

ATTACKS AGAINST HUMAN RIGHTS DEFENDERS ENGAGED WITH EUROPEAN COMPANIES AND INVESTORS

Forthcoming EU Directive on Corporate Sustainability Due Diligence: case studies highlighting the importance of preventing reprisals against human rights defenders



The European Union's legislative initiative on Corporate Sustainability Due Diligence is an opportunity for the European Union (EU) and its member states to play a leading role in ensuring that the protection of human rights is central to business operations around the globe. A decade after the adoption of the UN Guiding Principles on Business and Human Rights, the proposed Directive is a critical step towards mandatory human rights due diligence.

Through three case studies; from Colombia, India and Uganda, this briefing calls for human rights defenders (HRDs) to be included as key stakeholders. It demonstrates the need for safe and meaningful stakeholder consultations and the importance of addressing reprisals against HRDs as part of effective human rights due diligence.

Over the past two years Front Line Defenders consulted with HRDs and civil society from the Americas, Africa and Asia. This briefing, as well as several prior briefings draw on the results of those consultations.

Front cover image: Pedro Josse Velasco Tumiña, leader of the Misak people, Colombia, during a protest outside the AGM of Smurfit Kappa in Dublin, Ireland, on Friday, 29 April 2022.

Credit: Stephen S T Bradley/AP Images for Ekō (formerly SumOfUs).

1. INTRODUCTION

Those working to ensure businesses respect human rights are increasingly facing violent reprisals. At least [358 HRDs](#) were killed in 2021, an average of almost one each day. Over [600 attacks](#), including death threats, abductions and arbitrary arrests, were recorded against defenders working on business-related human rights issues. [Front Line Defenders \(FLD\)](#) works to improve the security and protection of HRDs and organisations around the world, including those impacted by business projects. With 20 years of experience in this field, Front Line Defenders has been advocating **to ensure the inclusion of HRDs in the forthcoming EU Directive on Corporate Sustainability Due Diligence ('the Directive')**.

Throughout 2021, Front Line Defenders and partners consulted with civil society from the Americas, Asia and Africa on this topic. The resulting [briefing](#), published in February 2022, outlines **the importance of addressing reprisals against HRDs** as part of effective human rights and environmental due diligence. A further [briefing](#) emphasises the need for safe and meaningful stakeholder engagement throughout the due diligence process. Building on this guidance, this briefing illustrates real life examples that reinforce why it is important that these recommendations are included in the forthcoming Directive.

The Directive is an opportunity for the EU and its member states to play a leading role in **ensuring the safety of HRDs in the context of business activities around the world**. There is a significant need for an EU-wide mandatory due diligence law, given that only two EU member states currently have national legislation which requires this. These laws, in [France](#) and [Germany](#), lack references to HRDs and the risks they face in engaging with business activities. As such, the forthcoming Directive is a welcomed development to include this.

There are, however, **important gaps in the current Directive's text** proposed by the European Commission in February 2022, related to obligations for companies to address the risks of reprisals against HRDs. These gaps include the definition of 'stakeholder' - where HRDs are currently not referenced, but should be. There is also no reference to the need for *safe* and *meaningful* stakeholder engagement, which is vital if risks to HRDs are to be addressed.

The three case studies in this report set out the experiences of communities of HRDs and the retaliation they face; including death threats, intimidation and murder, in the context of business projects linked to companies or investors based or operating in the EU. The case studies **demonstrate how an effective due diligence law could have prevented retaliation against the HRDs**. As such, by strengthening the provisions on HRDs in the Directive, the EU can have a significant impact on the ability of HRDs to carry out their vital work safely and successfully, and ensure better practices by EU companies operating around the world.

The case studies involve three industry leaders; from the oil, mining, and paper sectors, whose projects are linked to severe retaliations against HRDs in countries across Africa, Asia and Latin America. HRDs concerns relating to their business activities involve issues of land rights, the environment and indigenous rights. For each case study, Front Line Defenders interviewed key HRDs and, where appropriate, their support organisations. Front Line Defenders also reviewed the reports of local and international human rights organisations, UN bodies, media, as well as official documentation such as judicial rulings. Front Line Defenders also reviewed public statements by companies, ensuring their responses to allegations against them were considered.

2. OVERVIEW OF THE CASES

The three case studies researched by Front Line Defenders highlight the violations faced by HRDs across different contexts and regions:

- **French oil giant “TotalEnergies”** is facing opposition by local communities due to its multi-billion dollar oil pipeline and drilling projects in Uganda. Denouncing land seizures, climate harms and the forced displacement of thousands, **Ugandan land rights defenders have been arbitrarily detained, beaten by police and received anonymous threats.** The European Parliament, amongst others, has denounced human rights violations linked to the projects and called for the suspension of construction of Total’s oil pipeline for one year to study alternatives.
- **Irish company “Smurfit Kappa”, a world leader in paper and cardboard production,** is accused of holding land historically belonging to indigenous people in Cauca, Colombia. Colombian indigenous rights defenders have denounced environmental damage caused by the company’s pine and eucalyptus plantations. A prominent indigenous leader **has faced numerous death threats whilst two protestors have been killed in clashes with police and unidentified armed men.**
- **“Vedanta Resources”, a mining multinational with EU investors and subsidiaries,** had a copper smelting plant in Southern India which faced widespread protests due to pollution concerns. In May 2018 thousands of environmental defenders demonstrated against the planned expansion of the plant, **leading to the massacre of 13 protestors by police.** According to NGO and media reports, defenders involved in the case for justice continue to suffer legal harassment and intimidation by the police.

3. RECOMMENDATIONS

These case studies demonstrate the need for robust provisions related to HRDs in the upcoming Directive. As an overarching recommendation, Front Line Defenders recommends that **HRDs should be included as named stakeholders** and that the **UN Declaration on Human Rights Defenders** should be referenced. Specifically Front Line Defenders recommend the following, in line with the case study experiences:

- Human rights defenders and the risks they face should be referenced in the Directive to **ensure retaliation risks are comprehensively assessed in advance by companies** undertaking human rights due diligence. Companies should be required to actively and openly assess retaliation risks for HRDs as part of the due diligence process. The UN Declaration on Human Rights Defenders should also be referenced.
- Human rights defenders should be part of the Directive's definition of 'stakeholder' and companies should be required to **conduct safe and meaningful stakeholder engagement throughout the due diligence process**. This means ensuring appropriate access to information and participation for HRDs and affected communities, maintaining active, accessible and accountable grievance mechanisms (which should not replace stronger, more effective remedies).
- While the Directive includes the protection of persons reporting breaches, it is limited to people based in the EU and with a professional relationship to the company. A similar provision **should be included to cover HRDs outside the EU and those without a professional relationship to the company** who report breaches.

CASE STUDY 1



Construction works for oil roads in Uganda.
Credit: Environmental Governance Institute

TOTALENERGIES AND LAND DEFENDERS IN UGANDA

A controversial oil project facing calls for suspension

In October 2021, six staff members of the African Institute for Energy Governance (AFIEGO) in Uganda [were arbitrarily arrested](#), including the NGO's CEO, Dickens Kamugisha. AFIEGO advocates against the negative impacts of the oil and gas industry in Uganda, including TotalEnergies' projects. During the arrests, Kamugisha told Front Line Defenders that the police were violent, "*pushing everyone [...] and ordering us to remove our shoes, our belts, remove everything and go to the cells.*"¹ They were charged with "failure to produce documents" but Kamugisha says they "*just wanted to intimidate and create fear*". Although the AFIEGO members were [released on bail](#) 72 hours later, the file is still open and, according to Kamugisha, they can be re-arrested at any time.

The arrests follow a **pattern of judicial harassment and intimidation** by Ugandan authorities against AFIEGO and other groups campaigning against the East Africa Crude Oil Pipeline (EACOP). The [proposed 1,445 kilometre pipeline](#), co-financed by the French multinational TotalEnergies ('Total'), will transport oil from Hoima, Uganda, to the port of Tanga in Tanzania. Local communities and civil society organisations are challenging EACOP's construction because of [land seizures](#), the planned partial or total

¹ Front Line Defenders interview with Dickens Kamugisha (10 January 2023)

displacement of 118,000 people, climate harms and grave threats to local livelihoods, critical water resources and biodiversity.

Kamigisha told Front Line Defenders that, as AFIEGO's head, he has personally received many threats, most often anonymous phone calls telling him to "*stop your activities that are disrupting the oil industries [...] and stop the legal cases.*"² Kamigisha says that many of his staff have received intimidation in person by police and local authorities. Total [states](#) that it "*does not tolerate any threats, intimidation, harassment, or violence against those who peacefully and lawfully promote Human Rights in relation to our activities*".

AFIEGO is one of six international and Ugandan civil society groups who filed a [lawsuit](#) against Total for alleged failure to respect France's [Duty of Vigilance law](#) in its operations in Uganda. They accuse the oil giant of [failing to prevent risks](#) to **human safety, human rights and the environment** both in EACOP's construction and in Total's Tilenga oil project, where, [as lead developer](#), they plan to [drill oil wells](#) in Uganda's Murchison Falls National Park, an ecologically sensitive area. A [decision by the French Supreme Court in December 2021](#) found in favour of the NGOs that the case should be heard in front of a civil court. Unfortunately after more than three years of procedural delays, on [28 February 2023](#), the court declared the case inadmissible. Yet again, the judges ruled on procedural grounds, rather than on the core elements of the case - namely Total's failure to meet its due diligence obligations.

On 15 September 2022, the European Parliament passed [an urgency resolution](#), by a large majority, calling for an end to oil drilling in "protected and sensitive ecosystems" and **the suspension of work on EACOP** for a year to "study the feasibility of an alternative route" that would protect the environment and "consider other projects based on renewable energy".

Arbitrary arrests, intimidation and physical attacks against HRDs

Attacks against HRDs linked to the projects have persisted. Importantly, the European Parliament resolution **denounced human rights violations** in Uganda linked to investments in these fossil-fuel projects, including acts of intimidation and judicial harassment, and called for the immediate release of HRDs who were arbitrarily arrested . Yet, just a few weeks after the resolution was passed, nine HRDs - all members of the StopEACOP campaign - were wrongfully arrested_during a peaceful march to the European Union offices in Kampala, Uganda. They were planning to deliver a petition in support of the European Parliament resolution. During the arrest, three of the HRDs- Musiri David, Nkurunziza Alphonse and Lubega Vincent Nsamba [were physically assaulted and sustained open wounds](#) that required immediate medical attention. Currently out on bail, the nine HRDs [have been charged with "common nuisance"](#) and are awaiting trial on 20 February 2023.

² Front Line Defenders interview with Dickens Kamugisha (10 January 2023)

These are just the latest incidents in **a series of reprisals** that have taken place against HRDs engaged with Total's oil projects in Uganda. On 26 May 2021, [Maxwell Atuhura](#), a member of AFIEGO, was [arbitrarily arrested while conducting fieldwork](#) linked to Total's Tilenga project. Prior to his arrest, together with another colleague, Maxwell had been conducting interviews with community members whose land is being acquired or has been acquired for the oil project. On 20 August 2021, AFIEGO, as well as 53 other organisations, [had their activities suspended](#) for being found to be "non-compliant with the NGO Act, 2016", despite AFIEGO declaring it complied with all legal requirements.

Later that year, on 8 October 2021, [around 20 police officers raided the office](#) of AFIEGO, and two other local organisations, requiring their members to close down and leave the premises within two hours. Two weeks later [Robert Birimuye](#), a Project Affected People (PAP) leader affected by the planned EACOP pipeline [was arrested during a meeting of PAPs](#) organised by a Member of Parliament for Kyotera district, Southern Uganda. He was accused of disturbing the EACOP project by challenging the assessments and compensations he considers unfair and charged with ["inciting violence, sabotage of government programmes and unlawful assembly."](#)

International condemnation of these incidents was such that on 24 January 2022, [the UN Special Rapporteur](#) on Human Rights Defenders and other UN experts sent a letter to the Government of Uganda expressing their concerns regarding the arrests, acts of intimidation and judicial harassment against HRDs and NGOs working in the oil and gas sector in Uganda, which, they said "*appear to be directly related to their legitimate human rights activities.*"

One month later, the house and office of Yisito Kayinga Muddu- a renowned HRD working with communities affected by EACOP- [was raided by unidentified gunmen](#), and four laptops, two tablets, a cellphone and important files were taken. According to Muddu, [the stolen files contained grievance statements](#) from those impacted by EACOP, which were due to be taken to court. He alleges that before the burglary, he had received [anonymous threats](#) cautioning him against his activism while strangers were seen surveilling his house and taking pictures before the incident. His family [narrowly escaped](#) after hiding in the banana plantation behind the home. They have relocated and Muddu is now seeking police protection.

More recently, according to [media reports](#), at a signing of the oil agreement between the government and Total, Ugandan President Yoweri Museveni said that the "*associations that criticise this project are people who don't have a job. They have nothing to do, so let these idiots continue to wander aimlessly. They are only good at drinking tea and eating cookies*". President Museveni has widely criticised NGOs who challenge his policies, with [CSOs claiming the suspension of their activities](#) by the government is a direct retaliation for their actions.

How an effective due diligence law could have prevented reprisals

Total have not conducted environmental and human rights due diligence that addresses the negative environmental and human rights impacts of their oil projects in Uganda. If Total had been legally obliged to conduct a thorough due diligence, then it is possible that the Tilenga drilling and EACOP pipeline might have taken a different form. With more open dialogue it is unlikely that the oil project would have sparked such large opposition. Significantly, if Total had been required to conduct meaningful stakeholder engagement throughout this process, there would be a much higher chance of grievances being addressed. Total is now belatedly [attempting to improve its grievance mechanisms](#) and outreach to local communities.

Clear language in the future Directive that European companies should ensure retaliation risks are comprehensively assessed in advance, would thus help to mitigate the reprisals suffered by Ugandan HRDs and NGOs engaged with the oil project. Safe and meaningful engagement with stakeholders, such as affected communities, is also paramount. AFIEGO's head, Dickens Kamugisha, believes any future law must include a mechanism to monitor how rulings or judgements are implemented.³ He also believes the EU must provide support to witnesses and whistleblowers. As such, a provision of the Directive that addresses the protection of defenders reporting breaches should include those outside the EU, such as in Uganda, where the Total case clearly emphasises the urgent need for safeguards, including for local HRDs.

³ Front Line Defenders interview with Dickens Kamugisha (10 January 2023)

CASE STUDY 2

SMURFIT KAPPA AND INDIGENOUS AND LAND RIGHTS DEFENDERS IN COLOMBIA



Human rights protesters from SumOfUs (now Eko) and Latin American Solidarity Centre support Pedro Josse Velasco Tumiña, leader of the Misak people, Colombia, during their protest and attempt to enter the AGM of Smurfit Kappa on Friday, 29 April 2022, in Dublin. (Stephen S T Bradley/AP Images for SumOfUs)

Local communities impacted by monoculture plantations

Early one morning, in August last year, Colombian Misak indigenous HRD leader [Pedro Josse Velasco Tumiña](#), who is also a representative of the Movement of Indigenous Authorities of the South West (AISO) of Colombia, was travelling out of the town of Piendamó, Cauca department, when a motorbike with two armed men, pulled up alongside his car. The men tried to force open the driver's door, then gave chase, before the car managed to escape. According to Velasco Tumiña, this follows a familiar pattern of **how social leaders in the Cauca region have been targeted and killed in recent years.**⁴

This incident is just one example of increasing attacks against Velasco Tumiña, . Since 2021 Velasco Tumiña has [received anonymous phone calls threatening to kill him](#). The

⁴ Front Line Defenders interview with Pedro Josse Velasco Tumiña (11 January 2023)

Misak, together with Nasa and Kokonuko indigenous peoples, as well as campesino⁵ and Afro-descendant communities, have been [facing rising violence](#) whilst seeking to permanently recover land [currently owned by the Irish company Smurfit Kappa](#), through its Colombian subsidiary Smurfit Kappa Cartón de Colombia S.A ('Smurfit Kappa').

Velasco Tumiña and his [community](#) are demanding the return of some of the 67,000 hectares of land that Smurfit Kappa, a leading global company in paper and cardboard production, is using to plant pine and eucalyptus trees in Cauca department, predominantly in Cajibío municipality. The community are claiming that the land is part of the Misak people's ancestral territory. The company [asserts that](#) they acquired the land legally. Local communities have also **denounced environmental and social impacts** of the company's monoculture plantations. According to a [2022 joint report by international NGOs](#), Smurfit Kappa has contaminated water sources, dried up aqueducts, used clear-cutting to remove native trees and negatively affected biodiversity. The change from agricultural food production to monocultures has [reportedly broken up rural farming communities](#) and disrupted both community life and the local economy.

There is **growing legal recognition** of these communities' concerns. In 2019, according to the World Rainforest Movement, a court in the Cauca Valley issued a [ruling](#) ordering the government to investigate Smurfit Kappa for the improper use of pesticides and obliging the company to abide by protocols to avoid water pollution. In February 2021, a court in Cauca fined [Smurfit Kappa](#) and the local environmental regulator for not protecting local indigenous communities' water sources and [for colluding to avoid sanctions against the company](#).

Escalating violence against defenders

Since 2021, **community actions** to recover their claimed land have increased, including through [demonstrations](#), filing law suits and [calls for dialogue](#) due to a lack of concrete responses by the company to address the issues raised. These community actions have been met with rising violence. According to [local human rights organisations](#), on 2 August 2021 police from the Mobile Anti-Riot Squad (ESMAD) shot and killed 23-year-old Huber Samir Camayo, who was passing by a [violent eviction of peaceful protestors](#) on the company's property in Cajibío municipality. Authorities [launched a preliminary investigation](#) into members of the police but it is not clear how the case has progressed.

Despite efforts by communities to [implement mediation measures](#) and generate conditions for dialogue between the company and affected communities, the violence continues to escalate. Most recently, on 9 November 2022, indigenous guard and spiritual leader Juvencio Cerquera was [killed by a bullet to the chest during an eviction attempt](#) of La Unión farm, Sotará, by unidentified armed men. Eleven people [were also](#)

⁵ Campesino communities are small and medium-scale farmers, rooted in their localities, who use traditional agriculture practices with a low environmental impact.

[reportedly injured](#). Members of the Paletará Indigenous Reserve had been [claiming](#) the farm, property of Smurfit Kappa, as part of their ancestral land.

According to [a report from those present at the scene](#), around 250 masked men took part in the violence, arriving in cars and motorbikes armed with chainsaws, machetes and guns. In previous weeks, the Paletará Indigenous Reserve had [denounced threats](#) and intimidation from Smurfit Kappa workers and contractors. However, there is no evidence linking any of the above incidents to the company or its employees.

Constant death threats against Misak leader Velasco Tumiña

In the context of this rising violence, the prominent Misak leader, Pedro José Velasco Tumiña, **started to receive death threats**. According to Velasco Tumiña, at the end of August 2021 he received an anonymous call warning him to stop his activities or face ["the consequences of what happens to your people and to you"](#). Towards the end of 2021 he also [reportedly received multiple calls from the national police](#), seeking information about his whereabouts and movements. On 5 December 2021, according to Velasco Tumiña, his Twitter account [was hacked by unknown persons](#) with his profile changed to appear as if he was linked with armed groups.

The threats escalated in 2022. At the end of January 2022, Velasco Tumiña [received another anonymous call](#), in which he was allegedly told *"you're from the Misak authorities, who are supplying [...] the people of Cajibío, and the one who gives the people the idea of mobilizing on the land of [Smurfit Kappa] Cartón, stop this fucking shit, we have already warned you, we are going to disappear you, wipe you out, you know."*

In May 2022, Velasco Tumiña travelled to Ireland to take part in Smurfit Kappa's AGM, [publicly expressing his community's concerns](#) at the company's alleged impacts on human rights and the environment. Two days after his return to Colombia, the Misak leader [reportedly received a phone message](#) stating *"you already have a tombstone on your chest, Indian son of a bitch, for talking too much with foreigners."*

Rising international concern

Increased international attention on the situation and the safety of Pedro Josse Velasco Tumiña is reflected in a [public letter](#) sent by the UN Special Rapporteur on the situation of HRDs, the Working Group on the issue of human rights and transnational corporations and other business enterprises and the UN Special Rapporteur on the rights of indigenous peoples on 22 July 2022 to Smurfit Kappa, as well as Irish and Colombian authorities. In it, the UN experts **condemn the threats against Velasco Tumiña and denounce the alleged broader negative human rights and environmental impacts** linked to the use of land by Smurfit Kappa. Smurfit Kappa's [response](#) denied these negative impacts and stated that *"[Smurfit Kappa] Cartón de Colombia is (and has always been) fully committed to respecting the human rights of all*

communities in the areas in which we operate.” In relation to attacks against Velasco Tumiña, the company rejects “any implication that [Smurfit Kappa] Cartón de Colombia is responsible for the threats.”

How an effective due diligence law could have prevented reprisals

Smurfit Kappa has not implemented sufficient environmental and human rights due diligence to address the impacts of their plantation in Colombia. It is unlikely that the conflict between Smurfit Kappa and the communities in Cauca department would have produced such violence if there had been a thorough human rights and environmental due diligence process. HRDs have been killed in the context of these heightened tensions. Any future Directive must ensure European companies, such as Smurfit Kappa, **do not overlook the risks of reprisals against HRDs** who challenge their business activities.

Smurfit Kappa [claims to have](#) “policies and due diligence procedures in place to mitigate the risk of a human rights violation occurring. It also has established grievance mechanisms in place so that if a human rights-related complaint was raised, it could be investigated and addressed.” However, it is not clear what human rights due diligence procedures have been implemented in this instance or if the company has **conducted safe and meaningful stakeholder engagement** throughout any process, something that should be required in the upcoming Directive. The Directive must also ensure appropriate access to information and participation for HRDs and affected communities in the due diligence process.

Moreover, the case of Velasco Tumiña demonstrates **the urgent need to ensure the protection of defenders outside the EU** who report breaches of the Directive. This is especially important given the numerous threats against him, reportedly for his campaign denouncing Smurfit Kappa’s socio-environmental impacts and alleged occupation of the Misak and Nasa people’s ancestral territory.

CASE STUDY 3

VEDANTA RESOURCES AND ENVIRONMENTAL DEFENDERS IN INDIA



Protesters in large numbers march against the Sterlite copper plant on 22 May 2018
Credit: Mksr2020 Creative Commons Attribution-Share Alike 4.0

Massacre of environmental protestors

On 22 May 2018, [police opened fire on thousands of protestors](#) marching against the expansion of a copper smelter in the port city of Thoothukudi in Tamil Nadu, South India, **resulting in the killing of 13 people**, with [dozens suffering gunshot wounds](#). According to eye witnesses [interviewed by Reuters](#), a 17-year-old girl, J. Snowlin, was shot in the face while trying to flee from the firing. Another witness, who was shot in the leg, said “*They started shooting at us without any warning. They came with an intent to kill as if we were terrorists.*” A group of UN human rights experts immediately [condemned](#) the “*apparent excessive and disproportionate use of lethal force by police against protestors*”.

The protest marked the **100th day of demonstrations against a copper smelting plant**, Sterlite Copper, owned by Vedanta Resources (‘Vedanta’) - a multinational mining company with EU investors and subsidiaries.⁶ Local residents had begun the

⁶ According to Thomson Reuters’ analytic tool [Relativ Eikon](#), as of 11 January 2023, Vedanta Resources Ltd had subsidiaries in Ireland and Netherlands whilst Vedanta Ltd, a subsidiary of Vedanta Resources Ltd, had EU-based investors as well as investment from large firms with EU exposure such as Black Rock.

demonstrations demanding the closure of the plant due to pollution concerns when the company announced plans to double its expansion. A month before the protests, local authorities had rejected the company's request to renew its license, saying [it had not complied with environmental laws](#). According to [UN experts](#), Indian judicial bodies have documented water contamination, air pollution and other forms of environmental degradation linked to the plant. People's Watch, a prominent Indian human rights NGO, has [called for criminal prosecutions against Vedanta for environmental damage](#). Immediately after the police killings, the state government ordered the plant to be shut permanently on environmental grounds. The company has consistently [denied the pollution allegations](#).

Further abuses linked to the May 2018 violence have since come to light following a Commission of Inquiry (Col) ordered by the Tamil Nadu state government. Extracts of the Col's reports, [cited by local press](#), confirm that numerous protestors were illegally detained following the demonstration whilst *"ninety-four youths and boys were taken to the Vallanadu Police Firing Range near Thoothukudi and tortured."*

According to local media, the Col found that [the firing was "unprovoked"](#), **the police "had fired on the fleeing protesters..."** and concluded *"here is a case of police indulging in shooting from their hide-outs at the protesters who were far away from them."* The Col found that alleged violence by protestors occurred in the aftermath of these shootings. There were [reports](#) of protestors setting fire to vehicles and throwing stones at officers but the [Col claim](#) there was no *"imminent threat to the life and limb of the policemen"* and the crowd burnt the vehicles after it came to be known that the police had shot protestors dead.

Witnesses [interviewed by Reuters](#) said they saw a man shooting down on the crowd from the terrace of a local government office. Some of the gunmen, armed with rifles and pistols, were in police uniform while others were allegedly in plainclothes. One witness, whose relative died in the shooting, described seeing someone firing from the top of a van. There is no evidence of Vedanta's direct involvement in the killings. To date no one has been held accountable for the killings of May 2018.

Ongoing reprisals against defenders

People's Watch [has denounced](#) the **ongoing persecution of HRDs** by the police in Thoothukudi. False charges were reportedly filed against six HRDs who the police claimed were involved in violence during the May 2018 protests. Two lawyers who were providing legal aid to the HRDs were then illegally and arbitrarily detained in Thoothukudi, according to People's Watch. All eight defendants [were subsequently released](#) by the Madras High Court, which warned the police and the district administration of Thoothukudi not to arbitrarily detain persons under such preventive detention laws.

In August 2019, prominent defender Thirumurugan Gandhi [was arrested](#) at Bengaluru international airport on his return from testifying about the Thoothukudi massacre at the UN Human Rights Council and European Commission. People's Watch [allege that around 20 policemen surrounded him](#), roughed him up and threatened him to come with them without giving an explanation. They say his detention is linked to his activism on the case. A year after the killings, local residents told [Al-Jazeera](#) that they are still being intimidated, and in some cases detained and beaten, by the police. They said the police were clamping down on any attempts to discuss the shootings or the shutdown of the copper smelting plant.

How an effective due diligence law could have prevented reprisals

It is clear that Vedanta, as owner of the Sterlite Copper plant, failed to implement any genuine environmental and human rights due diligence process. Vedanta should have been obliged to **conduct safe and meaningful stakeholder engagement** with the local residents denouncing the project's environmental impacts. According to [documents seen by People's Watch](#), Vedanta had tried to get a court order to stop the protestors - a diverse group of residents from different castes and professions, that had peacefully held sit-ins outside their homes for 100 days before the massacre. This does not represent a genuine effort to engage with stakeholders and demonstrates the need for the Directive to include strong provisions that safeguards the rights of HRDs and communities to participate in the due diligence process.

If Vedanta, which has EU investors and subsidiaries, had been legally compelled to carry out effective human rights and environmental due diligence, **including mitigation of reprisal risks for HRDs**, then the protests likely would not have escalated to the same extent, or could have been prevented altogether.

Moreover, the example of the arrest of Thirumurugan Gandhi after he gave evidence related to the massacre at the UN and European Commission, underlines the need for the future Directive **to guarantee the protection of defenders outside the EU** who report breaches.

4. CONCLUSION

It is clear from the three case studies in this report that any future EU Directive on human rights and environmental due diligence must ensure EU-based companies and investors are obliged to effectively address reprisal risks against HRDs, as well as the socio-environmental impact of their activities. The wide geographical scope, range of business activity and type of HRD, demonstrated in these case studies, underlines the prevalence of reprisal risks linked to EU companies.

More specifically, these case studies show the significance of safe and meaningful stakeholder engagement, that can help build trust and drawing on the expertise of HRDs, pre-empt problems down the line. It is critical that stakeholder engagement be carried out throughout the human rights and environmental due diligence process. Similarly, whistleblowers and HRDs outside the EU who report illegalities related to EU business projects are urgently in need of protection, and any process must include provisions for their safety. For the EU Directive to ensure compliance with human rights and environmental due diligence, it is essential that HRDs have the space and security to be able to carry out their role.

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