



ARTICLE 19

A Dangerous Shade of Green

**Threats to Environmental Human
Rights Defenders and Journalists in Europe**

2014

Image front: Police clash with climate activists as they take direct action against the coal fired power station at Ratcliffe on Soar
Tom Pilsten - Panos

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About ARTICLE 19

ARTICLE 19 is a human rights charity established in 1987. Its mission is to promote, protect, develop and fulfill freedom of expression and the free flow of information and ideas in order to strengthen global social justice and empower people to make autonomous choices. Its global headquarters is in London, UK and it has regional offices in Bangladesh, Brazil, Kenya, Mexico, Myanmar, Senegal and Tunisia.

ARTICLE 19 believes that freedom of expression, including freedom of the press and access to information, is a fundamental human right, central to individual freedoms and human rights. It also believes that freedom of expression is an empowerment or cornerstone right, in that it enables other rights to be protected and exercised. Freedom of expression allows people to demand the right to health, to a clean environment and to the effective implementation of strategies to reduce poverty. This right increases not only the knowledge base and level of participation within society but can also secure external checks on state accountability, and thus prevent corruption which thrives on secrecy and closed environments.

www.article19.org

About Vermont Law School

Vermont Law School, a private, independent institution, has the top-ranked environmental law program and one of the top-ranked clinical training programs in the United States. VLS offers a Juris Doctor (JD) curriculum that emphasises public service; two Master's degrees (Master of Environmental Law and Policy and Master of Energy Regulation and Law); and three post-JD degrees — LLM in American Legal Studies (for foreign-trained lawyers), LLM in Energy Law, and LLM in Environmental Law. The school features innovative experiential programs and is home to the Environmental Law Center, the South Royalton Legal Clinic, the Environmental and Natural Resources Law Clinic, and the Center for Applied Human Rights.

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Executive summary

Environmental activists and journalists across Europe and Central Asia face severe challenges in their efforts to promote both the access and dissemination of environmental information and public discussion of environmental issues. Without information and discussion, society is generally unable to achieve its right to a healthy environment: people remain unaware of the environmental threats that face them and are disempowered by not being equipped to participate fully in the development of policies, which includes being able to express independent opinions.

In many cases underlying problems are found in countries with weak democratic mechanisms. Yet threats are not confined to countries with a tradition of authoritarianism: even in long-standing democracies, including the United Kingdom and the Netherlands, unlawful techniques are used against those who speak out about environmental hazards. The challenges that Environmental Human Rights Defenders (EHRDs) face are varied, ranging from physical attacks to unlawful surveillance. Often multiple forms of harassment are used against the same victims, escalating when softer methods are unsuccessful: thus, legal harassment and threats can lead to deadly attacks; surveillance can lead to provocation and imprisonment and limits to protests; civil society organisations are shut down after they refuse to accept unreasonable limits to their funding or activities. In order to withhold information or prevent its further dissemination, various measures, whether legal or illegal, are used against EHRDs, severely restricting their scope of action and restricting their fundamental freedoms.

EHRDs who engage in peaceful protests are protected by a plethora of provisions under international law, particularly with regard to their right to freedom of expression and freedom of assembly. Moreover, like all people, EHRDs are guaranteed the right to life, the right to physical integrity, the right to liberty and fair trial, and the right to privacy. The right to freedom of association also enables individuals to form groups and organisations to carry out peaceful activities, including protests that might disseminate opinions

and information which criticise private and state bodies. Obstacles to the exercise of these rights prevent the disclosure of information, including about extremely serious environmental and health hazards. In several of the instances described in this report, EHRDs are directly affected by environmental degradation, and frequently live near sites where environmentally unsound projects are implemented. Lack of information encourages a climate in which companies can act with impunity, causing environmental damage and sacrificing human health for profit. The vital importance of protecting these people and organisations is recognised in the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, in which Article 3(8) obliges ratifying states to protect EHRDs.

The media carries out a special role in the dissemination of information in the public interest (including on environmental matters). The report reveals that, despite the existing guarantees of protection, EHRDs who speak out on environmental concerns remain vulnerable to harassment, threats, criminal prosecution, physical attacks, and, in the most extreme cases, loss of life. The right to access environmental information and the right to freedom of expression are closely linked to a range of other rights, including the rights to life, liberty, fair trial and privacy. Various forms of violations of these rights ultimately contribute to information in the public interest being withheld, and to debate on controversial matters being stifled.



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Introduction

Across Europe and Central Asia, civil society groups, local communities, activists and journalists are being severely hindered in their ability to speak out about environmental concerns. Despite clear provisions in international and European law protecting Environmental Human Rights Defenders (EHRDs) as they exercise their rights, this particular group of human rights defenders faces serious risks when reporting on or protesting against environmentally harmful activities carried out by governmental bodies and the private sector. These risks can include: physical attacks; intimidation and harassment; restrictions to the establishment and activities of NGOs; abuse of legislation which is used to harass and limit the right of freedom of assembly and association; abuse of anti-terrorism legislation; and the use of undercover agents by the police to infiltrate and undermine environmental groups. These challenges drastically undermine the enjoyment of fundamental human rights, including freedom of expression, freedom of association and assembly, the right to privacy and - in the most extreme cases - the right to life.

This report provides an overview of some of these challenges. While the severity of forms of harassment may vary from country to country,

and be contingent upon changing political circumstances, what EHRDs share is an absence of effective guarantees protecting them, and a lack of freedom to reveal and denounce environmental hazards. This is particularly the case when EHRDs touch upon subjects that are politically sensitive and which involve the interests of governments and powerful private companies.

This report does not claim to be fully comprehensive, given the wide scope of its subject matter and the vast territory it covers. However, it aims to highlight both the risks faced by EHRDs and the need to ensure enhanced guarantees so that they can carry out their activities without fear of harm or retaliation. This need goes further than the protection of EHRDs per se: it is essential to satisfy the public's right to know, particularly when environmental hazards may have a direct impact on individuals and entire communities. This report attempts to fill a gap by focusing on problems that EHRDs face in Europe and Central Asia, including certain countries with high levels of development which are usually associated with the rule of law. As the report shows, serious concerns can arise even in the most developed nations with long democratic traditions.

A woman holds a sign in protest of the proposed fracking trials in Balcombe watched over by police officers. The sign reads: 'No fracking, here or anywhere. We must utilise wind, sun and sea.' The protesters at Balcombe in West Sussex are worried about the environmental effects of hydraulic fracturing (or fracking) which involves injecting a mixture of water, chemicals and sand into shale rock in order to extract oil and gas trapped below ground.
Andrew Testa - Panos

International framework

The 1999 *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (hereinafter referred to as the Declaration on HRDs)¹ acknowledges in its preamble ‘the valuable work of individuals, groups and associations in contributing to [...] the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals’. In the light of this, everyone must be guaranteed the right ‘to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels’ (Article 1), including by: assembling peacefully; and forming, participating in the work of, and communicating with, NGOs (Article 5).

Correspondingly, the state must adopt ‘legislative, administrative and other steps’ that may be required to guarantee the enjoyment of the rights contained in the Declaration on HRDs (Article 2(2)). The state has an obligation to ensure that effective remedies are available to people whose rights have been violated, and to conduct prompt and impartial investigations into such instances (Article 9). The need for protection is reiterated in Article 12(2):

The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

In relation to environmental information, the Convention on *Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (the Aarhus Convention)² requires ratifying states to ensure that EHRDs receive protection in the exercise of their rights under the Convention. Article 3(8) states:

Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement. This provision shall not affect the powers of national courts to award reasonable costs in judicial proceedings.

Moreover, there is a web of protections within international and European law designed to ensure that EHRDs and journalists are not harassed or attacked for their work. Among these is the Council of Europe’s *Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors*.³ The right to freedom of expression, and to receive and impart information without interference, is protected in Article 10 of the European Convention on Human Rights (ECHR) and in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR). It is widely recognised that the media fulfills the crucial role of public watchdog, disseminating information in the public interest,⁴ exposing instances of corruption and the abuse of power, as well as other crimes perpetrated by state and non-state actors alike. While this role highlights the great social significance of the activities carried out by the media and civil society, it also poses threats

Left: Protest at Royal Courts of Justice in London against police spies
Guy Corbishley - AP

**DEFEND
THE RIGHT
TO PROTEST**



to the safety of those carrying out these activities. Attacks on people wishing to exercise their right to free expression not only affect the safety of these individuals but also result in a restricted flow of information, with an adverse impact on public debate.⁵ In line with the jurisprudence of the European Court of Human Rights, states have an obligation to create a favourable environment for public debate;⁶ protection should be guaranteed not only to those who would traditionally be seen as journalists, but also to all those involved in disseminating information through traditional and new media.⁷

This report shows that the implementation of those legal obligations to protect EHRDs in Europe and Central Asia is far from effective, and calls for the institution of more robust measures to shield EHRDs from risk of harm. It should also be noted that, in many cases, problems run far deeper than the insufficient guarantees of protection, and are in fact linked to weak democratic institutions. Moreover, an unfavourable political environment can place Human Rights Defenders (HRDs) and non-governmental organisations (NGOs) in a position of heightened vulnerability. The most severe incidents described in this report did not take place in a vacuum, but in a general environment of disrespect for peaceful activism and the right to free expression.

Meanwhile, numerous protests (carrying risks of violence and arrest) would not take place if more opportunities existed to exercise the rights enshrined in the Aarhus Convention, particularly greater participation in decision-making by fully including stakeholders in the debate of policy-making on environmental issues.⁸ This would involve public discussion about decision-making relating to environmental matters, and the authorities actively disseminating environmental information prior to such events, while also soliciting feedback from stakeholders. The involvement of communities and civil society in decision-making enables the authorities to better accommodate society's various interest groups, in order to limit the possible waste of public funds, and/or the need for policy changes, or the payment of compensation when policies fail. In turn, effective mechanisms protecting EHRDs can stimulate co-operation between civil society and the authorities, reducing instances of direct confrontation.

A group at risk

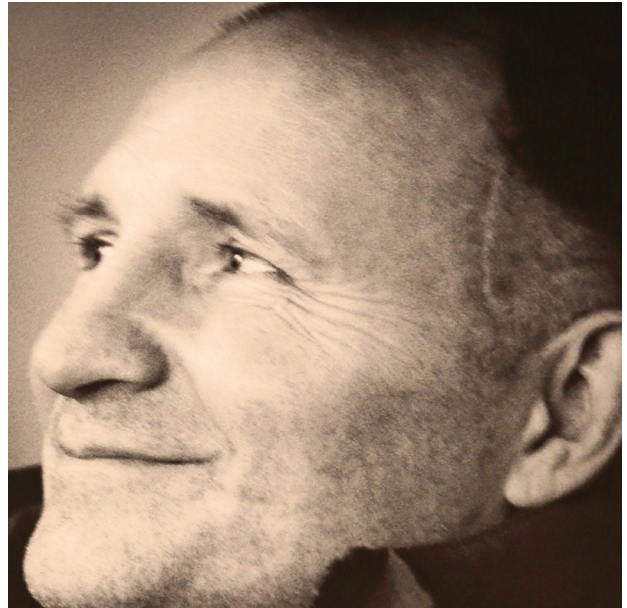
In many countries, fruitful co-operation between EHRDs and governments remains rare; EHRDs therefore resort to protests and risk retaliation by both state and non-state actors. In a 2011 report, the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, devoted an entire section to “defenders working on land and environmental issues”, who are identified as “defenders at risk”.⁹ Between December 2006 and May 2011, the Special Rapporteur received 106 communications¹⁰ concerning reported violations of the rights of this category of HRDs. Numerous communications related to the activities of extractive industries, construction and development projects, including land disputes affecting indigenous peoples.¹¹ Some communications indicated violations perpetrated by private corporations (including multinational corporations), who were allegedly responsible for killings, death threats, attacks on and intimidation of people who spoke out on the activities of these companies.¹² Journalists working on land and environment issues were also found to be a group ‘at particular risk’.¹³

Many of the HRDs involved in the protection of land rights and natural resources are from indigenous communities:¹⁴ they attempt to defend lands on which entire communities depend for their livelihood, and to which they often have a right of access under domestic and international legislation for the protection of indigenous peoples.¹⁵ Often, the people do not even consider themselves to be HRDs, but rather simply people attempting to help themselves and their communities. Most of the communications

received by the Special Rapporteur on this subject were from the Americas, Asia and Africa.¹⁶ However, land rights also affect indigenous peoples in the Russian Federation. For example, the Russian oil company Lukoil has been involved in the exploration, extraction and transport of oil in the territories traditionally inhabited by Russia’s indigenous peoples. In some cases oil rigs were built not only without consulting the affected communities, but also without their knowledge.¹⁷

III. The Right to Life and Physical Integrity

Across Europe and Central Asia, attacks on the physical integrity of Environmental Human Rights Defenders are a serious problem. These range from threats to physical attacks on them and their families. In the most severe cases, attacks can lead to violations of the right to life, a right which is protected under Article 2 of the *European Convention on Human Rights* (ECHR) and Article 6 of the UN *International Covenant on Civil and Political Rights* (ICCPR). Non-lethal attacks can constitute violations of the right to protection from inhuman and degrading treatment or punishment (Article 3 of the ECHR and Article 7 of the ICCPR) and protection of family life (Article 17 of the ICCPR and Article 8 of the ECHR). Even when such violations are perpetrated by non-state actors, governments still have a responsibility to guarantee everyone protection, and to carry out thorough and impartial investigations. The Declaration on HRDs stresses that HRDs have a right to effective remedy if their rights are violated (Article 9).¹⁸ The Council of Europe (CoE) *Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors* further states that “[e]radicating impunity is a crucial obligation upon States”, and “[a]ll attacks on journalists and other media actors should be vigorously investigated in a timely fashion and the perpetrators prosecuted.”¹⁹



Top: Mikhail Beketov / Mikhail Metzel - AP
Bottom: Volodymyr Honcharenko / Artist: Liz Peterson

1. Killings

In the most severe cases, EHRDs have been killed in Europe simply for attempting to reveal, or for protesting against, environmental hazards. It is likely that many more instances have taken place in Europe and Central Asia in addition to these. However, such occurrences often go underreported, and data is difficult to corroborate. Moreover, as Global Witness notes in a recent report,²⁰ the death rate indicates the likelihood of a much greater level of non-lethal violence and intimidation: such deaths can be seen as the tip of the iceberg and it is reasonable to expect that many more cases of death threats, harassment and intimidation have taken place.

In **Ukraine**, Volodymyr Honcharenko, head of the Ukrainian NGO For the Rights of Citizens to Environmental Safety was attacked and beaten on 1 August 2012. He died in hospital a few days later.²¹ The attack came four days after Honcharenko publicly denounced the illegal transfer of 180 tons of contaminated, highly toxic metal waste through Kryvy Rih in July 2012. The Chairperson of the Meeting of the Parties to the Aarhus Convention wrote to the Minister of Ecology and Natural Resources of Ukraine in October 2012, to urge him to provide an update on the investigation in light of the ‘gravity of the allegations’.²² Despite this, the investigation into the case has stalled and there has been no progress at the time of writing.²³

In **Russia**, Mikhail Beketov, editor of the newspaper *Kimkinskaya Pravda*, died in April 2013 after a violent attack in 2008 left him brain damaged. Beketov had campaigned against the building of a Moscow-Saint Petersburg motorway through the Khimki forest, which is part of Moscow’s greenbelt. He had denounced the environmental damage that would be caused by the motorway, also highlighting corruption linked to the project and exposing the illegal felling of trees in what is a protected area. He was subjected to various forms of intimidation - including the burning of his car and libel charges – before being attacked by two men outside his house. They hit his hands and legs and fractured his skull with an iron bar. The attackers were never identified, and there have been accusations of intentional failure by the Russian authorities to bring the perpetrators to justice.²⁴



Police use water cannon and tear
gas against protestors in Istanbul
Thanassis Stavrakis - AP



2. Violent attacks

Over the past few years there have been numerous instances of violence against EHRDs who report on environmental matters. Beatings are often perpetrated by unidentified individuals and impunity is frequent, with the authorities failing to carry out prompt, impartial and thorough investigations into these cases. In some cases physical attacks occur at the hands of law enforcement officers or private security guards.

In **Serbia** in July 2012, activist members of Prijatelj Brodareva attending a public presentation on the impact assessment of a hydroelectric plant on the River Lim were beaten by security guards. A subsequent hearing in January 2013, held 300 km away from the affected community so as to avoid further clashes, was announced only a few days before the event. A number of individuals were prevented from attending, and public protests in front of the building were banned by the local authorities. The impact assessment was eventually published many months later.²⁵

In **Russia**, environmental activist Konstantin Fetisov was beaten with a baseball bat in November 2010. The attack left Fetisov in a coma for several days, and with a permanent speech impediment.²⁶ Like Beketov, Fedisov had campaigned against the construction of the Moscow-Saint Petersburg motorway through the Khimski forest.²⁷ Only two days after the attack on Fetisov, another critic of the motorway project, Oleg Kashin, from the newspaper Kommersant, was also beaten and severely injured by two unidentified individuals.²⁸ In yet another case, ten activists were beaten by security guards in Voronezh province. They had been protesting about a nickel mine, which they argued could severely damage the local Khopyor nature reserve, as well as causing heavy pollution in the region.²⁹

3. Threats and Intimidation

In some instances EHRDs were not attacked, but were threatened with possible harm to themselves and members of their families and subjected to various forms of harassment. Some of these violations were perpetrated by unidentified individuals, while others were carried out by law enforcement officers. It is particularly concerning that law enforcement officers, whose role is to protect citizens, themselves commit human rights violations, leading to a climate of fear where debate is stifled.

In **Bulgaria** in February 2007, the journalist Mariya Nikolaeva from the newspaper *Politika* was threatened by two unidentified men, who told her that she would be the victim of an acid attack if she did not stop reporting. The journalist had been covering the story of an illegal real estate development project in a national park, which allegedly involved local government.³⁰ The men made an implicit reference to the case of another journalist, Anna Zarkova, who had acid thrown at her in 1998 and lost an eye.

In **Montenegro** in April 2010, the director of the NGO Breznica, Milorad Mitrovic, reportedly received an envelope in the post containing a bullet and the message “last warning”. Mitrovic’s NGO had been campaigning to protect the environment in the region. Mitrovic had already been attacked numerous times during the preceding ten years.³¹

In 2009 in **Belarus**, environmental activists Nikolay Ulasevich and Ivan Kruk were the targets of a smear campaign after highlighting the potential risks of building of a nuclear power plant. Anonymous leaflets with their personal details, including their home addresses and phone numbers, were distributed inviting ‘gays, transvestites and members of other sexual minorities’ to picket against the building of the plant. People were also invited to take part in homosexual events held by the two activists, who were described in the leaflets as leaders of the (non-existent) ‘Gay Party’. There have been numerous instances of intimidation and attacks on members of the LGBT community in Belarus.³²

Ulasevich was reportedly detained on 5 March 2009, and his flat searched on 6 and 12 March written by local environmental activist Aleksandr Dzerkachou. As in the case of Ulasevich and Kruk, the ‘newspaper article’ aimed to discredit people campaigning against the building of the nuclear plant. It included references to Dzerkachou’s ‘friends’ (Kruk and Ulasevich) from the nonexistent ‘Gay Party’, and, significantly, to the receipt of funds from foreign sources, implied to be illicitly acquired. Following a complaint by the European ECO Forum to the Aarhus Compliance Committee, under Article 3.8 of the Convention, the Committee stated that these incidents and other instances of harassment mentioned in the communication would indeed amount to non-compliance of the Aarhus Convention by the

Belarusian government if proven true. However, the Committee refrained from stating that this was the case, as it did not have sufficient data at its disposal for a comprehensive assessment.³³

In a particularly disturbing case from **Russia** in February 2011, false allegations of child abuse were made against Yevgenia Chirikova, one of the leaders of Defenders of Khimki Forest³⁴. She received threats that her children (aged 4 and 9 at the time) could be taken away by the Child Protection Service. This allegedly followed reports by a neighbour that she mistreated her children; however, this person was never identified, and her neighbours denied reporting her to the authorities. A few weeks earlier, another activist campaigning about Khimki forest, Alla Chernysheva, was detained for several hours, on the grounds of planting a fake bomb at a demonstration. Her children were also detained and kept in a separate cell. It was reported that the police tried (unsuccessfully) to force Chernysheva to sign a false confession by threatening that her children would be taken away, and that she and Chirikova would be sent to prison.³⁵



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David Khakim being arrested for protesting
conviction of Evgeny Vitishko
David Goldman - AP

Case Study: A Gold Medal for Harassment - The Sochi Olympics

In the period before the 2014 Sochi Olympics, scientists warned of the repercussions of the construction that was carried out within the Sochi National Park and the building of new transport infrastructure, including a new stretch of railway and a new motorway. Construction caused a marked growth in pollution levels - particularly due to the very heavy truck traffic - and a far higher risk of landslides. For example, a landslide caused by the construction work damaged the houses of the village of Chereshnya, seriously affecting the living conditions of the residents.

Intimidation and repression intensified in Russia, seriously affecting activists and journalists who spoke out about the Olympics and their environmental impact. Environmentalists were detained, fined, searched and threatened, became targets of media smear campaigns, and were charged for trivial offences. Moreover, ordinary citizens who were directly affected by the Olympics and held minor protests were arrested, detained and fined. Among the issues they protested about were their forceful eviction (with limited compensation) from areas designated for the Olympics, and the building of a new gas power plant as part of the Olympics development.

In February 2014, Yevgeny Vitishko, a member of the organisation Environmental Watch for North Caucasus (EWNC) and one of the

scientists who denounced the environmental damage caused by the Olympics, was sent to prison for three years for allegedly damaging an illegally erected fence during a rally in 2012. Vitishko and his colleague Suren Gazaryan were sentenced to conditional sentences at the time, but in December 2013 Vitishko's sentence was converted following his alleged breach of the curfew that was one of the conditions of his probation. His detention started shortly before the Sochi Olympics.

There were reports of editors discouraging journalists from reporting on issues, such as the environmental protests, that could show the Olympics in a negative light. Other journalists found themselves facing legal challenges. In January 2011, Svetlana Kravchenko and the newspaper *Chernomorskaya Zdravnitsa* were sued for defamation by the Krasnodar Region Department for the Preparation of the 2014 Winter Olympics. The lawsuit related to the reporting of the eviction of people from the territories designated for the Olympics and the Olympics infrastructure, and the reporting of related instances of corruption. Although Kravchenko won her case in May 2011 (and the appeal trial that followed three months later), the case compromised her ability to carry out her work as a journalist. Kravchenko also complained of various other threats and forms of harassment; in December 2012, she was found guilty of physically assaulting a security guard working for a water company, a charge that was linked to her coverage of allegations of corruption by the same company.

IV. The Right to Fair Trial and to Liberty

Environmental Human Rights Defenders campaigning on environmental issues have been detained for speaking out about them. These cases raise concerns in relation to the right to liberty and security (Article 5 of the ECHR and Article 9 of the ICCPR) and sometimes the right to fair trial (Article 6 of the ECHR and Article 14 of the ICCPR). Many of the cases are dubious, appearing to be based on fabricated charges. In others, disproportionate penalties have been imposed for minor offences, or criminal charges have been levied against people for peaceful protests. In some extreme cases, EHRDs have been sentenced to long periods of detention and held in inhumane conditions.

In **Spain** in November 2013, the highest criminal court found four Spanish activists guilty of an “attack on authority” under Articles 550 and 551.1 Penal Code of Spain, for throwing three cream pies at Yolanda Barcina, the head of the regional government of Navarra, during a public hearing in October 2011. The Public Prosecutor asked the Court to award a sentence of six years to each of the activists. In November 2013, three men were sentenced to two-year jail sentences and the other to one year, along with a fine of €900 per person. The men had been protesting against the destruction of part of the Pyrenees forests as a result of the planned development of a high-speed train network.³⁶

In a high-profile case in **Russia** in September 2013, 30 Greenpeace activists on board the ship Arctic Sunrise who were protesting against oil drilling in the Arctic were arrested in Russian waters after armed officers stormed the ship. The protesters were initially charged with piracy,

a charge that was later changed to hooliganism, despite the fact that the protest had been peaceful.³⁷ The detained included Kieron Bryan, a freelance journalist who were covering the protests. The activists were finally released at the end of December 2013.³⁸ The month before their release, the International Tribunal for the Law of the Sea had ruled that the Russian government had to release the activists.³⁹

Greenpeace activists were also arrested in the **Netherlands** in May 2014, as they tried to prevent a Russian oil tanker from docking in Rotterdam. The tanker was carrying the first oil extracted from the oil rig in the Barents Sea.⁴⁰

In **Uzbekistan** in 2008, independent journalist Solidzhon Abdurakhmanov was detained and sentenced to ten years’ imprisonment for drug trafficking after drugs were allegedly found in his car in June 2008. Abdurakhmanov had published articles about the threat to public health of the Aral Sea ecological disaster (both the sea’s shrinking and the ‘heavy pollution’⁴¹). Abdurakhmanov denied the accusations against him, stating that the drugs were planted in his car. In 2012, the International Committee of the Red Cross (ICRC) was denied a meeting with Abdurakhmanov in the prison where he was being held: it is reported that another prisoner ‘replaced’ him, pretending to be him during the meeting with ICRC.⁴² In mid-2013 it was reported that Abdurakhmanov had been transferred to a prison hospital with serious health problems, but in December 2013 he returned to prison to serve the rest of his sentence. At the time of writing, he remained in prison.⁴³



Protests in Spain mocking politician Yolanda Barcina after 3 activists were jailed for hitting her with a pie.
Ekinklik Argazkiak - Creative Commons

In **Ireland** in 2005, five environmental protesters were detained for 94 days. They were protesting against the planned construction of a gas pipeline, running through the countryside close to the village of Rossport on Ireland's west coast. The construction was part of Shell's exploitation of the natural gas discovered in the region in 1996 (the Corrib Gas project); the hazards linked to the project included the carrying of high pressure raw gas through the pipeline.⁴⁴ A court order prevented the group opposing the project (Shell to Sea) from accessing the areas where the pipeline was planned, and the 'Rossa Five' were arrested for violating this court order.⁴⁵

In **Belarus** in October 2009, Russian scientist and journalist Andrey Ozharovskiy was arrested and detained. With other activists, he had attempted to present alternative views about the building of a nuclear power plant in Belarus, and he was a member of the team that compiled an analysis of the plant's environmental hazards.⁴⁶ When Ozharovskiy tried to attend a public hearing carrying copies of the analysis to contribute to the discussion, the security guard told him that the copies could not be brought in. Ozharovskiy threw the copies on the floor, and was subsequently arrested and detained for seven days.⁴⁷ In July 2012, Ozharovskiy was again detained when he and other environmentalists attempted to present the Russian Prime Minister Dmitry Medvedev, in Minsk to sign a contract for the building of a nuclear power plant, with a petition asking him not to sign the contract. The Belarussian organiser of the petition, Tatjana Novikova, was also arrested. The two environmentalists were convicted the same day, to 10 days and five days imprisonment for hooliganism respectively; at

the hearing, the police – the only witnesses – stated that the two had screamed and used foul language. Another colleague who tried to deliver the petition was also arrested, detained and fined heavily.⁴⁸

In **Turkmenistan** in October 2009, Andrei Zatoka, a member of the Council of the International Socio-Ecological Union, was sentenced to five years' imprisonment. He was detained after being attacked by a man at a market in Dashoguz. Zatoka reported the attack to the police but was instead arrested himself. A medical report was produced showing that the attacker had suffered injuries, but Zatoka was not examined. He was charged with the criminal offence of "intentional infliction of medium injuries" and swiftly sentenced to imprisonment without a proper investigation and in a trial marred with irregularities. Zatoka had already been subjected to a period of detention and various charges as a result of his work as an environmentalist.⁴⁹ In November 2009 it was reported that Zatoka was released, his prison sentence having been commuted to a fine. He was, however, stripped of his Turkmen citizenship and forced to leave the country for Russia.⁵⁰

Willie Corduff, one of the Rossport Five
Ekinklik Argazkiak - Creative Commons
Niall Carson - AP



V. Freedom of Expression and Access to Information

The right to freedom of expression enjoys wide protection under international law (Article 10 of the ECHR and Article 19 of the ICCPR). Although not absolute, any legitimate restriction to this right has to be weighed against the crucial importance of freedom of expression and the media within a democratic society, as the European Court of Human Rights has repeatedly stressed.⁵¹

This has also been emphasised in political and legal documents published by other international bodies. The Declaration of the CoE Committee of Ministers on the protection of journalism⁵² states:

A favourable environment for public debate requires States to refrain from judicial intimidation by restricting the right of individuals to disclose information of public interest through arbitrary or disproportionate application of the law, in particular the criminal law provisions relating to defamation, national security or terrorism.

In some countries, repressive legislation constitutes per se a menace for people wishing to reveal information in the public interest, or to criticise the government and powerful non-state actors. Draconian legislation can intimidate potential whistleblowers, and result in secrecy becoming the norm. Recent legal amendments in this sphere have often concerned the internet which, in countries where the traditional media has been heavily regulated, has provided alternative sources of information.

For example, in May 2013 **Azerbaijan** adopted amendments to its legislation to expand on the forms of expression to which criminal defamation and insult apply, in order to include the internet.⁵³ Similarly, in April 2014, **Russia** passed a law⁵⁴ providing for stricter internet regulations (known as the ‘Bloggers’ Law’). It requires websites or pages by bloggers receiving more than 3,000 visitors a day to register as media and to comply with a number of regulations, such as checking the “reliability” of the information disseminated.

1. Libel Threats and Injunctions

Environmentalists have been threatened with legal suits unless they refrain from disseminating information that could be damaging to specific financial and political interests. A number of cases of this kind have been reported in the **UK**. For example, in 2011, the law firm Carter-Ruck threatened to instigate legal proceedings when the Soil Association charity submitted objections as part of a public consultation about the establishment of an intensive pig farm in Derbyshire. As the company Midland Pig Producers (MPP) sought permission to develop the farm, the Soil Association raised concerns about the increased risk of disease from large-size farms, and concerns over animal welfare. The Soil Association was told by Carter-Ruck, acting on behalf of MPP, that its objections should be withdrawn, and that their further dissemination “would risk incurring considerable liability”.⁵⁵ Channel 4 was similarly threatened with a libel action before the broadcasting of the documentary *Pig Business*. The threat came from Smithfield Foods of America, the world’s largest pig producer, which was featured extensively in the film.⁵⁶ In 2010, *The Financial Times* pulled a paid advertisement from Amnesty International critical of Shell Oil’s environmental record in Nigeria over fears about libel.⁵⁷

In **Slovenia**, a cement factory filed for an injunction against an environmental activist, Bostjan Pihler from the well-known environmental NGO Eko Krog (Eco Circle). For many years, the activist had warned the public about the dangers of the pollutants released by the factory.

The company demanded that the activist be prohibited from giving statements about the factory that would breach its reputation and good name. The municipal court issued a temporary injunction valid for 30 days until the lawsuit was filed. However, the Court refused to oblige the activist to pay €10,000 for each violation, nor did it prohibit all activities imparting information that could be seen as violating the company’s reputation rights. Under the Civil Procedure Code, the company had to file a lawsuit claiming damages within 30 days, which it did not do, and the injunction was therefore set aside.

In some cases, all information about an incident has been kept away from the public. In the **UK** in September 2009, a super-injunction was issued to prevent *The Guardian* newspaper from publishing a report about the British oil trading firm Trafigura. The report (known as the Minton report) had been commissioned in 2006 by Trafigura, and covered the dumping of toxic waste in the Ivory Coast. The dumping had resulted in immediate and severe health problems in over 100,000 people, a medical emergency, and the death of 15 (and possibly more) people.⁵⁸ The news of the super-injunction spread through social media, leading to public denunciations (including by MPs) of this attempt to gag a newspaper to stop it reporting parliamentary proceedings. Meanwhile, the content of the Minton report became widely known: the report was published outside the UK, including on WikiLeaks. It was alleged that Trafigura used legal threats to deter journalists from reporting on the case not only in the UK but also in the Netherlands and Norway.⁵⁹



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IS NOT A CRIME

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"KEEP TELLING
THE WORLD
THE TRUTH
I'M A
JOURNALIST"
I WAS DOING
MY JOB
THAT IS ALL"
KIERON BRYAN

FREE FREE

Protest outside Russian Embassy in London to free journalist Kieron Bryan Ben Cawthra



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Workers remove toxic waste from a garbage dump
in Abidjan, Ivory CoastDavid Goldman
AP

2. Anti-terrorism Legislation

Anti-terrorism legislation is also emerging as a concern. In numerous instances there have been attempts to silence people speaking out on environmental issues on the grounds of anti-terrorism measures and national security.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association has expressed his concern on the overuse of terrorism and extremism legislation against people wishing to peacefully exercise these rights. For example, in the **UK** he raised the issue that the definition of “domestic extremism” employed by the UK’s Association of Chief Police Officers is excessively broad, and could encompass peaceful protesters.⁶⁰

Perceived threats to public order and security often lead to alarmist attitudes on the part of politicians, who sometimes liken environmentalists and other groups expressing viewpoints contradicting those of the establishment to ‘terrorists’. For example, in **Iceland** in 2011, Björn Bjarnason, the former Minister of Justice, likened groups that operate “in the service of political ideals” or “under the banner of environmentalism or nature conservation” to potential terrorists.⁶¹

In **Italy**, writer Erri de Luca,⁶² who denounced a large construction project creating a high-speed railway in the Susa Valley (in the Piedmont region), was charged with “inciting others to commit crimes”. The TAV (high-speed train) project is planned to connect Lyon to Turin, running through the Susa Valley. In an interview in September 2013, de Luca said that the construction of

the train line had to be blocked.⁶³ Charges were brought against de Luca by the Division of General Investigations and Special Operations (DIGOS) which investigates terrorism cases. The trial started on 5 June 2014 and is still ongoing at the time of writing.⁶⁴ Since 2005, the construction area in the Susa Valley has periodically been placed under special security measures. Four people were arrested on 9 December 2013 for being in possession of equipment that they were reportedly intending to use to damage part of the building site. They were arrested under terrorism charges for “attacking the TAV construction site”. The protesters were held in a high-security detention facility, mostly in isolation.⁶⁵

In **Denmark** in June 2005, the Danish section of Greenpeace was fined 30,000 kroner (€4,000) under anti-terrorism legislation following a protest by 15 people against genetically modified organisms (GMOs) in the processing of pork. Although the demonstrators were fined as individuals, a fine was also imposed on Greenpeace under anti-terrorism legislation (adopted following 9/11) which holds organisations to account for the action of their members.⁶⁶ Greenpeace appealed against the decision, but it was upheld by a higher court. It is noteworthy that anti-terrorism legislation was also applied in a case where protesters simply entered a building (the offices of the Danish Agriculture Association in Copenhagen) and hung a banner from a window.

In **Russia**, numerous environmental and other organisations have been inspected on the basis of counter-terrorism measures. The Environmental Watch of the North Caucasus (EWNC), which

openly denounced the environmental damage caused by the construction for the Sochi Winter Olympics, was inspected on 27 March 2013. Emails were checked by officers of the local prosecutor's office and by the Centre for Combating Extremism. The officials asked questions about the NGO's activities regarding the Sochi Olympics, and reportedly asked the organisation not to publish a report on this issue (something which the EWNC refused to do). The following month, the EWNC was told that the organisation had to register as a "foreign agent".⁶⁷

Other environmentalists in **Russia** were also affected by counter-terrorism measures before the Sochi Olympics. Vladimir Kimaev, also with the EWNC, had his flat and dacha searched for explosives in 28 May 2013. Officials told him that the search was connected to an attempt to detonate bombs in Sochi. Environmentalist Dmitry Shevchenko was stopped at Krasnodar airport, searched by the Federal Security Services and then detained for four hours at a local police station. He was told that he had been stopped as he fitted the description of a wanted terrorist, and that he had been held as part of a pre-Olympic counter-terrorism drill. Shevchenko had been reporting on environmental concerns in Sochi.

3. State Secrets

The Aarhus Convention provides for strong rights of access to information relating to the environment. The state parties to the Convention are legally responsible for making information available upon request (Article 4), as well as for proactively collecting and disseminating environmental information (Article 5). Despite such guarantees, in some instances states not only restrict the free flow of information which is in the public interest, but also actively prosecute those who are seeking to disseminate it, including through the abuse of state secret legislation.

In **Russia**, environmentalists have also been sentenced to long-term detention for espionage and treason when they have publicised information on environmental hazards. These cases - the most prominent of which were those Grigory Pasko, Aleksandr Nikitin and Igor Sutyagin - used state secrets legislation.⁶⁸ Sutyagin, first detained in 1999 and sentenced in 2004 to 15 years' hard labour for treason, was only released in 2010 (in a high-profile 'spy swap' between Russia and the United States).



Anti-shale gas exploration protesters scuffle with riot police in Pungesti, Romania
AP

VI. The Right to Freedom of Assembly

Article 11(1) of the ECHR states: “Everyone has the right to freedom of peaceful assembly and freedom of association with others”. The right of peaceful assembly is also guaranteed at Article 21 of the ICCPR. Under both the ECHR and the ICCPR, this right is not absolute, but any restriction has to be prescribed by law and “necessary in a democratic society” to protect specific interests, such as national security or public order. Given that the right to freedom of assembly also entails expressing one’s viewpoint during demonstrations, it overlaps with the right to freedom of expression, which enjoys wide protection under international law.⁶⁹

Legislation can further affect the right to free assembly. In 2013, amendments to legislation in **Azerbaijan** increased the severity of sanctions for offences such as “organising unauthorised demonstrations”, by lengthening periods of detention and raising fines.⁷⁰ In **Russia** legal amendments in 2012 also raised the fines for violations of the law during demonstrations. In 2013, **Kyrgyzstan** made the “unauthorised blocking of roads” an offence.⁷¹ In **Ukraine** there were attempts to introduce new provisions⁷² restricting options for peaceful protests, following the protests in Kyiv in November 2013 (the provisions were adopted in January 2014 but repealed shortly after).

In the cases highlighted below, there are clearly restrictions to the right of free assembly that go well beyond the protection of legitimate interests such as national security and public order - or that protect such interests through the use of disproportionate measures. Violations of the right to free assembly include the excessive use of force by law-enforcement officers during demonstrations, and various pre-emptive measures that can impair people’s full enjoyment of this right.

1. Excessive Use of Force

There are numerous examples of the use of force during peaceful demonstrations.

- In **Romania** in early December 2013, in the village of Pungesti, the police used excessive force during demonstrations against Chevron's drilling for shale gas. The protesters were mostly villagers, protesting against the drilling of their farmlands. A few hundred protesters reportedly faced a disproportionate police presence of about 1,000 riot officers. As the protesters attempted to take down the fence surrounding Chevron's site, the police arrested activists, dealing with them roughly, with some people reporting beatings while in detention. The police also searched private properties in the area, declaring a state of emergency, despite the fact that the majority of the protests had been peaceful.⁷³
 - In **Armenia** there were reports of violence being used during the protests organised by the Mashtots Park Movement starting in February 2012. The initiative was born primarily of environmental concerns, linked to the building of a number of shops within the park; it subsequently developed into a wider movement denouncing various political concerns such as widespread corruption. Although the protests and police response were generally peaceful, there were also reports of use of force by law-enforcement officers.⁷⁴
 - In **Macedonia**, in 2013 demonstrators were arrested as they protested peacefully against the destruction of Bristol Park in Skopje to build a government building. Reportedly, journalists who attempted to cover the protests were threatened by the police and prevented from taking photographs and filming.⁷⁵
 - In **Ireland**, according to the UN Special Rapporteur on human rights defenders, there has been "a pattern of intimidation, harassment, surveillance and criminalization of those peacefully opposing the Corrib Gas project". There have been reports of the excessive use of force by the police during demonstrations, and instances of verbal abuse. Various incidents took place between 2006 and 2011, including physical assault and unlawful detention.⁷⁶
- A particularly serious case in **Turkey** in May-June 2013 saw the large-scale and disproportionate use of force by law-enforcement officers during protests. The protests were initially against the building of a shopping mall in Gezi Park, next to Taksim Square (Istanbul), but developed into general protests against restrictions to fundamental human rights in Turkey. On 25 May 2013, the police used tear gas, truncheons and water cannons to disperse a group of demonstrators in Taksim Square. Subsequently other protests broke out in nearly all the regions of Turkey. According to data by Human Rights Association (IHD), between 31 May 2013 and 10 June 2013, five people died, 8,160 were injured, 64 people were very severely injured, and 3,343 were detained. Four people died as a direct consequence of the use of tear gas.⁷⁷

Preemptive measures to deter protesters can impede the exercise of the right to freedom of assembly. Such measures can include:

- strict conditions on bail following arrests during demonstrations (to deter demonstrators from engaging in further protests)
- civil injunctions by private companies (for example preventing protesters from accessing specific areas).

In the **UK** in November 2012, protesters arrested during a peaceful demonstration against the building of a power station in northern England were given strict police bail conditions. These included a ban on associating with one another, a night curfew and a requirement to report to the police three times a week.⁷⁸ While bail conditions can be challenged in British courts, the high costs of the process can deter people from engaging in demonstrations in order to avoid possible negative consequences - particularly in the light of the cuts to legal aid as part of the country's austerity measures. The owners of the power plant also obtained a permanent injunction against activists who had been peacefully protesting against climate change at the site.⁷⁹

In a report following a mission to the UK in 2013, the Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed his concerns on both strict bail conditions and civil injunctions.⁸⁰ The UK government in its reply referred to the oversight role of the Independent Police Complaints Commission (IPCC), in relation to complaints brought against the police, and the carrying out of investigations.⁸¹ It did agree, however, that "the IPCC's capacity to deal with the most serious cases needs to be increased."⁸²

In the **UK** in 2008, six Greenpeace climate change activists were cleared of causing damage when they occupied a coal-fired power station in September 2008. They had been protesting against the extraordinary levels of pollution produced by Kingsnorth power station in Kent, and its impact on climate change. They justified their actions in the light of the urgent need to prevent further climate change –the first time that climate change was used as a 'lawful excuse'.⁸³ Reportedly the owner of the station, E.ON, had lobbied the government for the imposition of tough sentences, with a view to discouraging similar protests in the future.⁸⁴

2. Lawsuits

Numerous lawsuits have been filed against demonstrators, particularly by private companies targeted by the protests. In the **Netherlands** in September 2012, Royal Dutch Shell PLC filed a preemptive lawsuit against Greenpeace: it tried to ban its members from holding protests within 500 metres of Shell property over a period of six months, or face a €1 million fine. The suit was linked to global actions against Shell's oil drilling off the coast of Alaska. The Amsterdam District Court ruled in favour of Greenpeace, but did, however, pose certain conditions on future actions, including restrictions on their length.⁸⁵

In the **UK**, the energy company EDF (*Électricité de France*) started a £5m civil lawsuit against 21 activists who, in October 2012, occupied an EDF-owned gas-fired power plant in West Burton. EDF argued that the one-week occupation resulted in damages of over £5m. The company dropped the charges after the parents of one of the activists organised a prominent online petition, but the protesters received a permanent injunction, banning them from EDF power stations across the UK.⁸⁶



Police clash with climate activists in front of the coal fired power station at Ratcliffe on Soar
Andrew Testa - Panos



VII. The Right to Freedom of Association

Article 11 of the ECHR and Article 22 of the ICCPR guarantee the right to freedom of association. Like the right to free assembly, the right to freedom of association is not absolute, but any limitation of this right should be limited to narrowly-defined exceptions. Despite

these guarantees, NGOs in many countries find themselves in a continuous position of vulnerability, due to legal restrictions to their activities. At times they are subjected to direct infringements of their right to association at the hands of government officials.



"Foreign Agent- Love USA" Graffiti on wall of Memorial Human Rights group, Russia Memorial

1. 'Foreign agents' Legislation

A particularly concerning development has been **Russia's** June 2012 adoption of new legal provisions that became known as the 'Foreign Agents' Law.⁸⁷ It amends five pieces of legislation regulating the activities of NGOs, including the criminal code. According to the provisions, organisations in receipt of foreign funding and carrying out "political activities" are required to register as an "organisation performing the functions of a foreign agent". This labelling discredits organisations by implicitly linking them to international espionage activities. It also imposes numerous additional obligations in terms of reporting and auditing, to add to the already highly complex bureaucratic system regulating the work of NGOs in Russia. **Kyrgyzstan's** Parliament is currently debating the adoption of similar legislation based on the Russian 'Foreign Agents' Law.

Dozens of organisations in Russia have been affected by the law, and this has included environmental organisations.⁸⁸ The environmental organisation Ekozashchita! (Ecodefence) was declared a foreign agent by the Ministry of Justice, following an inspection on 9 June 2014. The organisation had protested against the building of the Baltic Nuclear Power Plant in Kaliningrad. The organisation was found to have been involved in political activities, "holding public events with the objective of opposing the building of the Nuclear Power Plant, and influencing public opinion".⁸⁹ Another organisation that has been affected is the Baikal Environmental Wave in Irkutsk. On 23 April 2013, the local prosecutor held that the objective of the organisation, as described in its statute

("active advocacy on environmental issues with state and municipal authorities"), fell within the scope of "political activities". The organisation's attempts to appeal against the decision have been unsuccessful.⁹⁰ According to Human Rights Watch, by May 2014 16 environmental organisations had received warnings that their activities could relate to "political activities".

2. Restrictions on Foreign Funds and Registration

Article 13 of the UN Declaration on HRDs states that: “Everyone has the right, individually and in association with others, to solicit, receive and utilize *resources* for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means’. [italics added]. As stressed by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, this principle does not differentiate between sources of funding – whether from domestic or international sources; moreover, funding restrictions that impair the activity of associations amount to an interference to Article 22 of the ICCPR.⁹¹ In 2013, in its Resolution 22/6, in the UN Human Rights Council called upon states to ensure that ‘reporting requirements [...] do not inhibit [associations] functional autonomy’, and that ‘restrictions are not discriminatorily imposed on potential sources of funding aimed at supporting the work of human rights defenders’.⁹²

Even before the adoption of the ‘Foreign Agents’ Law, Russian law restricted the influx of foreign funds by imposing high taxes on grants from foreign donors. Legal provisions imposing restrictions on foreign funds, modelled on the Russian provisions, have been adopted in other post-Soviet countries. They reflect a general distrust of foreign interference in domestic affairs. In 2013, new provisions created more stringent legal requirements for the registration of donations and grants (for example in Azerbaijan and Turkmenistan⁹³). There were attempts to adopt new

restrictive provisions in Kyrgyzstan, Armenia and Ukraine.⁹⁴ Funding agencies were also targeted directly in Russia, for example by ordering the closure of the USAID offices in the country in 2012.⁹⁵

Difficulties regarding registration are another of the problems affecting environmental and other NGOs. Monitoring by the International Centre for Not-for-Profit Law (ICNL) reveals severe problems for organisations regarding their ability to exercise the right to free association in various former Soviet Union countries. These problems include complex and cumbersome registration requirements, and excessive levels of government discretion when making decisions about registration.⁹⁶ In Uzbekistan requests have remained unprocessed, with great delays in the reviewing of applications, during which organisations are in a legal limbo, unable to operate legally.⁹⁷ A similar situation exists in Azerbaijan. In a case from 2011, the UN Human Rights Committee found the Uzbek government guilty of violating both the right to freedom of expression and the right to freedom of association by failing to register an NGO.⁹⁸ The judiciary’s lack of independence in many of the countries covered by this report poses an additional problem when challenging unjustified denials of registration or closure of NGOs.

In Poland in October 2012, Treasury Minister Nikola Budzanowski accused the environmental charity Client Earth of “working against the public interest of the state”. Client Earth had campaigned against environmental degradation, including the issue of shale gas. 20 Polish NGOs wrote a letter to the Polish Prime

Minister supporting Client Earth as a result of the accusations against the organisation, complaining about this “unprecedented attack” on civil society.⁹⁹ They denounced Budzanowski’s comments, along with attacks in the media, surveillance and arrests during protests, as contributing to create a “climate of fear” for environmental activists.¹⁰⁰

In Russia in March 2013, the offices of the Environmental and Rights Centre (ERC) Bellona in St Petersburg were raided by a team of inspectors: a representative from the Prosecutor General’s office, another from the fire department and two sanitary inspectors.¹⁰¹ The visit included a search for “extremist” literature. At the end of the raid, the team asked for an array of documents to be compiled and submitted to the local prosecutor’s office within three days. The documents included: data on payroll, bookkeeping records, bank statements, a list of activities carried out over the preceding three years, information about sources of funds and the use of funds received from foreign sources, “legal grounds for claim to the premises occupied”, a list of “awards (honorary titles, medals, and certificates of merits)” and “other necessary documents”. The information on sources of funds and tax records was in addition to regular reports to the Ministry of Justice for fiscal purposes. Bellona’s director noted that the guidelines of the prosecutor were “broader” than those of the Ministry of Justice, and “technically, prosecutors can ask any organisation for any documents”.¹⁰²

This inspection was carried out in the context of measures adopted by the Russian government. to counteract terrorism. In a document handed over to Bellona (containing the list of requested documents) the team of inspectors is referred to as a “mobile inspection group”, established by an order of the St Petersburg Prosecutor’s Office of 1 March 2013. In the same month, Russia’s General Prosecutor initiated “mass checks” of NGOs throughout the country.¹⁰³ The inspections were meant to investigate the legality of NGOs’ work, including any financing from abroad (ie ‘foreign agent’ activities) and possible engagement in any activities of an extremist and terrorist nature.¹⁰⁴ Clearly, the request to provide such documents penalises NGOs for receiving foreign funds. It places them in a situation of vulnerability in which they have no choice but to comply with the requests; this, and the litigation that sometimes follows such events, depletes their human and financial resources and can lead to their (temporary) closure.

3. Surveillance

There are also increased reports of infiltration of environmental groups by public authorities and private corporations in order to undermine their efforts. In the UK, estimates suggest that people who work for “corporate intelligence agencies” make up 25% of each activist camp.¹⁰⁵ Such agents often raise suspicions due to their excessive “diligence”. Most of the information on corporate espionage in the western world seems to have been discovered by accident rather than through a systematic attempt to uncover such occurrences.¹⁰⁶ Despite the fragmented nature of the information available, surveillance appears to be common among major companies, which employ intermediary firms to spy on non-profit organisations. Security companies are at least partially staffed with former intelligence and military officers (such as the CIA, MI5/MI6, and the former KGB).¹⁰⁷ The targets of these espionage operations have included environmental organisations, with the aim of undermining or pre-empting the actions of whistleblowers.¹⁰⁸

Intelligence gathering is no longer simply reactive but also proactive involving “the assessment of the risk to become the target of campaigners.”¹⁰⁹ This type of information-gathering involves infiltrating groups, hacking and other illegal means, making use of various informal networks of former police and secret services officers. The information gathered can be used to manipulate public narratives on sensitive issues potentially resulting in the “engineering of consent” in place of the free flow of information and debate.¹¹⁰ Furthermore, recent research reveals patterns of cooperation

between the government and corporations in relation to intelligence gathering. Thus, even when surveillance is not directly orchestrated by the government but by private corporations, the government might still be complicit, either directly (by sharing information) or indirectly (by failing to intervene to bring the practice to an end).

In France in 2011, it emerged that the state energy firm EDF had been spying on Greenpeace France, hiring a private company to hack into the organisation’s computers. The production of nuclear power in France (where over three-quarters of power is nuclear) has been the source of controversy, and of confrontations between EDF and Greenpeace, for several years. In November 2011, EDF was fined €1.5 million (plus an additional €500,000 damages to be paid to Greenpeace), and the EDF employees who had been responsible for commissioning the spying and the head of the firm that carried out the hacking were given prison sentences.¹¹¹ Such cases often expose transnational espionage networks: EDF is not only influential in France, but is the world’s biggest supplier of nuclear energy and owns British Energy, the British nuclear power operator. Reportedly, Greenpeace offices across Europe have been subject to surveillance for the past ten years.¹¹²

In Poland undercover operations saw the infiltration of anti-fracking groups protesting against shale gas developments. Spies were reportedly deployed by a shale gas investor, which also fed information to the government. Agents from the secret services reportedly approached protesters, their friends and colleagues, to gather information about them

and their activities, including any cooperation with foreign organisations. Environmentalists have also been summoned for interrogation by internal security agencies. Reports indicate that companies and the Polish government have played down the risks of the shale gas project, meaning that alternative, independent assessments of environmental concerns have remained generally unavailable to the local populations.¹¹³

In Ireland there were reports of the surveillance of public roads and private houses and the monitoring of local residents by private agents working for Shell, in relation to the Corrib Gas project.¹¹⁴

Case Study: A Police Spy in the UK

A particularly prominent case of police surveillance of environmentalists' activities was that of Mark Kennedy. Kennedy was an undercover police constable who carried out surveillance for seven years starting in 2003. Under a false identity Kennedy participated in all major environmental protests, infiltrating environmental groups in Nottingham (such as Earth First and Dissent!). He took an active role in demonstrations and various acts of protest (including chaining himself to a power station, or breaking into buildings) in the UK and abroad. He provided logistical support in the organisation of protests, befriended protesters and made some of his own assets and funds available to them. Kennedy's role seems not to have been confined to that of an observer; he was instrumental in the carrying out of protests and might also have acted as an agent provocateur.¹¹⁵ In April 2009, the information he supplied enabled the police to prevent an action in Ratcliffe-on-Soar power station. The police found 114 activists in a school, preparing to occupy the power station for a week in an attempt to prevent carbon emission. A case against six of the activists was withdrawn in 2011 when Kennedy's identity became known.

Kennedy worked for the National Public Order Intelligence Unit (NPOIU), which was established in 1999 to monitor "domestic extremists".¹¹⁶ Given the classified nature of its operations, even the precise location of the NPOIU is unknown.¹¹⁷

The cases of Bob Lambert¹¹⁸ and Jim Boyling¹¹⁹ were similar and became widely known in the UK. It has subsequently emerged that Lambert even participated in the writing of a leaflet critical of McDonald's (among other things accusing the company of damaging the environment).¹²⁰ This led to a lawsuit by McDonald's (commonly referred to as 'McLibel'), and a judgment by the European Court of Human Rights.¹²¹ Another undercover officer, John Dines, had a two-year relationship with Helen Steel, one of the defendants in the McDonald's case; Steel also became the main target of police surveillance.¹²²

In a report on the UK, the Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed his deep concern at the deployment of undercover police to monitor non-violent groups which do not engage in criminal activity.¹²³ He was "particularly dismayed" by Kennedy's case and that of Jim Boyling, which presented highly problematic features, such as: "[t]he duration of the infiltrations, and the resultant trauma and suspicion caused among the groups, in particular the women with whom the undercover police officers had intimate relationships".¹²⁴ Indeed, the involvement of the police officers with the women in question raises serious issues with regard to the right to privacy and family life.¹²⁵ The Special Rapporteur further noted reports of numerous databases, which contain personal information about peaceful protestors.¹²⁶ In a recent case, it was revealed that this included elected officials of the Green Party, who had been added to a secret database as "domestic extremists".¹²⁷

Recommendations

Recommendations to governments

General Recommendations

- Firmly acknowledge the importance of the activities of EHRDs and journalists in providing impartial information on environmental issues to the public, and in facilitating the free flow of information.
- Create an enabling environment in which EHRDs and journalists reporting on environmental matters can operate unhindered.
- Ensure that all stakeholders are able to take an effective part in environmental impact assessments and decision-making on projects that may affect the environment. This should include holding public hearings on environmental projects and providing adequate advance notice and information.
- Introduce mechanisms to protect whistleblowers.
- Ensure that indigenous people are not impaired in the exercise of their rights to access their lands, particularly with regard to environmental projects implemented by private businesses.

on The Right to Life and Physical Integrity

- Ensure that any breach of professional conduct or criminal behaviour by law-enforcement officers or other public officials (including excessive use of force, threats and intimidation) is promptly, thoroughly and impartially investigated and remedied and appropriate sanctions are imposed.
- Provide the utmost protection for the physical integrity of EHRDs; conduct thorough and impartial investigations in instances of physical attacks, with a view to bringing those responsible for these violations to justice, and compensating victims and their families; guarantee a right to effective remedy for EHRDs.

- Reform legislation in order to limit the use of lawsuits as a way to coerce EHRDs into silence.
- Coordinate the monitoring, with other governments and inter-governmental organisations, of attacks and cases of intimidation of EHRDs by non-state actors, particularly by transnational corporations, with a view to publicly exposing such occurrences.
- Publicly denounce all verbal attacks against EHRDs and their organisations which have the sole objective of discrediting them.

on The Right to Fair Trials and to Liberty

- Guarantee the holding of fair trials in cases involving EHRDs.
- Ensure that disproportionate sentences are not issued in cases of minor offences with a view to discouraging further protests.

on the right of Freedom of Expression and Access to Information

- Where relevant, amend legislation to ensure that defamation provisions are fully in line with international standards, particularly Article 10 of the ECHR and Article 19 of the ICCPR.
- Establish mechanisms allowing information on environmental matters to be promptly provided to the public upon request; any restrictions to the general right to access to information should be in line with Article 4 of the Aarhus Convention.
- Instruct public authorities to regularly gather and disseminate information on any of their activities which may affect the environment.

on the right to Freedom of assembly

- Ensure that any restrictions on peaceful protests, including on prior authorisation and notification, are in line with international standards.
- Ensure that people engaging in peaceful protests are never charged with criminal offences; in particular, eradicate the practice of charging and prosecuting peaceful EHRDs under anti-terrorism legislation.
- Ensure that EHRDs are not subjected to arbitrary detention, or sentenced to imprisonment, for the peaceful voicing of opinions during demonstration, or for simply disseminating environmental information.
- Ensure that all law-enforcement officers are fully trained and accountable in the exercise of their police powers, particularly during demonstrations.
- Ensure that private injunctions against peaceful protesters are not imposed or enforced.
- Prevent the imposition of stringent bail conditions on peaceful protesters.
- Where relevant, amend legislation so that the infiltration of peaceful protest groups by police and security services is prohibited.
- penalties for minor offences, such as holding demonstrations without prior authorisation.
- Refrain from stigmatising and penalising environmental organisations simply for the dissemination of information, expression of opinions or organisation of demonstrations.
- Ensure that environmental organisations are able to operate normally, by enabling their legal registration and fundraising activities without obstruction.
- Ensure that intelligence services are fully accountable for their actions.
- Investigate instances of surveillance of EHRDs by private companies, with a view to eradicating the practice.

on the right to Freedom of Association

- Repeal any law that illicitly restricts the ability of EHRDs to operate through their organisations, making sure it is in line with the internationally recognised right to freedom of association.
- Refrain from engaging in actions that can intimidate EHRDs, such as arbitrary inspections of their organisations.
- Amend any legislation that provides severe

Recommendations to the UNECE and Aarhus Secretariat

- Conduct a survey of member States including input from non-governmental organisations to examine best practices and problems relating to the protection of EHRDs.
- Create detailed guidelines for Aarhus Parties on their obligations to protect the activities of EHRDs under Article 3.8 of the Convention.
- Create a new mechanism for receiving complaints for violations of Article 3.8 with a rapid response mechanism.
- Table a initiative on the issue of the difficulties facing EHRDs and the importance of protecting for discussion in the working groups and at the next Meeting of the Parties of the Aarhus Convention.

Recommendations for the Council of Europe

- The Commissioner for Human Rights should conduct an investigation of threats and challenges to environmental human rights defenders.
- The Parliamentary Assembly and the Council of Ministers should ensure that future resolutions and recommendations on human rights defenders, as well as future programmes and activities, specifically include threats to EHRDs.

Recommendations for the Organisation for Security and Cooperation in Europe

- Ensure that the Focal Point on Human Rights Defenders includes EHRDs in its work plans and activities.
- Ensure that the Aarhus Centres and Public Environmental Information Centres include activities relating to protection of EHRDs.
- Ask the Representative on Freedom of the Media to conduct a survey on challenges to journalists writing on environmental issues.

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