

YOUNG ENVIRONMENTAL DEFENDERS

AND THE STANDARDS THAT PROTECT THEIR ACTIVISM



World Forum
for
Democracy
&
Expert Council on NGO Law

A. HOW DO WE CHARACTERISE ENVIRONMENTAL DEFENDERS?

Environmental activism come in all shapes, sizes and groupings

Environmental defenders pursue their goals related to environmental protection in different ways. Despite the differences in the size and structure of the organizations they work within, they all benefit from equal protection in their efforts to protect the environment and campaign against climate change. Environmental defenders are all part of civil society that should be understood broadly to encompass individuals, groups of individuals, networks and organizations. They can be organised in registered civil society organisations, or will be less structured within movements and informal groups through which they engage in the pursuit of their activities or may work independently outside of any grouping. Such organised or less organised groups may include professional and grass-roots organisations, universities and research centres, religious and non-denominational organisations and human rights defenders

YOUTH CLIMATE STRIKE

On September 20, 2019, more than 4 million people from 150 countries around the world went on climate strike. It is likely the largest demonstration in history of any kind -- climate related or otherwise.



Everyone must benefit from the same standards and protections

States must take all measures necessary to ensure the rights, protection and safety of all persons, including environmental activists, in all their diversity. Decision-makers cannot discriminate against groups simply because they are informal and must refrain from imposing limitations on the ability of such groups to express themselves and associate with each other because of the loose structure in which they operate. This includes, their rights to express opinions, to peaceful assembly and association – both online and offline. Also, both loose coalitions and formal networks should be able to access funding on an equal footing.

At the same time, registered organisations have different rights and duties than informal networks due to their acquired legal personality. Acting as a separate legal entity, a registered organisation has the capacity to enter contracts and to litigate and to be litigated against. Non-registered organisations and informal networks depend upon the legal personality of individual members when undertaking any actions having legal effect. This differentiation that arises from their legal recognition, however, does not legitimize any discrimination against informal groups in their right to associate with others or to organise peaceful protests.

Human rights enable and protect environmental activists

The Commissioner for Human rights of the Council of Europe specifically emphasised that it would be futile to try to protect the environment without at the same time protecting human rights such as the freedoms of expression, association or assembly, the right to an effective remedy or the right to education - to name just a few of so-called "enabling" rights.

The failure to take all necessary steps to protect the environment can also give rise to breaches of the right to life, as well as the right to respect for private and family life.

The Council of Europe has developed several international legal standards, including the European Convention on Human Rights, the European Social Charter and the Bern Convention on the Conservation of European Wildlife and and Natural Habitats that protect the rights and freedoms of environmental activists.



A group of Portuguese children and young adults have brought an unprecedented climate change case against 33 countries to the European Court of Human Rights. This case centres on the rising threat which climate change poses to the lives and wellbeing, both physical and mental, of these young people. If successful, these 33 countries would be legally bound, not only to ramp up their emissions cuts, but also to tackle their overseas contributions to climate change, including their exports of fossil fuels.





THE RIGHT TO FREEDOM OF ASSOCIATION ALLOWS PEOPLE TO COME TOGETHER TO PURSUE COMMON OBJECTIVES, INCLUDING THE PROTECTION OF THE ENVIRONMENT



B. POSITIVE OBLIGATIONS: WHAT SHOULD STATES BE DOING TO FOSTER ENVIRONMENTAL ACTIVISTS' FREEDOM OF ASSOCIATION?

Everyone has the rights to freedom of expression, association and peaceful assembly

Everyone has the rights to freedom of expression, freedom of association and freedom of peaceful assembly and States must ensure that everyone is able to exercise those rights. This means that States must not violate people's rights but also, that they must take active steps to help people to exercise their rights.

The right to freedom of association allows people to come together to pursue common objectives, including the protection of the environment. The right to freedom of association allows associations, whether formal or informal, to determine their own objectives and the activities they use to achieve those objectives (provided they are consistent with a democratic society), including holding peaceful assemblies. The right to freedom of peaceful assembly allows those participating in assemblies to determine the purpose of the assembly and its messages.

States must create an enabling environment for environmental defenders

An enabling environment is one in which the legal framework and the political and public environment allow civil society, including environmental defenders, to flourish and freely carry out activities to protect rights and freedoms. An enabling environment is not just one which avoids unnecessary interference with civil society, but also one which promotes and enables civil society. Promotion can include ensuring that civil society is consulted on laws and policies, providing funding to civil society and recognising the essential role of civil society in a democratic society.

State authorities must facilitate peaceful assemblies

State authorities have a duty to take measures to allow peaceful assemblies to take place uninterrupted, including spontaneous assemblies. This may include redirecting traffic and blocking off streets to allow protests to happen. As far as possible, State authorities should take positive steps to allow assemblies to take place within 'sight and sound' of the intended audience and at the organiser's preferred location. Law enforcement agencies should communicate with organisers in order to facilitate assemblies. Journalists and monitors must be allowed to carry out their work freely when reporting on and monitoring assemblies. The law and regulations relating to peaceful assemblies must be easily available and understandable to the public.

State authorities must protect environmental defenders

State authorities must protect those participating in peaceful assemblies from possible violence and discriminatory attacks from other members of the public. This includes when travelling to or from an event. In addition, as with all members of the public, State authorities must take all reasonable steps to protect environmental activists against violence from other members of the public generally and must conduct prompt and impartial investigations of such violence and other crimes. Given the economic interests that their activities tend to impact, environmental activists can be subjected to a range of intimidatory tactics such as smear campaigns and strategic lawsuits against public participation (SLAPPs) by companies and corporate actors in particular. States have the obligation to protect the right to protest against corporate activity, like any activity, regardless of States' strategic interests.



C. NEGATIVE OBLIGATIONS: WHAT SHOULD STATES REFRAIN FROM DOING BECAUSE THEY IMPEDE CIVIL SOCIETY SPACE?

No Discrimination

In their dealings with environmental groups and their members, law enforcement and other State officials must ensure that their conduct does not involve discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Environmental protests cannot be restricted on the basis of the prejudices and intolerance that societies have towards an individual or group, such as non-citizens, sexual minorities or student groups.



No unjustified crackdowns on environmental defenders

Environmental defenders and their organisations have the right to exist, to exercise their right to peaceful assembly and to express any views or concerns they have. When governments impose conditions of registration, financial reporting, foreign agent laws, or other administrative requirements that are excessively cumbersome or costly, this may make the conditions unreasonable and disproportionate to any objectives the requirements might otherwise serve on account of constituting a de facto bar on legitimate civil society activity. Similarly, imposing blanket bans on the right to peaceful assembly and to protest of environmental groups, and using criminal, civil and administrative laws to hinder and criminalise the work of environmental defenders, are unjustified.

Law enforcement should not hinder or intimidate those who wish to participate in protests, assemblies, and counter-demonstrations

States should not implement any restrictions to environmental activism, including protests, assemblies and counter-demonstrations that are not necessary and strictly proportionate to what they are seeking to achieve. Overly onerous regulations relating to holding protests and how protests are carried out are inconsistent with freedom of assembly. For example, States should not invoke Covid-19 as a reason to ban protests where social distancing rules are capable of being applied.

Dispersal of protests is an exceptional measure

Assemblies should not be dispersed unless there is an imminent threat of, or actual violence. Dispersals by force are only permitted in very exceptional cases, by means of an express order by a competent senior official based on a serious risk to the life or physical integrity of persons and where no other less harmful measures are available to protect those rights loss of the opportunity to capture them. Voluntary dispersal, such as asking participants to leave, or if necessary, moving the protest, are always preferred options to dispersal by force.

Law enforcement must never employ collective punishments to target environmental defenders

Any law enforcement response, such as the use of force or arrests must be strictly necessary in the circumstances, proportionate, and focused on those who are engaged in violent behaviour rather than directed at an organisation in its entirety or all the participants of the assembly. The rights to liberty and security of the person ground the prohibition on indiscriminate mass arrests. Similarly, the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment dictates important limits on the use of force during assemblies. Particular groups behaving violently should be separated out from the wider group so that peaceful protesters can continue to assemble peacefully.



States must refrain from overly broad definitions of “extremist” or “terrorist activity” which can have direct effects on environmental defenders

Some States have delimited certain zones as being of strategic national interest and characterised any protest activity inside the zone an act of terrorism. Similarly, a protest movement’s commitment to disruption through peaceful, non-violent, direct action protest, has in some instances resulted in being labelled as “extremist.” States should refrain from the adoption of similarly broad definitions that can have direct effects on environmental defenders.

Law enforcement must refrain from the resort to unjustified surveillance measures towards environmental defenders

Measures such as recording and filming environmental defenders and peaceful protesters, storing such data on searchable databases, phone-tapping, and using fake identities to infiltrate environmental groups, violate defenders right to privacy and have a chilling effect on civil society space. Emergency powers related to Covid-19 should not be used to justify increased surveillance of environmental defenders.

D. YOUNG ENVIRONMENT DEFENDERS: APPLICABLE STANDARDS

Human rights for young people

In addition to the human rights standards applicable to all environmental defenders, young environmental defenders are also protected by specific standards. Children and teenagers – that is everyone under the age of 18 – have the right to freedom of expression, including the right to access, receive and pass on information and ideas. They also have the right to form clubs, organisations or just to work together under this freedom of association. They equally have the right to protest, in streets, squares and even schools, as well as online, under the right to peaceful assembly.

Proportionate limitations only

Just like for adults, these rights are not unlimited. States can only limit them when it is necessary in a democratic society, is justified by a legitimate aim, and is provided for by law. This includes the rule that restrictions towards young environmental defenders do not go further than necessary – in other words, that they are proportionate.

The voice of children and other young people

States should make sure that children, who are capable of forming their own views, can also voice those views freely. This relates specifically to matters affecting children and other young people, so the future of the planet and the environment is clearly included. The views of young activists should be given due weight in accordance with their age and maturity. The capacity of young people to express themselves may be more limited than that of some adults, but the right to freedom of expression of young people should not be more limited. This also means that they have the right to be heard in any court or by another State authority taking decisions that affects them, either directly or by way of a representative. These guarantees should be included in the domestic laws of States to encourage and facilitate the rights of children and other young people and should be implemented also in practice.



Holly Gillibrand is 13 years old. She is helping to build a UK movement of children demanding more action on climate change.

Holly is a young ambassador for "Scotland: The Big Picture" and a campaigner for animal welfare charity "OneKind".



Best interests of the child

A key principle is that any action taken by a State official, whether it is a police officer during a protest or a judge, should always give priority to the best interests of the child or young person. This means that they have to consider the well-being of young people by ensuring necessary protection and care. They also need to take into account the rights and duties of the parents or legal guardians.



Protection during protests

State authorities should make sure to protect protesters against counter-protesters. This is all the more important if children and other young people are involved. In enforcing the law during protests, police officers and others should ensure and enable free expression and peaceful assembly for these groups. Law enforcement should also refrain from violence as much as possible and even more with children and other young people, taking into account that children should not be dealt with the same way as adults. Instead of police force, the protection of their best interests should always be at the forefront.

Arrest and detention

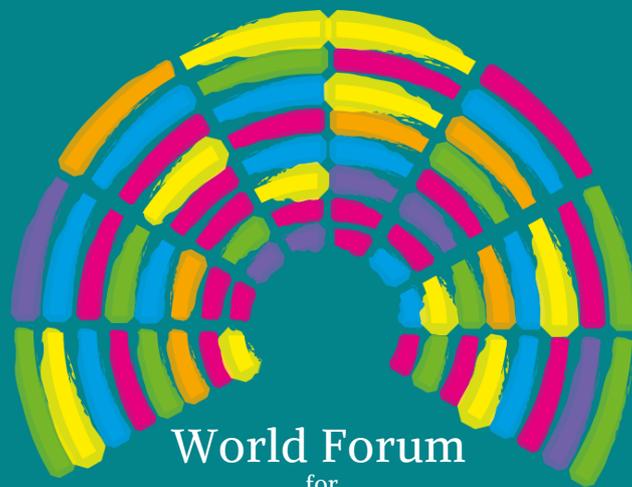
Arresting and detaining young environmental defenders during a protest is problematic and should only be a method of last resort. Young people should be brought to their parents and home as soon as possible. They should never be ill-treated. By contrast, police officers and others should treat them with humanity and ensure their dignity, taking into account their age. If young people are arrested, they shall be separated from adults, unless the best interests of the child require this. They have the right to stay in contact with their family. In detention, young people shall be given prompt access to legal or other assistance. They have the right to challenge their detention before a judge and to receive a fast decision on their case.



FOR MORE INFORMATION

-  [Council of Europe, *Protecting the Environment Using Human Rights Law*](#)
-  Council of Europe, Office of the Commissioner for Human Rights, '[Environmental Rights Activism and Advocacy in Europe: Issues, Threats, Opportunities: Round-table with environmental human rights defenders and activists organised by the Office of the Council of Europe Commissioner for Human Rights](#)', 31 March 2021
-  [Environment and the European Convention on Human Rights- Factsheet](#)
-  [Joint Declaration on human rights and the environment by the outgoing and incoming Presidencies of the Committee of Ministers](#)
-  [OSCE/Venice Commission Guidelines on Freedom of Peaceful Assembly](#)
-  [United Nations, Declaration on Human Rights Defenders](#)
-  [United Nations Human Rights Committee, General comment No. 37 \(2020\) on the right of peaceful assembly \(article 21\).](#)
-  UNODC and OHCHR, '[Resource Book on the Use of Force and Firearms in Law Enforcement](#)', 2017
-  [Earth Day: Youth Climate Activists to Follow on Social media](#)

This brief was developed by the following members of the Expert Council on NGO Law of the Council of Europe's Conference of INGOs: Jade Glenister, Carla Ferstman, Antoine Buyse and Katerina Hadzi-Miceva Evans with the support of Ivana Rosenzweigova, Legal Consultant at the European Center for Not-for-Profit Law (ECNL).



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