights.

¹³ *Ibidem*.

2. Forms of Criminalization

We understand the phenomenon of criminalizing human rights defenders to be a process involving a multitude of initiatives designed to neutralize their capacity for action, whether through apparently legal means (use of force, judicial or administrative bodies), or through illegal attacks (such as harassments, threats, interceptions, delegitimizing the organizations' work, stigmatization of their struggles or their persona, etc.).

In any given context, criminalization always surfaces a democratic deficit. For example, in her trip report to Honduras, Rapporteur Sekaggya noted: a) a culture of impunity and lack of protection mechanisms; b) deficits in institutional capacity and coordination for recognizing the goals of defenders' activities, and for acting accordingly; c) restrictive environments for the exercise of fundamental rights; and d) stigmatization of human rights defenders, a mix that undermines conditions for the exercise of the defense of human rights.

Many countries in the region present one or more of these characteristics. In this report, we will talk about three forms or patterns of criminalization which are used to neutralize the activities of women working to defend territory, the environment and nature. In the first instance, criminalization as a legal phenomenon or **prosecution**; in the second, criminalization as public exposure by means of **stigmatization**; and thirdly, criminalization emanating from different forms of **harassment**.

The idea of revealing the current state of affairs through these patterns is to bring to light and emphasize certain behaviors used against women in specific contexts, but it is worth noting that all the cases studied involve all three forms of criminalization of activists to some degree. We begin by recognizing that criminalization is not limited to the prosecution of defenders, but rather is the cause and/or consequence of other situations such as public stigmatization and harassment, which worsen the conditions of women's existence.

2.1 Prosecution

Acuña *et al* define criminalization as “the process by which the idea of potential criminality becomes associated with certain behaviors and individuals (...) always serving as a justification for the use of force as a preventative measure¹⁴”. Resistance to the exploitation of resources or to the construction of infrastructure is a behavior that State authorities and companies associate with illegality and with

¹⁴ Acuña Ruz, Felipe, Daniel Fredes García and Domingo Pérez Valenzuela. “Criminalización de la protesta y judicialización de las demandas sociales. Producción de legitimidad a partir del doble juego de la dominación”. (*Criminalization of protest and judicialization of social demands. Production of legitimacy through the double game of domination*”- translation is ours). University of Chile. Magazine *Derecho y humanidades*, No. 16, Vol. 1, 2010.

behaviors representative of infractions, whether of constitutional or administrative mandates, but especially, of criminal ones.

To consider resistance to different types of projects as crime, and the leaders of peasant, indigenous, Afro-descendent, environmental and ecological processes, as delinquents, constitutes a form of social disciplining and punishment that, in addition, violates “the generally-recognized principle of *individual criminal responsibility*, a fundamental principle of justice”¹⁵.

Behind the recurring practice of naming leaders as detractors of development is the notion that development- present in constitutional documents as a goalpost- is a condition that does not allow for objections. Therefore, by linking the idea of “development” with the principle of the “common good”, any opposition to projects becomes identified with rebellion against the existing constitutional order.

Hence, the inadmissibility of paradigms distinct from development (sustainable development, or sustained development), such as those of decreasing growth, *sumac kawsay* or post-development, lie at the root of the criminalization of those who defend the environment and nature.

Furthermore, the supremacy of administrative procedures over constitutional rights, that is, the supremacy of environmental licensing, administrative expropriations, indentured servitude, etc., over community rights, constitutes a type of *constitutional circumvention*, understood as the abduction of this type of normative acts from constitutional control, so that only “symbolic or low-intensity control is exercised over them”¹⁶. Based on the experience of the communities we are familiar with, we can affirm that, in practice, these administrative acts have greater hierarchy than the Constitution and international human rights instruments.

For example, environmental licenses appear as legal instruments, when, in reality, they are mere patents for aggression against communities and their territories. The technical language, the limited time-frames for their gestation, the deceptive forms of socialization and consultation of such instruments, the enormous advocacy capacity of companies in contrast to the scarce margin of action by communities, all illustrate the perversity that judicial procedures acquire in the context of resource extraction.

It is at this moment that the criminal justice system becomes involved in order to neutralize resistances not contained through administrative measures, during, at least, three stages: 1) the creation of criminal offences directed at containing social

¹⁵ FIDH (International Federation of Human Rights). Non-violent social protest: A right in the Americas? No. 460/3, October, 2006.

¹⁶ Quinche Ramírez, Manuel Fernando. “La elusión constitucional, una política de evasión del control constitucional en Colombia”. (*Constitutional Circumvention, a Policy of Constitutional Control Avoidance in Colombia*- translation is ours). Rosario University, 2009. P.19.

protest; 2) the initiation of criminal proceedings against those who resist; and 3) the effective application of sentences as an exercise of social disciplining.

This panorama has led to the formulation of commentaries and recommendations directed to States by international organisms with the goal of curbing the prosecution of human rights defenders. Among them, the following deserve attention:

- “Ensure that the authorities or third parties do not manipulate the punitive power of the State and its organs of justice, with the goal of harassing human rights defenders, subjecting them to unjust or unsubstantiated trials¹⁷”; and accordingly, “to strengthen mechanisms for the administration of justice and to guarantee the independence and impartiality of justice system operators”¹⁸.
- “Revise and ensure that criminal typologies commonly used to detain defenders are formulated according to legal principles; that authorities charged with legal files do not surpass reasonable periods of time for emitting their verdicts; and that authorities and third parties do not violate the principle of innocence by emitting declarations that stigmatize defenders subjected to criminal proceedings, as delinquents”¹⁹.
- Since the right to freedom of expression during demonstrations can be blocked by the judiciary, it is necessary “to analyze whether the use of criminal sanctions can be justified under Inter-American Court standards, which establish the need to prove that the limitation (the criminalization) satisfies an imperative public interest required for the functioning of a democratic society²⁰”.
- “Ensure that all laws that criminalize activities in defense of human rights are repealed²¹”; “abstain from criminalizing non-violent and legitimate activities of defenders²²”.

Despite the existence of these recommendations, the number of cases in which criminal law is “instrumentalized” to contain and neutralize the collective exercise of rights to territory, continues to multiply in the region. What follows is an exposé of exemplary cases from Chile, Ecuador, and Mexico where women defenders of territory and nature have been prosecuted.

¹⁷ IACHR, 2006. Par. 342-11

¹⁸ IACHR, 2012. Par. 541- 24 to 26.

¹⁹ IACHR, 2012. Par. 541-24 to 26.

²⁰ IACDH, Chapter IV, 2002 Annual Report, Volume III “Report of the Rapporteur on Freedom of Expression”, OAS/Ser. L/V/II. 117, Doc. 5, rev. 1, par. 35

²¹ Frost, Michel. Special Rapporteur on the situation of human rights defenders. Report A/HRC/28/63 of December 29, 2104. Par. 124-k.

²² Report A/HRC/25/55 Par.131

**Communities of the Río Pilmaikin in Resistance, south of Chile, and
Criminalization of the Machi, Millaray Huichalaf**

Millaray Hichalaf, Machi or spiritual leader of the Mapuche people, was accused of being an accomplice to a fire in January, 2013, a fire which happened more than 25 km. from her residence, and for which she was held in preventative detention in the maximum security jail in Valdivia for four months. This episode of criminalization happened during struggles of the Mapuche communities to defend their territory and their collective rights, under threat of construction of the Hydroelectric Osorno Dam. Prior consultation, as stipulated in ILO Convention 169, has not taken place and the environmental impact study ignored the ancestral presence of the Mapuche communities of Maihue, Roble-Carimallín and Lumaco, located in the area that will be directly affected.

As a result of the privatization of water and land, and the destruction of their ceremonial sites, this project would threaten continued cultural existence and permanence in the Mapuche peoples' territory by preventing access to the common goods required for the development of their traditional forms of life.

Prosecution of the Machi should be understood within a framework of the political persecution and systematic criminalization endured by the Mapuche people for their non-violent opposition to the development of hydroelectric and mining projects and forestry plantations, which violate their rights²³. In the case of the Millaray family, persecution began in 2006 when her sister, Amanda Huichalaf, community leader, was detained and accused on the basis of a judicial set-up in a case that was eventually thrown out for lack of evidence. Currently, Millaray's partner is facing criminal proceedings as the result of another set-up.

The capture of Machi Millaray Huichalaf took place during an illegal break-in, characterized by the excessive use of force (long-range firearms, destruction of household items and serious damages to the home, intent to remove ceremonial elements and dress, among others). All this was witnessed by her three-year old daughter who suffered serious psychological impacts as a result. The same day, the homes of other leaders in the Bueno River community and in the town of Osorno were violated, including Millaray's mother's home which was destroyed by the police. During the operation another three members of the community, who were in the Machi's residence, were detained.

Millaray was accused of illegal possession of arms and cover-up of the fire, according to intelligence findings- no order from the Public Ministry or a legal warrant-; declarations from public servants (firefighters, military police, investigative police of Chile who had taken charge of criminal investigations against the Mapuche communities, etc.); and goods confiscated illegally, since there was no legal warrant for this intrusion. During the trial, compelling evidence, related to the participation of the Machi in the events for which she was accused, was not collected; instead, references to activities and situations related to her personal life and community role, which do not constitute crimes, prevailed.

²³ The detention of Millaray Huichalaf and the Machi, Tito Cañulef, happened during the same period as the detention of Machi Celestino Córdoba (January 4, 2013) and Machi Linconao (January 5, 2013).

Nine months later, despite being tried for the same crime and relying on the same evidence, the other three community members were absolved while the Machi was the only one charged by the Tribunal of Oral Criminal Trials in Valdivia. Clearly, therefore, criminalization resulted from a gender-based bias and for her role in the community. She was a central figure, a political and spiritual authority charged with the responsibility of acting as a bridge between the land and its sons and daughters, of ensuring harmony and equilibrium between nature and human beings; additionally, she was the most visible leader in the resistance against the dam.

Meanwhile, some Mapuche community members were coopted, deceived, or harassed into giving their consent for the construction of the hydroelectric dam and for new extractive and forestry projects that were appearing in their territories. In this case, the criminalization of the Machi and the forward march of projects and economic interests overlap perfectly. Community energy for the defense of what is rightfully theirs and for their physical and cultural survival is weakened when they are required, on another front, to sustain social, legal and political support for the Machi and other community members.

An anthropological survey undertaken in 2013 revealed that the prosecution of the Machi had had devastating impacts on the community due to the interruption of her function as a spiritual leader. They are reflected in alterations in the spirituality and harmony of the Río Bueno community and surrounding areas as a result of her being unable to continue with a variety of ceremonies and rituals, as well as from interruptions in permanent exchanges of knowledge. This absence led to the weakening of community health since it was impossible for her to exercise her curative functions.

Besides the emotional trauma, and the rupture in her role as spiritual and political leader during her detention, sentiments of insecurity, anguish, fear, and anger currently remain with her and her family. Moreover, recent harassments underscore the persistence of persecution: tracking from strange automobiles, permanent vigilance of her home by unknown subjects, finger-pointing and stigmatization, and continued interception of her cell phone. Furthermore, her sister's home was illegally broken into on April 25, 2015 by supposed delinquents and audiovisual material and portable computers that contained important information about the organization and the territorial conflict were stolen. These acts remain in impunity.

Large-scale Mining in Ecuador and the Criminalization of Women from the League of Women Defenders of the Pachamama- FMDPM (for their acronym in Spanish)

The organization of rural women from the highland Andean populations of Molleturo and Victoria del Portete was founded in 2008, as well as that of Amazon-based peoples from Limón and Indanza in the south of Ecuador, in rejection of concessions granted for mining exploitation, and in defense of nature.

Within the framework of a protest in 2009, several participating women were facing criminal charges. Georgina Gutama was accused of organized terrorism and after eight

months of investigation, judges acquitted her. Rosa Gutama and María Chuñir faced charges of blocking a public road and were accused. However, the arrest warrant was never issued and the process lapsed in 2013. María Zhaguí faced the same charge but her case was amnestied by the Constituent Assembly.

Lina Solano has faced several charges- occupation and theft of the Rosa de Oro camp belonging to the Explocobres Comany in the province of Morona Santiago at the time of a manifestatation in November, 2006. The case was amnestied by the 2008 Constituent Assembly; however, she was required to report to the Public Prosecutor's office until June, 2010. She also had to confront a process for obstructing a public roadway in July, 2007 that was also amnestied. And furthermore, she confronted an accusation for the alleged illegal occupation of a building belonging to the Ecuacorrienteses Company that was dropped for lack of evidence.

As Amnesty International points out, "in response to the accusation that the right to protest is being criminalized, the President has likewise made declarations: 'enough of deceptions, enough of hypocrisy, the protesters are criminals and the Law must be applied'. Moreover, he has repeatedly used the phrase "criminal social protest" to write off manifestations opposed to government policy as delinquent activities²⁴.

Far from diminishing the practice of criminalization of social leaders in the country by means of dialogue, the prosecution repertoire is maintained in areas where extractive and infrastructure construction projects are underway.

Wind-Energy Project in Indigenous Territories and the Criminalization of Bettina Cruz

Bettina Cruz is a Binnizá (Zapoteca) indigenous woman from the state of Oaxaca, Mexico; member of the Assembly of Indigenous Peoples from the Isthmus of Tehuantepec in Defense of Land and Territory (APIITDTT for its Spanish acronym); of the Network of Women Activists and Human Rights Defenders of Oaxaca; and of the National Network of Women Human Rights Defenders in Mexico (RNDDHM for its Spanish acronym).

Since 2007, as a member of APIITDTT, she has been engaged in meaningful and intense activity in Mexico to defend the territory and natural resources of the Ikkjoots and Binnizá peoples who are confronted by private entities interested in occupying their ancestral and community lands to install wind energy generators. The required prior consultation did not happen and the local economy and food chain of the indigenous communities, among other rights, have been put at risk.

Because of her activism, Bettina has been threatened, followed, intimidated, and victimized by campaigns of defamation, an assassination attempt, and criminalization. On February 22, 2012, she was arbitrarily detained, and later received a formal pre-trial detention order. She was accused of crimes of illegal constraints on freedom and crimes

²⁴ Amnesty International. Report: So that No One Can Demand Anything. 2012; P. 30. At: http://www.amnesty.org.uk/sites/default/files/ecuador_report_-_report_eng.pdf

against “consumption and national wealth” because of a non-violent demonstration by APIITDTT on April 13, 2011 in which she did not participate.

During her incarceration, a prison guard pointed out to her that her human rights had been suspended and that she should understand he was in command here; exercising, moreover, psychological terror over her by reminding her that just to use the washroom, she had to request his permission. Furthermore, she was repeatedly questioned and told that “madam, you are in big trouble; why don’t you think of your children and family and the hardship you cause them before getting involved in these problems”?

During and after her detainment, authorities and the company took advantage of her incarceration to undertake a defamatory smear campaign in which it was stated that “as a woman, she should be at home and not looking for or causing problems and conflicts”, and that as a defender, she deserved to be in jail since she was not a “housewife”. At heart, they were attempting to justify her imprisonment because they could not conceive that a woman would be publicly questioning the State and its policies, since her place was in the home.

On February 24, 2012, after paying a bond, our defender was released on bail, and for more than three years, confronted her criminal proceedings in freedom, having to sign every month in the court of Salina Cruz, Oaxaca. In February, 2015, the Sixth District Tribunal of the State of Oaxaca formalized the acquittal of Bettina Cruz for the imputed charges. This can be seen as a victory for the persistence of support from women human rights defenders and from organizations that defend and promote human rights at the national and international levels.

Prosecution operates as a form of social disciplining. The cases mentioned above have in common that:- i) they took place in contexts of social mobilization or protest; ii) they focus on individuals with a certain degree of visibility or leadership in the community or organization; iii) they send the signal that to mobilize for rights is a criminal act; iv) they involve great personal cost for the victims: interruption of life projects and family and community relationships, the use of hard to-come-by economic resources to cover legal defense costs, uncertainty about the future, deprivation of various rights, and humiliation at being exposed to the mass media as criminals; v) the end result favors the imposition of an industry or the interests of a specific company directly, to the detriment of organizational unity in the communities; and vi) the independence of the justice system is compromised when cases turn into a media façade, while this out-of-court level goes unrecognized, and the principle of the presumption of innocence is annulled.

Specifically, for women, prosecution undermines their possibilities to exist as subjects of rights in public life and to participate in decisions related to their territories, the environment, and the conditions for the physical and cultural survival of their peoples.

2.2 Stigmatization

Stigmatization is directly linked to the intention of undermining legitimacy for the defense of human rights, territory, the environment, and nature, as well as pointing to and undercutting the public image of specific defenders. It takes place “in the mass media and (in) declarations by public officials with the goal of decreasing defenders’ legitimacy²⁵”.

In the first case, “the mass media plays a crucial role in representing perceptions about the work of human rights defenders and their struggles for justice (...) If media reports continue to depict defenders as a threat to public order rather than actors for the creation of conditions to diffuse social conflict, it will become more difficult to ensure protection of their lives and physical integrity²⁶”, as Hina Jilani stated so well.

From what is broadcast in the mass media, whose interests are nearly always aligned with those of extractive industries, workers repeat the same messages as do community members who feel empowered to attack women and their families in a variety of ways.

In certain contexts, the declarations of public officials can constitute “forms of direct or indirect inherence, or adverse pressure, on the rights of individuals to contribute to public debate through the expression and dissemination of their ideas²⁷”. The Constitutional Court of Colombia determined, for example, in a legal protection action, which had originated in Presidential discourse against human rights defenders, that given his role in the direction of State affairs, his declarations must comply with the Constitution, and as such are not absolutely free.

According to this Court, in the case of high senior officials, “*their communication with the Nation must contribute to the defense of the fundamental rights of citizens, especially those who merit special protection*²⁸”. The principle of not exacerbating “the level of exposure to risk” to which activists are subjected by virtue of their work, must be observed.

Similarly, the United Nations General Assembly has recognized that women human rights defenders “*can experience gender-based violence, rape and other forms of sexual violence, harassment and verbal abuse, and attacks on reputation, on-line and off-line, by State actors, including law-enforcement personnel and security*

²⁵ Margaret Sekaggya, Special Rapporteur on the Situation of Human Rights Defenders; Report: A/HRC/22/47/Add., of December 13, 2012. Par. 113

²⁶ Hina Jilani, Special Representative of the Secretary General for the Situation of Human Rights Defenders. Report A/HRC/4/37/Add.2 of December 19, 2006. Visit to Brazil. Par. 79.

²⁷ IAHR Court. Case of Ríos and others Vs. Venezuela. Preliminary Exceptions, Funds, Reparations, and Costs. Sentence 28 of January, 2009. Series C, No. 195, párr. 151. Translation by the author.

²⁸ Sentence T-1191 de 2004. M.P

forces, and non-State actors, such as those related to family and community, in both public and private spheres²⁹”.

With respect to women defenders of territorial and environmental rights, animosity towards activism on these issues is linked to gender-based violence. This has encouraged international entities to comment and make recommendations, among them:

- In cases of government advertising, its objective should be “to satisfy the legitimate aims of the State and it should not be used for discriminatory purposes, (or) to violate the human rights of citizens³⁰”.
- States must, at all levels of state activity and in all spheres of power-executive, legislative, or judicial- recognize the role of human rights defenders in guaranteeing democracy and the rule of law³¹, and the legitimacy of defending human rights³². Therefore, public officials must abstain from “making declarations that stigmatize defenders or that suggest that human rights organizations behave in an improper or illegal manner, only by the fact of undertaking their work in the promotion or protection of human rights³³”. And in the case of women, specific measures must be put in place “for the purpose of promoting recognition of the importance of their role in the movement for the defense of human rights³⁴”.
- Public recognition of the “important and legitimate role that women human rights defenders, and defenders of the rights of women, play, is fundamental in the promotion and protection of human rights, democracy, the rule of law and development³⁵”.
- “Defending human rights is not only a legitimate and honorable activity, but a right in itself³⁶, and implies the corresponding obligation to “publicly acknowledge the particular and significant role played by women human rights defenders” in the construction of democracy³⁷”.

²⁹ United Nations General Assembly. Resolution 68/181 of January 30, 2014.

³⁰ IACHR. Principles on the regulation of government advertising and freedom of expression. March 7, 2011. Par. 42

³¹ IACHR, 2006. Par. 342-1 and 2012. Par. 541-4 to 7.

³² Ibidem, Par. 342-2

³³ Ibidem, Par. 342-10

³⁴ Ibidem, Par. 7

³⁵ United Nations General Assembly. Resolution 68/181 of January 30, 2014. Protection of women human rights defenders and defenders of women’s rights.

³⁶ Margaret Sekaggy, Special Rapporteur on the situation of human rights defenders. Report: A/HRC/25/55 Par. 128.

³⁷ Ibidem, Par 131.

Despite the existence of these recommendations, cases in which the stigmatization of women activists is used as a tool for neutralizing the collective exercise of rights linked to territory, continue to multiply in the region. Below we will present two emblematic cases that reflect this second pattern of criminalization, from Ecuador and Peru:

Exploitation of Hydrocarbons in Protected Areas and the Media Lynching of Esperanza Martínez

Esperanza Martínez is an ecologist, well known for her work endorsing the recognition of nature as a subject of rights, for her promotion of community rights in contexts of environmental aggression, for initiatives to keep petroleum underground, and for promoting mechanisms of constitutional participation, such as popular consultations, especially for prohibiting the exploitation of hydrocarbons in Yasuní National Park.

Since the time of her participation as a consultant to the process of the National Constituent Assembly, she became the object of comments and of hostile private and public attacks by the highest officials of the Executive, and especially by the President of the Republic.

On several national channels during Saturday broadcasts, the President alluded to her using several hateful phrases and insults such as ‘infantile ecologist’, ‘fundamentalist’, ‘*árgolla*’ or ‘*tranquera*’, putting her on public display as an enemy of his political project. In one of the most recent episodes, after several non-governmental sources identified the construction of a highway in the Yasuni Park using satellite images, and which Martínez denounced, the Vice President of the country publicly named her “liar of the year”.

Since dialogue between civil society organizations and the national government has come to a halt in recent years- due to hostility towards the former and to constant attacks which have been described as veritable “lynching spectacles”- and given that neither justice officials nor the Ombudsman’s office show any signs of commitment to clarifying the attacks of which human rights defenders in the country are victims, the activist had to respond to the insults and the ensuing pressure through open letters³⁸.

Other epithets against the ecologist, closely linked to the fact she is a woman, have circulated on social media, such as “witch with 37 cats”. Emails entitled “Yasunidos attacked by Esperanza Martínez’s porn video” were received by family members, among others. Moreover, billboards have appeared along the highways which read “indeed, responsible mining exists, the ONG does not pay my salary”.

Far from alleviating the situation, or correcting the insults, the institutional response has been based in attempts to close the organization where she has worked for 25 years- Ecological Action (*Acción Ecológica*)-, through intelligence activities of an offensive nature, through the elaboration of organigrams by intelligence police where she is presented as a delinquent along with other members of the Yasunidos movement, and by new taunts and ugly discourses³⁹.

³⁸ See for example: Letter from Esperanza Martínez to Rafael Correa, January 2010. At: <http://www.accionecologica.org/accion-ecologica-opina/1196-carta-de-esperanza-martinez-a-rafael-correa> and letter from Esperanza Martínez to Jorge Glas, July, 2104. At: <http://lalineadefuego.info/2014/07/04/9658/>

³⁹ Such as when the country’s Vice President indicated he would send her a ruler so “she could learn to measure” (the highway she denounced for the Yasuní Park). See: Vice-President Glas sends a ruler to Esperanza

The Río Blanco Mining Project in Peru and the Stigma against Women Who Protect the Highlands

In August, 2005, during a five-day, non-violent march, Clefo Neyra and Elizabeth Cunya, members of the Association of Women Who Protect the Highlands- AMUPPA (for acronym in Spanish) and members of the Ñangali community located at 2,250 meters above sea level in the area of the Huancabamba cloud forest in Piura, northern Peru, were kidnapped along with 26 demonstrators, by the Río Blanco security forces. Being the only women in the group, they were kept half naked in a small bathroom with black plastic bags over their heads, and their feet and hands tied. Both women remember receiving permanent threats of rape and sexual harassment. “We had neither food nor water. They beat us constantly with their fists and boots. All of them took pleasure in squeezing my breasts with such force that I thought I would faint. They threatened us all the time with rape, while they talked about their fantasies of what they would do with us”, revealed Clefo Neyra.

Clefo and Elizabeth received indemnization in an out-of-court settlement with the company and from that moment on, their lives deteriorated significantly. Clefo’s and Elizabeth’s reputation was destroyed, while community members blamed them for the sexual abuse as being the result of their wanting to participate in the demonstrations. They are treated like “dirty women” resulting in the distancing of friends and family members. Both Clefo and Elizabeth have been isolated from the community. The constant defamation and discrimination spread by radio and community leaders (who have relationships with the mine) is what incites, provokes, and feeds violations against them.

From the time of this episode, women belonging to AMUPPA and their families have received death threats, and on several occasions, intentions of sexual violation have been affirmed. Some of the daily insults include: “stupid, repugnant old ladies- what do you know about rights, get to cooking and sweeping your houses”; “bitch of shit, we are going to rape you and cut you in to pieces”; “real women go back home, they don’t go on with this”; “shameless thief, give back the money you got from the mine or if not, better we get rid of you”; “traitors, repugnant old ladies, assassins, give back the money you received from the mine or you will see what happens”; “let’s see who is going to save you when we get hold of you”; “if you keep screwing around against the mine, we are going to mess you up, unfortunate one”; “watch out bitch, salt to snare you like we did in Río Blanco.....”.

With stones, sticks, and shouts, on the road home or to town; by phone or in person, the daily life of these women is one of permanent threats, with no effective protective action taken by any public authority.

Martínez in response to her letter. In *Ecuador Inmediato*, July, 2014. At: http://ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=2818765682&umt=vicepresidente_glas_envia_un_metro_a_esperanza_martinez_en_respuesta_a_carta. Be aware that that the activist travelled to the Park to verify the dimensions of the highway; however, the Army stopped her.

In the cases described, stigmatization is used to denigrate women and to damage them psychologically, physically, emotionally, and sexually, reinforcing mistaken perceptions in their family, community, organizational, and social milieus. The result is that their work as protagonists in the public sphere and as defenders of environmental and territorial rights, is made more difficult, and in many cases, annulled.

Smear campaigns against activists is grounded in promoting suspicion around their sexual morality, while insidious and ill-intentioned comments, and insulting and prejudiced messages place women in a situation of vulnerability in terms of their emotional and physical integrity. This results in shortening the distance between animosity and the license to threaten, attack and even assassinate women activists.

2.3 Harassment

In the context of their activism to defend territory and nature, women are also victims of different types of harassment, exercised by public, military, and civilian officials, as well as by company workers and representatives.

Such harassment responds to the abuse of power, and can include anything from subtle forms of undermining women's lives in their territories through insults, acts of daily-life apartheid, spreading gossip and rumors, and including offensive intelligence activities⁴⁰, and even attacks against their physical integrity.

For example, Margaret Sekaggya confirmed the conduct of security guards, contracted by companies in the extractive sector, in all types of harassment against defenders of land and natural resources, uncovering their complicities in violations against defenders⁴¹.

As the Honorable Commission has recognized, in contexts where legal protection is weak or non-existent- as is the case of communities in contexts of extractive projects-, there are "sectors of society that are unable to access other channels for denouncing or petitioning, including the traditional press or right to petition mechanisms within State entities where the very object of the petition originated⁴²".

⁴⁰ A term, which in the Colombian context defined the behavior of the Administrative Department of Security-DAS (Spanish acronym)-against human rights defenders, consisting of "campaigns of disinformation, of smearing opponents, creating specialized espionage groups, and intelligence networks, or of informants, infiltrations, monitoring, illegal interceptions, and psychological warfare for the purpose of intimidation". Corporación Jurídica Libertad, 2009. At: <http://www.cjlibertad.org/files/INTELIGENCIA%20OFENSIVA.pdf>. Psychological intimidation within this gamut of strategies is directed specifically at destroying the activists' social, family and organizational networks.

⁴¹ Report A/HRC/25/55 Par. 105.

⁴² IACHR, Annual Report 2005. Chapter V. Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly.

They therefore revert to protest to bring violations to the fore and to demand their rights.

In contexts of public demonstrations, acts of harassment are more conspicuous, both for the excessive use of force by authorities, and because of intelligence activities. In the specific case of women activists, the United Nations General Assembly has indicated that “censure and hacking of email accounts, mobile phones, and other electronic devices with a view to discrediting them and/or inciting other violations and abuses against them, are a growing concern and can be a manifestation of systemic gender discrimination, requiring effective responses compliant with human rights⁴³”.

The situation is exacerbated when women become the victims of retaliations after filing complaints about the different types of attacks they have experienced. Michel Frost, current Special Rapporteur on the Situation of Human Rights Defenders, has taken up this issue- “such attacks may take diverse forms: personal threats or threats against members of the defenders’ families, smear campaigns, death threats, physical attacks, kidnapping, judicial harassment, murder, and other forms of police harassment and intimidation⁴⁴”.

This has encouraged international bodies to elaborate comments and issue recommendations to States, among which the following deserve attention:

- “Review of existing mechanisms for the monitoring and accountability of the State security apparatus, particularly the military police, is recommended. There is a general lack of confidence in the competence, vigilance, and independence of existing mechanisms for this purpose⁴⁵”.
- The IACHR has urged States to adopt effective strategies to prevent attacks against defenders⁴⁶, to protect their lives and integrity when threatened⁴⁷, and to investigate, process, and sanction those involved in acts of violence against them⁴⁸ so that impunity surrounding the attacks does not become an incentive for further violence⁴⁹; special attention has been requested for women defenders “whenever they run the risk of being attacked, using specific, gender-based mechanisms⁵⁰”. The IACHR has also called for a revision of the principles of intelligence activities directed against defenders,

⁴³ Resolution 68/181 of January 30, 2014. Protecting Women Human Rights Defenders and Defenders of Women’s Rights

⁴⁴ Report A/HRC/28/63 of December 29, 2014, Par. 108

⁴⁵ Hina Jilani. Report A/HRC/4/37/Add.2 of December 19, 2006. Visit to Brazil. Par. 105.

⁴⁶ IACHR, 2006. Par. 342-5 and 2012. Par. 541-9

⁴⁷ IACHR, 2006. Par. 342-6

⁴⁸ Ibidem

⁴⁹ Ibidem. Par. 342-9

⁵⁰ CIDH, 2006. Par.. 342-7

as well as of the procedures⁵¹. With regard to organizations, the IACHR has recommended that States ensure that regulations do not hinder their work⁵² or restrict their operations⁵³.

Despite these recommendations, women have been victims of multiple forms of harassment, as can be seen in cases we have identified from Peru, Argentina, and Honduras:

Mining in Peru and the Harassment of Máxima Acuña and Mirtha Vásquez

Máxima Acuña de Chaupe is one of the emblematic women leaders involved in resistance against the Conga Mining Project (Cajamarca). After the Yanacocha Mining Company beat her and destroyed her home in August, 2011, she was accused of aggravated theft by the company. The complaint, after a long process, was dismissed and filed during an appeal to the Superior Court of Cajamarca. The company presented an appeal before the Supreme Court for a judicial review, and at the same time, introduced another eight complaints against Máxima and her family.

After fencing off the entire surface of the land bordering on hers, they remain trapped in the plot under dispute, and are prohibited access to their ancestral roads. Company officials present a civil lawsuit for ownership of the land and the judge who hears the case admits precautionary measures, denying Máxima “any type of activity” on the land, including planting and harvesting. As her lawyer, Mirtha Vásquez, argues “as a consequence of this struggle they are reduced to a life of near misery, due to the hostilities of the company:- legal processes, threats, physical attacks, and restrictions to cultivate what they require for their own subsistence”.

Mirtha Vásquez, director of GRUFIDES, an institution that has been working for the rights of peasants threatened by extractive companies in the area of Cajamarca, Peru since 2001, has also been threatened, harassed, and spied upon by the Yanacocha security company (Yanacocha operates the Conga Mines) in an espionage operation denounced by La República newspaper in 2006. Once again she is being harassed, including approaches by the police (PNP) to her young children (4 and 2 respectively) and forced searches of her home.

Mirtha Vásquez and Máxima Acuña de Chaupe were granted precautionary measures by the IACHR. In the case of the former, the Peruvian government provided a police escort “to accompany her” in her daily activities in Cajamarca. In the case of Máxima Acuña de Chaupe, the public prosecutor, Luis Huerta, still refuses the requested precautionary measures by the Peruvian State.

The case of Máxima exposes an amalgam of judicial forms of neutralization as well as diverse forms of harassment: her house has been destroyed, some of her animals have been killed, among them, her dog. Her household items (beds, clothing, and kitchen

⁵¹ Ibidem. Par. 342-14 and also 2012. Par. 541-16

⁵² IACHR, 2006. Par. 342-16

⁵³ Ibidem. Par. 342-17 and also 2012. Pars. 541-18 to 20.

utensils) have been confiscated, her crops destroyed, and the security company has prevented her from transporting food. In the community she is presented as the person who stops the company from contracting workers and she is forbidden a seat in the local bus that transports people from her community, “because she has problems with the company”. She has received threatening phone calls telling her “to leave your property or they will kill you”; during the house searches, officials laughed at her and insulted her. Her family has also suffered verbal ill-treatment and threats at the hands of the police and mine workers.

Genetically Modified Mono-Cropping in Argentina and the Case of the Mothers of Ituzaingó

The organization, Mothers of Ituzaingó, appears in 2002 to publicize environmental and health problems caused by fumigations with glyphosate in the Ituzaingó Annex Neighborhood in the province of Córdoba, Argentina. Later, they become part of the organizational process of the Assembly of Neighbors of the Malvinas, Struggle for Life (*Lucha por la Vida*), established to stop the construction of a Monsanto processing plant in Malvinas Argentinas due to the environmental contamination and negative effects on the community that such an installation would cause. Sofía Gatica emerges as the emblematic figure for the legal enforceability of rights against soya mono-cropping, and for which she received the Goldman Prize in 2012.

During public hearings and the filing of complaints regarding the negative health effects and environmental contamination caused by the fumigations, Sofía Gatica and the Mothers of Ituzaingó were called “mad women” and “liars” and other degrading verbal epithets by public officials and by community members who agree with the project. Specifically, Sofía Gatica was called a “gringa revolutionary” and “terrorist”.

In 2002, in the context of protests against the fumigations, they were threatened by the fumigators, who “were waiting for them with machetes, and they dropped their pants”, and threw their fumigation machines at them to scare them and to get around their blockades. Later, in the context of “camping out” to block the installation of Monsanto’s processing plant in Malvinas, Sofía and the Mothers were victims of excessive force by public officials, and suffered major health consequences.

In 2013, when Sofía Gatica was on her way to work, she was followed by an unknown individual. On public transport, he threatened her with a fire-arm and said that “he would blow her brains all over the Malvinas Argentinas if she didn’t abandon the struggle against Monsanto”. In another occasion, she was followed by two individuals “(...) one threw himself on top of me, pushed me to the ground, and kicked the life out of me. The other one got down and began to pull me by my hair. I screamed a great deal and just then a passing car stopped to help me. With this, the guys started their motorbike and escaped (...)”.

She has also received threats in her home: her dog was killed with a fire-arm, her children have been robbed and assaulted, and there was an attempt to burn down her

house. In September, 2015, she was once again threatened and physically attacked in her residence by individuals who warned her about not participating in the Monsato Spring Festival, or her life would be in danger. Although she has received police accompaniment there is no evidence of progress in the investigations related to the several attacks of which she has been a victim.

Mining and Lumbering: The Persecution of Consuelo Soto in Honduras

Consuelo Soto is an indigenous defender from the Tolupana Tribe of San Francisco Campo in the Locomapa Sector, Yoro, and a member of the Broad-based Movement for Dignity and Justice. Since 2013, she has been a victim of persecution and intimidation; she survived a violent episode in which hired assassins killed two male members and one female member of her same tribe.

Due to the impunity that reigns in Honduras, the Broad-based Movement for Dignity and Justice decided to protect their lives, rescuing them from the Sector area and moving them to places where their personal security would be guaranteed. In February, 2014, challenging the confinement, Consuelo decided to return to her community where she had to confront numerous intimidations and harassments from community members who are in favor of mining and logging operations in the area.

On April 4, 2015, Luis Macías, her partner, was assassinated, and on Friday, May 22 she suffered a new assault that forced her to once again leave her community. Consuelo was granted precautionary measures by the Inter-American Commission on Human Rights (IACHR).

These acts of harassment, distinct from those of prosecution and stigmatization which are very visible and public, take place in the activists' most private and intimate spaces. Often they can't exactly be denounced as crimes or abuses of power. They involve body language, shouting, attitudes, and different forms of hostility against women defenders in their social milieu; family peace is wounded when the security of loved ones is compromised; activists' security is abused when they are forbidden to travel and move about freely; affronts to their security and exhibitions of cruelty occur, for example, when their pets are killed, as has been mentioned in the cases described.

Distinct forms of harassment curtail the normal development of the lives of women; they interlock with the other forms of criminalization that have been described, and submerge women in a hostile world that limits the exercise of many of their rights.

3. Differentiated Impacts of Prosecution, Stigmatization, and Harassment against Women Defenders of Territory and Nature

We coincide with the Worldwide Movement for Human Rights-FIDH (acronym in Spanish)- that the prosecution of human rights defenders in contexts of environmental and territorial disputes “is employed as an instrument of social control to dismantle popular struggles⁵⁴”, and that criminalizing processes against social movements take on a symbolic and exemplary character, where militants of this or other social movement are shown that if they continue with their activities, they will end up in jail⁵⁵”.

Social control and exemplary punishments have a disciplining effect on the population: they perpetuate fear and attack the very heart of the Rule of Law by denying genuine participation of citizens in the affairs that affect them. As a result, decisions about the destination of the common goods is left in the hands of economic minorities. However, there are differentiated impacts on the lives of women which need to be analyzed and which we will discuss next.

3.1 Impacts Related to Property Rights and Secure Home Ownership

In the first place, various forms of criminalization aggravate the precarious situation for women’s land rights and secure ownership of a home. As recognized by the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights, “millions of women worldwide suffer from extremely poor housing and living conditions, including severe pollution, overcrowding, polluted water, and inadequate sanitation, all of which give rise to serious mental and physical health problems and cause thousands of women to die, or to live in a permanent state of ill-health,⁵⁶”.

The current state of affairs, which already “constitutes a violation of women's human rights to equality, protection against discrimination, and to the equal enjoyment of the right to an adequate standard of living, including adequate housing⁵⁷” is worsened by actions unleashed against women activists by companies and public officials.

⁵⁴ Ob. Cit. FIDH. Pág. 23 (Translation is ours).

⁵⁵ Ob. Cit. FIDH. Pág. 30 (Translation is ours).

⁵⁶ Sub-commission on the Prevention of Discrimination and Protection of Minorities of the UNOHCHR. Resol. 1997/19. Women and the right to adequate housing and to land and property

⁵⁷ Sub-commission on the Prevention of Discrimination and Protection of Minorities of the UNOHCHR. Resol. 1998/15. Women and the right to adequate housing and to land and property

Dealing with women living in rural areas where conditions for existence and work are demanding, community life is key for sustaining families. In the cases studied, companies attack, precisely, this community unity in the countryside by using perks, harassments, or threats. The State does the same with its disproportionate displays of force and the instrumentalization of criminal law.

The progressive loss of a rural life project seriously affects women since “they see their real income and purchasing power reduced as they must spend more money to pay for essential food and services. Faced with insufficient resources, women may be forced to reduce their food intake or their access to essential services to provide for their families⁵⁸”. Once stripped of their homes, possibilities for achieving equality in property ownership and economic sustainability, which would render women less prone to dependence and to related violences, are also extinguished.

3.2 Impacts Related to the Right to Participation and Non-discrimination

Principle 20 of the Río Declaration on the Environment recognizes that “women fulfill a fundamental role in environmental management and in development. It is imperative, therefore, to ensure their full participation in order to achieve sustainable development”.

For this reason, Agenda 21 recommends that States a) “ensure opportunities for women, including those women who belong to indigenous communities, so they may participate at all levels, in the adoption of decisions related to the environment⁵⁹”; b) “elaborate a strategy for change that eliminates all barriers to the full and equal participation of women in sustainable development and access to, and control over, resources on an equal footing⁶⁰”.

In addition to current problems with existing participation mechanisms:- deficiencies in consultation procedures within the framework of ILO Convention 169; rejection of obligatory acceptance of decisions adopted in community consultations; barriers to mechanisms of citizen participation such as popular consultations; and the narrow margin of recognition of rights achieved at the judicial level- specific difficulties for women’s participation must be factored in.

Gender-based discrimination suffered by women, which limits their ability to participate in public affairs and to effectively influence decisions, is aggravated in contexts of environmental aggression and territorial dispossession. Some of the

⁵⁸ Independent expert on the Effects of Foreign Debt and other Related International Financial Obligations of States on the Full Enjoyment of all Human Rights. Report: Impact of foreign debt on women’s rights. Report A/67/304 de 2012. Par. 40

⁵⁹ Strategic Objective K.1. To achieve women’s active participation, at all levels, in the adoption of decisions related to the environment.

⁶⁰ Strategic Objective K.2. To integrate gender concerns and perspectives in policies and programs in support of sustainable development.

cases discussed in the text verify this situation. Disharmony at the center of communities and limited possibilities for participation annul the exercise of citizenship by women.

3.3 Impacts Related to the Right to Enjoy an Enabling Environment for the Promotion and Defense of Human Rights

Women's activism is a legitimate form of resistance for humanity's common goods and in defense of ancestral, collective, and diverse domains of life. But when women are labelled as "enemies of development", "liars", "witches" or "terrorists", gender-based violence is exacerbated.

In all the cases described, women suffered some form of attack linked to gender: threats of rape, sexual assault, harassment of different types, and outrages against honor. These attacks prevent women from exercising their activism in an enabling environment for the defense of human and territorial rights, and of nature.

Attacks against women in contexts of resource extraction projects or threats that they will come to fruition, expose additional vulnerabilities, since they "have few opportunities to present these abuses before the courts, and when they do, they experience incomprehension and fierce pressure in their family and community settings⁶¹". Additional threats directed towards their families constitute a form of psychological torture and subject women to pressures that compromise their physical and mental health and that go hand in hand with guilt.

It is important to name the economic and emotional disaster brought on by the criminalization of women defenders, the progressive deterioration of their health, and the limitations on their possibilities for action since they must concentrate all of their energies and resources in defending themselves, contracting defense lawyers in spite of the high costs, and at the same time fulfilling their gender commitments and roles in family, social, and organizational milieus.

What follows is stress, frustration, anger, the inability to trust others, and paranoia, unleashed by the attacks and by the actions of intelligence offensives. Sadness and isolation come next. In certain cases, the emotional consequences can lead to the point of women resigning from activism due to exhaustion.

Therefore, the dynamics of extractive enterprises and the construction of huge infrastructure projects are joined to the precarious nature of women's lives in the community, the development of their leadership capacities, and their recognition as citizens.

⁶¹ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples. Report on indigenous women. A/HRC/4/32. 2007. Par. 71

4. Recommendations

We request the Honorable Commission to take the following recommendations into account when setting standards for human rights defenders in the region and in the validation of cases, particularly those related to activism in defense of territory, the environment, and nature.

4.1 Recommendations Related to the Recognition of the Legitimacy of the Work of Women who Defend Rights to Territory, the Environment, and Nature

States must recognize, just as the United Nations Assembly has stressed, that “the empowerment, autonomy and advancement of women and the improvement of their political, social, legal and economic status are essential to...the achievement of representative, transparent and accountable government, democratic institutions, and sustainable development in all areas of life⁶²”, and we would add, to strengthen their leadership and activism in defense of territory and nature.

As Rapporteur Sekaggya mentioned during her visit to Colombia “ending the stigmatization of human rights defenders by all public officials is an absolute priority⁶³” and an imperative for protecting activists’ lives, the governance of territories, and the health of ecosystems.

In so far as acts of stigmatization against defenders proceed from high-level public officials of the different branches of power, but especially from the executive branch, recognition of the legitimacy of women human rights defenders must come from officials at the highest level, who must also extract themselves from discourses against women defenders, and at the same time, implement policies that generate an enabling environment for women.

For example, during her visit to Honduras, Sekaggya recommended directly to the President that he “promote and lead a constructive dialogue between authorities and civil society to create a favorable environment for human rights defenders and to generate confidence within the population⁶⁴”; and during her visit to Colombia, a country experimenting a high level of distrust between human rights defenders and the national government, she recommended that “practical measures be adopted immediately to allow for genuine and sustainable dialogue⁶⁵”.

⁶² Resolution 68/181 of January 30, 2014. Protection of women human rights defenders and the defenders of the rights of women. .

⁶³ Report A/HRC/13/22/Add.3, of March 1, 2010. Visit to Colombia. Par. 140.

⁶⁴ Report A/HRC/22/47/Add.1, of December 13, 2012. Visit to Honduras. Par. 123.

⁶⁵ Report A/HRC/13/22/Add.3 of March 1, 2010. Visit to Colombia. Par. 141

Such measures could result in the issuing of legal instruments (such as decrees, guidelines, directives, ministerial accords, etc.) that recognize the legitimacy of the work of women human rights defenders and that establish disciplinary sanctions for those officials who stigmatize their labor in any way. The duty to “discourage and sanction the stigmatization of human rights defenders, whether by public or private entities, such as the media⁶⁶”, is of equal importance.

4.2 Recommendations Related to the Performance of the Judiciary

We coincide with Sekaggy in that “the judiciary should be aware of the role of human rights defenders. It should also take proactive measures to ensure the protection of human rights defenders⁶⁷”. This implies a two-way obligation: on the one hand, abstain from being an instrument of oppression and on the other, act with diligence, celerity, and commitment whenever reports concerning attacks on human rights defenders become known.

The independence of the judiciary depends on the budget so officials can refuse to be used for the repression of human rights defenders. As an example, “the Attorney-General’s Office should review all criminal investigations against human rights defenders, immediately close all cases found to be baseless, and prosecute State officials, including prosecutors, who maliciously investigated defenders⁶⁸”, according to a recommendation by Sekaggy. The Public Ministry Office could generate “guidelines to prevent judicial persecution of human rights defenders because of their activism”, as recommended by Jilani⁶⁹.

The diligence required to end impunity surrounding cases of aggression against human rights defenders implies “the adoption of an effective methodology to thoroughly investigate all threats and attacks⁷⁰” and could respond to the need to:

- Collect all formal complaints about every type of attack against women activists, systematize them, and ensure appropriate procedural initiatives, setting up special units within investigative units, if required⁷¹
- Establish areas of investigation that include background information to hostilities resulting from extractive operations or infrastructure construction,

⁶⁶ Report A/HRC/22/47/Add.1 of December 13, 2012. Visit to Honduras. Par. 150

⁶⁷ Report A/HRC/22/47/Add.1 of December 13, 2012. Visit to Honduras. Par. 136.

⁶⁸ Report A/HRC/13/22/Add.3 of March 1, 2010. Visit to Colombia. Par. 149

⁶⁹ Report A/HRC/4/37/Add.2 of December 19, 2006. Visit to Brazil. Par. 79.

⁷⁰ Report A/HRC/13/22/Add.3 from March 1, 2010. Visit to Colombia. Par. 147

⁷¹ “Practical measures should be taken to address backlogs and delays in administering cases of human rights violations”; Margaret Sekaggya, Report A/HRC/22/47/Add.1 of December 13, 2012. Visit to Honduras.

so that patterns, actors, material and intellectual authors, and the beneficiaries of aggression against activists, can be identified

- Periodically produce reports on the progress of investigations and distribute them publicly, and especially to private or public companies participating in resource exploitation projects or infrastructure construction⁷².

4.3 Recommendations related to accountability

We coincide with Margaret Sekaggya in that “full accountability for violations against defenders is an absolute priority and that perpetrators must be brought to justice⁷³”.

At a minimum, accountability requires that each State Party “institutionalize consultations between the Government and civil society organizations in those areas subject to government intervention⁷⁴” in order to guarantee the periodicity and seriousness of the process. It goes without saying that the presence of women is a requirement in scenarios of accountability, concertation, and consultation.

4.4 Recommendations Related to the Creation of an Enabling Environment for Women Human Rights Defenders

In the first place, institutions should clarify the roles they play in the promotion and protection of women defenders of human rights, territory, environment, and nature. Specifically, permanent and committed support is required from national human rights entities such as the Ombudsman’s Office, Ministries of Justice and Human Rights, Secretariats of Social Affairs, etc. In summary, that State entities become a “source of political and institutional support⁷⁵” for women.

On many occasions, States act like third parties, distancing themselves from disputes over territories between companies and communities. When the State does enter the dispute, it places its military, police, and legal apparatus at the disposal of the former. Both forms of behavior are serious infractions of International Human Rights Law. In the first instance, the State is not a third party in cases of human rights violation, since it is the State itself that is responsible for

⁷² “The State should ensure that both public and private actors, including transnational companies and private security companies, respect the work of human rights defenders, particularly those working on economic, social and cultural rights”. Margaret Sekaggya, Report A/HRC/22/47/Add.1 of December 13, 2012. Visit to Honduras.

⁷³ Ibidem, Par. 121

⁷⁴ Hina Jilani, Special Representative of the Secretary General on the situation of human rights defenders. Report: A/HRC/10/12/Add.3 of February 6, 2009. Visit to Guatemala. Par. 91

⁷⁵ Ibidem, Par. 98

ceding territories belonging to ethnic and indigenous communities and for granting licenses for the projects. Secondly, the State has the responsibility to protect all its citizens, without discrimination of any type, and even less so against those who oppose its policies.

Sekaggya has recommended that in such contexts “efforts be redoubled to mediate conflicts over land ownership rights⁷⁶”, mentioning community consultations whenever necessary. For Jilani, it is fundamental that human rights defenders “do not remain isolated in their struggles for social justice against powerful or influential social entities and economic interests⁷⁷”.

4.5 Recommendations Related to the Participation of Women

States must “ensure that public policies, including development policies and projects, are developed and implemented in an open and participatory manner, and that defenders and communities affected are able to actively, freely and meaningfully participate⁷⁸”.

However, such participation must start from the principle of equality between women and men. In the design and implementation of procedures for participation, a gender analysis is required and “members of both sexes must be given the opportunity to represent their views, including, if necessary, through specially targeted consultations (for example, women-only spaces) and support. Processes to identify participants must not rely on community elites in a manner than can reinforce existing inequalities⁷⁹”.

But participation is legitimate not only within institutional frameworks. Social protest is also important for the consolidation of democracy, and as has been recognized by this Honorable Commission, “this form of participation in public life, as an exercise of freedom of expression, is an imperative social interest⁸⁰”. Women have the right to protest and to feel secure about doing so, implying a substantially different focus from the way in which States confront social protest.

⁷⁶ Report A/HRC/22/47/Add.1 of December 13, 2012. Visit to Honduras. Par. 135.

⁷⁷ Informe A/HRC/4/37/Add.2 of December 19, 2006. Visit to Brazil. Par. 102.

⁷⁸ Sekaggya, Margaret. Special Rapporteur on the situation of human rights defenders. Report A/HRC/25/55 of December 23, 2013. Par. 131-h.

⁷⁹ Special Rapporteur on extreme poverty and human rights. Report A/HRC/23/36 of 2013, par. 49.

⁸⁰ IACHR. Annual Report, 2002. OAS/Ser.L/V/II.117, March 3, 2003. Report of the Special Rapporteur for Freedom of Expression, Cap. IV, Par. 34.

5. Requests

The organizations: Urgent Action Fund of Latin America and the Caribbean- UAF-LA, the Women's Fund of the South- FMS (for acronym in Spanish) of Argentina, the Alquimia Fund of Chile, the Latin American Union of Women- Red ULAM (for acronym in Spanish), the Association for Women's Rights and Development- AWID, Just Associates –JASS, the Mesoamerican Initiative of Women Human Rights Defenders, member organizations of Ecological Action of Ecuador, Mothers of Ituzaingó of Argentina, Coordination of Organizations of Rural Working and Indigenous Women- CONAMURI (for acronym in Spanish)- of Paraguay, and Women Defenders of the Pilmaiken River of Chile, request this Honorable Commission:

- 5.1 To include aspects mentioned in this report which it considers pertinent, in the preparation of thematic reports about the issue at hand, particularly in its report on criminalization through the abuse of criminal law against human rights defenders; or in consideration of the admissibility of cases that respond to patterns of criminalization presented here.
- 5.2 To consider the possibility of undertaking a regional survey with women defenders of territory, the environment, and nature concerning the most appropriate measures for their protection, in keeping with the Resolution, "Protection of Human Rights Defenders", adopted in November, 2013 by the United Nations General Assembly. The survey would also gather data about the most appropriate measures for guaranteeing women's participation in contexts of natural resource extraction and infrastructure construction, aligned with international standards on women's participation in issues related to development and the environment⁸¹.
- 5.3 To monitor the situation of women activists defending territory, the environment, and nature, during country visits, and in overall interlocution with States, formulating appropriate recommendations, especially those related to the adoption of effective measures for confronting impunity surrounding attacks against women defenders, through exhaustive and independent investigations; and to avoid the instrumentalization of criminal law in order to neutralize women's struggles.
- 5.4 To urgently call the attention of States to recognize the legitimacy of women activists who defend the environment, territory and nature and to generate a safe environment, free from risks to their lives and personal integrity.

⁸¹ For further consultation, see: MURCIA, Diana; "International Instruments and Standards: Women, Environment, Property, and Territory" 2014. Available at: http://media.wix.com/ugd/b81245_cdd26cadba0445aebf10f2c39bf89480.pdf



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