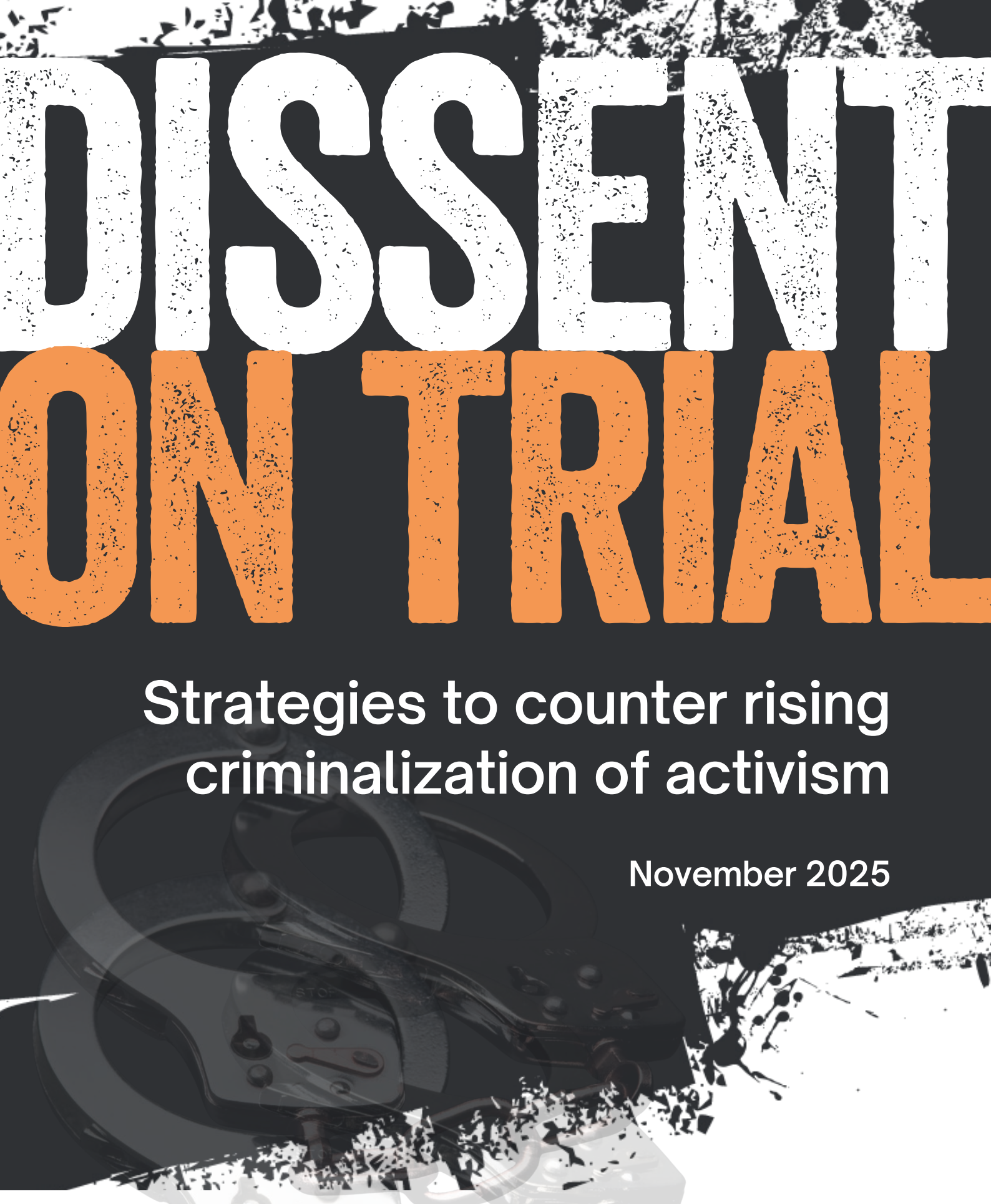
DISSENT ON TRIAL

Strategies to counter rising criminalization of activism

November 2025



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Introduction

Around the world, people are firmly voicing their dissent against governments and corporate actors that trample human rights. In the past 12 months alone, more than 140 sizable anti-government protests have been recorded in response to corruption, the climate emergency mainly caused by the production and burning of fossil fuels, the ongoing genocide in **Gaza**, and other human rights abuses.[1] For example, in August 2025, nationwide protests against low wages, tax hikes, the cost of living, and lawmakers' benefits took place in **Indonesia**, amid concerns regarding excessive use of lethal force by police.[2]

People are resisting governments' reliance on authoritarian practices that seek to sabotage accountability, entrench power and silence critical voices.[3] For example, on 14 June 2025, it was estimated that more than five million people participated in the No Kings protests in the **United States** to oppose the Trump administration's policies, amid a crackdown on migrants and defiance towards the judiciary and other checks and balances.[4]

Criminalization as a tactic to silence voices

These mobilizations—and, more broadly, the environment in which human rights defenders (HRDs), journalists and whistleblowers express dissent—have come under increasing threat from governments and corporate actors, with attacks growing both more severe and more widespread. In 2024, according to CIVICUS, more than 72% of the world population lived in a country where civic space was closed or repressed (81 countries),[5] an increase of nearly 4% when compared to 2020 (67 countries).[6]

Threats include unlawful killings, enforced disappearances and physical attacks. Journalists and HRDs often bear the brunt of these abuses. In 2024, at least **324 HRDs** were reportedly **killed** in **32 countries**, including 157 in Colombia, the country with the highest number worldwide.[7] In the same year, **188 journalists** were reportedly killed or forcibly disappeared because of their journalistic activity, with the highest number (23) in the Occupied Palestinian Territory (OPT).[8]

In **South Africa**, at least 25 HRDs involved with Abahlali baseMjondolo (AbM),[9] a movement focused on improving economic and social rights for people living in informal settlements and in poverty, have been killed since its establishment in 2005. These killings were often accompanied by threats, harassment and physical attacks, which police often neglected by failing to take positive measures to protect the right to life. Impunity remains widespread, as perpetrators have been brought to justice in only a handful of cases.[10]

The criminalization of human rights defenders, activists, journalists and anyone expressing dissent is among the clearest emerging tactics that powerful actors are using to restrict civic space, silence critical voices and undermine accountability.[11] A stark result of criminalization is the arbitrary detention of journalists and other media workers solely because of their professional activities. As of October 2025, at least 558 journalists and media workers were arbitrarily detained globally.[12]

The misuse of criminal laws and legal systems is a key component of authoritarian practices that governments and other powerful actors are using to sabotage accountability and entrench power, including by instilling fear and disincentivizing individuals and organizations from standing up against injustice. Criminalization often produces a chilling effect: people refrain from exercising their rights to freedom of expression, association, and peaceful assembly, which in turn undermines efforts to challenge power and hold perpetrators of human rights abuses accountable.[13] While these abuses are not new, the multiplication of criminal laws to repress protest and punish free expression, as well as their draconian implementation often resulting in arbitrary arrest and pre-trial detention, has intensified in recent years.[14]

On 12 March 2025, for example, at least 114 people were arbitrarily arrested in Buenos Aires, **Argentina**, during a protest demanding improved social security for pensioners, in a context marred by austerity measures.[15] At least 20 protesters sustained injuries due to the excessive use of force by law enforcement officials.[16] The following day, a judge released all the protesters, citing the lack of adequate information and other irregularities surrounding their arrests.[17] In response, the government filed a criminal complaint against the judge for failing to perform her official duties and for aggravated concealment of criminal activities. These arrests took place against the backdrop of the authoritarian practices that the Argentinian authorities have increasingly weaponized since the election of President Javier Milei. These practices include, for example, Decree 943/2023, through which the executive branch expanded the types of peaceful conduct, namely partial or full road blockade, that are prohibited and granted powers to law enforcement officials to disperse and arrest protesters.[18]

Overbroad and vague laws (defamation and sedition)

Governments have stepped up their efforts to repress dissent by enacting and implementing often overbroad and vague laws criminalizing conduct that is protected by human rights law and standards. For example, between 2019 and 2022, 22 laws that unduly restricted the right to peaceful assembly were passed in 14 countries, including Australia, France, South Africa, the UK and the US.[19] In 2024, the authorities in at least 20 countries introduced or sought to introduce new laws that infringed on the right to freedom of expression.[20]

Comprehensive data about HRDs and activists prosecuted for acts protected by human rights law is lacking. In 2024, according to Front Line Defenders, the most common charges brought against human rights defenders were defamation, national security or sedition related charges, public order and assembly related charges, and terrorism-related charges.[21] **Criminal defamation** laws remain in force in more than **160 countries** worldwide. The authorities often use these laws to target journalists, media workers, HRDs or whistleblowers who report on, for example, human rights abuses by corporate actors, or allegations of gender-based violence involving politicians and other public figures.[22]

Other overbroad laws include security and public order laws, and **sedition laws**, which governments continue to use to silence and punish critical voices.[23] For example, in **Thailand**, between 2020 and 2024, at least 152 people were charged in 50 cases under article 116 of the Criminal Code, following large youth-led protests that demanded reform of the monarchy.[24] Article 116 punishes vaguely defined conduct such as "*causing unrest or disaffection*" among the population or "*causing people to transgress the laws of the country*".

The repression of civil disobedience

Individuals engaging in **civil disobedience** by carrying out non-violent acts that deliberately break the law to address ongoing human rights abuses are subject to draconian responses by the authorities. These responses include the use of counter-terrorism laws or **laws targeting organized crime**, as well as harsh criminal sanctions, including prison sentences.[25] For example, activists involved with Last Generation, an organization addressing the climate crisis by engaging in non-violent direct actions, have been investigated in **Germany** since at least 2022 for forming a 'criminal organization'. In May 2024, five activists were charged with forming a criminal organization and, in June 2024, one activist was charged with participation in a criminal organization.[26]

The six activists participated in several actions such as disrupting air traffic for 90 minutes, attempting to shut off oil pipelines and throwing food on the glass and frame of a painting without damaging it. The government conceded that the activists did not cause any serious damage but emphasized the 'inherent risk of damage' associated with their activism.[27] The charges against them appear to be disproportionate as these provisions are meant to combat criminal organizations that aim to enrich themselves through unlawful activities.

In the **United Kingdom**, 16 activists from Just Stop Oil were convicted and given prison sentences ranging from five months to five years for public nuisance and conspiracy to cause public nuisance following their participation in various acts of civil disobedience (see Section C2).[28]

Protest against austerity and for social security which took place in Buenos Aires (Argentina) on 12 March, 2025.
Credits: EMILIANO LASALVIA/AFP via Getty Images

SLAPPs and attacks on whistleblowers

Governments and corporate actors are turning to Strategic Lawsuits against Public Participation (SLAPPs) to stifle criticism and prevent justice and transparency in key areas, such as environmental issues or the fight against corruption.[29] Although comprehensive data regarding SLAPPs is not available, 1049 such lawsuits were reported between 2010 and 2023 in Europe alone[30] Globally, the Business and Human Rights Resource Centre recorded 355 SLAPPs launched by corporate actors between 2015 and 2021.[31]

In March 2025, for example, a court in North Dakota (**United States**) ordered three Greenpeace entities to pay USD 660 million to the fossil fuel company Energy Transfer, posing an existential threat to the organization.[32] The court upheld the company's claims against Greenpeace for opposing the Dakota Access Pipeline, which transports crude oil from North Dakota to Illinois, and found Greenpeace liable for defamation, trespassing and nuisance, among other charges. The company has also attempted to prevent Greenpeace International from pursuing proceedings in the Netherlands, where both domestic and European Union legal frameworks robustly protect against SLAPPs (see Section B6).[33]

Whistleblowers, such as Edward Snowden and Chelsea Manning, play a key role in fostering transparency and promoting accountability for human rights abuses. They often face retaliation, including criminal sanctions, for breaking confidentiality clauses, whether in the context of their work or in other situations. Most countries do not provide effective protection for whistleblowers. According to a working paper published by the International Labour Organization (ILO), only **five** out of 67 ILO Member States have **comprehensive domestic laws relevant to whistleblowing protection** in the public employment sector.[34] In the EU, where robust legislation was adopted in 2019, most member states have not yet effectively implement it.[35]

HRDs, civil society organizations, journalists and lawyers are resisting these harrowing criminalization trends by devising and pursuing strategies, including in courts, that have at times proven effective in securing the defendants' acquittal. These strategies are the primary focus of this briefing, which seeks to strengthen responses against the criminalization of dissenting voices.

Objectives and methodology

This briefing aims to provide human rights defenders (HRDs), activists, civil society organizations, journalists and lawyers with examples of possible strategies and avenues to counter the criminalization of dissent, especially in areas where advocates may face barriers in formulating claims for full decriminalization, namely repealing specific criminal laws.

In some cases, short-term strategies are necessary because full decriminalization may take time to achieve. For example, lawyers may have to rely on specific short-term strategies to defend individuals prosecuted for defamation or sedition, aiming to secure their acquittals or, at a minimum, avoid custodial sentences. In the long term, however, these criminal offences should be abolished entirely, as they are inconsistent with international and regional human rights law and standards (see Section B4). Moreover, while there is a growing consensus among human rights experts and bodies on the need to decriminalize defamation, this requires legal reforms and sustained advocacy over time, which makes decriminalization unlikely to be achieved in the short term.

In other instances, there may be limitations preventing advocates from making fully-fledged decriminalization claims. For example, HRDs may express dissent peacefully, while deliberately breaking criminal laws, such as those punishing trespassing or non-serious criminal damage, which are not prima facie inconsistent with human rights law. In such cases, where opposing prosecution may be more challenging, lawyers and civil society organizations may need to rely on specific public interest defences to argue for the exclusion of criminal liability and secure an acquittal for the HRDs facing trial or, at a minimum, avoid custodial sentences.

This briefing focuses on specific strategies that have, in some instances, been successfully used to enhance protection against the criminalization of people who express dissent individually or collectively against state or corporate actors through a variety of tactics and repertoires. Specifically, this briefing outlines strategies that may be successful to counter the criminalization of civil disobedience, defamation, and whistleblowing, as well as the use of SLAPPs. States criminalize dissent by relying on a wide range of tactics, including some that, due to limited resources, are not addressed in this briefing, such as criminal and other laws that disproportionately restrict the right to association, for instance, so-called "*foreign agents*" laws.[36]

The briefing is divided into three main chapters focusing on strategies that can be pursued in three specific phases of the criminal legal system:

a) before charges are filed or criminal proceedings are initiated;
b) during criminal proceedings; and
c) at the sentencing stage.

It includes examples of laws and practices as well as specific case-studies from **15 countries**: Argentina, Australia, Belgium, Canada, Chile, Colombia, France, Indonesia, Luxembourg, Peru, South Africa, Switzerland, Thailand, the UK and the US. The choice of these countries does not reflect their overall compliance with their obligation to protect, respect and fulfil the rights to freedom of expression and peaceful assembly. While some HRDs have successfully countered their criminalization in these countries, concerns regarding undue restrictions on civic space remain.[37]

These countries have been selected based on the following criteria: **1)** geographical representation (world regions, Global North/Global South); **2)** presence of cases where legal defences or other strategies to counter the criminalization of dissent have been effective, e.g. securing an acquittal of HRDs; **3)** type of legal system (common law or civil law system), and **4)** access to and availability of information.

This briefing is a useful tool for:

- **Lawyers and legal practitioners**, as it includes case law from several jurisdictions that can be useful for building legal arguments regarding specific types of defences or other strategies to counter the criminalization of dissent. This case law may also inspire the development and pursuit of litigation strategies to ensure the availability of specific legal defences domestically or addressing the existing barriers preventing their use.
- **Affected human rights defenders**, as the briefing may inspire them and their organizations and movements to use, adopt and/or develop specific strategies to counter their criminalization, including during trials and/or through media and advocacy work.
- **Civil society organizations, NGOs and campaigners**, as the publication provides insights for devising campaigns, as well as advocacy and litigation strategies, that may strengthen the availability of specific legal defences to counter the criminalization of dissent, achieve policy reforms resulting in enhanced protections for HRDs and journalists, or challenge negative narratives stigmatizing civil disobedience.

This briefing is based on research conducted from June 2024 to September 2025. In 2024, 14 online exploratory interviews were conducted with individual human rights defenders and civil society organizations based in seven regions. The interviews focused on identifying challenges and practices to counter the criminalization of dissent.

In December 2024, a two-day participatory workshop took place in Bangkok (Thailand). Eighteen participants representing 14 organizations attended the event, which aimed to explore further strategies that may be successful in countering the criminalization of HRDs, activists and journalists, as well as to establish synergies among the participants in the areas of policy, advocacy and strategic litigation.

Desk research conducted between March and September 2025 identified laws, policies and case law that may inform the efforts of those defending human rights in countering the criminalization of dissent. Desk research identified **56 cases** in **16 countries**. For the sake of conciseness, this briefing draws only on some of them, excluding those for which the rulings' full texts were not available, and ensuring regional representation. It highlights **11 case studies** that illustrate specific strategies and legal defences to counter the criminalization of dissent.

To complement the information collected through the analysis of courts' decisions in these cases, 10 online interviews were conducted with 12 people, including individuals who were criminalized and/or their lawyers. Some of the names of these individuals have been concealed to ensure their privacy and security and in line with their informed consent. Pseudonyms are indicated by an asterisk (*).

Glossary

This briefing refers to the criminalization of dissent as the exercise of punitive power by the state or corporate actors to dissuade, punish or prevent individual and/or collective acts of dissent through the arbitrary or disproportionate use of criminal laws and criminal legal proceedings. Civil or administrative sanctions, including fines and warnings, may also be punitive and used to crackdown on dissent. The criminalization of dissent negatively affects the rights to freedom of expression, association and/or peaceful assembly and, in some instances, the right to liberty and security of person, the prohibition of torture and other ill-treatment as well as fair trial standards.

Criminalization
The Inter-American Commission on Human Rights has noted that "*the criminalization of social protests consists in using the punitive power of the state to dissuade, punish or prevent people from exercising their right to protest and, in some instances, social and political participation more broadly, through the arbitrary, disproportionate or reiterated use of criminal justice or laws on minor offences against protesters, activists, social or political leaders for participating in social protests, or organizing them or being a member of entities and collectives that organized them*".[38] The Commission has also emphasized that the criminalization of HRDs often occurs against a backdrop of laws that lack legal clarity or are otherwise inconsistent with international human rights law, or in the context of unfair trials lacking sufficient evidence of involvement in a crime, or based on secret evidence.[39]

Minor non-violent offences
As international human rights law and standards do not provide a universally agreed definition of minor non-violent offences, the concept may be subject to varied definitions and understandings in different national contexts. This briefing makes use of minor non-violent offences to refer to criminal offences that do not result in injuries or serious damage to property and are usually punished by a low-value fine or a short term of imprisonment.[40]

Civil disobedience
This term refers to deliberate acts of law-breaking concerning a matter of public interest, conducted publicly. While civil disobedience is not explicitly defined by international or regional human rights instruments, several human rights bodies and mechanisms have referred to it.[41] The Human Rights Committee refers to civil disobedience without explicitly defining the concept, while affirming that peaceful acts of civil disobedience and non-violent direct actions are protected by the right to freedom of peaceful assembly (when they engage that right).[42]

Non-violent direct action
This is an umbrella term referring to a variety of tactics, such as sit-ins, boycotts or occupations, that aim to achieve change beyond institutionalized channels. The term includes civil disobedience as well as acts that do not break the law.

Human rights defenders (HRDs)
These are people who, individually or in association with others, defend human rights by using a variety or peaceful tactics and repertoires. Environmental HRDs defend the right to a clean, healthy, and sustainable environment.

Activists
Activists are individuals who engage in causes that may not be directly related to human rights; these include, for example, activists involved in political causes by supporting a political party (political activists) or activists defending animal rights. The briefing sometimes refers to environmental defenders or simply defenders for conciseness.

Strategies to enhance protection against criminalization

A Countering criminalization before charges are filed or criminal proceedings are initiated

A.1 Public interest and alternatives to prosecution

According to the UN Guidelines on the Role of Prosecutors, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings or diverting criminal cases from the formal justice system, with full respect for the rights of both suspects and victims.[43]

Available alternatives to prosecution usually depend on whether prosecution in any given country is discretionary or mandatory.[44] In the former instance, prosecutors can make independent decisions regarding whether or not to prosecute suspects and which charges to bring for reasons of opportunity, expediency and public interest. In the latter case, prosecutors do not have this margin of discretion regarding the exercise of their functions. Prosecutorial discretion, which may provide flexibility to prioritize resources and consider individual circumstances, is typical of common law systems such as Canada, South Africa, the UK and the US, but also characterizes some civil law systems such as, for example, Belgium and France.[45]

In some countries, residual prosecutorial discretion accompanies mandatory prosecution, enabling prosecutors to interrupt or discontinue proceedings in specific instances, including when prosecuting suspects is not in the public interest. These countries include, for example, Argentina, Chile and Colombia.[46]

The UN Guidelines on the Role of Prosecutors also indicate that, in countries where prosecutors are vested with discretionary functions, there must be guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process.[47] The Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience by the Special Rapporteur on Environmental Defenders under the Aarhus Convention, call on prosecutorial oversight bodies in jurisdictions with prosecutorial discretion to establish guidelines on the factors to be considered when determining whether it is in the public interest and proportionate to prosecute lawbreaking that occurs in the context of a peaceful environmental protest.[48]

Some domestic prosecutorial guidelines include a focus on offences that may be committed in the context of public assemblies, requiring particular consideration. For example, in the **United Kingdom**, the Crown Prosecution Service guidance on offences committed during protests, demonstrations or campaigns indicates factors that make prosecution less likely to be required. These include the peacefulness of the event, the minor role of the suspect, the lack of previous offending history, and the fact that the act committed was minor, instinctive and carried out in the heat of the moment.[49]

Public interest in prosecuting suspects of criminal offences

In many common law jurisdictions where prosecution is discretionary, the public interest test is key in decision-making processes regarding pressing charges. It requires prosecutors to consider whether pursuing a case serves the broader public good, even when they have gathered sufficient evidence to justify prosecution.

In the **United Kingdom**, the intersecting factors considered in determining whether the public interest requires a prosecution include:

- The seriousness of the offence, considering the suspect's culpability and the harm caused;
- The level of culpability of the suspect according to the level of involvement, whether the offence was premeditated or planned, or the existence of previous criminal records or mental or physical ill health;
- The circumstances of the harm caused to the victim, including the vulnerability of the victim's situation. It is more likely that prosecution is required if the offence was motivated by any form of prejudice or hostility against the victim on discriminatory grounds; and
- The impact on the community and whether prosecution is a proportionate response.

In **South Africa**, the National Prosecuting Authority's Prosecution Policy establishes that when there is enough evidence to provide a reasonable prospect of a conviction, "a prosecution should normally follow, unless public interest demands otherwise". The policy sets out a series of criteria to assess the public interest. These include the nature and seriousness of the offence, the interests of victims and the broader community, and the circumstances of the offender.

Prosecutorial guidelines in **Aotearoa New Zealand** set out factors that should favour a decision not to prosecute. These include, for example, cases where only a very small or nominal penalty is likely to be imposed; where the loss or harm can be described as minor; where the recovery of the proceeds of crime can be more effectively pursued; or where proper alternatives to prosecution are available (including disciplinary or other proceedings).

In **Colombia**, prosecutorial guidelines issued in September 2024[50] incorporate specific safeguards against the criminalization of peaceful protest. These guidelines provide for the consideration of self-defence in instances where protesters break the law in response to acts that themselves raise concerns, such as prior acts of aggression.[51] They also include the principle that the more a group is marginalized, the greater the protection it should receive when voicing its demands through non-institutionalized or challenging tactics.[52]

The guidelines also establish that journalists covering protests and human rights defenders should receive special protection;[53] incorporate safeguards against arbitrary detentions, stating that individuals cannot be deprived of their liberty for disagreeing with or showing disrespect toward police;[54] stipulate that actions resulting in minimal harm may not justify criminal prosecution;[55] and reserve investigations for violent acts that seriously affect the human rights of others.[56]

In relation to public endangerment offences (delitos de peligro común) that may occur in the context of protests, such as throwing objects or obstructing roads, the guidelines establish that prosecutors must verify that the danger that the act causes to a protected interest is concrete—not abstract—and must be based on real and objectively verifiable causes.[57] Specifically, the guidelines indicate that in cases of road obstruction, only blockades that threaten life, public health, the right to work or the environment, and that are carried out with unlawful means, are criminalized (see Section A2).[58]

Despite these important principles, information regarding specific cases in which Colombian prosecutors may have applied the guidelines when deciding about the prosecution of peaceful protesters is not publicly available, and some legislators have called for the guidelines to be repealed.[59]

Pierina Nochetti
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CASE 1: Alternatives to prosecution in the case against the LGBTI rights defender Pierina Nochetti (Argentina)

In **Argentina**, mandatory prosecution is combined with residual discretion, for example in relation to minor offences that do not pose a serious threat to public interest.[152] Moreover, prosecutors can make use of a conciliation mechanism to reach an agreement between a suspect and a victim, for example in relation to property crimes committing without serious violence against people, subject to judicial approval.[153] **Pierina Nochetti**, an LGBTI activist and municipal employee, drew on this mechanism. Despite not preventing Pierina's criminalization, this option protected her from facing criminal proceedings and resulted in all the charges being dropped.

Pierina was charged with aggravated damage ("***daño agravado***") after allegedly painting, in February 2022, the mural "***¿Dónde está Tehuel?***" on public property belonging to the municipality of Necochea (Buenos Aires Province) during the LGBTI Pride March. The slogan referred to the 2021 transphobic murder of Tehuel de la Torre, a young trans man, whose body was never found.

The Municipality of Necochea filed a criminal complaint and launched a parallel administrative disciplinary procedure, which led to Pierina's suspension from her job. The charges carried a sentence of up to four years in prison.[154]

On October 31, 2024, Pierina reached a formal conciliation agreement with the municipality, which withdrew its criminal complaint. The conciliation received judicial approval and resulted in all the charges against Pierina being dropped, the termination of disciplinary proceedings, and her reinstated in her job. [155]

Almost one year after the end of the conciliation, Pierina told Amnesty International that she was pleased that an agreement had been reached. However, she emphasized that it took too long and had a detrimental impact on her, both personally and as an activist. She said: "***It affected me a lot that the police came to my house regularly to check that I was there. I feel like they took three years of my life away from me. The process could have ended sooner. I don't think [conciliation] is a mechanism that prevents the criminalization of protesters, because criminalisation already occurs the moment they file a complaint against you, and a case is opened. However, I am relieved that the agreement was reached, so I did not have to pay the fine, but I don't want anyone else to go through what I went through. Besides, my employer has not yet fulfilled all the commitments made, and I don't think it will***".[156]

A.2 Challenging vague laws through judicial review mechanisms

International and regional human rights law and standards, as well as most domestic legal systems, require that criminal provisions be clear and precise enough so that individuals can understand what conduct is prohibited and refrain from engaging in it.[60] Overbroad domestic laws that do not comply with the principle of legal clarity, such as sedition laws, violate international and regional human rights laws and standards.[61]

Domestic courts have played a vital role in clarifying the scope of criminal offences that were unclear, vague and overbroad, lending themselves to being used to stifle dissent. In the **United States**, for example, the Supreme Court has declared some criminal laws invalid based on the concept of "*void for vagueness*". This notion is rooted in constitutional due process guarantees, which provide that criminal laws must be sufficiently clear so that ordinary people can understand what conduct is prohibited and enforcement is not arbitrary or discriminatory. As early as in 1948, the Supreme Court struck down New York state law that punished publications deemed indecent or corrupting to morals, emphasizing that individuals should not have to speculate about the meaning of the law because of its vagueness.[62]

In some countries, individuals can directly trigger the review of laws that may lack legal clarity. For instance, in **Indonesia**, citizens can challenge national laws through the Constitutional Court by means of a judicial review petition.[63] Petitioners must demonstrate legal standing by showing an actual or potential loss of constitutional rights due to the law in question.[64] While this limits public interest challenges, activists have been able to use this mechanism to challenge provisions that lacked legal clarity and violated their human rights. In December 2006, for example, the Constitutional Court scrapped articles 134, 136 and 137 of the country's Criminal Code, which punished "insulting the President or Vice-President" with up to six years' imprisonment. The decision followed the judicial review petition introduced by two people who had been prosecuted based on those

Countering criminalization before charges are filed or criminal proceedings are initiated

- Avenues to oppose the criminalization of dissent before charges are filed include the use of judicial review mechanisms and the application of existing mechanisms and guidelines that provide for alternatives to prosecution.
- Public interest considerations play a key role in prosecutorial decision-making, particularly in jurisdictions where prosecution is discretionary or where residual discretion accompanies mandatory prosecution. Prosecuting minor non-violent offences committed during peaceful protests for reasons of conscience— for example, to raise awareness of human rights violations— may not serve the public interest.
- Alternatives to prosecution are available in some countries and can be used to prevent the initiation of criminal proceedings and mitigate the risk of criminal sanctions.
- Judicial review mechanisms in some countries provide broad standing, allowing anyone to challenge the constitutionality of a provision without needing to show direct personal impact.

laws.[65] Regrettably, since 2023, the new Criminal Code has reintroduced punishment for assaulting the dignity, honour or prestige of the President or Vice-President.[66] In May 2025, the Constitutional Court clarified the scope of the domestic provisions punishing defamation and 'hate speech', following the petition by Daniel Frits Maurits Tangkilisan (see case 8).

In contrast, **South Africa** has developed a broader approach to constitutional litigation, with a robust framework for challenging the constitutionality of laws and government actions in relation to human rights. Section 38 of the South African Constitution provides broad standing by allowing anyone acting in the public interest, whether directly affected or not, to approach a competent court if a human right protected by the Constitution has been infringed or threatened.[67]

CASE 2: Judicial review of laws punishing the blocking of roads and disruption of public transport (Colombia)

In **Colombia**, the public action of unconstitutionality is a mechanism that allows any citizen to challenge before the Constitutional Court a law and other normative acts that may violate the Constitution.[157] A legal scholar used this mechanism to challenge the constitutionality of two provisions that punished blocking roads and disrupting public transport (articles 44 and 45 of law 1453 of 2011).[158]

The plaintiff argued that these articles were ambiguous and vague, violating the principle of legality (estricta legalidad) and the right to freedom of peaceful assembly. The Constitutional Court found that the provisions did not violate the Constitution but clarified their application by excluding peaceful assemblies from their scope[159] and reiterating the principle of minimum intervention of criminal law. The Court emphasized that criminal law should be used only as a last resort, when other means prove ineffective to punish conduct that constitutes a real risk for individual or collective interests.[160]

The Court established that article 44 complied with the principle of legality because, when interpreted reasonably and in context, the provision becomes "***sufficiently precise and clear***". The Court clarified that blocking roads by "***illicit means***" refers specifically to punishable acts prohibited by law, a definition that does not encompass peaceful protest.[161] The Court further held that article 45 should be interpreted as punishing conduct that not only results in temporarily blocking public transport, but effectively eliminate any possibility of its circulation.[162]

In 2023, in a separate case, the Constitutional Court also clarified the aggravating circumstance of concealing one's face when blocking roads. The Court emphasized that covering one's face during peaceful protests falls within the exercise of the right to peaceful assembly, citing General Comment No. 37 of the Human Rights Committee.[163]

B Countering criminalization during trials

B.1 Using the necessity defence: breaking the law to address an imminent threat

"The threshold applied by courts is very high in instances where the state of necessity is invoked. We tried to use it several times in proceedings against environmental activists, but courts did not acknowledge that their actions directly addressed the climate emergency"

[A Belgian criminal lawyer interviewed for this research]

Particular circumstances may sometimes justify or excuse a person's otherwise unlawful conduct. In both common law and civil law systems, and depending on the jurisdiction, it may be possible for a person to rely on "*lawful excuses*" or "*defences*" resulting either in full or partial exemption from criminal liability.

One of the most well-known examples of a lawful excuse is self-defence, which entails the use of reasonable force to protect oneself or others from harm. This type of defence may be used, for example, by a peaceful protester who is subject to the unlawful use of force by a police officer. The protester may not be found criminally liable for assaulting the police if they honestly believed that the use of force was necessary to protect themselves from physical harm and their response was proportional to the threat faced.

The ***necessity defence*** is another defence provided for by many common law and civil law systems. This defence can protect against criminal liability if a person succeeds in arguing that a specific act, which would be unlawful in other circumstances, is necessary to prevent a greater harm, that the threat faced is imminent, and other reasonable options are not available.

Courts have sometimes acquitted individuals who committed crimes due to a lack of access to social and economic rights or in response to domestic violence, recognizing that their acts were justified by necessity. For example, on 13 April 2024, a court in Buenos Aires (**Argentina**) acquitted M.L.Y., a French citizen who was prosecuted for international child abduction after fleeing France in 2016 with her two sons. Her decision was motivated by her sons' disclosure that they had been sexually abused by their father who, shortly afterwar obtained legal custody of them. The Court acquitted M.L.Y. recognizing that her actions were justified under the legal defence of necessity. The ruling emphasized that her maternal duty to protect her children from imminent harm outweighed her legal obligation to comply with international custody orders.[68]

On 5 April 2023, the Federal Criminal Cassation Court in **Buenos Aires (Argentina)** acquitted a woman who had been convicted by a lower court of transporting drugs. She argued that she had acted out of socio-economic hardship, as she was living in poverty, without access to basic needs, such as drinking water, and was unable to provide for her children. The Court accepted her defence, recognizing a state of necessity rooted in her marginalization and the obligation to protect her children's rights—particularly the right to water, as guaranteed under article 24 of the Convention on the Rights of the Child. The judges applied a gender-sensitive and human rights–based approach, noting the disproportionate burden that women living in poverty faced. Concluding that she had no viable legal alternatives and did not pose a public danger, the Cassation Court overturned her conviction and acquitted her.[69]

Examples of necessity defence

Criminal codes

Colombia: article 32.7

There shall be no criminal responsibility when: (...) One acts out of necessity to protect one's own rights or the rights of another from a present or imminent danger that cannot be avoided in any other way, provided that the agent did not intentionally or negligently cause the danger and is not legally obligated to face it.

France: article 122.7

A person is not criminally responsible who, faced with a present or imminent danger which threatens themselves, another person, or property, performs an act necessary to safeguard the person or the property, unless there is a disproportion between the means employed and the severity of the threat.

Thailand: Section 67

Any person shall not be punished for committing any offence on account of necessity:

1. When such person is under compulsion or under the influence of a force such that such person cannot avoid or resist; or
2. When such person acts in order to make himself or another person to escape from an imminent danger which could not be avoided by any other means, and which such person did not cause to exist through his own fault, provided that no more is done than is reasonably necessary under the circumstances.

Necessity defence recognized by courts

Canada: In Perka v the Queen (1984), the Supreme Court of Canada clarified that necessity can be used as a defence excusing criminal acts in exceptional circumstances, when there is an imminent peril or danger, there is no other reasonable legal alternative, and the harm caused is less than the harm avoided.[164]

South-Africa: In S v Malan (1998), the Western Cape Division of the High Court of South Africa considered whether the necessity defence could justify the defendant's act of killing animals belonging to a neighbour following his repeated attempts to prevent them from endangering his crops. The defendant had been charged with malicious damage to property. The Court found that the defendant's interest was endangered by an imminent or existing threat, which required him to act, that he had exhausted other means to avoid the threat, and that the harm caused by the defendant's act was proportionate to the harm avoided. The Court thus acquitted the defendant of malicious damage of property. [165]

England (United Kingdom): English courts have been reluctant to recognize a necessity defence. In R Dudley and Stephens (1884), the Divisional Bench of the Queen's Bench Division held that necessity was not a defence in a case of murder. In this case, three crew members were convicted of murdering a young cabin attendant in poor health, whom they had decided to kill and eat in the aftermath of a shipwreck.[166] However, a necessity defence was recognized in subsequent cases, including in Re A (2001), where the Court of Appeal ruled that the death of one of two conjoined twins resulting from surgery to separate them did not constitute murder, on the basis of necessity.[167] According to the Court of Appeal "*there are three necessary requirements for the application of the doctrine of necessity: (i) the act is needed to avoid inevitable and irreparable evil; (ii) no more should be done than is reasonably necessary for the purpose to be achieved; (iii) the evil inflicted must not be disproportionate to the evil avoided*".[168]

Courts have often held that the necessity defence should be recognized only in cases that meet a set of stringent criteria. These criteria often prevented HRDs from successfully arguing necessity as a defence in contexts where they deliberately broke the law for reasons of conscience. For example, in 2024 the Provincial Court of British Columbia (**Canada**) allowed two anti-logging activists who had carried out several road blockades to invoke the necessity defence for the first time. The Court acknowledged that climate change constitutes a serious threat to life in Canada and around in the world. It emphasized three elements required to establish a necessity defence: a reasonable belief in the existence of an imminent peril of danger; the absence of reasonable alternatives (other than breaking the law); and the proportionality between the harm caused and the harm avoided.[70] The Court nevertheless rejected the necessity defence, finding that the threat was not sufficiently imminent and that other legal alternatives were available to the activists.

In **Belgium**, the Court of Cassation has recognized the necessity defence since 1987. However, the Court's case law establishes that four key conditions must be satisfied for defendants to invoke the defence successfully: a) the interest or right to be protected is in imminent and serious danger, b) there are no other reasonable means to protect that interest other than by committing a criminal offence, c) the value of the interest or right to be protected is higher than the value of what is sacrificed by committing an offence, and d) the person committing an offence did not create the situation of necessity through their own actions.[71] A Belgian criminal lawyer explained to Amnesty International that "*the threshold applied by courts is very high in instances where the state of necessity is invoked. We tried to use it several times in proceedings against environmental activists, but courts did not acknowledge that their actions directly addressed the climate emergency.*"[72]

In **Colombia**, the Constitutional Court has reiterated the key criteria applicable to the necessity defence in a case concerning breaches of legal professional privilege (confidentiality). The Court held that, in limited circumstances, lawyers may act out of necessity when breaching that privilege - particularly to prevent the commission of a crime. It emphasized that a state of necessity exists when there is an objectively actual or imminent danger to a protected legal interest (such as life, property, or rights); when safeguarding a specific legal interest is more important than the harm caused; and when the means used are appropriate to protect that interest. The Court concluded that the necessity defence could apply to lawyers who decide to violate professional confidentiality in order to, for example, prevent a violent attack, locate a kidnapped person, or stop a systematic pattern of domestic violence, provided there are no alternative measures to achieve the same aim and the harm caused by the crime in question is more serious than the breach of confidentiality.[73]

Criteria usually applied by courts to assess necessity as a legal defence

1. **Actual or imminent risk/danger**: is there an actual or imminent danger that justifies committing an act that breaks the law?
2. **No alternative means**: are there other alternatives, especially legal ones, that could equally address the threat or danger?
3. **Proportionality/balancing**: does acting result in less damage than not acting? Are the consequences of addressing a threat or danger by breaking the law less serious than complying with the law (and thereby refraining from addressing the threat)?
4. **No involvement**: has the person who broke the law to address a threat or danger contributed to creating that danger?

B1.1 Judges instructing juries not to take the necessity defence into account

The criteria outlined in the previous section have often prevented human rights defenders from successfully invoking the necessity defence. While courts have acknowledged that the climate emergency constitutes an imminent threat, they have deemed the acts carried out by environmental HRDs inadequate to address that threat. However, the interpretation of these criteria is evolving, and some courts have adopted a broader view, allowing HRDs who engaged in civil disobedience to invoke the necessity defence and secure their acquittal (see Section B 1.3).

In addition to restrictive criteria, courts in some countries have denied HRDs the very possibility of invoking a necessity defence during criminal proceedings against them. For example, a trial court in the state of Washington (**USA**) excluded all evidence and expert testimony supporting the necessity defence that Kenneth Ward, an environmental HRD, had invoked in his trial. However, in 2019, the Court of Appeals of the State of Washington overturned this decision.

On 11 October 2016, Kenneth Ward was arrested at the Kinder Morgan pipeline facility in Burlington (Washington). He entered the facility to close a valve and interrupt the flow of Canadian tar sands oil, which has significant environmental impact. He was charged with burglary, criminal trespass, and criminal sabotage. The trial court accepted the state's request to exclude all evidence in support of his necessity defence. The first trial ended with a hung jury. A second jury convicted him of burglary. He appealed the decision. In April 2019, the Court of Appeals of the State of Washington upheld Ward's right to present a necessity defence to the jury for its consideration. The Court ruled that he had presented sufficient evidence to show that he reasonably believed the crimes committed were necessary to minimize the harmful impacts of Canadian tar sands oil. The Court indicated that Ward "*did not have to prove that the harm he sought to avoid or minimize was actually avoided or minimized but instead that the reason he broke the law was in an attempt to avoid or minimize harm*". [74] The Court also held that human rights defender had presented sufficient evidence regarding the existence of reasonable alternatives, including by showing how past acts of civil disobedience had succeeded, in contrast to other tactics that proved ineffective.

In 2021, the Supreme Court of the State of Washington (**USA**), in State v Taylor, overturned the decision of an appellate court to deny an environmental defender, who had been convicted of criminal trespass and obstruction of a train, the possibility to raise a necessity defence. The Court rejected the appellate court's argument that the defendant could have resorted to reasonable legal alternatives without the need to break the law. The Supreme Court held that these alternatives should not only exist but also be effective. Specifically, the Court clarified that "*[i]f the defendant offers evidence that they have actually tried the alternative, had no time to try it, or have a history of futile attempts with the alternative, they have created a question of fact for the jury regarding whether there are reasonable legal alternatives*".[75]

In England (**United Kingdom**), judges may decide whether a necessity defence can be presented to a jury. They can withdraw the issue from the jury if they determine that the criteria are not met, effectively preventing defendants from relying on a necessity defence. For example, in 2021, the Court of Appeal found that the decision on whether a necessity defence was applicable in the case against the Stansted 15—a group of activists who had stopped a deportation in 2017— should not be put to the jury. The court reiterated the principle established in R v Jones, a case involving anti-war protesters who trespassed onto military bases and damaged equipment to express dissent against the 2003 war in Iraq. In that case, the Court of Appeal ruled that the necessity defence did not extend to protest and civil disobedience.[76] The Court of Appeal stated that: "*acts must be considered in the context of a functioning state in which legal disputes can be peacefully submitted to the courts and disputes over what should be law or government policy can be submitted to the arbitrament of the democratic process. In such circumstances, the apprehension, however honest or reasonable, of acts which are thought to be unlawful or contrary to the public interest, cannot justify the commission of criminal acts and the issue of justification should be withdrawn from the jury*".[77] Despite these barriers, English courts have, in a few instances, acquitted HRDs by recognizing the existence of a necessity defence (see Section B1.3).

B.1.2 Necessity defence successfully used by human rights defenders

Despite existing barriers and the strict interpretation of the criteria outlined above, courts have, in some instances, acquitted human rights defenders who broke the law by, for example, blocking roads, causing non-serious damage to property or trespassing, recognizing that their acts were motivated by necessity.

In the landmark Andoas case, an appeal court in **Peru** acquitted Indigenous protesters who had occupied the airfield and offices of an oil company in March 2008. The court recognized that they had acted out of necessity in light of the structural marginalization and lack of access to labour rights that they experienced.

In December 2009, the Second Criminal Chamber of the Loreto Superior Court acquitted 24 Indigenous Achuar and Kichwa individuals from the Andoas Native Community, who had been charged with qualified homicide, aggravated assault, public disorders, violence against and resistance to authority, aggravated robbery, and illegal possession of firearms.[78] The Court acquitted the defendants of the charges of homicide and illegal possessions of firearms due to insufficient evidence. In relation to the other charges, the Court recognized that the protesters' actions were a response to the state's failure to address their legitimate grievances regarding labour rights and environmental concerns. The ruling specified that the criminalization of such protests could not be justified, particularly when they arise from systemic exclusion and neglect of Indigenous communities. Specifically, the Court stated that "*the protest by the members of the Andoas community and others falls within the constitutional right of petition. Therefore, the fact that they participated in the occupation of the Andoas aerodrome runway and used some force do not constitute a crime, because their protest in the face of real poverty and a lack of reasonable responses from the State constitutes a state of justifying necessity, as provided in subsection 4(a) of article 20 of the Penal Code*".[79]

In 2021, six HRDs from Extinction Rebellion were acquitted by a jury at the Southwark Crown Court in London (**United Kingdom**), despite the judge's instruction against accepting the necessity defence. In April 2019, the HRDs broke windows and sprayed graffiti on Shell's headquarters in London to raise awareness of the company's role in driving the climate emergency. The HRDs were charged with criminal damage estimated at £25,000. The six HRDs decided to represent themselves. The judge allowed the defendants to present their defence to the jury. One of them emphasized that his actions were based on his beliefs and supported by facts. He argued that Shell was aware about its detrimental impact on the environment and actively concealed it. He also stressed that conventional campaigning had failed to achieve results.[80] The judge directed the jury not to accept the necessity defence; however, the jury acquitted all six HRDs despite these instructions.[81]

Judges have recognized a necessity defence in some instances where activists aimed to halt, or at least raise awareness of, the harm caused by specific projects impacting the environment. In 2016, several activists conducted a series of actions to block the construction of the West Roxbury Lateral gas pipeline in Boston, Massachusetts (United States). The pipeline ran through a densely populated neighbourhood, and experts had raised concerns regarding the risk of explosions. The activists entered the construction site, chained themselves to the machinery, and refused to leave. Sixteen activists were subsequently charged with trespass, disorderly conduct, and resisting arrest. In 2018, one week before the trial, the prosecution downgraded the criminal charges to civil infractions to avoid a jury trial. The activists collectively argued that their acts were based on necessity. On 27 March 2018, a judge dismissed the civil infractions by accepting their defence.[82] One of the activists said: "*For the necessity defence, we have to argue a reasonable expectation that we actually can avert the harms [of the opposed project]. In the real world of fighting these projects, just one civil disobedience action or just one person acting isn't reasonably going to stop these projects by huge corporations, but when communities come together to resist and movements stand up to resist over and over, week after week, day after day, with wave after wave of action, that shows a reasonable chance, that's how movements win. It's having an impact beyond just this case […]. It shows that companies cannot carry out similar projects without systemic resistance*".[83]

Protesters blocking the road and river traffic in Le Havre (France) on 12 May 2023
© Scientifiques en Rébellion / DR

CASE 3: Environmental defenders acquitted for blocking roads in Le Havre (France)

On 12 May 2023, six environmental defenders of Extinction Rebellion, Last Renovation (Dernière Renovation) and Scientist Rebellion blocked the road and river traffic in Le Havre (Northern **France**) to oppose the construction of a new floating Liquefied Natural Gas (LNG) Terminal. Some activists locked themselves to the barriers on both sides of the road, while others glued themselves to the asphalt. Police arrested them a few hours later and placed them in pre-charge detention for 24 hours. Libre*, one of the sixteen activists, told Amnesty International that their action "was unlawful but justified because of public interest". She stated that "***civil disobedience is necessary to achieve change; if we do not bother the state and the corporations, it's not going to work***."[169]

On 6 October 2023, each defender received a €200 criminal fine for blocking traffic. On 6 December 2024, while contesting the fine, they stood trial before the Havre First Instance Court. The activists invoked a necessity defence and also argued that their acts were protected by freedom of expression. Their lawyer told Amnesty International that two witnesses - one scientist and one survivor of an environmental disaster - testified during the trial. Their statements supported the activists' defence, showing that their actions were necessary to raise awareness of the real threat posed by the climate emergency. The lawyer explained that the decision to rely on both the necessity defence and freedom of expression was strategic, particularly given that courts had rejected the necessity defence in similar cases.[170]

On 10 February 2025, the Court ruled in favour of the necessity defence and acquitted the activists. The ruling emphasized that blocking traffic was necessary to raise awareness among the media and the general public of the planned gas terminal, which contradicted France's commitment to reduce its investments in fossil fuels. Moreover, the Court found that blocking traffic was proportionate to the threat associated with the climate emergency, even more so considering that the activists were peaceful and their acts did not result in any damage to property.[171]

Libre* explained that she and the other activists invoked the necessity defence because: "***the state is not taking measures to address the crisis. If we don't act, we put ourselves in danger. We said we shouldn't be here doing this, but the state isn't protecting us, so it's up to us to act because the state is not doing its job***". She added: "***It's very important that courts acknowledge that what we do is necessary; this should push the state to act to address the situation***".[172]

The state appealed the judgment. As of November 2025, the date of the appeal hearing had not yet been scheduled.

In the case against the environmental defenders who blocked traffic in Le Havre (**France**, case 3), the court acknowledged the role of civil disobedience in raising awareness of the climate emergency and the specific harm caused by the construction of a new liquefied natural gas terminal. In this case, the court interpreted the "*no alternative means*" criterion broadly; it did not assess whether the protest itself could directly solve the threats (i.e., the climate emergency or more specifically the construction of the terminal) but rather whether it could raise public awareness of them.

In some cases, first-instance courts acquitted HRDs by accepting the necessity defence, but these decisions were overturned on appeal, as higher courts found that the threats faced were neither actual nor imminent, or held that alternative measures could have achieved the same aim. For example, in **Switzerland**, on 28 September 2021, the Swiss Federal Supreme Court upheld the conviction for criminal damage of an activist who had participated in a rally in front of Credit Suisse in Geneva on 13 October 2018.In the context of the rally, activists painted red hands on the building's façade to raise awareness of the bank's role in investing in fossil fuels. The Court stated that climate activists usually seek to protect a collective interest, such as the environment or public health. However, the Court interpreted the state of necessity as protecting an individual, rather than a collective interest, based on article 17 of the Criminal Code. Moreover, the Court ruled that the state of necessity can be recognized in instances where no other measures can address the threat in question (principle of "*absolute subsidiarity*"). Ultimately, the Court held that applying paint on a bank's façade did not address climate change or reduce its risks.[84] Following the ruling, the activist was ordered to pay a CHF100 (€107) fine for criminal damage, refund CHF 409 (€438) to the bank as repair costs, and contribute to the costs of the court proceedings (CHF 430, €460).[85]

Using the necessity defence

- Human rights defenders have successfully used the necessity defence in a limited number of cases, primarily because courts often strictly interpret the criteria associated with this defence (imminent or actual threat or danger, no alternative options, proportionality between harm caused and harm avoided, and no involvement in creating the specific threat or danger).
- Most successful cases involve environmental HRDs. In these cases, courts have taken into account the available evidence regarding the climate emergency or the environmental impact of specific projects, including admitting expert statements on the issue as evidence. This has led courts to recognize environmental harms as actual threats.
- In successful cases, courts have interpreted the "*no other alternative*" criterion broadly. They held that specific acts of civil disobedience raised awareness of the climate emergency or the environmental harm caused by particular projects, at times affirming the ineffectiveness of other avenues.
- Given the proportionality criterion, most successful cases involved acts that resulted in limited disruption and/or non-serious damage to property.

B.2 Freedom of expression as a justification or excuse

"[Our acquittal] was highly publicized, and it can encourage new activists to take action. But it also proves us right — it gives us credibility and more weight against the authorities' narrative. We have also seen that lower courts acquitted activists after this ruling, which is an important one, especially because it's the Paris Appeal Court".[86]

[Rachel*, an environmental HRD commenting on her acquittal for blocking traffic]

Human rights defenders have sometimes successfully argued that the criminalization of their acts unduly restricted their right to freedom of expression, even if they broke the law. In these instances, the state's obligation to protect, respect and fulfil the right to freedom of expression has exempted HRDs from criminal sanctions.

For example, in **Belgium**, criminal law establishes that no criminal offences can be excused except in cases prescribed by the law.[87] Freedom of expression is not an explicit ground that could protect from criminal liability or mitigate the sanction for an unlawful act.[88] However, in the case against three environmental human rights defenders in Liege, the Tribunal of First Instance has relied on freedom of expression to exempt environmental HRDs from criminal sanction for acts of civil disobedience.

In **France**, the Court of Cassation has clarified that lower courts should assess whether the conviction of individuals invoking freedom of expression to justify unlawful conduct constitutes a disproportionate restriction of their right to freedom of expression. The Court reached these conclusions in three key rulings issued in 2021 and 2023. In these decisions, the Court challenged the conviction for theft of human rights defenders who took down the official portraits of President Macron from city halls to raise awareness of the state's lack of adequate action to address the climate emergency.[89] Dozens of HRDs, mobilizing with the grassroots organization Non-Violent Action COP21, carried out coordinated actions in 2019 and were subsequently tried. Many of the trials resulted in either the defenders' acquittal or convictions with fines as penalties.[90]

Several lower courts have acquitted activists for criminal offences such as blocking traffic (case 5), non-serious damage to property (case 6) or trespassing[91] by recognizing that their convictions would disproportionately restrict their freedom of expression. Courts have reached these decisions in instances where activists engaged in acts of civil disobedience, without resorting to violence, covering their faces or causing serious and sustained disruptions.

CASE 4: No sanctions for environmental defenders in Liège (Belgium) because of freedom of expression

On 9 August 2022, in Liège, **Belgium**, a police patrol arrested three defenders who were attempting to remove a large advertisement banner for electric vehicles. The police found two similar banners in the car boot of one of them. The activists aimed to use the banners in the context of a protest to denounce the environmental impact of electric Sport Utility Vehicles (SUVs) and oppose the advantageous tax measures for these vehicles.

The three defenders were charged with theft and attempted theft. They invoked the necessity defence, arguing that the rights to a healthy environment and to health were more important than property rights. They also claimed that the state was enabling companies to promote electric cars by relying on biased information. The Liège First Instance Tribunal did not accept the necessity defence. While recognizing that the climate emergency constituted a serious, certain and actual threat, the Court held that removing advertisement banners did not, in itself, address that threat.

However, the Tribunal stated that the exercise of freedom of expression can constitute an excuse, which can either exclude ("***excuse absolutoire***") or mitigate punishment ("***excuse atténuante***"). In this particular case, while the Tribunal found that the protection of property rights justified the prosecution of the defendants, it considered that punishing them for theft and attempted theft would constitute a disproportionate restriction of their right to freedom of expression. Indeed, the Tribunal emphasized that "***the sentencing to a penalty for the simple theft of advertising tarps with the intention of subsequently displaying them during public demonstrations concerning a major issue of public and societal interest would, in this case, constitute a disproportionate interference with the defendants' exercise of their freedom of expression, given the nature and context of their actions***".[173]

The Tribunal set out two criteria for considering freedom of expression as an excuse exempting defendants from punishment. First, the law-breaking conduct must constitute the expression of personal opinions and should be non-violent. Second, the criminal punishment for such conduct must not be necessary to address a serious social imperative.

Prosecutorial authorities appealed the decision on the charge of theft while the decision on the charge of attempted theft became final. On 9 January 2025, the Liège Court of Appeal emphasized that, under Belgian criminal law (art. 78 of the Criminal Code), any excuse exempting from criminal punishment must be established by law. It found that domestic law did not allow judges to whether a criminal sanction against defenders who had engaged in civil disobedience constituted a disproportionate restriction of their freedom of expression. Therefore, the Court referred the issue to the Constitutional Court for a preliminary ruling, asking whether article 78 of the Criminal Code is contrary to the Belgian Constitution insofar as it does not enable judges to exempt activists from criminal sanctions by invoking freedom of expression as excuse for their law-breaking conduct.[174] As of November 2025, the case before the Constitutional Court was still pending.

The three environmental defenders explained to Amnesty International that their acts were necessary to raise awareness of the environmental and social aspects of electric SUVs, which are not affordable for many people. They believe that their case could have a broader impact. One of them said: "***If we succeed in confirming the decision on appeal, it means that our arguments are accepted, that our acts are accepted and this is important because other activists will get involved, those who agree with us, and this is key for achieving social change.***"[175]

Protesters blocking the highway A6A in the suburb of Paris.
© Dernière Rénovation

CASE 5: Environmental HRDs acquitted of blocking the highway in Paris (France)

On 28 October 2022, several environmental defenders from Last Renovation (Dernière Renovation) seeking to pressure the government to reduce greenhouse gas emissions – particularly in the building sector - blocked the A6A highway in the suburbs of Paris, **France**. They sat on the highway, preventing vehicles from passing. Police removed them shortly before arresting them. The activists were then charged with blocking traffic and endangering life.

During the trial, the defenders argued that their acts were necessary due to the government's inaction in addressing the climate emergency. One activist told the Court: "***I did not do that for fun. I did it because I still want to be able to have a good time with my family in 10 years. Sadly, if I look at the state of the world, I realize that it's not going to be possible [...]. I have opted for civil resistance because of necessity. I am optimistic and I believe we can succeed, that's why I did that***". Rachel, one of the defenders, told Amnesty International: "***We argued the state of necessity because there is clearly an imminent danger. The trickiest part is to show that there are no other adequate ways of addressing it, but we explained that we indeed tried other means. We use civil disobedience to make ourselves heard. But we notified emergency services before blocking the highway and we let vehicles with urgent needs pass. We create a disruption, but we do it consciously. The idea is certainly to disrupt the normal order of things, and this is proportionate to the enormous danger we are confronted with***".[176]

On 11 May 2023, the Creteil Court of First Instance acquitted the defenders of endangering life but convicted them for blocking traffic. It imposed a penalty of 35 hours of general interest work or 3 months' imprisonment in case of non-compliance.

On 3 June 2024, the Paris Appeal Court overturned the conviction and acquitted the defenders. While the Court confirmed that the climate emergency constitutes an imminent or actual danger, it found that blocking traffic did not, in itself, address that danger and thus rejected the necessity defence. However, the Court noted that the Court of Cassation had established the principle that a criminal conviction may constitute a disproportionate restriction on freedom of expression and that courts must assess the proportionality of any such restriction. In this case, the Appeal Court emphasized that the defenders were non-violent, had informed emergency services ahead of the blockade so alternative routes could be used, blocked traffic for only 30 minutes, and did not resist arrest. Considering these factors, the Court concluded that convicting them of blocking traffic amounted to a disproportionate restriction on their freedom of expression.[177]

One of the activists explained the crucial impact of the ruling. Rachel* said: "***It was highly publicized, and it can encourage new activists to take action. But it also proves us right — it gives us credibility and more weight against the authorities' narrative. We have also seen that lower courts acquitted activists after this ruling, which is an important one, especially because it's the Paris Appeal Court***".[178] As of November 2025, the case was still pending before the Court of Cassation, following the prosecution's appeal.

CASE 6: Environmental defenders acquitted for non-serious damage to property in Bordeaux and Nantes (France)

On 7 July 2023, two HRDs climbed the scaffolding of the customs building to hang a banner above an advertisement placed by a private company in **France**. The activists aimed to protest TotalEnergies' sponsorship of the Tour de France as the race passed through Bordeaux that day.

On 30 November 2023, they were given a suspended fine of €1000 for minor damage to the advertisement banner and ordered to pay about €2000 jointly for damages and legal fees to the advertising private company. They appealed their conviction. On 20 September 2024, the Bordeaux Court of Appeal acquitted them, emphasizing that their conviction had constituted a disproportionate restriction on freedom of expression.

The Court acknowledged the role of TotalEnergies in the climate emergency and its attempts to improve its image by sponsoring sports events.[179] The Court found that the HRDs acted in the public interest to raise awareness of the role of TotalEnergies in the context of a highly publicized sporting event. In assessing whether their conviction disproportionately restricted their freedom of expression, the Court considered that the HRDs did not threaten public order: they did not conceal their faces during the action, did not attempt to trespass into the customs building, caused only minor damage to the advertisement banner, and were not motivated by any financial interest.[180]

In a separate case, on 22 March 2023, a group of environmental HRDs mobilising with Dernière Renovation sprayed orange painting on the Prefecture building in Nantes. The group aimed to raise awareness of the urgent need to implement policies improving building insulation to combat climate change.

The paint did not cause any permanent damage; the costs of cleaning the building amounted to approximately €8,000. One HRD, Grégoire, was identified following the action and prosecuted for criminal damage. The Court of First Instance requalified the offence as minor damage, punishable by a fine. The public prosecutor requested a fine of €800. The Court of First instance acquitted the activist, and the prosector appealed the ruling.

The Rennes Appeal Court confirmed the ruling of the Court of First Instance. It reiterated that the painting did not cause permanent damage, that the HRD pursued the act to raise awareness of a matter of public interest without seeking any financial gain, and that he conducted the action in a non-violent manner without covering his face. The Court concluded that even a minor sanction, or the mere recognition of criminal liability without any sanction, would constitute a disproportionate restriction on freedom of expression.[181]

Grégoire told Amnesty International that he believed the necessity defence should be recognized in relation to collective struggles to address the climate emergency. He said "***For me, the Environmental Charter, which has constitutional value in France, can today be combined with the provision of the Penal Code concerning the state of necessity. In this way, one could envision the creation of an environmental state of necessity, grounded in a reason of general interest: the fight against climate change.***"[182]

Criminal sanctions as a disproportionate restriction of freedom of expression

- The right to freedom of expression can serve as a legal safeguard against criminal sanctions imposed on HRDs and others engaging in acts of civil disobedience.
- In some instances, domestic courts have found that a criminal convictions or penalties imposed on HRDs for acts of civil disobedience constituted to a disproportionate restriction on their right to freedom of expression
- Freedom of expression may provide a strong legal defence, particularly given the clear international human rights standards applicable to all restrictions of this right, including those imposed through criminal law and sanctions. Specifically, any restrictions must be prescribed by law, pursue a legitimate aim, and be necessary and proportionate to that aim.
- Courts have frequently stressed proportionality, finding violations of this principle in cases where HRDs were convicted for acts aimed at raising public awareness of the climate emergency and that did not result in serious and sustained disruption or serious damage to property.

Protest at the Bonn Climate Conference in June 2025 against the Genocide in Gaza.
© Olivia Fleuvy/Amnesty International

B.3 Defending the right to a healthy environment as a justification for breaking the law

International and regional human rights mechanisms have increasingly recognized and contributed to enforcing the right to a clean, healthy, and sustainable environment.[92] In July 2025, the International Court of Justice recognized that climate change constitutes "*an existential problem of planetary proportions that imperils all forms of life and the very health of our planet*".[93] The Court emphasized that the states' failure to protect the climate system may constitute an internationally wrongful act, giving rise to international responsibility.

Defending this right has become increasingly critical in the context of the current climate crisis and the inadequate steps taken by governments to address it. Despite existing standards ensuring public participation in tackling the climate crisis,[94] states often hinder the efforts of environmental human rights defenders, including by targeting them with criminalization.[95] In May 2025, the Inter-American Court of Human Rights reiterated that states have a special duty of protection toward environmental HRDs, stemming from the broad right to defend human rights. [96] This duty entails recognizing the role of environmental HRDs, guaranteeing them a safe and enabling environment and investigating and punishing attacks against them.[97]

Environmental defenders have leveraged the right to defend human rights and the right to a healthy environment, which are increasingly recognized at the national level, to counter attempts by states and corporations to criminalize them. In **Chile**, for example, a bill aimed at enhancing the protection of environmental HRDs was introduced in Parliament in 2024,[98] against the backdrop of rising attacks.[99] The law proposal recognizes the right to protect the environment, individually or collectively, in a safe and non-violent context. In a recent case, five individuals who interrupted the construction of a high-voltage electrical tower in a natural reserve were acquitted, as a Chilean court recognized that the right to a healthy environment justified the collective action.

In **Indonesia**, the 2009 law on Environmental Protection and Management has sometimes played a key role in protecting environmental HRDs. Article 66 states that no one defending the right to a healthy environment can be criminally prosecuted or sued before a civil court.[100] The Supreme Court Regulation Number 1 of 2023[101] supports the implementation of article 66, providing detailed procedural mechanisms and judicial guidelines to operationalize the legal protection afforded to environmental defenders in both civil and criminal proceedings.

Under the 2023 Regulation, any civil or criminal case filed with the intent of obstructing environmental rights advocacy constitutes a violation of article 66 of the 2009 law. This Regulation introduced safeguards to counter Strategic Lawsuits against Public Participation (SLAPPs, see Section B.6). Judges are empowered to determine whether a lawsuit or criminal charge is an attempt to undermine the efforts of environmental rights defenders. When defenders are targeted by a SLAPP, they can present evidence of their role as environmental rights defenders. If their status is established, the judge may dismiss the lawsuit or charges (see Section B.6)

In August 2024, the Ministry for the Environment issued new guidelines to strengthen the protection of environmental HRDs against retaliatory measures, including criminalization, civil lawsuits and legal threats. These guidelines emphasize that reporting, protesting and informing the public of actual and potential environmental harms are protected acts.[102] These safeguards have been key in the acquittal of Daniel Frits Maurits Tangkilisan (Case 8).

CASE 7: The right to a healthy environment as justification for opposing public works in the Campana-Peñuelas Natural Reserve (Chile)

Between 2 and 11 April 2019, several environmental defenders blocked a high-voltage transmission line project carried out by the corporation Interchile SA in a protected biosphere area in the Campana-Peñuelas region of **Chile**. Opposition to the project dated back to 2016, when environmental HRDs began raising concerns about the transmission line's impact on the ecosystem and demanded more transparency and stronger environmental protections.

The activists climbed onto a tower under construction, preventing the company from completing the works. Interchile SA filed a complaint, and five activists were subsequently charged with unjustified opposition to public works, an offence punished under article 272 of the Criminal Code.[183]

On 29 January 2025, the Guarantee Court of Limache (Juzgado de Guarantías) acquitted the five activists. The Court ruled that their opposition to the public works was neither unjustified nor unreasonable, a key element of the criminal offence. Crucially, the Court emphasized that the activists had exercised their constitutional right to live in an environment free from pollution, protected by article 19 of the Chilean Constitution. The Court noted that "the opponents of the project had serious doubts about whether the company was complying with regulations in the development of its operations. In addition, the work was being carried out in a biosphere reserve, with the consequent risk of environmental damage. Alongside this, it is evident that legal actions were attempted, and that various public agencies intervened in the monitoring and supervision of the project, even going so far, after the events, as to raise objections to it".[184]

Interchile SA appealed the first-instance judgment. On 7 April 2025, the Valparaiso Court of Appeal dismissed the appeal due to procedural flaws, without assessing the Limache Court's conclusions regarding the activists' motivation or their acquittal.[185]

CASE 8: Acquittal of Daniel Tangkilisan for his role as an environmental HRD (Indonesia)

Daniel Frits Maurits Tangkilisan is an environmental HRD who began working in Karimunjawa, an archipelago off the northern coast of Java, in 2017, initially as a teacher and later as a sustainable-tourism promoter across eastern **Indonesia**.

In 2022, Daniel joined the #SaveKarimunjawa campaign alongside other activists to protect the area's ecosystem. Since 2017, illegal shrimp ponds have proliferated in Karimunjawa, causing significant environmental harm through coastal pollution and waste discharges, and threatening the livelihoods of local fishermen.

A satirical poster criticizing shrimp farming of the campaign #Savekarimunjava.

On 12 November 2022, Daniel publicly criticized the environmental damage caused by shrimp farm waste in a Facebook post. In response to one comment criticizing the campaign, he used the phrase "***masyarakat otak udang***" (literally "***shrimp-brained community***"), referring to narrow-mindedness and the inability to think critically. This offended some residents involved in shrimp farming, who subsequently reported him to police. Although these comments were perceived as offensive, they did not amount to advocacy of hatred - constituting advocacy of discrimination, hostility or violence - the threshold established by international human rights law for expressions that states may criminalize.[186] On 7 December 2023, Daniel was arrested and charged with incitement to racial, ethnic and religious hatred, which is an offence punishable under the Electronic Information and Transactions Laws (2016 EIT Law reviewed in 2024, articles 28.2 in conjunction with 45 (A).2).

On 4 April 2024, the District Court in Jepara found him guilty and sentenced him to 7 months' imprisonment and a Rp 5 million fine (about €260) for spreading "***hate speech***". In May 2024, the Semarang High Court overturned the conviction and acquitted him. While the High Court found that Daniel's acts fell within the scope of incitement to hatred under domestic law,[187] it recognized Daniel as a defender of the right to a healthy environment, which is protected by article 66 of the 2009 Environmental Law and therefore acquitted him.[188] In October 2024, the Supreme Court upheld the acquittal based on the High Court's reasoning.

Daniel explained to Amnesty International that the provisions enshrined in the 2009 Environmental Law should, in the first place, protect HRDs from arrest and prosecution. He explained: "***The burden of the responsibility lies on the shoulders of the authorities, they should not arrest and prosecute anyone who defends the environment, they should not use the controversial EIT law to target HRDs.***"[189]

The right to defend the environment as a protection against criminalization

- International and regional courts have established that the climate crisis constitutes an urgent threat and that states failing to address it may commit internationally wrongful acts.
- The right to a healthy environment and the right to defend it have been increasingly recognized at the national, regional, and international levels
- The right to defend the environment has, in some cases of civil disobedience, been recognized as a justification for deliberately breaking the law.

B.4 Public interest to counter criminal defamation

Most countries in the world criminalize defamation,[103] broadly understood as publishing or otherwise communicating false information with the malicious intent of harming a natural or legal person's reputation.[104] While safeguards against defamation may be necessary to protect the rights of those targeted by maliciously spread false information, the use of criminal laws constitutes a disproportionate restriction on freedom of expression. Indeed, states often use criminal defamation laws to stifle dissent and target journalists, human rights defenders and civil society organizations simply for expressing themselves freely (see Introduction).

Civil defamation laws may be better suited to balance the protection of freedom of expression with safeguarding the rights of others. In July 2025, the Constitutional Court of **Malawi** struck down a domestic provision criminalizing defamation, not only ruling that it violated freedom of expression but also emphasizing that civil remedies were available to address defamation.[105] However, as corporate actors increasingly use civil defamation laws to target human rights defenders with abusive lawsuits, specific safeguards against such abuse are also needed (see B6 Abusive lawsuits/SLAPPs).

In view of the growing consensus among international and regional human rights bodies and mechanisms against the criminalization of defamation, states should repeal criminal laws punishing defamation.[106] The Inter-American Court of Human Rights has had a key role in challenging criminal sanctions for defamation, finding that they disproportionately restrict freedom of expression. For example, in the 2019 case Alvarez Ramos v Venezuela, the Court ruled that criminal prosecution is not an appropriate means of protecting a public official's honour, as a criminal sanction has an intimidatory effect and undermines accountability.[107]

The UN Human Rights Committee has emphasized that the **public interest** in conveying information critical of a public figure should always be recognized as a defence in defamation cases.[108] In some countries where defamation is still criminalized, journalists, HRDs, and other individuals publishing or broadcasting information critical of public figures have been acquitted, precisely because courts recognized that they were acting in the public interest. For example, in November 2024, the Supreme Court of **Argentina** acquitted several journalists who had previously been convicted of defaming Mario Solinsky, a well-known paediatrician, and his foundation. The journalists alleged that some of the doctors invited to Solinsky's TV show lacked medical qualifications and questioned the transfer of a publicly owned building to Solinsky's foundation. The Court overturned the conviction, emphasizing that Solinsky was a public figure and that the journalists had addressed issues of public

interest— namely, public health and the use of public resources. On this basis, the Court concluded that they did not knowingly publish false information or act with reckless disregard for the truth (actual malice).[109]

In **Colombia**, the Constitutional Court has found that reporting on gender-based violence is of **public interest** and therefore a protected form of expression. In 2022, the Court ruled that and Matilde de los Milagros Londoño, founders of the feminist digital media outlet Volcánicas, did not violate the rights to honour, reputation and presumption of innocence of Ciro Alfonso Guerra Picón, a well-known film director.[110] The journalists had published allegations of gender-based violence made by eight women against the director, who subsequently invoked a constitutional law mechanism (acción de tutela) to protect his rights.

The Constitutional Court reiterated the principles of feminist journalism, which aim to give voice to the perspectives of survivors of gender-based violence. The Court stated that the journalists: "*[…] presented a report of public and political interest, which reflects a discourse that is especially protected and necessary to confront discrimination against women and gender-based violence […]. Ciro Alfonso Guerra Picón and his legal representatives, on the other hand, have chosen to initiate a series of successive judicial actions, with disproportionate claims, both for compensation and for censorship.*"[111]

The Court concluded that the journalists did not intend to harm the director by publishing information they knew was false, or recklessly disregarded its truth, but rather sought to report on issues of **public interest**.[112] It overturned the 2021 decision of the Bogota Superior Tribunal, which had ordered the journalists to issue rectifications for allegedly failing to comply with the principles of impartiality and veracity by implying that the director had been convicted.[113] Moreover, the Court emphasized several elements of judicial harassment in the director's response. It underscored the power imbalance between the film director and the journalists, the fact that he pursued several avenues simultaneously to seek rectification and compensation, and that some of his demands (including banning the journalists from ever mentioning him or the allegations) would result in pre-emptive censorship.[114]

In the African region, a trend has emerged whereby the publication of potentially defamatory allegations is not penalized, even if not entirely accurate, provided it was reasonable to publish the information.[115] The standard of "*reasonable publication*" requires that the author takes reasonable steps to verify the information's accuracy and that the publication addresses an issue of **public interest**. In 1998, the Supreme Court of Appeal in **South Africa** outlined the elements to consider in assessing whether the publication of potentially defamatory information—including false information—is reasonable and therefore not unlawful. In case National Media Ltd v Bogoshi (1998), the Court highlighted that the nature, extent and tone of allegations should be considered, along with the nature of the information, its sources, and the steps journalists took to verify it.[116]

CASE 9: Good faith defence leading to Andy Hall's acquittal for defamation (Thailand)

In **Thailand**, criminal provisions punishing defamation include a "***good faith***" defence, which courts have recognized in the cases such as that of British HRD Andy Hall. Hall was charged with defamation and breaches of the Computer Crimes Act[190] for his contribution to a 2013 report published by the NGO Finnwatch, exposing allegations of labour abuses by the Thai fruit company Natural Fruit. The report alleged the use of child labour, poor working conditions, and exploitation of migrant workers from Myanmar.[191]

In 2016, the Bangkok South Criminal Court sentenced Hall to a suspended three-year prison term and a fine of nearly 150,000 Thai Baht (€4,000). However, on 16 June 2020, the Appeals Court reversed the conviction and acquitted him.[192] The Court found that Hall's report relied on credible and substantiated evidence, including worker interviews, third-party witnesses, and consistent documentary support. Moreover, it concluded that he acted in good faith, conducted diligent research, and aimed to expose matters of public interest rather than harm the company's reputation. The Court also noted that the company had failed to engage with Hall or the NGO to discuss the findings before publication. Finally, the Court emphasized that the alleged misconduct constituted serious violations of labour and human rights norms, making the disclosure not only permissible but necessary for public awareness and consumer protection.

The Court held that Hall's conduct was lawful, falling within the "***good faith***" defence under Articles 329.1 and 329.3 of the Criminal Code (protection of a legitimate interest and fair comment on any person subjected to public criticism).[193] On 30 June 2020, Thailand's Supreme Court confirmed the acquittal in the criminal defamation case, and in May 2021 it also dismissed all the civil defamation claims.

The notion of public interest in countering criminal defamation

- Courts have recognized that exposing allegations of human rights abuses and criticizing public figures is often in the public interest.
- Absence of actual malice, reasonable publication, and good faith have been used by human rights defenders and journalists to secure their acquittal in criminal defamation trials. Courts have acquitted defendants by taking into account the public interest in publishing potentially defamatory allegations in instances where they did not spread information that they knew was false and where they took due diligence steps to verify their sources.

B.5 Protection of whistleblowers disclosing confidential information in the public interest

Whistleblowers are individuals who bring to light confidential information that they reasonably believe, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest.[117] Whistleblowers exercise the right to freedom of expression, which includes the right to seek, receive and impart ideas and information.[118] As these disclosures may breach confidentiality provisions, such as those governing employment relationships, whistleblowers and those who assist them ("*associated persons*") are exposed to various retaliatory measures, including criminal sanctions, unless they are protected by law.

When the **public interest** in disclosing confidential information outweighs the harm caused to a legitimate state interest, whistleblowers should be protected from retaliation, including criminal sanctions, if other criteria are fulfilled (see p. 33). The UN Special Rapporteur on Freedom of Expression has emphasized that "*some matters should be considered presumptively in the public interest, such as criminal offences and human rights or international humanitarian law violations, corruption, public safety and environmental harm and abuse of public office*".[119] The disclosure of human rights or international humanitarian law violations should never

Key areas for legal protection of whistleblowers in work-related contexts (EU Directive 2019/1937)

1. Covered persons
   - Broad protection including not only workers but also self-employed individuals, shareholders, contractors, volunteers, trainees, job applicants, and former employees.
2. Reasonable belief requirement
   - Whistleblowers must have had reasonable grounds to believe the information was true and within the scope of the Directive at the time of reporting.
3. Reporting channels
   - Protection applies to reporting via:
     - Internal channels
     - External channels
     - Public disclosures: allowed in limited circumstances (imminent danger, risk of retaliation, ineffectiveness of other channels).
4. Confidentiality
   - Whistleblower identity must remain confidential and may not be disclosed without consent, except when required by law.
5. Protection against retaliation
   - Retaliation is strictly prohibited (dismissal, demotion, intimidation, harassment, etc.).
6. Burden of proof
   - In cases of alleged retaliation, the employer must prove the action was not linked to the whistleblowing.
7. Support measures
   - Member States must ensure whistleblowers have access to:
     - Comprehensive information and advice;
     - Effective assistance from competent authorities; and
     - Legal aid and financial/psychological support where appropriate

be the basis of penalties of any kind.[120] In the same vein, the Council of Europe's Recommendation on the Protection of Whistleblowers notes that information that is of public interest should include "*violations of law and human rights as well as risks to public health and safety and to the environment*".[121]

The adoption of domestic laws protecting whistleblowers is a relatively recent phenomenon, mostly taking place after 2000.[122] The 2019 **European Union** legislation on whistleblowers sets out a protection framework for people who disclose breaches of EU law in work-related contexts, both in the public and private sector, covering seven key areas.

According to the International Bar Association (IBA), the EU has adopted one of the strongest protection frameworks, together with **Australia** and the **United States**, based on a comprehensive set of 20 criteria. However, the effectiveness of this protection is often limited in practice. For example, in the **United States** - the first country in the world to enact whistleblower protection in the 1970s - the apparently low percentage of whistleblowers facing retaliation (1.5 per cent) may, according to the IBA, be due to whistleblowers being dissuaded from filing retaliation complaints by the lengthy process and other barriers, as well as the relatively low success rate of such complaints (10.8 per cent), particularly for federal employees.[123]

Whistleblowers should be protected from retaliation for disclosures, including prosecution, when certain criteria are met. They must: a) have reasonable grounds to believe that the information is genuine and indicates wrongdoing; b) reasonably believe that the public interest in disclosing the information outweighs any harm that may result; c) disclose only the information reasonably necessary to reveal the wrongdoing; and d) have either unsuccessfully attempted to report, had a viable opportunity to do so, or felt compelled to report to avoid the destruction or concealment of evidence, for fear of retaliation, or because the disclosure relates to a serious and imminent danger to the life, health and safety of persons, or to the environment. Prosecution of whistleblowers should only occur as a last resort, in limited circumstances where their disclosure does not meet the above criteria and they commit an internationally recognizable offence in the course of obtaining, reporting or disclosing the information. Even in such cases, whistleblowers should be able to invoke a public interest defence that can shield them from criminal liability and secure their acquittal if the public interest in disclosure outweighs the interest in non-disclosure. They should also have access to all the information necessary to mount their defence, including classified information.[124]

The European Court of Human Rights has set out a framework including six criteria for assessing whether retaliation measures against whistleblowers, including criminal sanctions, constitute a disproportionate restriction of their right to freedom of expression (see Case 10).

The notion of public interest in countering criminal defamation

- Human rights bodies and mechanisms have recognized that disclosing confidential information, including by breaking domestic laws, can be in the public interest and that whistleblowers should be protected from retaliation, including criminal sanctions.
- Disclosing information about human rights abuses, violations of international humanitarian law, corruption and environmental harm is generally in the public interest
- The European Court of Human Rights has found that even the imposition of a minor fine on a whistleblower is a disproportionate restriction on the right to freedom of expression.

CASE 10: LuxLeaks and the protection of whistleblowers by the European Court of Human Rights

LuxLeaks refers to a major tax-avoidance scandal revealed in 2012, involving confidential documents leaked by Antoine Deltour and Raphaël Halet, two former employees of an auditing company, to a journalist in **Luxembourg**. These documents disclosed highly favourable tax agreements that Luxembourgish authorities granted to major multinational corporations, sparking widespread criticism.

Both employees were convicted of theft, breach of professional secrecy, and other related offences. Deltour's conviction was partially overturned on appeal, with the court recognizing his whistleblower status to some extent, whereas Halet's appeal failed—he was fined €1,000 and ordered to pay the company €1 in symbolic damages.

Halet brought the case before the European Court of Human Rights (ECtHR), claiming that his conviction violated his right to freedom of expression. In May 2021, the ECtHR Chamber found no violation, reasoning that the domestic courts had appropriately balanced the public interest in the disclosures against the harm to the company, and that the penalties were proportionate.[194]

Halet's appeal was referred to the ECtHR Grand Chamber, which delivered a landmark ruling in February 2023, finding that his right to freedom of expression had been violated.[195] The Court held that the public interest in the revealed information outweighed the harm caused to the employer,[196] and therefore Halet's conviction disproportionately restricted his freedom of expression. Notably, the Court reached its conclusion even though the criminal sanction imposed on the whistleblower by domestic courts was limited to a fine, highlighting the cumulative nature of the retaliation measures (including also his dismissal), and the chilling effect that criminal sanctions have on the right to freedom of expression of both Halet and other whistleblowers.[197]

The Court emphasized that: "***there is no doubt that this is information in respect of which disclosure is of interest for public opinion, in Luxembourg itself, whose tax policy was directly at issue, in Europe and in other States whose tax revenues could be affected by the practices disclosed***".[198] Other criteria contributed to the decision, including that facts that the documents were indisputably genuine and credible and that the disclosure to internal channels or authorities would have been ineffective in exposing the systemic tax avoidance.[199]

Supporters of former PricewaterhouseCoopers employee, Antoine Deltour hold a banner outside the Luxembourg Court of Appeal before hearing the appeal decision on the LuxLeaks whistleblowers case on 15 March 2017 in Luxembourg.

B.6 Protection against abusive litigation/SLAPPS

A Strategic Lawsuit Against Public Participation (SLAPP) is a tactic that involves misusing the legal system to punish, intimidate or harass activists, media workers, whistleblowers, HRDs and others acting in the public interest.[125] SLAPPs are usually characterized by: a) an imbalance of power and resources favouring the claimant over the target of the SLAPP; b) the misuse or abuse of legal tactics (such as excessive claims or multiple legal cases filed; and c) a direct or indirect interest by the claimant in undermining the right of certain individuals or organizations to take action or express views on matters of public interest.[126]

In view of the increasing use of SLAPPs by both state and corporate actors, the most effective strategy to counter them is the enactment of comprehensive legislation with a sufficiently broad scope to protect all potential targets. Such legislation should include clear definitions covering all abusive actions and, at a minimum, establish an accelerated early-dismissal mechanism that places the burden of proof on the SLAPP claimant and stays the main proceedings.

In **Europe**, the Council of Europe's Recommendation on countering the use of SLAPPs, adopted in April 2024, sets out robust and comprehensive standards and definitions that could inspire domestic laws to significantly reduce the harm caused by SLAPPs.[127] Although non-binding, the Recommendation adopts a broad understanding of litigation, encompassing not only initiated proceedings or claims but also threats of legal action. It follows the trend of expanding the definition of those who can be targeted by SLAPPs to include all public watchdogs, individuals contributing to public debate and participating in public affairs, while highlighting the specific risks faced by certain groups, such as women and LGBTI persons. Moreover, the Recommendation lists ten non-exhaustive indicators to identify SLAPPs and recommends the establishment of an early dismissal procedure that can be applied by courts on their own initiative or the defendants can invoke.

Only a few jurisdictions have passed specific anti-SLAPP laws. These include 33 states and the District of Columbia in the United States[128], three Canadian provinces,[129] the Australia Capital Territory (ACT) in Australia[130] and the European Union.[131] In other countries, such as Indonesia, existing domestic laws provide some, albeit limited, protection against SLAPPs (see Section B3).

In countries where comprehensive anti-SLAPP laws are lacking, courts may play a key role in providing safeguards against SLAPPs. For example, the Constitutional Court of **South Africa** has recognized that SLAPPs constitute an abuse of power and established a SLAPP defence for targeted human rights defenders. In an ongoing case, environmental activists and the Centre for Applied Legal Studies are challenging two interim court orders ("*interdicts*") that prevent three environmental activists from making "*defamatory statements*" against a mining company.[132]

Key elements for effective anti-SLAPP legislation

1. Broad scope and comprehensive definitions
   - Legislation must be broad enough to protect the range of actors who can be targeted by SLAPPs– including HRDs, journalists and NGOs– from both state and corporate actors, covering civil, criminal and administrative proceedings, as well as threats of legal action.
2. Clear criteria to identify SLAPPs or the likelihood of a SLAPP such as the exploitation of power imbalances, partially or fully unfounded arguments, multiple or cross-border proceedings using the same arguments and requests for disproportionate remedies
3. Judicial actors must have the power to dismiss abusive legal actions, either at the request of the SLAPP target or on their own initiative.
4. An accelerated early dismissal mechanism for abusive actions must be established to limit the harm of SLAPPs. This mechanism should:
   - place the burden of proof on the claimant to prove that their lawsuit is not a SLAPP;
   - provide for the stay of main proceedings pending the decision on whether the claim is a SLAPP;
   - ensure restitution of legal costs to the SLAPP's victims; and
   - incorporate procedural protections when defendants are facing numerous cases filed by the same claimant or concerning the same public interest action or publication, including in other jurisdictions.
5. Those targeted by SLAPPs must be recognized as having "*victim*" status in order to access comprehensive and effective remedies, including full and prompt compensation for damages incurred as a result of the SLAPP, covering both pecuniary and non-pecuniary damages (such as loss of income and emotional distress).
6. Enact dissuasive measures, such as capping the damages that claimants can seek, and provide for penalties for claimants proportionate their resources.
7. Provide effective support to those targeted by SLAPPs and their families through legal assistance and financial and psychological support as appropriate and in accordance with their needs and wishes.

CASE 11: The South African Constitutional Court recognizing an anti-SLAPP defence (South Africa)

In **South Africa**, the 2022 South African Constitutional Court case *Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others* addressed the legality of SLAPPs and the possibility for business corporations to claim general damages for defamation.

The case stemmed from defamation suits filed by two Australian mining companies, Mineral Sands Resources and Mineral Commodities Limited against six environmental activists and lawyers. They had, between 2014 and 2017, publicly criticized the companies' mining operations at the Xolobeni titanium mine and the Tormin sand mine, alleging environmental harm. The combined claims of the companies' suits exceeded 14 million South African Rand (€730,800).

The activists argued that the defamation suits were SLAPPs—lawsuits intended to intimidate and silence public criticism. The Western Cape High Court upheld their defence, dismissing the defamation case. The Court identified several elements characterizing SLAPPs, in particular the fact that the companies launched the proceedings against the six defendants at the same time, although they criticized the mining operations at different times between 2014 and 2017, and claimed an exorbitant amount in damages that the defendants could never cover while, at the same time, conceding that they would have accepted an apology instead. The Court pointed out that "***[t]he conclusion is incontrovertible that the lawsuit was initiated against the defendants because they have spoken out and assumed a specific position in respect of the plaintiffs' mining operations***".

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The activists argued that the defamation suits were SLAPPs—lawsuits intended to intimidate and silence public criticism. The Western Cape High Court upheld this claim and dismissed the defamation case. The Court identified several elements characterizing SLAPPs, in particular that the companies filed proceedings against all six defendants simultaneously, even though their criticisms occurred at different times between 2014 and 2017, and sought exorbitant damages that the defendants could never pay, while also conceding that they would have accepted an apology instead. The Court noted: "***[t]he conclusion is incontrovertible that the lawsuit was initiated against the defendants because they have spoken out and assumed a specific position in respect of the plaintiffs' mining operations***".[200] The companies appealed the decision to the Constitutional Court.

The Constitutional Court recognized SLAPPs as a form of abuse of process under South African common law. The Court emphasized that such suits aim to silence critics by burdening them with legal costs and the threat of prolonged litigation, rather than to resolve legitimate legal disputes. It held that the current understanding of abuse of process includes a defence against SLAPPs, establishing that "***the law serves its primary purposes, to see that justice is done, and not to be abused for odious, ulterior purposes***".[201]

The Court also examined whether corporations could claim general damages for defamation. While acknowledging that corporations have a right to protect their reputation, it held that they do not possess human dignity and therefore cannot claim general damages in the same manner as individuals. Allowing such claims without stringent requirements would unjustifiably limit freedom of expression, particularly in matters of public interest. The Constitutional Court upheld the High Court's dismissal of the defamation claims, affirming the activists' right to freedom of expression.[202]

C Mitigating criminal sanctions (sentencing phase)

C.1 Alternatives to imprisonment/non-custodial sentences

According to the UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), custodial measures - particularly for minor, non-violent offences - should be avoided and imposed only in exceptional circumstances, as a measure of last resort when strictly necessary to address a pressing concern, such as a genuine threat to public order.[133] Alternative measures to custody may include, for example: verbal warnings; suspended sentences (prison terms that are suspended on the condition of good behaviour and compliance with specific requirements); probation under judicial supervision (supervised release instead of prison time); or community sentences (hours of unpaid community work, often in areas that relate to the offence or benefit the affected community).

The Guidelines on the Right to Peaceful Environmental Protest and Civil Disobedience, issued by the Special Rapporteur on Environmental Defenders under the Aarhus Convention, emphasize that imposing custodial sentences for acts of civil disobedience is likely to constitute a disproportionate restriction of the rights to freedom of expression, association and peaceful assembly, and therefore should not be imposed.[134]

Regional human rights mechanisms have recognized that imposing criminal penalties that restrict the rights to freedom of expression and peaceful assembly constitutes one of the most serious forms of interference with these rights. For example, the **European Court of Human Rights** has consistently held that peaceful and non-violent forms of expression should not be subject to the threat of a custodial sentence, emphasizing that criminal sanctions may have a chilling effect on the exercise of freedom of expression.[135] The Court has further pointed that peaceful protests should not, in principle, be threatened with criminal penalties.[136] The Inter-American Commission on Human Rights has underscored that "*criminal law is the most restrictive and severe means of establishing liability for unlawful conduct, particularly when prison sentences are imposed. Therefore, the use of criminal law must adhere to the principle of minimum intervention, given the ultima ratio nature of criminal law*".[137]

In some instances, domestic courts have found that a custodial sentence, even if suspended, amount to a disproportionate restriction on the rights to freedom of expression and/or peaceful assembly of individuals who engaged in acts of civil disobedience. In **Australia**, in January 2020, at the height of devastating bushfires, two climate activists travelled to Bowen, Queensland, to protest against coal-mine expansions. They entered the company's rail corridor and locked themselves on to the track using a 44-gallon drum filled with concrete and steel tubes – a device known as a "*dragon's den*". They prevented trains from accessing the coal terminal until police and emergency services were able to remove the device.

They were charged with obstructing a railway, trespass on a railway, contravening a police instruction, and using a dangerous attachment device.[138] Both pleaded guilty at first instance and were sentenced to three months' imprisonment, fully suspended for two years. They appealed the suspended custodial sentence, arguing that it was manifestly excessive. The Court of Appeal agreed, noting that they were first time offenders who had plead guilty, had favourable antecedents, and demonstrated excellent prospects of rehabilitation.[139] The Court found that the magistrate erred in disregarding the protesters' conscientious motive, which reduced their culpability, and emphasized that the conduct caused disruption but not proven harm.[140] Accordingly, the Court of Appeal quashed the custodial sentence and imposed a single fine of AUS$1,000 (about €561) for all offences.[141]

In **Indonesia**, courts have sometimes taken into account the motives, nature and context of specific protests to impose conditional sentences

(probation), such as in the case against two fishermen from Kwala Langkat Village, in the North Sumatra Province. On 21 March 2024, community members protested against mangrove encroachment activities, allegedly dismantling a makeshift wooden hut in the protected mangrove forest, used by workers hired to clear mangrove trees for palm oil operations. The fishermen, along with their community, feared that the environmental harm resulting from encroachment would devastate their livelihoods and the ecosystem.

On 15 July 2024, they were charged with group violence and property damage (punished under articles 170(1) and 406 of the Criminal Code), facing a maximum penalty of up to 5.5 years' imprisonment. On 5 September 2024, the Stabat District Court in North Sumatra sentenced them to two months' prison, with four months' probation. One of them was released from detention on the day of sentencing, while the other had already been freed from pre-trial detention on July 4, 2024. The prosecution did not appeal the ruling.

The Court found that their actions in damaging the makeshift hut in the forest was unlawful and did not accept the environmental protection defence under article 66 of the 2009 Environmental Law. However, it acknowledged that the actions were taken in the context of the community's efforts to protect the forest and the environment. Accordingly, the Court imposed a conditional (probationary) sentence rather than a custodial one.[142]

C.2 Conscientious motives leading to reducing prison sentences or fines

Courts have, in some cases, reduced prison sentences and fines for peaceful protesters and HRDs who deliberately broke the law for reasons of conscience. In such instances, courts have considered factors such as the individuals' first-time offender status, non-violent conduct, genuine conscientious motivation, the public interest in the cause pursued, and the proportionality between the harm caused and the penalty, ultimately deciding to reduce the penalty.

In the **United Kingdom**, for example, 16 activists received sentences ranging from 15 months to five years for offences of public nuisance and conspiracy to cause a public nuisance, after taking part in various climate and environmental protests in 2022. In March 2025, the Court of Appeal reduced the sentences of six activists. One sentence was reduced from five to four years as the Court considered that the defendant's role in the protests was less central than initially assessed, and the length of his sentence disproportionate. The appeals of 10 other activists were dismissed. Their sentences were found to be proportionate considering the scale of disruption, prior warnings, and disregard for court injunctions.[143]

The necessity defence was not accepted, nor was the public interest treated as a standalone defence. Nonetheless, the Court acknowledged the protestors' conscientious motivation as a factor that could mitigate culpability.[144] However, it noted that this factor carried "*much less [weight] than would have been the case had the offending been less disproportionate*".[145] Consequently, the Court reduced the prison sentences, ranging from 1.5 years to two months.[146]

In a separate case, an activist received a sentence of 12 months' imprisonment for public nuisance for participating in an Extinction Rebellion climate protest on October 10, 2019. He climbed onto the roof of a British Airways plane and superglued his right hand to the fuselage, wedging his mobile phone in the door to prevent it from closing. This protest was part of a coordinated action by at least 10 Extinction Rebellion activists to draw attention to the climate crisis, and the contribution of the aviation industry to net carbon emissions. The activist livestreamed part of his protest and remained on the aircraft for over an hour before being removed.[147]

The Court of Appeal dismissed the appeal against his conviction, finding that the disruption caused exceeding the scope of aggravated trespass and that there was good reason to prosecute under the common law offence of nuisance. However, it allowed his appeal against the sentence, reducing

it to four months. The Court took into account several mitigating factors, including the context of peaceful protest, the activist's visual impairment, which would make imprisonment more difficult, and the proportionality of the sentence under Articles 10 and 11 of the European Convention on Human Rights. Nonetheless, the Court emphasized that while the right to peaceful protest is important, it "*should not lead to tolerance of behaviour that is far removed from conveying a strongly held conviction but instead seeks to cause chaos and as much harm as possible to members of the public*".[148]

In **Australia**, a prominent climate activist, member of both Christian Climate Action Australia and Blockade Australia, was charged with trespassing on railway property and unlawful obstruction of railway operations. On November 10, 2018, he engaged in a high-profile climate protest on the railway line serving a coal terminal on Juru country (traditional Aboriginal land), Queensland. He erected and occupied a bamboo tripod structure eight meters above the railway tracks, where he remained suspended for over three hours until removed by police. The protest halted several coal trains for hours and disrupted the operations of the national rail freight company. The coal terminal is owned by a mining company that faced significant protests as it prepared to open a new coal mine, which was reported to potentially impact the Great Barrier Reef.

The HRD became the first person in Australia to plead not guilty based on climate emergency arguments.[149] However, the necessity defence was rejected, and he was initially convicted to AUS$7,000 fine (nearly €4,000). The Court of Appeal upheld the magistrate reasoning about the inapplicability of the necessity defence,[150] but reduced the fine to AUS$3,000 (about €1,700), taking into account, among other factors, the conscientious motives of the protest and the fact that it did not cause excessive loss, damage or inconvenience.[151]

Conclusions

This briefing has highlighted circumstances in which deliberately breaking the law – whether individually or collectively – can serve the public interest, and underscores the obligation of authorities to take this context into account to avoid disproportionate responses that violate human rights. For instance, blocking a company's operations may cause financial loss or reputational damage, yet the environmental harm caused by the company may far outweigh these losses. In the face of government inaction, HRDs may act to raise public awareness of the climate crisis and the failures of state and corporate actors to respond effectively and urgently.

The briefing also provides arguments and strategies that HRDs, activists and journalists can use when prosecuted for expressing dissent through deliberately unlawful tactics. They can invoke the necessity defence to demonstrate that their actions were aimed at addressing an urgent threat, rely on their freedom of expression and contend that criminal sanctions would disproportionately restrict it, assert their role as HRDs – particularly where such roles are recognized and protected under domestic law – or draw on existing safeguards against abuse of process.

Moreover, human rights organisations and civil society can support dissenting actors by leveraging judicial review mechanisms to challenge the laws that violate the principle of legality or the rights to freedom of expression, association, and peaceful assembly, and by advocating for prosecutorial safeguards or alternatives to criminal sanctions in cases involving minor non-violent offences.

Ultimately, governments, parliaments, and judicial authorities have a clear obligation to guarantee these rights for all without discrimination and to enact legal and policy reforms that prevent the criminalization of dissent.

Recommendations

Recommendations for lawmakers

- Repeal all laws and policies that violate the rights to freedom of expression, association and peaceful assembly, including criminal defamation and sedition laws;
- Amend all laws that are vague and overbroad by ensuring that they comply with the principle of legality;
- Ensure that criminal offences comply fully with all requirements under international human rights law, including being precisely formulated, and must never be used to target or otherwise adversely affect conduct that is protected by human rights;
- End the use of national security and counter-terrorism as a pretext for enabling or committing human rights violations, including through undue restrictions on the rights to freedom of expression, association and peaceful assembly;
- Repeal or substantially amend laws that criminalize road blocking in the context of a peaceful protest given that peaceful assemblies are a legitimate use of public and other spaces;
- Enact laws that make alternatives to prosecution available and accessible, especially to suspects of minor non-violent offences, by respecting their rights including the presumption of innocence, as well as the rights of victims;
- Establish a legal framework ensuring that standing to bring judicial review claims is broad enough in matters of public interest, which include challenging the compliance of domestic laws with international human rights law and standards. Such framework should include appropriate safeguards against vexatious claims;
- Enact specific laws and policies to guarantee the right to defend human rights, whether individually or collectively;

- Adopt or amend legislation to establish fully operational, independent national human rights institutions (NHRIs) and ensure that their mandate is in line with international standards. NHRIs must have the mandate to promote the rights to freedom of expression, association and peaceful assembly, as well as the right to defend rights, monitor the authorities' compliance with these rights, and have the adequate powers and resources to collect data on human rights abuses against human rights defenders, activists, journalists and whistleblowers and anyone else expressing dissent;

- Guarantee independence and adequate resourcing of national human rights institutions (NHRIs), police oversight bodies, and other mechanisms of oversight with specific mandates to monitor the compliance of state and/or corporate actors with the rights to freedom of expression, association and peaceful assembly;

- In light of the urgent and undeniable threat posed by the triple planetary crisis of human-induced climate change, biodiversity loss and pollution and waste, protect environmental HRDs by enacting laws that establish safeguards to ensure they are not criminalized when deliberately breaking the law to raise awareness of, and defend the right to, a clean, healthy and sustainable environment, particularly when such actions involve minor non-violent offences;

- Enact robust legal framework to protect whistleblowers who disclose information in the public interest by breaching confidentiality in both the public and private sectors, as well as associated persons, against retaliatory measures, including criminal sanctions;

- Enact effective anti-SLAPPs legislation with a scope sufficiently broad to protect all those potentially targeted by both state and non-state actors. Such legislation should include comprehensive definitions covering all forms of abusive legal actions and, at a minimum, establish an accelerated early dismissal mechanism that places the burden of proof on the SLAPP claimant and stays the main proceedings.

Recommendations for prosecutorial and judicial authorities

- Ensure that the use of criminal laws and sanctions do not result in disproportionate restrictions of the rights to freedom of expression, association and peaceful assembly;

- Make use of alternatives to prosecution when they are available, such as conciliation and mediation mechanisms, especially in cases of minor non-violent offences committed in the context of public assemblies;

- Adopt guidelines that include safeguards to ensure that prosecution does not constitute a disproportionate restriction of the rights to freedom of expression, association and peaceful assembly, especially in judicial systems where prosecution is fully discretionary or is characterized by residual discretion;

- Ensure that prosecutorial guidelines include a public interest test to guide decision-making processes in judicial systems where prosecution is fully discretionary or is characterized by residual discretion. The public interest test should take into consideration whether specific offences, especially minor non-violent offences, are committed while exercising the rights to freedom of expression, association and/or peaceful assembly and if they are motivated by reasons of conscience, for example to raise awareness of human rights abuses or to demand action on the triple planetary crisis;

- Ensure that the necessity defence is available to HRDs and any other persons who seek to invoke it in criminal proceedings because of their involvement in acts that deliberately broke the law for reasons of conscience;

- Ensure that the criteria associated with the necessity defence or other similar legal defences do not prevent HRDs and other persons from successfully relying on them. In particular, the human-induced climate emergency should be recognized as an actual threat in light of governments' lack of effective actions to address it. Individual or collective acts that deliberately break the law should not be required to overcome those threats for a necessity defence to be successfully invoked;

- Ensure that those who break the law by committing minor non-violent offences for reasons of conscience, such as raising awareness of the environmental harm or other harms associated with a specific project or the right to a healthy environment or other human rights, are in principle exempted from criminal sanctions;

- Ensure that criminal sanctions for acts of civil disobedience do not disproportionately restrict the right of freedom of expression. The conviction of HRDs or other persons who deliberately break the law for reasons of conscience without using violence resulting in injuries or serious property damage and causing serious and sustained disruption in principle violates the right to freedom of expression;

- In jurisdictions where defamation is criminalized, consider taking these elements into account in specific cases against HRDs while awaiting for criminal defamation laws to be repealed: whether defendants knew that an information was false or if they recklessly disregarded the truth, if they exercised due diligence for example by verifying the sources or, more generally, if they spread information or allegations which were in the public interest, for example because they exposed potential human rights abuses;

- Refrain from imposing sanctions of any type on whistleblowers who disclose information about human rights or international humanitarian law violations when certain criteria are met (see B5);

- Ensure that in the limited cases where whistleblowers cannot avail themselves of protection against retaliatory measures, they can rely on a public interest defence in criminal proceedings against them;

- In the absence of anti-SLAPP legislation, encourage judges, through the enactment of precise guidance, to make proactive use of all tools available to identify and dispose swiftly of SLAPP cases, including provisions targeting abuse of law or process;

- As a general principle, avoid imposing custodial measures, especially as a punishment for minor non-violent offences committed when engaging in civil disobedience. Consider using alternative measures to custody, which may include, for example, verbal warnings, suspended sentences, probation under judicial supervision or community sentences, always by ensuring that both the rights of victims and suspects are guaranteed;

- Take into account the conscientious motives behind any conduct that results in breaking the law to ensure that criminal sanctions do not disproportionately restrict the rights to freedom of expression, association and peaceful assembly;

- Ensure that all individuals wrongfully prosecuted or convicted for exercising their rights to freedom of expression, association and peaceful assembly have full access to justice and reparation for the harm suffered, including restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition.

Endnotes

1 According to the Carnegie Endowment's Global Protest Tracker, 142 significant protests took place between September 2024 and September 2025. "*Significant protests*" are defined for the purposes of the tracker as "*sizeable street protests that express opposition to the national government as a whole or to its recent policies or actions*. The tracker is available at: https://carnegieendowment.org/features/global-protest-tracker?lang=en

2 At least 10 protesters died during the protests. Some of these deaths were allegedly caused by police excessive use of force. Amnesty International Indonesia, "*Usut kematian 10 warga terkait unjuk rasa, bebaskan aktivis HAM Delpedro dkk dan hentikan praktik otoriter atas unjuk rasa*", 2 September 2025, available at: https://www.amnesty.id/kabar-terbaru/siaran-pers/usut-kematian-10-warga-terkait-unjuk-rasa-bebaskan-aktivis-ham-delpedro-dkk-dan-hentikan-praktik-otoriter-atas-unjuk-rasa/09/2025/

3 International human rights law and standards do not define authoritarian practices. Political theorist Marlies Glasius defines authoritarian practices as "*patterns of action that sabotage accountability to people over whom a political actor exerts control, or their representatives, by means of secrecy, disinformation and disabling voice*". For more information see Glasius, M. (2018). What authoritarianism is… and is not: a practice perspective. International affairs, 94(3), 515-533 and Glasius, M. (2023). Authoritarian practices in a global age. Oxford University Press.

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9 More information about AbM is available at: https://abahlali.org/about/

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11 Special Rapporteur on the Right of Peaceful Assembly and Association, Preserving the Gains and Pushing Back against the Global Attacks on Civic Space and Growing Authoritarianism, HRC 56/50, 13 September 2024, para. 21, available at: https://docs.un.org/en/A/HRC/56/50

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55 Fiscalía General de la Nación, Directiva 001, Directrices 3.5 and 5.6 (previously cited).

56 Fiscalía General de la Nación, Directiva 001, Directriz 5.6. Principle of minimal intervention of criminal law (previously cited).

57 Fiscalía General de la Nación, Directiva 001, Directriz 10.1 (previously cited).

58 Fiscalía General de la Nación, Directiva 001, Directriz 11 (previously cited).

59 Maria Fernanda Cabal, a senator, filed a case with the Council of State as she stated on her X account, available at: https://x.com/MariaFdaCabal/status/1840736228691362213

60 For example, the European Court of Human Rights (ECtHR) has stated that "*Article 7 para. 1 (art. 7-1) of the Convention […] embodies, more generally, the principle that […] the criminal law must not be extensively construed to an accused's detriment, for instance by analogy; it follows from this that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him liable*". See ECtHR, Kokkinakis v Greece, 14307/88,1993, para. 52. Similarly, the Inter-American Court of Human Rights (ICtHR) has pointed out that "*crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense. This means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviours that are either not punishable offences or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behaviour with penalties that exact their toll on the things that are most precious, such as life and liberty*". See ICtHR, Castillo Petruzzi et al v Peru, 1999, para. 121.

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66 Article 218.1 and 218.2 of the 2023 Criminal Code.

67 Section 38 states that: "*Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are— (a) anyone acting in their own interest; (b) anyone acting on behalf of another person who cannot act in their own name; (c) anyone acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest; and (e) an association acting in the interest of its members*". The Bill of Rights is a set of human rights protected by Chapter 2 of the Constitution. The text of the Constitution is available at: https://www.justice.gov.za/constitution/SAConstitution-web-eng.pdf

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73 Constitutional Court of Colombia, case C-301/12, available at: https://www.corteconstitucional.gov.co/relatoria/2012/c-301-12

74 State v. Ward, No. 77044-6-I, wash. Ct. app. div. I, 8 April 2019, p. 7 available at: https://law.justia.com/cases/washington/court-of-appeals-division-i/2019/77044-6.html. To avoid a third trial, the defendant and prosecutors reached a plea agreement. Ward pleaded guilty to a lesser charge of second-degree criminal trespass. He received no additional prison time beyond what he had already served in pretrial detention.

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142 Amnesty International had access to the judgment, which is not published online. The Court stated: "*Considering that nevertheless, the actions committed by the defendant are not included in matters that can be protected as referred to in article 66 of Law Number 32 of 2009 and Supreme Court Regulation Number 1 of 2023 concerning Guidelines for Adjudicating Environmental Cases, however, the Panel of Judges also understands the conditions and situations occurring in society and is of the opinion that the actions taken by the defendant were in the context of fighting for the preservation of forests and the environment as a source of community life. Therefore, for the defendants, it would be fair, wise, and prudent to impose Conditional Criminal Sentencing (Voorwaardelijke veroordeling) in accordance with the provisions of article 14(a) of the Criminal Code (KUHP).*"

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144 Court of Appeal, [2025] EWCA Crim 199, para. 81 (previously cited). The Court stated: "*However, we read the judge's sentencing remarks as meaning that he took no account at all of the appellants' conscientious motivation. Whilst he was right that conscientious motivation is not a matter of mitigation, it is a factor which may reduce culpability*",

145 Court of Appeal, [2025] EWCA Crim 199, para. 80 (previously cited).

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175 Online Interview with the three defenders, 24 July 2025.

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177 Paris Appeal Court, judgment 436 of 3 June 2024.

178 Phone interview with Rachel*, 18 July 2025.

179 Judgment of the Bordeaux Appeal Court of 20 September 2024, 24/00095, p. 8

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201 Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others (CCT 66/21) [2022] ZACC 37; 2023 (2) SA 68 (CC); 2023 (7) BCLR 779 (CC), 14 November 2022,, para. 100, available at: https://www.saflii.org/za/cases/ZACC/2022/37.html

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The African Policing Civilian Oversight Forum (APCOF) is a Not-for-Profit Trust working on issues of police accountability and governance in Africa.

Suara Rakyat Malaysia (SUARAM), is a human rights organisation in Malaysia created in 1989 after Operation Lalang, when 106 opposition, unions, activist leaders were detained without trial under the Internal Security Act.

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