

Criminalisation of Human Rights Defenders

David Ravelo:
Imprisoned since
September 2010



Protecting human rights defenders at risk since 1981

pbi
making space for peace

Introduction

Criminalisation as a strategy of repression

Human rights defenders (HRDs) play a crucial role in ensuring that fundamental rights are upheld, and that victims are able to pursue justice. However, their work is often challenged and undermined by state agents and non-state actors such as illegal armed groups and business enterprises. Wishing to protect their own interests and reputations, these groups will sometimes adopt any viable method to impede the peaceful activities of HRDs. In this context, HRDs become the target of unlawful physical and psychological violence. In addition, those seeking to silence HRDs increasingly resort to quasi-legal tactics such as smear campaigns and baseless charges and prosecutions. The criminalisation of HRDs has become an area of growing international concern.²

In criminology, the term 'criminalisation' refers to "the process by which behaviours and individuals are transformed into crime and criminals."³ In the context of defending human rights, we understand criminalisation to derive from the intent to discredit, sabotage or impede the work of HRDs through the misuse of the legal system, and through adverse and

cynical manipulation of public discourse. The UN Special Rapporteur on the situation of human rights defenders explains that "States increasingly resort to legal actions to violate the human rights of defenders denouncing human rights violations. Defenders are arrested and prosecuted on false charges. Many others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest."⁴ PBI has identified a number of ways in which HRDs have been made the victims of criminalisation, including the use of unfounded accusations and specious charges; arbitrary detention and non adherence to due process; stigmatisation of HRDs by government officials and national media; and the misuse of legislation / employment of ambiguous legislation and states of emergency to impose restrictions on the rights to assembly and association, and the right to freedom of expression. This report will outline and illustrate these examples in greater detail.

The tactic of criminalising HRDs provides unscrupulous state and non-state actors with a significant strategic advantage at times when a violent or heavy handed approach is not

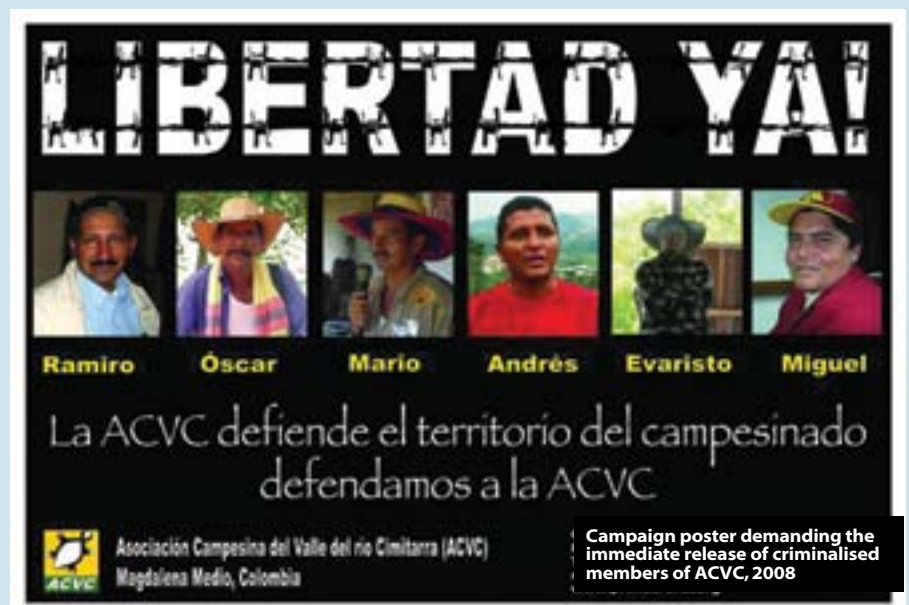
Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence."¹

EU Guidelines on Human Rights Defenders

CASE STUDY

The Rural Association of the Cimitarra River Valley (ACVC), Colombia

ACVC is a cooperative of over 25,000 smallholder farmers campaigning, through the model of a "Peasant Farmer Reserve", to achieve fair and sustainable development for local communities. Since their foundation in 1996, members of ACVC have been victims of threats, murders, arbitrary detentions, displacement, disappearances, torture, and arson attacks on their homes. In September 2007, several of their board of directors were arrested and charged with 'rebellion'. In May 2008, some were released due to unreliable testimony and lack of evidence, but two of the directors, Andrés Gil and Miguel Angel González, were kept imprisoned. It took a further year of campaigning for Miguel Angel and Andrés to be released, in June and August 2009 respectively, although Andrés is still under investigation. PBI, along with other international organisations and



institutions, led the way in pressuring the international community and the Colombian state to uphold due process and deliver a just resolution to these cases. In December

2010, ACVC was given the National Peace Award. In the same year, the decade long suspension of the Peasant Farmer Reserve was lifted.

politically viable. Due to its legitimate facade, criminalisation is by nature a nuanced and sophisticated strategy that can be extremely difficult to counteract. The impact and effect of criminalisation on HRDs, their families, and wider human rights and democracy movements are manifold and include:

■ **Increased exposure to physical attack** As stated, criminal allegations often go hand in hand with other forms of repression such as threats, intimidation, surveillance, and physical violence. Allegations often aim to stigmatise HRDs in the public imagination as ‘troublemakers’, ‘criminals’, or ‘terrorists’, and such labels create the perception that HRDs “hinder the development of society and deserve persecution”⁵ and to be dealt with as criminals. This has led to acts of aggression and even assassination.⁶

■ **Psychological distress and family breakdown** The process of criminalisation, from allegations and smearing through to imprisonment and beyond, can have a profound impact on the wellbeing of the individual(s) involved. The psychological effects of criminalisation include extreme stress, paranoia, depression, isolation and insecurity.⁷ Enormous pressure is also put on family and community life; HRDs report instances of divorce, abandonment, and self-imposed restrictions on movement.

■ **Undermining of the legitimacy and credibility of the organisation** The strategy of criminalisation aims to tarnish the reputation of the HRD and their organisation, thereby seeking to negate any support they may receive. In practice, this can mean that the defender and organisation lose face and political capital within their own communities, as well as with the general public, civil society, media, the state, the international community and funders. This can lead to losing current or future work opportunities, or jeopardise access to important political spaces.

■ **Crippling of financial, judicial, and administrative capacity** The all-consuming rigmarole of having to defend against malicious allegations is a significant drain of time and money on a human rights organisation, resources that would otherwise be spent on assisting vulnerable rights holders. The capacity of an organisation to mount a legal defence is often beset by barriers, both geographic and bureaucratic, in gaining access to clients and gathering evidence. States may also try to target organisations administratively by seeking

to suspend their legal status.

■ **Weakening the human rights movement** Criminalisation carries an implicit warning to any defender working on politically or economically sensitive issues that they too might be targeted. Others might think twice before speaking out. Vulnerable groups and individuals who depend on HRDs may also be less inclined to stand up for their rights, fearing legal or violent reprisals to their actions. Equally, clients and communities may believe the accusations and consider the HRD unworthy of trust.

■ **Breakdown of democracy and rule of law** A legal system which tolerates misuse in the form of spurious and undue processes sets unfortunate precedents which have an ultimately damaging effect on the exercise of democracy and the rule of law. A malaise sets in among civil society and the general public, whereby “faith is lost in society and in the meaning of justice.”⁸ If HRDs are successfully targeted with strategies of criminalisation, such precedents can increase the power that agents of corruption and impunity have to assert their authority over the democratic process, thus diminishing the capacity of civil society to be effective in political opposition, and undermining the rule of law in a democracy.

Criminalisation also represents a challenge to the international community; governments, institutions, and NGOs who seek to build respect for and observance of human rights through their support for local HRDs. Foreign diplomats and officials who are prepared to challenge states over flagrant violations of international human rights norms are often less able or willing to take a similar stand on cases of apparent criminalisation, as doing so can imply undue interference in internal affairs. In cases of stigmatisation by media columnists, or business enterprises, attacks on human rights are even more difficult to combat, due to even more diluted channels of accountability.

The recommendations in this report show ways in which the international community can, however, be effective in denouncing and redressing cynical acts of criminalisation and stigmatisation. A bolder application of existing mechanisms such as the EU Guidelines and UN mechanisms and special procedures, and a principled use of other bilateral and multi-lateral relationships, can send a clear message to deter those who hold universal human rights in contempt.

¹ Ensuring protection – European Union Guidelines on Human Rights Defenders, para 3. The HRDs accompanied by PBI include lawyers, civil society NGOs, indigenous and rural community leaders, gender and LGBT rights defenders, journalists, and trade unionists.

² See for example: 2009 Final Report on the Evaluation and Recommendations on EIDHR support to HRDs; also ‘Baseless Prosecutions of Human Rights Defenders in Colombia: In the Dock and Under the Gun’ (Human Rights First: February 2009); also ‘Criminalización de los defensores de derechos humanos y de la protesta social en México’ (Due Process of Law Foundation); and ‘CIDSE at the World Social Forum, Belem, Brazil 2009’ <http://www.cidse.org/Regions/LatinAmerica/?id=918>

³ Michalowski, R.J., *Order, Law and Crime: An Introduction to Criminology*. (New York: Random House, 1985), p.6

⁴ A/HRC/13/22, UN General Assembly Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Dec 2009, para 31.

⁵ CIDSE at the World Social Forum, Belem, Brazil 2009: <http://www.cidse.org/Regions/LatinAmerica/?id=918>

⁶ For example, in 2004 Colombian university sociologist and HRD Alfredo Correa was charged with rebellion and with collaborating with the FARC guerrilla, and imprisoned. He was subsequently cleared of all charges and released, but was murdered three weeks after his release. See ‘Colombia’s Dirty War’, Colombia Reports 14 Jul 2009. <http://colombiareports.com/opinion/the-colombiamerican/4998-colombias-dirty-war-chuzadas-and-the-future-of-the-das-.html>

⁷ See interview with AVRE in ColomPBlA, No.6 Mar 2008, p.10. http://www.pbi-colombia.org/fileadmin/user_files/projects/colombia/files/colomPBlA/ColomPBlA_v6_ing.pdf

⁸ *Ibid.*

The work of human rights defenders often involves criticism of government policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government’s policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported.

EU Guidelines on Human Rights Defenders



Strategies of Criminalisation

(i) Spurious charges, arbitrary detention, and baseless prosecutions

A wide variety of national laws are invoked in order to bring charges against HRDs. Some of the most common alleged infringements include:

- invasion of private property
- incitement to commit a crime,
- illegal assembly
- coercion
- issuing of a threat
- unlawful detention,
- 'rebellion'
- terrorism⁹

In most cases the charges are unfounded or based on unreliable evidence, such as statements from demobilised combatants who stand to win reduced sentences in return for information, or commercial stakeholders who stand to benefit from reduced opposition to their operations. In other cases, witnesses have received bribes in return for making misleading statements.

⁹ See UDEFEGUA, Human Rights Defenders Protection Unit, Guatemala, 'Criminalización: una forma de paralizar y debilitar la respuesta social', 2010, p.12.

CASE STUDY

The Cerezo Brothers, Mexico

In August 2001, the brothers Alejandro, Héctor and Antonio Cerezo Contreras were imprisoned after being falsely accused of causing several explosions in three Mexico City banks. The Cerezo Committee was formed to campaign for the release of the prisoners, who were deemed prisoners of conscience by Amnesty International. Their parents are alleged to be founders of the Popular Revolutionary Army (EPR) guerrilla group. The Mexican League for the Defence of Human Rights sustains that this was a motivating factor in the arrest; that the state could appear to be tough on guerrilla action. The brothers say they were arrested without warrant, beaten and tied up, in order to force a false confession from them, and they speculate that evidence was planted in their homes. After years of campaigning by the Cerezo Committee and the international community, Alejandro was



Campaign to release Cerezo Brothers, 2005

exonerated of all charges in April 2005, having been imprisoned for over three years. But Héctor and Antonio had to complete their sentences, eventually being released in August 2005 and February 2009 respectively. The Cerezo Committee continues to work helping other prisoners of conscience.

CASE STUDY

The Association for the Protection of Las Granadillas Mountain (APMG)

APMG campaigns against deforestation and mono-cropping due to their harmful environmental and social impact on local communities. On 29 November 2010, eight members of APMG were ordered to appear in court after a local landowner lodged a formal complaint. The landowner and workers from a logging company had earlier destroyed a wall legitimately restricting access to heavy goods vehicles. When the landowner encountered local villagers rebuilding the wall with the support of APMG it sparked an incident in which villagers were later hospitalised



Father Jose Pilar, adviser to APMG, and victim of criminalisation

for exposure to tear gas. Subsequently, the landowner publicly accused, through the

press, APMG members of illegally detaining his convoy, and announced his intention to initiate judicial proceedings.

When, after long delays, the case was finally heard on 13 April 2011, the judge ruled that the case brought against members of APMG was entirely lacking a legal basis, and criticised the public prosecutor for not having carried out the necessary prior investigation. This was not the first time criminal charges against APMG had been thrown out due to complete lack of evidence.

PBI has accompanied the Association since August 2008, during which time they have also suffered death threats and illegal surveillance related to their work defending the rights of local communities.

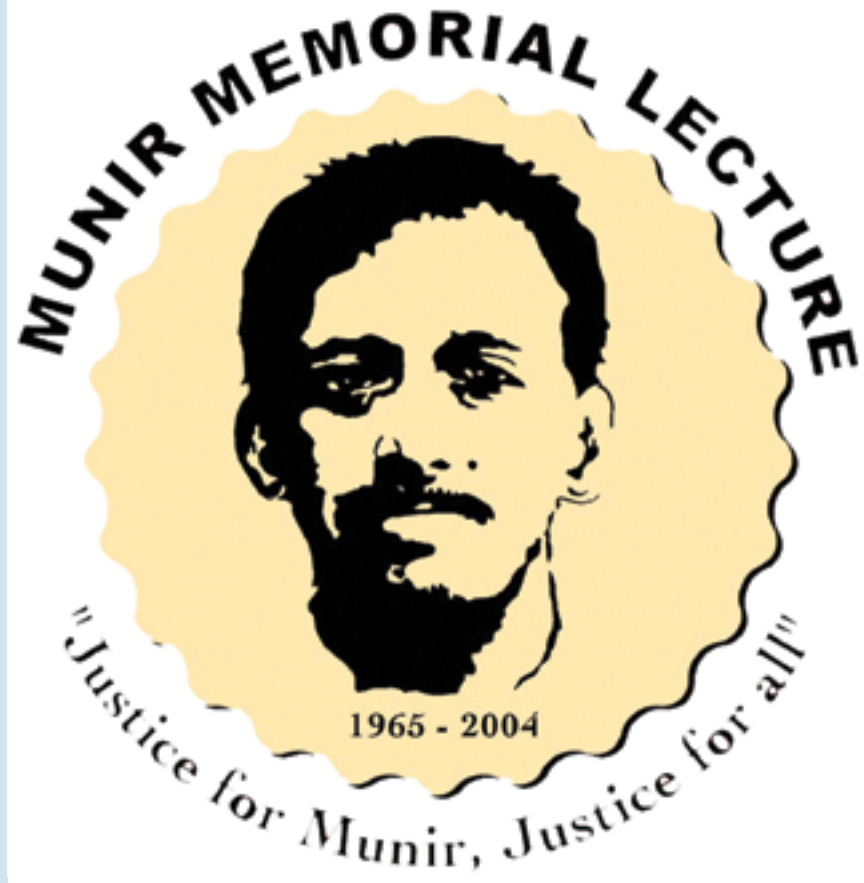
(ii) Weakness of the judicial system

False charges against HRDs are often accompanied by apparent administrative inefficiencies and failure to uphold due process. Effects of a weak judicial system can permeate all stages of criminal proceedings, and can include: arrest without warrant; forced confessions; failure to inform defendants of charges brought against them; mistreatment during arrest and detention; ineffective witness protection programs which lead to witness intimidation, statement retractions, and unreliable testimony; failure to admit key evidence; presence of pressure groups in courtrooms; lack of independence of judiciary. Inevitably, flaws in the judicial system fall in favour of those seeking to silence the activities of the HRD under suspicion. PBI has observed numerous cases of HRDs who have been obliged to spend years in prison due to administrative inefficiency and violation of due process, only for the charges to ultimately be thrown out. In such instances, it is almost unheard of for compensation to be granted to the victim.

They use the law to do what they can't do with their guns

Alfredo Molano, The Dispossessed

¹⁰ 'Defamation Case Against Human Rights Defender', open letter from NGOs, in Pacific Scoop, 16th November 2009. <http://www.scoop.co.nz/stories/WO0911/S00517.htm>



CASE STUDY

Murder of Munir bin Thalib, Indonesia

Munir bin Thalib, a member of the Commission for the Disappeared and Victims of Violence (KontraS) and The Indonesian Human Rights Monitor (Imparsial), was murdered in September 2004 by arsenic poisoning. Investigations were carried out into his murder, and a trial was held against a man called Polycarpus, who was linked to the National Intelligence Agency (BIN). During the trial, Munir's wife Suciwati received death threats and was subjected to attempts of assault, and received PBI accompaniment as a result. Polycarpus was found guilty. Subsequently, a trial was held against

the then deputy head of BIN, Muchdi Purwopranjono, for masterminding Munir's murder. During this trial many of the witnesses retracted their statements, and militant groups supporting Muchdi appeared in court trying to influence and intimidate the courtroom. The Action Committee in Solidarity with Munir (KASUM) concluded that "the Indonesian justice system is not yet able to effectively prosecute senior officials with powerful connections, due to weak prosecution capacity and witness intimidation."¹⁰ Muchdi was acquitted in December 2008, and then brought a criminalisation campaign against one of the witnesses who testified against him, accusing him of 'criminal defamation'.

(iii) Misuse of law and legal instruments

Spurious investigations or baseless prosecutions are not the only way to criminalise defenders: Existing laws can be misinterpreted in a way contrary to the legislation's original intent, in order to target HRDs, where the actions of those HRDs conflict with government policy or strategy. Another nuanced strategy used to impair the functions of HRDs is to call upon what might be termed as 'secondary' law, or the use of various statutory restrictions and powers. Secondary law could include invoking prior notice requirements for public assemblies, or demanding conformity with complex administrative requirements. These strategies effectively 'criminalise' HRDs, as they are incapable of complying with the administrative or regulatory demands placed upon them. The human rights organisation is left with a choice between not carrying out its role at all, or carrying out its role and facing criminalisation, usually on 'public order' or 'public safety' grounds.

Such practices are incompatible with the American and European conventions on Human Rights, which require states to take positive steps to guarantee the rights of assembly and protest:

Aldemir v. Turkey

'The Court notes that States must not only safeguard freedom of peaceful assembly, but must also refrain from applying unreasonable indirect restrictions upon that right. Finally, it considers that, although the essential object of Article 11 is to protect the individual against arbitrary interference by public authorities in the exercise of the rights protected, there may also be positive obligations to secure their effective enjoyment... regulations should not represent a hidden obstacle to the freedom of peaceful assembly as protected by the Convention.'

It is not therefore enough for countries to sign up to human rights treaties and conventions; there must be ongoing compliance and implementation with both the positive and negative obligations of these mechanisms.

CASE STUDY: A step-by-step guide to criminalisation – Guatemala

Extracts from an Interview with Carmela Curup, Association of Mayan Lawyers, Guatemala

“

1

The HRD becomes a visible public figure through accompanying victims and unionised workers in marches, protests, and criminal trials, and is singled out by commercial interests as a key player.

2

Business enterprises detail the movements of the HRD: where they work, where they live, the whereabouts of their family, their needs.

3

Threatening phone calls begin, warning the HRD to distance him/herself from the social movement or face the consequences.

4

Anonymous flyers are distributed, intended to smear the defender provoking mistrust from within the social movement.

5

Persecution and surveillance is carried out by members of the state security forces and by unidentified persons in civilian dress.

6

Formal complaints are lodged against the HRD, often accusing them of terrorist activities. Widely reported in the press, television, and radio, negative publicity causes reputational damage and can even lead to dismissal if the HRD works in a public position.

7

The HRD is summoned by the public prosecutor's office.

8

Commercial interests buy media space and install sympathetic columnists to write incriminating articles against the HRD.

9

The HRD is charged and arrested; the detention is widely publicised, totally destroying the reputation and honour of the defender.

”

(iv) Stigmatisation

Allegations against HRDs in public statements by government officials, business enterprises, and 'independent' commentators in the media undermine HRDs' work and delegitimise human rights work in general. This stigmatisation spreads throughout society, resulting in a generalised suspicion of HRDs and NGOs. In Indonesia, for example, the UN Special Rapporteur believes the greatest human rights challenge is "giving legitimacy" to HRDs.¹¹ HRDs may censor themselves and their work to prevent harassment. Stigmatisation can mark HRDs as targets for illegal violence and threats on the one hand, and as targets for criminal persecution on the other, in situations where charges are initiated on the basis of claims made in the media or by politicians.¹² The stigmatisation that results from detentions and specious charges or prosecutions tends to continue long after the HRDs are released, as their names are rarely cleared.

CASE STUDY

Stigmatisation by public officials in Colombia

Regular public comments by government officials, including Álvaro Uribe Vélez, Colombian president from 2002 to 2010, have repeatedly branded HRDs as 'terrorist sympathisers'. The UN Special on the situation of HRDs witnessed video footage of Uribe making public statements "in which human rights defenders were portrayed as colluding with terrorists or guerrilla members."¹¹ In addition to stigmatising comments by high ranking officials, the national intelligence agency, DAS, which answers directly to the presidency, was found to be gathering illegal intelligence to be used against HRDs. The now-disbanded Special Strategic Intelligence Group (G3) of the DAS was, between 2003 and 2005, involved in "phone wiretapping, interception and recording of e-mails of trade unions,

national and international NGOs; phone wiretapping and surveillance of movements of prominent human rights defenders and their families; and surveillance of the movements of Susana Villarán, the Special Rapporteur for Colombia of the Inter-American Commission on Human Rights during her visit to the country in 2005."¹² The International Federation for Human Rights (FIDH) has denounced this illegal surveillance as "a program to politically and psychologically exterminate all individuals or institutions that adversely affect the government's interests". In spite of a welcome commitment made by Uribe's successor, Juan Manuel Santos, to end the culture of negative statements about HRDs, in late 2011, the president himself publicly accused a leading human rights law collective of being "corrupt opportunists," seeking to co-opt victims in order to profit from the state.



CAJAR Lawyers Collective continue to be the target of stigmatisation

¹¹ Report of UN Special Rapporteur on the Situation of Human Rights Defenders: Mission to Colombia. 4th March 2010, p.61. A/HRC/13/22/Add.3

¹² Ibid, p.65.

Which HRDs are vulnerable and why?

(i) Those who speak out against abuses by state and non-state actors

Individual HRDs or organisations who speak out against impunity regarding gross human rights violations, such as massacres,

forced disappearances, forced displacement, human trafficking, torture, rape and war crimes, are frequently subjected to suppression by criminalisation. Perpetrators know that obliging HRDs to divert time

and energy to the formalities of their legal defence will take attention away from human rights violations and the rights of vulnerable groups seeking justice and remedy.

CASE STUDY

Jitman Basnet, Nepal

Jitman Basnet is a Nepali lawyer, journalist and human rights defender. He is one of the founders of the Lawyers' Forum for Human Rights (LAFHUR), which provides free legal assistance for victims of human rights violations across Nepal. In February 2004 he was detained by the army after publishing an article denouncing a massacre committed during a ceasefire in July 2003, and another article satirising the King of Nepal, highlighting the disparity between his private riches and the country's poor. These articles were enough 'evidence' to label him a Maoist sympathiser. Jitman was held in secret



Jitman Basnet protesting for victims in Nepal

army detention for 258 days, where he was subjected to beatings and torture and witnessed atrocities committed against other prisoners. The army denied his arrest, but in October 2004, as a result of continuous pressure from Nepali civil society and from the international community, Jitman was released. As well as receiving protective accompaniment from PBI, he has also been supported by the International Federation for Human Rights, the World Organisation Against Torture, Amnesty International, Protection International, the Asian Human Rights Commission, and Lawyers' Rights Watch Canada. In the years following his release, Jitman has continued to receive threats. He currently lives in the USA.

CASE STUDY

David Ravelo, Colombia

David Ravelo Crespo is the Secretary of the Board of Directors of the Regional Corporation for the Defence of Human Rights (CREDHOS), and also a member of the Movement of Victims of State Crimes (MOVICE). David has been a vocal critic of violations committed by paramilitaries, and the impunity problems surrounding the controversial Justice and Peace Law, a law passed in 2005 that offered demobilised paramilitaries heavily reduced sentences in return for confessing their crimes. Since 2000, David Ravelo and other members of CREDHOS have been granted precautionary security measures by the Inter-American Commission on Human Rights because of persecution for their human rights defence work, and PBI has accompanied CREDHOS since 1994. In spite of this, David has been subjected to a campaign of criminalisation, and imprisoned for a murder he did not commit.



David Ravelo, Colombian human rights defender imprisoned since September 2010

In September 2010, he was arrested and charged with conspiracy to commit a crime and aggravated homicide. These charges are based on testimonies of paramilitaries given within the framework provided by the Justice and Peace Law, despite the Colombian Constitutional Court ruling that such testimonies cannot be used as evidence for initiating judicial proceedings. David

has willingly presented himself to a full investigation, and his lawyers have provided evidence as to the falsity of the charges against him, including the allegation that he was a member of the FARC guerrilla group. They contend that this prosecution is part of a sustained attempt to stigmatise David and silence his criticism of the paramilitaries and their collusion with the authorities.

(ii) Those who campaign for economic, cultural and social rights

HRDs and organisations that campaign for labour, land, and environmental rights are increasingly targeted with criminalisation when state and economic actors perceive their activities as a hindrance to the implementation of development policies. Due to the extremely lucrative outcomes of large-scale extractive, agribusiness, and infrastructure projects, the stakes become high for HRDs speaking out against abuses and seeking to defend the rights of indigenous and agricultural communities. Local authorities, landowners, and businesses may regard economic, cultural and social (ECS) rights defenders as unwelcome obstacles, and seek to neutralise their activities through smear campaigns and criminal processes. According to Guatemalan lawyer Carmela Curup, HRDs are stigmatised and criminalised “under a pretext that civil society groups are against development; that they oppose dialogue and mediation processes; that they are criminals and terrorists. They also accuse HRDs of defending criminals and delinquents.”

CASE STUDY

The Organisation of the Indigenous Me’phaa People (OPIM), Mexico

OPIM campaigns for the rights of indigenous communities and against impunity surrounding human rights violations committed by the Mexican Army. On 17 April 2008, five members of OPIM were arrested in connection with the 2007 murder of Alejandro Feliciano García, an army informant. The



Members of OPIM with Frank La Rue, UN Special Rapporteur on Freedom of Expression, July 2010

four accused of aiding and abetting the murder were released in March 2009, as a result of numerous inconsistencies in the case, including doubtful forensic evidence and unreliable witness testimony. However, OPIM member Raúl Hernandez, remained in jail on the grounds that two witnesses said they had seen him shoot the victim. After a drawn out process, Raúl’s lawyers were finally able to prove the falsity of the witness statements and he was declared innocent and released on 27 August 2010. Following Raúl’s acquittal, PBI, together with Amnesty International, are calling for an investigation into his unfounded prosecution and for him to be fully compensated for his unfair imprisonment. Members of OPIM continue to receive threats and harassment for their legitimate work against impunity and in defence of indigenous rights.

CASE STUDY

People of San Juan Unite, Guatemala

People of San Juan Unite (Qamoló Kí Aj Sanjuani) is an indigenous organisation comprising several communities in the municipality of San Juan Sacatepéquez who work to conserve the natural resources of their land and defend the rights of indigenous people, in particular their right to be consulted on any major development projects. In 2006, Guatemalan company Cementos Progreso opened the San Juan Project, which included building a cement factory and digging a quarry in the municipality. The communities affected by the project opposed it and demanded their right to be consulted in accordance with Guatemala’s ratification of the International Labour Organisation’s Convention 169 on the Rights of Indigenous Peoples. Consequently, members of Qamoló



Members of San Juan Sacatepéquez community meet James Anaya, the UN Special Rapporteur on the rights of Indigenous Peoples, 2010

Ki Aj Sanjuani have been subjected to intimidations and aggressions, and a campaign of criminalisation. In June 2008, 43 villagers from the community of Las Trojes were detained and charged with illegal

assembly and protest, a charge that was enabled by a state of prevention declaration in the territory. The Human Rights Defenders Protection Unit (UDEFEQUA) monitors violence against HRDs across Guatemala, and concluded that this imposition of martial law “constitutes a clear demonstration of a state policy whose aim is to discard the process of dialogue in favour of legal persecution through the abuse of authority”.

(iii) Those who campaign against inequality and discrimination

HRDs and organisations that campaign for the rights of indigenous populations, of Lesbian, Gay, Bisexual and Transgender (LGBT) communities, for women's rights, and other marginalised peoples are also subjected to criminalisation.

Their work often challenges fundamental social attitudes and customs; especially in deeply conservative, religious, or patriarchal societies. It may therefore be in the interests of those in authority who seek to maintain the status quo to promote such HRDs and the values they espouse as illegitimate and criminal.



Jorge Lopez in Guatemala City, 2008

Emma Marshall

CASE STUDY

Jorge López, Guatemala

Jorge López is the director of OASIS, which works with HIV/AIDS education and prevention and promotes the rights of the LGBT community in Guatemala. Often rejected from the family home because of their sexual identity, the members of Guatemala's LGBT communities suffer from marginalisation and lack of access to

education, work and health care. OASIS has suffered threats and harassment for years because of its work. PBI has accompanied it since January 2006. The Inter-American Commission on Human Rights granted Jorge precautionary measures in February 2006. In 2008, Jorge was arrested and falsely charged with the attempted murder of a sex worker. OASIS interprets this charge as a continuation of the persecution that Jorge has suffered as a defender of LGBT rights. During

the proceedings PBI emphasised the European Union Guidelines for the protection of human rights defenders in its advocacy, to ensure the participation of EU embassies at the two court hearings. These measures helped ensure that due process was observed, and after eight months of house arrest, the case was ruled inadmissible on the basis of insufficient evidence. Sadly, Jorge's health, reputation and capacity for work have been severely affected.

Recommendations

Recommendations to all European Union governments in accordance with the EU Guidelines on the Protection HRDs:

- Recognise the trend of criminalisation of HRDs as an urgent issue to address, as one of the biggest threats to the security and the work of HRDs, and incorporate this as a priority focus into human rights advocacy strategy.
- Facilitate ongoing communication at the international level between HRDs, diplomats, NGOs and governments in order to strengthen and expand existing support networks. As suggested in the EU Guidelines, this may be achieved by coordinating closely with HRDs and sharing contacts and information, organising regular meetings to discuss strategic developments, challenges and priorities, and providing visible recognition for HRDs and their work through the media and through invitations to events.
- Monitor more closely the trends of criminalisation in countries of concern. This could be done by selecting and adopting emblematic cases, in consultation with national and international NGOs, and making these cases visible by “visiting human rights defenders in custody or under house arrest and attending their trials as observers;” as stipulated by the EU Guidelines on HRDs, as well as monitoring due process, making public statements, and making frequent representations to states where there is cause for concern.
- In particular, closely monitor the way in which both primary and secondary legislative instruments of a potentially broad scope are exploited by governments and their apparatus to criminalise behaviour that, under a purposive reading of the law, they were never meant to encapsulate. This trend may require particular scrutiny and sensitivity, as its subtlety and apparent constitutionality make it especially complex.
- Press states to ensure, in line with their international obligations: coherent monitoring of ongoing investigations and trials against HRDs, in order to close with maximum swiftness those which are found to be spurious or lacking legal basis; respect for due process and an adequate defence; access to justice for the HRD, including independent legal advice; that HRDs are clearly

and promptly informed of arrest warrants or cases opened against them.

- Identify and support current key recommendations relating to the criminalisation of HRDs. Particularly important are recommendations from the specific country visits of (i) the UN Special Rapporteur on the situation of human rights defenders; (ii) the UN Special Rapporteur on the independence of judges and lawyers; and (iii) the UN Working Group on arbitrary detention; as well as other UN mechanisms, particularly the Universal Periodic Review and the Human Rights Committee. Urge host countries to implement these recommendations by incorporating them into their national legislation and institutions.
- Take steps to combat the stigmatisation of HRDs by public officials: (i) condemn public statements made by public officials that negatively affect the image and reputation of HRDs and reiterate the damaging effect this has; and (ii) do positive awareness work and encourage governments to do the same. In specific cases where HRDs are unjustly targeted, encourage governments and media bodies to take affirmative action to clear their name, support their work, and restore their reputation and legitimacy.
- Urge implementation into national legislation and institutions of UN mechanisms relating to the protection of economic, cultural and social rights, as having these guarantees will make HRDs working for these rights less vulnerable to criminalisation. For example, monitor compliance in countries that have ratified the bill of rights, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the ILO Convention 169.
- Afford special attention to groups marginalised due to their identity (as women, as LGBT, and ethnic or indigenous groups) who are at risk. These groups are particularly vulnerable to all types of persecution, including criminalisation. Urge governments to guarantee their rights, which will protect them from such persecution. This can be done by public campaigns to counter popular prejudice, embassy events, profile raising, and intervening when certain groups are shown to be unfairly or disproportionately targeted for criminalisation due to their identity.

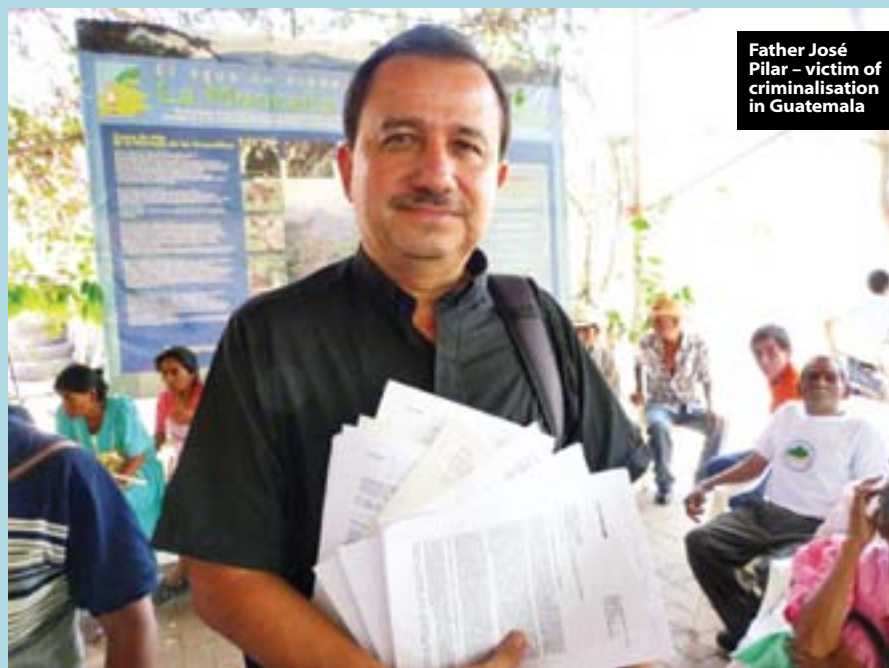
- Remind states that the UDHR enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- Take steps to ensure that the UN Basic Principles on the role of the Judiciary are taken into account and respected by governments within the framework of their national legislation and practice and brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general and in particular to safeguard the independence of the judiciary.

Specific recommendation to the UK Government in accordance with the UN Framework on Business and Human Rights

- Fully implement the Guiding Principles of the UN Framework on Business and Human Rights. Implementation should pay special attention to the creation of mechanisms at a national level such as a Business and Human Rights Commission to ensure that companies based or registered in the UK comply with agreed environmental and human rights standards, and that victims are guaranteed accessible channels of redress.
- Provide effective guidance to UK companies to ensure that they or their junior partners desist from making stigmatising comments against local HRDs. In cases where this occurs, the Government should advise companies to take immediate steps to rectify the situation, including making public statements that emphasise the important role played by HRDs in upholding the rights of local communities.

PBI's vision

PBI envisions a world in which people address conflicts nonviolently, where human rights are universally upheld and social justice and intercultural respect have become a reality.



About PBI

PBI has been working to support human rights and promote nonviolence for 31 years. We send teams of international observers to areas of conflict and repression to provide protective accompaniment to local human rights defenders whose lives and work are under threat. We currently have 68 international volunteers working in field projects in Mexico, Colombia, Nepal, and Guatemala.

Our work is based on principles of non-partisanship and non-interference, in the belief that lasting transformation of violent conflict cannot be imposed from outside but must be based on the capacity of local people to build a genuine peace. We act only at the express request of local human rights organisations and it is they who determine where our assistance is most needed. PBI UK provides support to field projects in the form of advocacy, outreach, publicity, fundraising, and recruitment and training of volunteers.



PBI UK office

Peace Brigades International (PBI) UK Section
1b Waterlow Road, London N19 5NJ
Tel / Fax 020 7281 5370
email susibascon@peacebrigades.org.uk
web www.peacebrigades.org.uk
facebook.com/pbiuk

Charity number 1101016