

OUTCOME DOCUMENT



Defending the defenders

Copenhagen, 5-6 September 2018



DEFENDING THE DEFENDERS

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Synopsis report

DAY 1

High-level opening segment

The opening segment of the conference began with welcoming remarks by **Ms. Eva Kjer Hansen**, the Danish Minister for Equal Opportunities, and **Mr. Knud Vilby**, the Chair of IWGIA's Board. Ms. Kjer Hansen began by paying tribute to Berta Cáceres, an indigenous human rights defender from Honduras who was murdered in 2016 after having received the Goldman Environmental Prize for her work in defence of the human rights of the Lenca people. "Unfortunately, this is not a unique incident", she said. "In 2016, 281 human rights defenders were killed, almost half of them defending their land, their environment and their indigenous rights". She called on States, international organisations, NGOs, businesses, media and others to work together to put a stop to fates like that of Berta Cáceres. She reaffirmed that "protecting the rights of indigenous peoples is a priority for Denmark", noting that "indigenous peoples are still among the poorest and most marginalized in the world" and pointing to the Agenda 2030 credo of "leaving no one behind".

Mr. Vilby drew attention to the fact that the number of human rights defenders who are murdered is increasing and that a shockingly high and disproportionate percentage of those who are killed are indigenous leaders and activists defending their communities' rights to their lands and resources. He observed that "human rights activists are not only suffering because of insufficient protection from state authorities", but are often under attack from their own governments, and "often state authorities are themselves directly or indirectly responsible for the killings." Noting that human rights and particularly indigenous peoples' rights were under attack in many parts of the world, he stressed the importance of supporting human rights defenders economically and politically. "There is a need for bigger and stronger coalitions and for more international solidarity in the fight for human rights for all groups experiencing violation of their rights", he said, noting that the building of new alliances for protecting indigenous peoples' rights was one of the aims of the conference.

Following the welcoming remarks by the organizers, two opening speeches were given. **Ms. Kate Gilmore**, UN Deputy High Commissioner for Human Rights, observed that "rapacious betrayal of indigenous peoples' rights in the face of large-scale development on the one hand and of conservation efforts on the other, is eating away at indigenous peoples' traditional ways of life and subsistence and eroding their heritage." Indigenous peoples, she said, "are often the first casualties of development, but the last to be heard, the last to be included, the last to be consulted, and the last to be compensated". Although the UN Member States had voted the Declaration on the Rights of Indigenous Peoples into authority and thus recognized indigenous peoples' collective rights to their lands, territories and resources and to free, prior and informed consent, there were States today "investing great effort to silence, punish, criminalize – even eradicate – indigenous human rights defenders" seeking to exercise and defend those

rights. “From toxic public rhetoric denouncing and diminishing indigenous peoples – their rights, their claims, their representatives – to wrongful deployment of anti-terrorism laws to limit civil society freedoms or restrict access to foreign funding; from denial of access to justice to impunity for violence, even for killings,” she said, “certain States are undermining the rule of law through a rule by law that seeks to control and disempower, even destroy indigenous human rights defenders.”

Ms. Gilmore underlined the importance for civil society to stand up for indigenous human rights defenders, noting that States have a “direct and clear responsibility to protect indigenous human rights defenders and ensure they can act without risk of intimidation, harassment or violence, and without fear of reprisal when approaching the international community.” Asked about the key challenges for promoting human rights today, Ms. Gilmore responded that there was a common perception today that human rights are in retreat. “Human rights are not in retreat”, she emphasized, noting that more human rights instruments and mechanisms exist today than ever before. “Political leadership is in retreat from human rights. We have a generation of political leadership on the global scale that betrays rights.” One of the biggest challenges was “for civil society to stand up in a manner that gives political leadership the direction and support, the constituency and accountability they need to be braver, faster, more generous and more compassionate” in upholding human rights.

The second opening speech was given by **Ms. Lida Skifte Lennert**, Head of the Greenlandic Representation in Denmark. Ms. Skifte Lennert provided an overview of the developments that the Greenlandic people has undergone from the colonial era to the present, with a focus on how the Greenlanders achieved the legal and political status they enjoy today. In 1979, home rule was introduced in Greenland, which provided the Greenlandic people with autonomy over matters such as education and health, but did not give them full rights to their own natural resources. However, in 2009 the Greenlanders gained self-government, including authority over the mineral resources of Greenland and the revenues that flow from them. The Inuit Circumpolar Council has played a crucial part in the struggle for indigenous people, leading up to The United Nations Declaration on the Rights of Indigenous Peoples from 2007. Ms. Skifte Lennert said that the achievements of the indigenous people of Greenland could be a model for indigenous peoples across the world. “We have achieved our dreams and rights, but we fully realize that this is not the case everywhere and we fully support and actively engage in the agenda for the protection of all indigenous peoples and their rights.”

Program overview and methodology

Following the opening session, **Mr. Verner Kristiansen**, who served as the facilitator of the conference, provided an overview of the program and methodology of the conference and explained what the organizers were hoping to get out of the conference. He noted that the conference would follow a dynamic and participatory approach, and that his main objective was to facilitate an open dialogue among the panelists as well as between the panelists and the audience. The panelists would answer specific questions posed by the facilitator rather than present speeches prepared in advance. He noted that all the sessions on the first day would take place in the plenary, but that on the second day, the meeting would break out into three parallel sessions, to be able to discuss some key themes in more detail and come up with recommendations for concrete actions that could help to protect indigenous human

rights defenders. Following the parallel sessions, there would be another plenary session to discuss and refine the recommendations.

Testimonies from indigenous human rights defenders

At the heart of the conference were two sessions (one on the first day, and one on the second) in which indigenous human rights defenders from different continents shared their experiences of being personally targeted and criminalized while defending the rights of their peoples and communities. The first of these sessions was preceded by a short speech by IWGIA's Director **Julie Koch**, who gave an overview of the scale of the problem and commemorated the many indigenous human rights defenders who have been killed in recent years. Alone in 2017, approximately 400 environmental and human rights activists were recorded killed, an estimated 40-50% of these being indigenous leaders or community members. As global consumption increases, Ms. Koch observed, there is a never-ending demand for land and access to natural resources, and "indigenous peoples, who have a profoundly different approach to development where land, water and forests are not commodity goods, pay the price: with harassment, criminalization, violence, and worst of all, killings."

At the core of the problem, Ms. Koch said, were the lack of recognition of indigenous peoples' rights to their land and the skewed power relations between indigenous peoples on the one hand and private companies and state authorities on the other. "Many private companies are drivers of human rights violations committed against indigenous peoples, too often with the complicity of the states," she observed. "In many countries, state authorities are in fact the most common perpetrators of violations against human rights defenders even though they bear the primary responsibility for assuring their protection." Security forces conduct arbitrary arrests, illegal searches and physical violence, while some non-state actors use killings, abductions and death threats as regular tactics to silence human rights defenders. "To a large degree, perpetrators of crimes against indigenous peoples continue to act with impunity," she added.

Ms. Lida Emilse Paz Labio of the Association of Indigenous Councils of Northern Cauca, Colombia, talked about the struggle of indigenous peoples in Colombia to defend their lands, their human dignity and their dreams and aspirations as indigenous peoples against the interest of the private sector and governments in a context of rampant capitalism, corruption, drug cartels, violence and militarization. "As indigenous peoples in Latin America," she said, "we have always had the defence of our land and nature in our heart – we carry it within us, we are part of our land, so we have to defend it." She talked about "large numbers of human rights violations that keep us awake at night", including killings, dispossessions, and evictions. "The private sector acts without principles, and governments have not lived up to their responsibility to protect us," she said. "But we have made a decision as a people to continue fighting." Asked about what inspired her people to continue, she answered that their main inspirations were the life of Mother Earth, and their ancestors. Additionally, they were inspired by a vision of peace, and a main aspiration of indigenous peoples in Latin America had been robust peace agreements. Sadly, Ms. Paz Labio said, the implementation of the peace agreements had failed indigenous peoples and had resulted in increased criminalization of indigenous peoples' demands and repression and killings of indigenous leaders and community activists. In closing, Ms. Paz Labio noted a saying that for each human rights

defender who is killed, another 500 would be born. This was also an inspiration for them, she said.

Mr. Adam Ole Mwarabu, Director of PAICODEO, an organization of Parakuyo Maasai pastoralists from Tanzania, said that the situation in his country was in many ways similar to that which Ms. Paz Labio had described. “The list of people who have died defending their land is very long. Many are not with us anymore, but their footprints continue to be seen.” He explained that the British colonizers had left Tanzanian pastoralists with very small pieces of land and that the situation was getting worse now due to the pressure that investors and development projects are putting on land and resources. Investors, often supported by international organizations and financial institutions from abroad, were taking land and livestock from the communities, and forced evictions were going on. The pastoralist communities were suffering severely from the situation and the future was looking increasingly bleak for their children. “If we don’t have cows and land, there is no future for us,” he said, “there is only a struggle.” The severe impacts of climate change were making the situation even worse for the communities, the result being hunger and abject poverty.

Mr. Ole Mwarabu said that it was very difficult to speak about the hunger situation and address land rights at the national level, because there was a lot of pressure and freedom of speech was restricted. Indigenous human rights defenders, including many indigenous women who are very much in the frontline of the struggle, were therefore turning to the international community and the UN for help. However, defenders were often barred from leaving the country, which was a serious problem. Mr. Ole Mwarabu also mentioned that the communities had tried to access justice and won a number of cases in court, however, there was a lack of implementation of the rulings and the government was not complying with them. He emphasized the importance of support from the international community, including humanitarian relief, and of working out a strategy to collaborate with international organizations and friendly governments.

Ms. Joan Carling from the Philippines talked about the threats she has personally faced as an indigenous activist defending the lands and resources of indigenous peoples in the Philippines against mining, agribusiness, hydroelectric dams and other large-scale developments. In the 1990s and early 2000s, she said, “Indigenous leaders were subjected to harassment, intimidation, threats, arrests and political killings. Two of my colleagues at the time were killed and I was facing threats myself. I had to move house, I had to have a body guard with me and my family could not visit me.” Now it is back to the same situation, she said, “30 indigenous human rights defenders in the Philippines have been tagged as terrorists by the Philippines government, and I am again part of that list. Most are community leaders based in Mindanao, where our president is bringing in Chinese investments into agriculture, mining and other so-called ‘development’ projects.” Ms. Carling underlined that “these individuals are not terrorists. They are legitimate citizens and human rights advocates who are now facing trumped-up charges, some even of murder, and a number of them are now in hiding because they cannot afford the bail or are afraid that they would not get out of jail anymore once they are arrested.”

In response to a question whether there was room for dialogue at the national level to solve the situation, Ms. Carling said that this was difficult under the current repressive government, but that some national actors such as the National Human Rights Commission and individual

senators and parliamentarians had spoken out and some local governments had passed supportive resolutions. Additionally, there had been broad international support, from UN agencies, the Investor Alliance for Human Rights, NGOs and indigenous organizations, partly triggered by the high profile of the UN Special Rapporteur Victoria Tauli-Corpuz, whose name had also been included on the “terrorist” list. Ms. Carling said that the international support had greatly helped to draw attention to the case and influence public opinion, and that the names of four persons had meanwhile been removed from the list, including that of Ms. Tauli-Corpuz. She emphasized the importance of sustaining international support, adding that “global solidarity means a lot to the people who are struggling on the ground, it makes us feel that we are not alone.” She mentioned that a global campaign was being initiated to make sure that the human rights defenders in the Philippines would get justice. “We need a combination of different solidarity actions to build public opinion and also send the message to the government that the violators cannot get off the hook.”

Panel debate on the role of the private sector

There were two panel debates on the first day, the first of which focused on the question what measures private sector companies and investors can take to ensure that no human rights violations are committed when they do business in indigenous peoples’ territories. The panel discussion began with some remarks by the UN Special Rapporteur on the Rights of Indigenous Peoples, **Ms. Victoria Tauli-Corpuz** about her 2018 annual report to the Human Rights Council, which has a thematic focus on attacks against and criminalization of indigenous human rights defenders.¹ Ms. Tauli-Corpuz said that from the evidence she has gathered as Special Rapporteur, it is very clear that “the private sector is one of the drivers of criminalization of indigenous human rights defenders”. She mentioned that she had received numerous communications about situations where indigenous individuals opposing private sector projects were criminalized or jailed based on unsubstantiated allegations and false information provided by private companies, often accompanied by defamation and smear campaigns directed against them. The criminalization of indigenous human rights defenders and the increasing attacks against them, she added, “are occurring within the context of a huge power imbalance between companies and indigenous peoples. Companies have the resources to bribe government officials, bribe judges, etc.”

Ms. Tauli-Corpuz emphasized that solidarity from the international community was crucial to stop these kinds of things. “We need to really denounce these kinds of activities,” she said. She called for more dialogues between indigenous peoples and companies at all levels (local, national, and global), and emphasized the need to make companies adhere to the UN Guiding Principles on Business and Human Rights. “They have to do due diligence, human rights impact assessments and environmental impact assessments before they invest or engage in a particular project.” She also stressed the need for companies whose operations or investments affect indigenous peoples’ territories, to formally report on how they address risks of human rights impacts on indigenous peoples.

Mr. Claus Primdal Sørensen, Director of Corporate Social Responsibility at Denmark’s Export Credit Agency EKF, talked about the role that EKF can play in protecting indigenous peoples’

¹ UN Doc. A/HRC/39/17, 18 August 2018.

rights as an insurance company that insures international loans to projects. He explained that EKF comes in rather late in the process, at a point when consultations with indigenous peoples should already have been done. Their challenge was to seek documentation in order to determine whether FPIC procedures had been carried out properly and to set up requirements for informed consultation and participation going forward in order to establish a fair framework for future activities. He said that there had been cases where they had pulled out of projects because environmental or social requirements had not been met, noting that there was also a “fairly simple business case”, since the stability and predictability of projects depended on social support for the projects.

Ms. Anita Ramasastry, Expert Member of the UN Working Group on Business and Human Rights, said that the Working Group continues to confront the issue of how indigenous peoples and communities are being treated not only by their governments but also by private sector companies in the name of economic development. She underlined the need to set a baseline expectation –which could be created through export credit agencies, development finance institutions, investors, as well as the home governments of companies doing business abroad– that companies, if their business activities are linked to any threat to a human rights defender, not only conduct due diligence to identify problems, but also prevent and mitigate problems and threats and provide remedy. She said that although some companies were carrying out due diligence in relation to human rights, companies did not really consider threats to human rights defenders in this context. “Defending the defenders is a really big missing piece”, she stressed.

Mr. Mauricio Lazala, Deputy Director of the Business & Human Rights Resource Centre, noted that his organization maintains a database of attacks against human rights defenders working in the business and human rights field, which corroborates the findings of Frontline Defenders, Global Witness and others that attacks against indigenous human rights defenders are disproportionately high. Although indigenous peoples only represent 5% of the global population, they suffered 25% of the 1.200 attacks in his organization’s database, he said. Peru, Honduras, Guatemala, the Philippines, Brazil, Colombia and Mexico were currently the most dangerous countries for indigenous human rights defenders. The most dangerous sector in terms of linkages to attacks against indigenous human rights defenders was the extractive sector, he said, however, the agribusiness and renewable energy sectors were coming quite close. Very few renewable energy companies had human rights due diligence processes in place and his organization continued to receive reports about human rights abuses against local communities and indigenous peoples involving renewable energy companies. Mr. Lazala noted that investors were increasingly aware of these problems and stressed the key role of investors in pushing renewable energy companies to respect human rights. There was a strong business case, a strong moral case, and a strong normative case for companies to engage in good faith with indigenous peoples and respect their right to free, prior and informed consent. Renewable energy initiatives led by indigenous peoples, such as the multi-stakeholder “Right Energy Partnership with Indigenous Peoples”, offered a lot of promise in showing the way forward, he added.

Mr. Kristian Heydenreich, Senior Director, Compliance & CSR at the Danish wind energy company Vestas, talked about the possibilities for Vestas to help ensure respect for indigenous peoples’ rights in the projects they are involved in. He explained that Vestas is a supply company selling turbines to developers, and is not present on the ground during the planning

phase of projects. He said that they were not part of the consultation processes on the ground, “because we are only a supplier, not the developer.” He acknowledged, however, that Vestas had a responsibility in relation to human rights, and said that they had a due diligence methodology and were cooperating with customers for several years, in order to gain access to documentation, understand what consultations had been done, etc. He emphasized the importance of governments setting-up structures ensuring legitimate and transparent consultation processes.

In the discussion that followed, several of the panellists referred to the opportunity that the Sustainable Development Goals provide in terms of engaging with the private sector on human rights issues. They noted that private sector executives had little knowledge about human rights and were reluctant to talk about them, but were familiar with the development discourse and relatively eager to engage with the SDGs, which many companies see as a marketing tool. Panellists emphasized the need to integrate human rights better into the collaboration on the SDGs, and it was suggested that governments should only invite companies to partner on the SDGs if they show a demonstrated commitment to human rights.

Panel debate on the State’s duty to protect indigenous human rights defenders

The second panel debate focused on the State’s duty to protect indigenous human rights defenders and the question what steps state agencies, politicians and decision-makers can take to protect indigenous human rights defenders. The first panellist to speak was the UN Special Rapporteur on the situation of human rights defenders, **Mr. Michel Forst**, who briefly talked about some achievements in relation to the protection of human rights defenders over the last 25 years. He drew attention to the adoption of the UN Declaration on Human Rights Defenders in 1998, highlighting the importance of the fact that the Declaration provides a clear and very broad definition of ‘human rights defenders.’ Noting that some States were working to narrow the definition, he emphasized the importance of keeping the definition open. He also noted as an achievement that several countries had developed their own instruments, mechanisms and national laws to protect human rights defenders, which had saved a number of lives in countries such as Mexico, Guatemala, Honduras or Colombia. He also mentioned that some countries, such as Canada or the EU, had developed guidelines on supporting human rights defenders for officials at their diplomatic missions or companies from their countries that are operating abroad. Canada had also created an Ombudsperson to investigate allegations of human rights abuses linked to Canadian companies abroad. Another achievement that he mentioned are UN-funded programs that facilitate the relocation of defenders at risk to other countries. In relation to his own mandate, he underscored the usefulness of the country visits he undertakes as Special Rapporteur, as well as the written communications he sends to States. What was missing, Mr. Forst said, was a mechanism to assess the implementation by States of the recommendations of UN Special Rapporteurs.

Mr. Nikolaj West of the Danish Ministry of Foreign Affairs started by saying that since indigenous human rights defenders could express human rights concerns without fear of reprisals in Denmark, he would concentrate on what Denmark did to support indigenous human rights defenders internationally and abroad. A focus for Denmark was working in international forums and at a bilateral level to support the participation of indigenous peoples in processes affecting them and to ensure that they can make their voices heard. Supporting that participation in international forums could take place without fear of reprisals was of

particular importance to the ones that are not free to express their opinions at home. Likewise, Denmark supported work abroad both bilaterally and through NGOs. Furthermore, important work was conducted by and through the European Union, e.g. protect defenders, which is the European Union Human Rights Defenders mechanism, which categorizes indigenous peoples as being “most at risk”. Mr. West also mentioned that Denmark was one of the countries that have a national action plan on the implementation of the UN Guiding Principles on Business and Human Rights. According to this, when DANIDA signs contracts with companies, it is a requirement that companies live up to e.g. the UN Global Compact. Furthermore, in order to further the implementation of the OECD guidelines for multinational enterprises, Denmark has set up a Mediation and Complaints-Handling Institution for Responsible Business Conduct.

Mr. Chris Chapman, Indigenous Peoples’ Rights Advisor at Amnesty International UK, focused on the ways in which civil society organizations like AI can push States, the primary human rights duty-bearers, to live up to their duty to protect human rights defenders. He said that on its own, AI had very little to no influence on States, and that best results were achieved through changing public opinion. Many governments would only listen when civil society created a lot of noise. Campaigns were most successful if they were based on broad coalitions involving a variety of actors (NGOs, NHRIs, UN mechanisms, etc) and were led by the relevant rights holders or indigenous communities themselves. When working with indigenous peoples, the best approach for international support groups like AI was to take a back seat as much as possible and strengthen the capacity of local communities to lobby on their own behalf. He cited the Sengwer case (Kenya) as a recent example where this approach had been applied. In January 2018, a Sengwer man was killed by the Kenyan Forest Service during an episode of forceful evictions from Embobut Forest; following a broad based civil society campaign, the EU suspended funding for the Kenya Water Tower Protection and Climate Change Mitigation and Adaptation Programme as a consequence. In closing, M.r Chapman noted that governments targeted individual human rights defenders because they could not normally target whole communities. While the possibility to be targeted was a “weakness” of human rights defenders, it was also a “strength”, because individual defenders were “iconic” members of their communities and stories could be built around them that people could empathize with.

Ms. Birgitte Feiring, Department Director at the Danish Institute for Human Rights, spoke about the role that National Human Rights Institutions (NHRIs) can play in relation to the State’s duty to protect indigenous human rights defenders. She explained that NHRIs are independent institutions that are established by the State with a mandate to protect and promote human rights and monitor whether the State is living up to its obligations. They could receive complaints and investigate specific cases of detention, arrests, harassment or killings, but could also address more systemic issues such as land rights, participation and consent, etc. If sufficiently independent, she added, NHRIs could play a crucial role in protecting indigenous peoples’ rights and indigenous human rights defenders. For instance, the NHRIs in Malaysia and Indonesia had undertaken large scale inquiries into the situation of indigenous peoples’ rights to their lands and resources, and in Malaysia this had led to changes in legislation. The NHRI of the Philippines had recently established an observatory on indigenous peoples’ rights, and the NHRI of Peru had accompanied a process of addressing an incident where several indigenous persons participating in demonstrations had been killed. Ms. Feiring noted that sometimes NHRIs themselves became human rights defenders under threat, for

example, the Philippine NHRI had recently been the target of intimidation and harassment by the government. In closing, Ms. Feiring emphasized the importance of strengthening alliances between NHRIs, indigenous organizations and other actors, to build the capacity of NHRIs to monitor indigenous peoples' rights.

Ms. Laila Susanne Vars, Vice-Chair of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), talked about the ways in which EMRIP can assist States in the promotion and protection of indigenous peoples' rights. She explained that EMRIP was originally established with a mandate to provide advice on the rights of indigenous peoples to the UN Human Rights Council. However, in 2016, the mandate was amended to enable EMRIP to assist States, upon request, in promoting and protecting indigenous peoples' rights at the national level. Ms. Vars said that the new mandate provided a possibility for EMRIP to engage with different actors at the national level and to facilitate dialogue between governments and indigenous peoples where there was a willingness to find solutions to specific issues. All indigenous peoples could request an official country visit, however, EMRIP had limited capacity and could only conduct two visits per year. She underlined the need for the relevant government authorities to be willing to engage with EMRIP and enter into a dialogue with the indigenous peoples for any country visits to be useful.

Perspectives for Tomorrow

At the end of the first day, **Mr. Rodion Sulyandziga**, Director of the Center for support of indigenous peoples of the North, Russia, and **Ms. Lola Garcia-Alix** of IWGIA provided reflections on the day's discussion and thoughts on the priorities for the second day. Mr. Sulyandziga remarked that almost 100 years had passed since Chief Deskaheh of the Cayuga Nation first approached the League of Nations, but indigenous peoples were still facing the same issues. While the era of colonialism had ended, indigenous peoples continued to be subjected to internal colonialism. The normative achievements at the international level over the last 20 years had been significant, however, there was a growing gap between the commitments at the UN level and the implementation of the commitments at the national level. At a local level, the situation continued to be the same. More efforts were needed to protect indigenous rights at the national and local levels.

Ms. Garcia-Alix also drew attention to the huge gap between the legal framework and discourse on indigenous peoples' rights at the international level and the situation on the ground. At the local level, she said, the situation of indigenous peoples was not improving, and even deteriorating. She noted that two words had come up repeatedly during the day's discussions: compliance and accountability. The big question was what actions were needed to put the international commitments regarding indigenous peoples into action.

Both Ms. Garcia-Alix and Mr. Sulyandziga thought that the priority for the second day should be to identify very concrete and action-oriented recommendations on what should be done by whom to better protect indigenous human rights defenders. "It should not only be a discussion", Ms. Garcia-Alix said, "it should be action-oriented, implementation-oriented. We can discuss and discuss, but what is needed is action. Today there were already suggestions for some actions", she added, "a global campaign, better use of the media, mainstreaming the support for indigenous human rights defenders, and engaging other actors. We need to be very realistic and think about where we go from here. We need to focus on actions."

DAY 2

Testimonies from indigenous human rights defenders

The second day of the conference began with another session in which indigenous human rights defenders presented testimonies from the frontline. **Ms. Abie Anongos** of the Cordillera Peoples Alliance (CPA), Philippines, talked about the difficulties and violations experienced by indigenous human rights defenders in the Cordillera, from surveillance, harassment and threats to violent attacks, abductions and extrajudicial killings. One of the most serious difficulties that human rights defenders in the Philippines were facing, she said, was the criminalization of dissent. She said that in the Philippines there were over 175 political detainees, “human rights defenders who are languishing in jail simply because of their political beliefs, simply because they are activists”. The names of over 600 human rights defenders, including several indigenous defenders, had recently been included on a terrorist proscription list issued by the Philippine Department of Justice under a law called, ironically, the “Human Security Act”. Additionally, over 100 indigenous human rights defenders were facing trumped up charges such as rebellion, arson, robbery, murder, attempted murder or frustrated murder, when all they had done was defend the land and the rights of their people.

The underlying reason for the criminalization of indigenous human rights defenders, Ms. Anongos noted, was the existing development paradigm and the resulting race for the last natural resources, which are largely located in indigenous peoples’ territories. As indigenous peoples, she said, “we cannot simply give in to that situation because it is part of our tradition, our lives, and the legacy of our ancestors to defend land, because land is life. Land is not for profit.” One of the main drivers of the criminalization of and violations against indigenous human rights defenders were big companies who would like to operate in indigenous peoples’ territories. More than half of the around 400 mining applications in the Philippines were located on indigenous peoples’ lands, and wherever extractive industries were entering indigenous territories, there was military deployment. The Armed Forces of the Philippines had become the “investment defense force of the extractives that are entering indigenous peoples’ communities”, Ms. Anongos said. Militarization resulted in human rights violations and surveillance and had a chilling effect on the members of the community. In some cases, especially in Mindanao, mining and hydroelectric companies had also employed paramilitary groups to secure their applications and operations.

Ms. Anongos recounted that in 2006, indigenous human rights defenders in the Philippines experienced a reign of terror with extrajudicial killings, intensive harassment and threats, and that in 2008, one of the founding members of the CPA, James Balao, had been abducted and had not resurfaced until now. Under the current administration, the overall situation was very similar. A body called the “Inter-Agency Committee on Legal Action” had been created, which allowed government agencies and even the Armed Forces of the Philippines to file cases based on trumped up charges against indigenous human rights defenders. Ms. Anongos asked for the support and solidarity of the conference participants and the international community in calling for a stop the criminalization of dissent and terrorist-tagging of indigenous human rights defenders. “If you are attacked as a terrorist, if you are vilified, it makes you an open

target of many kinds of human rights violations”, she said. “Activism is not a crime. What is a crime is the militarization of our communities.”

Mr. Daniel Kobei, Director of the Ogiek Peoples Development Program, Kenya, talked about the struggle of the Ogiek people for the recognition of their rights to their ancestral lands in the Mau Forest Complex in Kenya. He explained that the Mau Forest Complex was over 400.000 hectares in size and that the Kenyan government had been treating it as government land and kept evicting the Ogiek, although the Ogiek had always lived there and it had always been their land. The evictions had created big challenges for the Ogiek, both as individuals and collectively as a people. In 1994 the Ogiek started a movement for the recognition of their land rights, and began telling the world that the Mau Forest was their ancestral land. Mr. Kobei said that this is when the criminalization of Ogiek human rights defenders started, when Ogiek began to be arrested, taken to court and put in jail.

Although the Ogiek had won their case against the Kenyan government at the African Court of Human and Peoples’ Rights,² Mr. Kobei said, the evictions of Ogiek from the Mau Forest were still going on. The government was using land grabbers to take up Ogiek land and was continuing to give out title deeds to non-Ogiek, evicting the Ogiek in the process. He said that Mau was very fertile land and that it was easy for the government to find land grabbers willing to come and settle there. When Ogiek protested their eviction, the land grabbers would take them to court and they might end up in jail. Recently two men, a father and his son, had received life sentences because a land grabber said that they had threatened to kill him. Mr. Kobei also recounted that in 2016, an Ogiek man called Stephen Munyereri had been shot by a land grabber, in front of the eyes of local police, as he attempted to salvage what remained of his son’s home after it was burned down by the land grabbers. The police took the killer to their car, protected him, and he was later set free.

Ms. Toribia Lero Quispe, Coordinadora Andina de Organizaciones Indígenas, from the Andean region in Bolivia, said that the struggle of her people was very similar to that of the Ogiek. The criminalization of indigenous human rights defenders, she noted, was a strategy to conquer indigenous peoples’ territories. Her people’s ancestors had left them the message that they should always continue the fight for their land and for their indigenous rights. Ms. Quispe highlighted that indigenous women in Bolivia had organized as women in order to make it visible that indigenous women face challenges that are different from the challenges faced by indigenous men. For instance, for indigenous women in the Andean region access to land was through men and through marriage; men had the titles to land, and women were always dependent on them. Despite of the lack of property rights to land indigenous women are the ones defending the territories the most. Indigenous women had a vision of equality that was also part of the fight. Women needed the same rights to land as men to be able to feed their children. Ms. Quispe underlined, however, that indigenous men and women needed to stand together in fighting for their land rights as indigenous peoples.

Ms. Quispe also talked about the criminalization and persecution of indigenous human rights defenders in Bolivia and the difficulties for defenders to gain access to justice, especially when they are women. To file cases and gain access to justice, she said, you needed money and a

² *African Commission on Human and Peoples’ Rights v. Republic of Kenya*, Application No. 006/2012, Judgement of 26 May 2017.

lawyer. Finding the money for lawyers was often impossible and many lawyers were afraid to take up their cases as they considered them as political issues. “There is no access to justice for indigenous human rights defenders”, she said, “many have died without having access to justice”.

Ms. Quispe acknowledged that some progress had been made during the presidency of Evo Morales with regard to legislation, noting that several human rights conventions had been signed and ratified and some laws for the protection of women and indigenous peoples had been adopted. However, much of that stayed on paper, she said, a lot of mining and construction was happening in indigenous peoples’ territories without indigenous peoples’ free, prior and informed consent. Extractive industry companies were coming with a lot of money, were bringing jobs, and were given land titles and licenses to operate in indigenous peoples’ territories without having environmental strategies and without indigenous peoples having access to information.

Ms. Quispe adds that the development policies of the Bolivian government endangers indigenous peoples’ land and territories. The implementation of these policies relies heavily on extractive enterprises.

Parallel session on criminalization

Following the testimonies of indigenous human rights defenders, the conference broke out into three parallel sessions on the themes of “Criminalization”, “Land Rights”, and “Access to Justice”, tasked with identifying recommendations for actions that could help protect indigenous human rights defenders at risk. Each of the parallel sessions was asked to come up with three recommendations for action.

The first of these parallel sessions discussed the criminalization, stigmatization and penalization of indigenous human rights defenders by means such as arbitrary arrests, illegal surveillance, judicial harassment, travel bans, threats, and dispossessions. The parallel session began with a short presentation by the UN Special Rapporteur on the Rights of Indigenous Peoples, **Ms. Victoria Tauli-Corpuz**, who provided a brief summary of her recent report to the Human Rights Council.³ She explained that the report looked into common patterns of criminalization of indigenous human rights defenders, as well as possible measures to protect them. Most commonly, she said, anti-terrorism legislation and national security acts provided the legal framework for criminalizing indigenous human rights defenders; common charges included trespassing, aggravated usurpation, illegal occupation of land, conspiracy, kidnapping, coercion, disturbance of public order, and incitement of crime. Ms. Tauli-Corpuz also provided an overview of the recommendations contained in her report, including recommendations to States, NHRIs, private companies, international financial institutions and civil society (see Chapter IX of the report). She noted that as Special Rapporteur she would continue to look into possible protection measures for indigenous human rights defenders, in particular how to strengthen community-based protection mechanisms, which she highlighted as an especially effective way of protection.

³ UN Doc. A/HRC/39/17, 18 August 2018.

Another aspect that Ms. Tauli-Corpuz highlighted was the need to document the role of companies in the criminalization of indigenous human rights defenders, and to get financial institutions and donors to pull out when human rights violations occur in the context of a company's activities. She also mentioned plans for a global, multi-sectoral campaign against the criminalization of indigenous human rights defenders, to be launched at the end of the year. The campaign would involve a broad range of actors, she explained, including human rights organizations, academia, churches, UN bodies, media, etc. "We need a campaign to be able to provide support to all those who are criminalized, not just the well-connected", she said, "to condemn violations, provide legal assistance to the victims, etc. We need to be linked up and work together – and be ready to act immediately."

Ms. Andrea Rocca, Deputy Director of Front Line Defenders, presented the main findings of the recent report "Stop the Killings" (published by the HRD Memorial Network),⁴ which analyzes the root causes of the killing of human rights defenders in Brazil, Colombia, Guatemala, Honduras, Mexico and the Philippines. Taken together, these countries accounted for 85% of the killings of human rights defenders in 2017. Ms. Rocca reiterated that the number of human rights defenders killed has been increasing in recent years, and that two-thirds of those killed were engaged in the defense of land, environmental and indigenous peoples' rights. 88% of the killings, she said, were committed with complete impunity, although there was at least a tendency for perpetrators to be brought to justice when there was concerted public pressure (as in the case of Berta Cáceres). Ms. Rocca noted that there was a need for enhanced documentation in order to get a better idea of the real scale of the problem. She emphasized the importance of pushing donors and international financial institutions to uphold their policies and principles and insist that private companies perform human rights impact assessments for all projects affecting indigenous peoples. Similarly, the mother countries of companies needed to be pushed to uphold their existing human rights-related policies and guidelines for private sector enterprises.

Mr. Gam Shimray, General Secretary of Asia Indigenous Peoples' Pact (AIPP), shared some examples of criminalization of indigenous human rights defenders in Asia. In Laos and Cambodia, the main underlying cause for the criminalization of indigenous human rights defenders were land concessions to private companies, he said. Companies would suddenly appear and start cutting trees without prior notice to the communities. When communities responded, the government would protect the companies, not the people. In Cambodia, several indigenous human rights defenders had been killed this year and many more injured by police shootings, whereas in Laos, several people had been jailed and one person had died in jail. Mr Shimray also mentioned that in Bangladesh and India an increasingly common problem was rape and violence against indigenous women and girls as a tool in the context of land-related conflicts. In most cases, the perpetrators were never brought to justice and there were indications that in some cases State officials had hired thugs to commit the crimes. Structural issues such as the segregation in India, or the stigmatization of indigenous people as savages, drug addicts and drinkers, were limiting access to justice for the victims. Mr Shimray highlighted the importance of documentation for addressing the problems. Even if support was available to go to court in a given case, providing the documentation needed could be a huge challenge. Capacity development for documentation was needed at the

⁴ Available at https://www.frontlinedefenders.org/sites/default/files/stk_-_full_report.pdf

community level. He supported the idea of a global campaign on the issue of criminalization of indigenous human rights defenders, but said that it was important for it to be aligned with action at the community, national and regional levels.

Mr. Jesús Amadeo Martínez, Coordinator of the Abya Yala Indigenous Forum, talked about the criminalization of indigenous human rights defenders in Latin America. He said that the problem of criminalization had existed for a long time but that it had become worse in recent times, as the pressure on natural resources was increasing and indigenous peoples were living in areas that are rich in natural resources. Countries such as Nicaragua, Bolivia and Guatemala had adopted laws and policies to protect indigenous peoples' rights, but in practice these laws and policies did not offer sufficient protection for indigenous peoples' lands. Governments in Latin America were giving land concessions to foreign companies, who were not interested in dialogue with indigenous peoples and were buying governments. In Honduras and Guatemala, huge areas had been invaded by extractive industry, as well as drug traffickers. Governments were trying to link the struggle of indigenous peoples with drug trafficking, in order to expel indigenous peoples from their lands. Disappearances of indigenous human rights defenders were common in Latin America and thousands of indigenous people had been murdered. Indigenous organizations, even old and well-established ones, were branded as terrorists, which was contributing to the violence and the killings. In some countries, governments were establishing parallel organizations to undermine indigenous organizations. In closing, Mr Martínez highlighted the need to strengthen indigenous peoples' organizations at all levels.

Parallel session on land rights

The second parallel session considered the globally intensifying pressure on indigenous peoples' lands, territories and resources and the lack of respect for indigenous peoples' collective rights in this context, which is a main underlying cause of the increasing attacks on indigenous human rights defenders in recent years. The parallel session began with a short presentation by the UN Special Rapporteur on the situation of human rights defenders, **Mr. Michel Forst**, who provided an overview of his 2016 report to the UN General Assembly, which focuses on the situation of environmental human rights defenders.⁵ Mr. Forst noted that he had also prepared a user-friendly version of the report, for it to be more useful at a community level.⁶ Mr. Forst said that during his official missions, he witnessed the difficult situations that people and communities affected by the activities of private companies are facing in many parts of the world. He noted that one of the root causes of violations against indigenous human rights defenders was the imbalance of power between States, companies and indigenous communities, and the general "lack of access" of affected communities and rights-holders (to decision-making processes, information, documentation, the judiciary, government services, etc.). Other common problems that Mr. Forst identified were fake consultations, a lack of impact assessments, corruption, and impunity for attacks and violations committed against environmental human rights defenders. Mr. Forst mentioned that the last part of his report presented suggestions on what could be done by the

⁵ UN Doc. A/71/281.

⁶ The user-friendly version, "They spoke truth to power and were murdered in cold blood", is available at: https://www.protecting-defenders.org/sites/protecting-defenders.org/files/environmentaldefenders_0.pdf

international community to better protect environmental human rights defenders and foster a safe and enabling environment for them.

Mr. Mike Davis, Director of Campaigns at Global Witness, discussed what businesses and governments could do to tackle the root causes of threats and attacks against indigenous, land and environmental defenders. In doing so, he drew on a recent report by Global Witness entitled “At What Cost? Irresponsible business and the murder of land and environmental defenders in 2017”.⁷ According to the report, at least 207 land and environmental defenders were murdered in 2017, making it the deadliest year on record. Agribusiness surfaced as the most dangerous sector, he said, overtaking mining for the first time ever. Brazil saw the most killings of environmental human rights defenders ever registered by Global Witness in one year in any country (57 killings), while the Philippines saw more killings in 2017 than ever seen in an Asian country (48). Mr Davis identified three measures to tackle the root causes of the problem: 1) ensuring respect for indigenous peoples’ rights to their lands, territories and resources, including their rights to participation and FPIC; 2) tackling corruption; and 3) ending impunity. He emphasized the importance of proper consultations from the very beginning and that the exclusion from decision-making processes was one of the root causes of conflict. Ensuring proper consultations, participation and consent, as well as fighting corruption, was not only a responsibility of governments and implementing companies, but also of financial institutions, investors and lenders.

Ms. Frederica Barclay of Peru Equidad and **Mr. Shampiom Noningo Sesen**, Technical Secretary of the Autonomous Territorial Government of the Wampis Nation, talked about the pressures on indigenous peoples’ lands, territories and resources in the Peruvian Amazon and the recent creation of the Wampis autonomous territorial government as an effort by the Wampis to protect their forests, waters and livelihoods against the threats posed by oil and mining companies, logging and palm oil plantations. Ms. Barclay provided some background on the situation of indigenous peoples and indigenous human rights defenders in Peru. She highlighted that petroleum companies caused a lot of environmental destruction in the Peruvian Amazon and said that attacks against and persecution of indigenous human rights defenders occurred especially in the context of the extractive and agribusiness sectors. Mr. Noningo outlined how the Wampis in 2015, after a long internal process, established an autonomous territorial government and then notified the Peruvian authorities of this decision, including the exact extension of their territory (covering 1,3 million hectares of tropical forest). In essence, this was a decision by the Wampis to take their future into their own hands, rather than wait for the Peruvian State to take measures to protect their land and their livelihood.

Parallel session on access to justice

The third parallel session discussed the issue of access to justice and remedy for indigenous human rights defenders, especially those from marginalized and poor communities. **Mr. Daniel Kobei** talked about the landmark judgement of the African Court on Human and Peoples’ Rights in the Ogiek case (ACHPR v. Kenya, 26 May 2017), recognizing the Ogiek’s rights over their ancestral land in Kenya’s Mau Forest, and the role that regional human rights mechanisms can play for indigenous peoples in gaining access to justice. Although the Ogiek

⁷ https://www.globalwitness.org/documents/19392/Defenders_report_layout_AW2_lowres.pdf

still had not gotten their land back, they were celebrating the court's ruling and pushing for its implementation.

Mr. Melakou Tegegn, a member of the African Commission's Working Group on Indigenous Populations, discussed the difficulties faced by human rights defenders in Africa given the post-independence political culture in Africa, the lack of a proper balance of power between executive, legislature and judiciary in most African States, and the extremely weak position of the non-state sector ("civil society"). He said that although human rights NGOs were doing monumental work, they faced significant structural limitations and were easily repressed by the regime. He emphasized the importance of capacity building to narrow the gap the non-state sector finds itself in.

Ms. Anuradha Mittal, Executive Director of the Oakland Institute, talked about how fact-based documentation can help access to justice. She noted that collecting solid evidence of human rights abuses was crucial for both litigation and campaigning purposes, and underlined the importance of creating the capacity on the ground to do human rights documentation properly. She also stressed the need to pay special attention to the security of sources and local partners when collecting and presenting evidence of human rights abuses, and to plan campaigns and strategies together with the victims and communities involved.

Ms. Joan Carling talked more about the "terrorist list" recently issued by the Philippine authorities, by which over 30 indigenous human rights defenders, including Ms. Carling herself, were tagged as "terrorists". She highlighted the importance of building strong alliances, involving both local and global actors, in order to be able to launch global campaigns and push for access to justice and remedy for indigenous human rights defenders who are victims of criminalization, violence and harassment. Campaign strategies, she suggested, should involve a combination of actions from below (community mobilization and national level advocacy) and actions from above (global solidarity and support). She used the analogy of cooking rice, where heat is applied from below at the same time as heat from above, to describe the type of strategies that were needed ("rice-cooking analogy").

Key recommendations from parallel sessions

Following the parallel sessions, a plenary session was held during which the rapporteurs of the parallel sessions presented the recommendations identified in the parallel sessions. The draft recommendations were then discussed and further refined. The plenary decided that the conference should endorse the findings and recommendations of the UN Special Rapporteur on the rights of indigenous peoples in her report on the criminalization of indigenous human rights defenders (Doc A/HRC/39/17), and appeal to all relevant actors to follow-up on and implement the report's recommendations. Additionally, it was agreed that all relevant actors should be encouraged to support and engage in the following nine key actions aimed at enhancing the protection of indigenous human rights defenders at risk:⁸

⁸ The conference recommendations were drafted in the three parallel sessions on the second day of the conference, and then adjusted and adopted during the plenary session at the end. Following the meeting, they were edited by IWGIA based on recordings and notes taken during the conference. The purpose of this editing work was to make the recommendations more comprehensible and to the point, bearing in mind the essence of the discussions and recommended actions. The edited version was then sent to a reference group for approval,

1. Actively engage in and contribute to an inclusive and multisectoral global campaign on the issue of criminalization of indigenous human rights defenders that is linked to the regional, national and local levels.
2. Support the establishment and strengthening of community-based mechanisms for the protection of indigenous human rights defenders at risk.
3. Strengthen documentation and dissemination of information on cases of criminalization of indigenous human rights defenders and violations committed against them, including violations committed in remote areas. Attention should also be drawn to the role played by business enterprises and investors in this context.
4. Support activities aimed at empowering indigenous peoples to protect their rights as enshrined in the UNDRIP, including their rights to their lands, territories and resources. An international action group that can respond quickly in cases of violations against indigenous human rights defenders should be established. Support should also be given to indigenous peoples' initiatives to develop their own models for exercising their right to self-determination, self-governance and autonomy.
5. Urge existing funding mechanisms and relevant institutions and organisations to strengthen their engagement with indigenous peoples and make funding available to them so that they can defend their land rights and protect indigenous human rights defenders.
6. Foster understanding and build capacity about free, prior and informed consent standards, methodologies and guidelines among all relevant actors, including indigenous peoples' organisations themselves.
7. Apply a combination of methods and strategies to advocate for access to justice, involving both actions from below (community mobilization and national advocacy) and actions from above (global solidarity and support). Relevant methods include media strategies (putting governments, investors and corporations on the spotlight), litigation and legal support, use of indigenous peoples' own legal systems/institutions, sustained advocacy, etc.
8. Support initiatives aimed at building indigenous peoples' capacity and competence in documenting human rights abuses so that they can produce solid, reliable documentation themselves. Considering the risks that can be associated with the production of human rights documentation, personal security training should be an integral part of such capacity-building initiatives.
9. Ensure that campaigns and alliances to support indigenous peoples' access to justice are based on long-term commitment and consistency, also in terms of funding.

Closing remarks

Closing remarks were presented by the Head of the Department for International Law and Human Rights at the Danish Ministry of Foreign Affairs, **Ms. Mette Nørgaard Dissing-Spandet**, and IWGIA's Executive Director, **Ms. Julie Koch**. Ms. Koch expressed her satisfaction with the fruitful discussions during the conference and the broad range of actors who had actively participated. She stressed the importance of reaching out to and mobilizing new actors, both from civil society and the private sector, and building new alliances to enhance the protection

consisting of the rapporteurs of the three parallel sessions, the Special Rapporteur on Indigenous Peoples, and one of the two co-conveners of the Indigenous Peoples Major Group for Sustainable Development.

of indigenous human rights defenders. She noted that there were various human rights networks focusing on the protection of human rights defenders, which could be encouraged to pay more attention to the situation of indigenous defenders. Indigenous defenders were overrepresented among the human rights defenders subjected to attacks and killings, and the wider population needed to stand up for them.

Ms. Mette Nørgaard Dissing-Spandet also alluded to the need to engage additional actors and build broader alliances; she suggested that potential new allies could also include politicians, parliamentarians and academics. She expressed her satisfaction with the recommendations elaborated by the conference, adding that the challenge would be to make the recommendations “matter outside of the room”. She noted that the overall human rights movement was struggling and that currently many countries were not as supportive of human rights anymore as they used to be. It was important to remind them why human rights instruments and standards had been adopted in the first place and why it had been a good idea. Ms. Nørgaard Dissing-Spandet underlined that the protection of indigenous peoples’ rights would continue to be a priority for Denmark, also in forums such as the Human Rights Council. A main challenge was to make the Human Rights Council’s discussions, decisions and resolutions regarding indigenous peoples “matter outside of Geneva”. The focus should be on the implementation of existing commitments, rather than on new normative statements.