



# **Human Rights Watch submission to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association on the challenges and threats facing climate defenders**

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Human Rights Watch welcomes the opportunity to provide input on the challenges and risks facing climate defenders for the upcoming report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association. While recognizing that climate defenders face threats in countries all over the world, we have chosen in this submission to focus largely on incidents and trends that we have documented in our prior research, namely in Brazil, France, India, Indonesia, Kenya, Philippines, Poland, Russia, South Africa, and Uganda, including the experiences of Indigenous peoples, women, and children.

### **Challenges of Climate Defenders to Exercising Assembly and Association Rights *Killings, Intimidation, Discrimination, Disappearances, and Legal Harassment***

In Brazil, people put their lives at risk to protect the Amazon rainforest, one of the world's most important carbon sinks. Criminal networks engaged in illegal deforestation use intimidation, threats, and violence against anyone who stands in their way by reporting their illegal activities, including Indigenous peoples, small-scale farmers, community leaders, and even environmental law enforcement agents.<sup>1</sup> Human Rights Watch documented 28 killings—as well as four attempted killings and more than 40 death threats—linked to illegal deforestation, most of which occurred between 2015 and 2019. The perpetrators in only two of these cases have been brought to trial.<sup>2</sup>

In Kenya's Lamu county, activists have sought to raise awareness about the environmental, health, and climate impacts of a regional project known as LAPSSET, the Lamu Port-South Sudan-Ethiopia Transport corridor project which includes a proposed coal-fired power plant. According to Human Rights Watch research, in 2016 at least two activists in Lamu, an island on the Kenyan coast, were kidnapped by people believed to be police officers and are still missing.<sup>3</sup>

In Indonesia, women impacted by the palm oil industry's deforestation practices have been excluded from community consultations regarding selling of their family land. The specific impacts on women, including serious impacts on their human rights to a livelihood, access to food and water, and culture, went unheard and unaddressed.<sup>4</sup> Similarly, many Indigenous peoples impacted by palm oil companies' operations in Indonesia are not legally recognized and

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<sup>1</sup> Human Rights Watch, *Brazil—Rainforest Mafias: How Violence and Impunity Fuel Deforestation in Brazil's Amazon*, September 2019, <https://www.hrw.org/report/2019/09/17/rainforest-mafias/how-violence-and-impunity-fuel-deforestation-brazils-amazon>.

<sup>2</sup> For instance, illegal loggers fired gunshots at Naraymi Suruí, an Indigenous leader, and his wife, Elizângela Dell-Armelina Suruí, in their home after he confronted illegal loggers in Rondônia state, in 2017. In Maranhão state, six of the seven members of the Ka'apor Governing Council, which coordinates forest patrols to prevent illegal logging in the Alto Turiaçu Indigenous Territory, received death threats from loggers. Osváldina Marcelino Alves Pereira, a small-scale farmer in the state of Pará who founded the Areia II Women's Association in 2011 to reforest areas affected by logging, has faced death threats and was forced into hiding for nearly two years with her partner for reporting illegal logging activities. See: Nnoko-Mewanu, J.; Tellez-Chavez, L.; Rall, K., "Protect rights and advance gender equality to mitigate climate change," *Nature Climate Change*, accessed May 2021, doi: <https://doi.org/10.1038/s41558-021-01043-4>.

<sup>3</sup> Human Rights Watch, *Kenya—“They Just Want to Silence Us:” Abuses Against Environmental Activists in Kenya's Coast Region*, December 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/kenya1218\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/kenya1218_web2.pdf), pg. 25.

<sup>4</sup> Human Rights Watch, *Indonesia—“When We Lost the Forest, We Lost Everything:” Oil Palm Plantations and Rights Violations in Indonesia*, September 2019, <https://www.hrw.org/report/2019/09/23/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>.

have only weak protects over their territories, which allows for deforestation and deprivation of their lands to continue relatively unchecked.<sup>5</sup>

In South Africa, communities across the country are raising concerns about the serious environmental, social, health, and climate harms of mining and coal-fired power plants. Human Rights Watch documented how, in many cases, such activism has been met with harassment, violence, or even killings.<sup>6</sup> The perpetrators of the attacks are often unknown, but activists believe that police, government officials, private security providers, or others apparently acting on behalf of mining companies may have facilitated them.

South African police have failed to carry out adequate investigations for high-profile murders of environmental activists, including Sikhosiphi “Bazooka” Rhadebe in 2016 and Mama Fikile Ntshangase in 2020, which has left other environmental activists afraid to speak out.<sup>7</sup> Community members in South Africa’s mining areas also described being assaulted, intimidated, threatened, and their property damaged.<sup>8</sup>

Companies have also weaponized courts against climate defenders using nuisance lawsuits. These baseless lawsuits—known as “Strategic lawsuits against public participation,” or SLAPPs—are a tactic to suppress environmental defenders’ effectiveness by intimidating them and burdening them with onerous costs of mounting a legal defense. In South Africa, an Australian mining company sued environmental activists, attorneys, and a social worker for defamation in 2017 in relation to a statement they had made criticizing the human rights impacts of the company’s mining operations.<sup>9</sup> In response to these tactics, the High Court in Cape Town issued a ruling in February 2021 holding that this suit constituted an abuse of the legal process.<sup>10</sup>

### ***Restrictions of Peaceful Assembly and Association Rights***

In India, authorities arrested 21-year-old climate activist Disha Ravi in February 2021 on charges including sedition and criminal conspiracy for editing and sharing an online toolkit, shared by Swedish climate activist Greta Thunberg, aimed at providing information to those seeking to

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<sup>5</sup> *Ibid.*

<sup>6</sup> Human Rights Watch, *South Africa—“We Know Our Lives are in Danger:” Environment of Fear in South Africa’s Mining-Affected Communities*, April 2019, [https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected#\\_ftn79](https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected#_ftn79).

<sup>7</sup> Katharina Rall and Billy Mnqondo, “UN Spotlight on Killing of South African Environmental Defender,” Human Rights Watch Dispatch, March 15, 2021, <https://www.hrw.org/news/2021/03/15/un-spotlight-killing-south-african-environmental-defender>.

<sup>8</sup> Human Rights Watch, *South Africa—“We Know Our Lives are in Danger:” Environment of Fear in South Africa’s Mining-Affected Communities*, April 2019, [https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected#\\_ftn79](https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected#_ftn79).

<sup>9</sup> Marcos Orellana, “Green Activists are Fighting the Great Fight—But are Being Dragged Down by Petty Lawsuits,” *Newsweek*, May 20, 2019, <https://www.hrw.org/news/2019/05/20/green-activists-are-fighting-great-fight-are-being-dragged-down-petty-lawsuits>.

<sup>10</sup> High Court of South Africa, *Mineral Sands Resources v. Reddell (7595/2017)*, Judgment of 09 February 2021; available at: <https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/programmes/rule-of-law/in-court/Judgment%20MSR%20v%20Reddell.pdf>.

peacefully support the ongoing farmers protests.<sup>11</sup> In granting bail to Ravi, the Delhi court called the evidence against her “scanty and sketchy.” This arrest was the latest in the Indian government’s long line of efforts to silence criticism, including by targeting independent journalism, filing baseless criminal charges, arresting student protesters, and pressing social media companies to block critical content.

In France, police used teargas from very close range against climate activists staging a peaceful sit-in in 2019.<sup>12</sup>

In Kenya, police in Lamu often violently break up meetings and peaceful protests, arrest activists, and charge them with crimes, such as incitement, participating in an illegal assembly, trespassing on government land, and resisting arrest.<sup>13</sup> Human Rights Watch researchers found at least ten cases in which individual activists have faced prosecution for criminal offenses for acts such as talking to the press or holding meetings with residents of potentially impacted communities. In most cases, charges were dropped for lack of evidence, but often only after suspects were detained longer than the 24-hour period that Kenya’s constitution permits.<sup>14</sup> Human Rights Watch documented 13 cases of arbitrary detention and interrogation of activists by police in Lamu between 2013 and 2018. The government also increased surveillance and crackdowns on rights organizations and activists in regions with predominantly Muslim populations, especially between 2013 and 2016, which led to increased surveillance of environmental activists.

In Uganda, police arrested and detained for eight hours eight youth climate activists while participating in the global climate strike on September 25, 2020 in Kampala. The police told them election campaigns were not allowed, although the activists repeatedly explained that they were an environmental—not a political—movement. The activists, only two of whom were above the age of 18, were detained in a room for eight hours, questioned, and then allowed to leave.

In South Africa, municipalities often create obstacles to assembly that have no basis in law, including giving communities the impression that all protests need to be approved—which is not true under South African law—or where a mining company is involved, requiring communities to provide documentation of prior engagement with the mining company.<sup>15</sup> Police have also injured peaceful protestors using teargas and rubber bullets to disperse anti-mining protests or have arrested community members on grounds such as “public violence” or “malicious damage

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<sup>11</sup> Human Rights Watch, *India—Tech Firms Should Uphold Privacy, Free Speech*, March 2021, <https://www.hrw.org/news/2021/03/11/india-tech-firms-should-uphold-privacy-free-speech>.

<sup>12</sup> Katharina Rall, “Amid France Heat Wave, Police Teargas Climate Activists,” Human Rights Watch Dispatch, July 2, 2019, <https://www.hrw.org/news/2019/07/02/amid-france-heat-wave-police-teargas-climate-activists>.

<sup>13</sup> Human Rights Watch, *Kenya—“They Just Want to Silence Us:” Abuses Against Environmental Activists in Kenya’s Coast Region*, December 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/kenya1218\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/kenya1218_web2.pdf).

<sup>14</sup> *Ibid.*

<sup>15</sup> Human Rights Watch, *South Africa—“We Know Our Lives are in Danger:” Environment of Fear in South Africa’s Mining-Affected Communities*, April 2019, [https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected#\\_ftn79](https://www.hrw.org/report/2019/04/16/we-know-our-lives-are-danger/environment-fear-south-africas-mining-affected#_ftn79).

to property.” In some cases, police have not investigated these incidents or have delayed investigations.<sup>16</sup>

### ***False Accusations of “Ecoterrorism,” Extremism, and “Threats to National Security”***

In Kenya, HRW documented 15 cases in a three-year period of environmental defenders who spoke out against the LAPSSET development in Lamu being accused of having ties to al-Shabab.<sup>17</sup> In Kenya, the government has also attempted to severely limit foreign funding to civil society groups—especially environmental groups.<sup>18</sup>

In Russia, at least 14 environmental groups have had to stop work in recent years, as a result of Russia’s Law on Foreign Agents.<sup>19</sup> The law requires any Russian group accepting foreign funding and carrying out activities that the Russian government deems “political” to register as a “foreign agent,” which in Russia connotes “spy” or “traitor.” Russian officials labeled Greenpeace Russia an extremist group, and an activist with Stop GOK, a Russian group seeking to block mining and enrichment plants, was fined in April 2019 for “mass distribution of extremist materials” because he published a poem on Stop GOK’s social media page, which the government had banned as extremist in 2012.<sup>20</sup>

Authoritarian governments have sought to label environmental groups and climate activists as unpatriotic radicals that pose a threat to the state. In 2018, Philippines President Rodrigo Duterte placed 600 civil society members, including environmental and Indigenous rights defenders, on a list of alleged members of the country’s communist party and its armed wing, which Duterte has declared a terrorist organization.<sup>21</sup> The included Victoria Tauli-Corpuz, an indigenous Filipina who is the UN special rapporteur on the rights of indigenous peoples and a climate change activist.<sup>22</sup> A Manila court ordered the government to remove Tauli-Corpuz from the list, but a Philippines military official renewed the campaign against her, accusing her of “infiltrating” the UN for the communist insurgents.<sup>23</sup>

Counterterrorism laws have also been used to suppress protest during major climate summits. In Poland, authorities denied entry to at least 13 climate activists during COP24 in 2018,

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<sup>16</sup> *Ibid.*

<sup>17</sup> Letta Taylor, Cara Schulte, Katharina Rall, “Targeted: Counterterrorism Measures Take Aim at Environmental Activists” commentary, November 28, 2019, <https://www.hrw.org/news/2019/11/28/targeted-counterterrorism-measures-take-aim-environmental-activists>.

<sup>18</sup> Human Rights Watch, *Kenya—“They Just Want to Silence Us:” Abuses Against Environmental Activists in Kenya’s Coast Region*, December 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/kenya1218\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/kenya1218_web2.pdf).

<sup>19</sup> Letta Taylor, Cara Schulte, Katharina Rall, “Targeted: Counterterrorism Measures Take Aim at Environmental Activists” commentary, November 28, 2019, <https://www.hrw.org/news/2019/11/28/targeted-counterterrorism-measures-take-aim-environmental-activists>.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Carlos Conde, “Philippines Terrorist Petition Virtual Hit List,” Human Rights Watch Dispatch, March 8, 2018, <https://www.hrw.org/news/2018/03/08/philippines-terrorist-petition-virtual-hit-list>.

<sup>23</sup> Letta Taylor, Cara Schulte, Katharina Rall, “Targeted: Counterterrorism Measures Take Aim at Environmental Activists” commentary, November 28, 2019, <https://www.hrw.org/news/2019/11/28/targeted-counterterrorism-measures-take-aim-environmental-activists>.

contending that they posed a threat to national security.<sup>24</sup> The government also issued a new law in advance of COP24 specifically aimed at restricting freedom of assembly during the climate summit in the name of national security. The law gave police and secret services sweeping surveillance powers to obtain, collect, and analyze personal data about registered conference participants or people associated with its organization, without judicial oversight or their knowledge and consent.<sup>25</sup>

The law explicitly banned spontaneous protests during the climate summit.<sup>26</sup> The Polish government had previously changed the law to support demonstrations of which it approves while banning related counter-protests.<sup>27</sup> Polish authorities responded to criticism of the law by citing a French law that issued a total ban on protests related to COP21 in Paris.<sup>28</sup> However, the Polish ban was not a reaction to a concrete security threat. The French authorities had banned protests at COP21 as part of a formally declared state of emergency in response to the deadly November 2015 attacks in Paris just weeks earlier that were claimed by the Islamic State.<sup>29</sup> But France also abused those sweeping emergency powers, placing at least 24 climate activists under house arrest without judicial warrant, raiding activists' homes, and seizing computers and personal belongings.<sup>30</sup>

### Recommendations for States

- Direct government officials to, in line with their human rights obligations, promote and protect universally recognized human rights and fundamental freedoms, respect, and protect the work of climate activists.
- Publicly condemn assault, threats, harassment, intimidation, and arbitrary arrests of activists, and direct security and other government officials to stop arresting, harassing, or threatening activists for protesting or on false accusations.
- Conduct thorough, prompt, effective, and impartial investigations into the killings and violence against climate defenders and ensure the perpetrators are brought to justice. Direct police and prosecutors to ensure accountability for private actors and state

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<sup>24</sup> Katharina Rall, "Poland Denies Entry to Environmental Activists to Attend Climate Talks," Human Rights Watch Dispatch, December 7, 2018, <https://www.hrw.org/news/2018/12/07/poland-denies-entry-environmental-activists-attend-climate-talks>.

<sup>25</sup> Katharina Rall, "Poland Should Welcome Activists to U.N. Climate Talks," commentary, *Thomas Reuters Foundation News*, May 9, 2018, <https://www.hrw.org/news/2018/05/09/poland-should-welcome-activists-un-climate-talks>.

<sup>26</sup> Letta Taylor, Cara Schulte, Katharina Rall, "Targeted: Counterterrorism Measures Take Aim at Environmental Activists" commentary, November 28, 2019, <https://www.hrw.org/news/2019/11/28/targeted-counterterrorism-measures-take-aim-environmental-activists>.

<sup>27</sup> Katharina Rall, "Polish Crackdown Ahead of Climate Talks," Human Rights Watch Dispatch, February 1, 2018, <https://www.hrw.org/news/2018/02/01/polish-crackdown-ahead-climate-talks>.

<sup>28</sup> Katharina Rall, "Poland Should Welcome Activists to U.N. Climate Talks," commentary, *Thomas Reuters Foundation News*, May 9, 2018, <https://www.hrw.org/news/2018/05/09/poland-should-welcome-activists-un-climate-talks>.

<sup>29</sup> *Ibid.*

<sup>30</sup> Human Rights Watch, *France—New Emergency Powers Threaten Rights*, November 24, 2015, <https://www.hrw.org/news/2015/11/24/france-new-emergency-powers-threaten-rights>; Arthur Nelson, "Paris Climate Activists Put Under House Arrest Using Emergency Laws," *The Guardian*, November 27, 2015, <https://www.theguardian.com/environment/2015/nov/27/paris-climate-activists-put-under-house-arrest-using-emergency-laws>.

officials, regardless of rank or position, who threaten, harass, harm, or arbitrarily arrest climate activists.

- Eliminate laws that inhibit the rights to assembly and to freedom of expression, especially during climate summits and surrounding projects that are likely to have a significant climate impact.
- Implement anti-SLAPP legislation to protect climate activists against legal harassment.
- Meaningfully consult with environmental activists and civil society organizations and ensure free, prior, and informed consent of Indigenous peoples prior to approving large infrastructure or mining projects that will have significant climate and environmental rights impacts.
- Where applicable, ratify and implement regional human rights agreements to ensure public participation in environmental decision-making and to protect environmental defenders.

### **Recommendations for Businesses**

- Take adequate measures to address any environmental concerns, meaningfully consult with impacted communities ensuring participation of women and Indigenous peoples, and respect the rights of climate activists when carrying out infrastructure projects. Publicly condemn all attacks against climate activists.
- Conduct human rights due diligence to identify any risks, including those posed by police, military, or other government officials, and take actions to prevent or mitigate them. Adopt and implement the Voluntary Principles on Security and Human Rights, including by recording and reporting allegations of credible human rights abuses by police in their areas of operation to appropriate government authorities and encouraging investigations of allegations.
- Develop and implement, in collaboration with climate defenders, a grievance mechanism for raising allegations of human rights violations, and take all necessary steps to ensure the safety of anyone who files a grievance.

### **Recommendations for Multilateral Institutions**

- Ensure that all international climate summits allow civil society organizations and activists ample opportunity to safely participate, peacefully protest, and express their concerns about the climate crisis.
- Integrate a rights-based approach into the global climate framework that addresses and combats repression of climate activists.