

PETER LANGFORD

**THE CONCEPT OF
AN ENVIRONMENTAL HUMAN RIGHTS
DEFENDER AS A CONTRIBUTION
TO THE ENVIRONMENTAL MOVEMENT
IN THE WESTERN BALKANS**

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Belgrade, 2025

Book Series SQUARE

Edited by:

Srđan Đurović, Jelena Vasiljević

Title:

The Concept of an Environmental Human Rights Defender as a Contribution to the Environmental Movement in the Western Balkans

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Publishers:

Institute for Philosophy and Social Theory, University of Belgrade
Regional Center for Advanced Studies of Humanities – RECAS
Regional Network of the Centers for Advanced Studies of Southeast Europe

Proofreader:

Lucy Stevens

Cover design:

Nikola Stevanović

Typesetting:

Sonja Nikolić, Tijana Baltić

Place and year of publication:

Belgrade, 2025

ISBN:

978-86-6190-006-8

Replicate:

Institute for Philosophy and Social Theory, University of Belgrade

Production run:

50 copies



This publication was created within the Regional Fellowship Program, implemented by the Institute for Philosophy and Social Theory, University of Belgrade, in partnership with the Regional Center for Advanced Studies of Humanities – RECAS and the Regional Network of the Centers for Advanced Studies of Southeast Europe, with the support of the Open Society Foundation Western Balkans, Erste Foundation, and Rockefeller Brothers Fund.

The views expressed in the text represent the views of the authors.

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1. Introduction

The contemporary situation is one in which states have effectively accepted their failure to actively comply with their international legal obligations under the Paris Agreement at the UN Climate Change Conference (COP21) in 2015. The effective compliance with these obligations requires a consistent, determined, and explicit policy of active mitigation. In relation to these obligations, an earlier UK NGO policy proposal, the Green New Deal (Elliot et al., 2008), had sought to combine active climate mitigation with the reduction of socio-economic inequality. After COP 21, this policy approach re-emerged in the USA (2018) (Galvin & Healey, 2020) and the EU (2019). This policy combination of climate and social justice has subsequently ceased to have such a visible and central position. It has increasingly been replaced with the notion of green transition towards a green economy (Brand & Wissen, 2015). Here, the greater, if not

predominant, emphasis is upon technological solutions to active mitigation.

In relation to these technological solutions, there is also the further difficulty of the emergence of the technologies of carbon capture, direct air capture, and geoengineering. The focus upon these technologies reinforces certain states' acceptance of their failure to actively mitigate by offering a future 'solution'. At some unknown point in the future, these technologies will allegedly remove the negative effects of climate change.¹ In this way, states can set their continued failure to actively mitigate climate change in the present against these future technological solutions (Fressoz, 2024). This has the further effect of turning the focus from the absolute reduction of raw material and energy use to future, retrospective technological solutions.

The more diffuse and fragmentary character of the policy of green transition, together with the potential focus upon these future-oriented technologies, has encouraged states to increasingly accept their failure to actively respond to their obligations under COP21. This is further compounded by the increasing prominence of states which explicitly deny climate change and have even withdrawn from the Paris Agreement (USA and Argentina). Thus, they have created the contemporary impasse² between international obligations and states' lack of active mitigation, which, in turn, transfers the burden of this impasse to future generations (Gardiner, 2011; Kallhoff, 2018).

¹ There are currently carbon capture projects in Algeria, Australia, Brazil, China, Germany, Iceland, Japan, Sweden, the UK, and the USA (Bose et al., 2024). There are currently direct air capture projects in Canada, Iceland, Switzerland, and the USA (Ozkan et al., 2022). There are continued initiatives, both private and state-funded, in relation to geoengineering, but these are comparatively less developed. Geoengineering has also encountered significant opposition both within states (e.g., USA and Canada) and internationally with the moratorium imposed in 2010 ('in the absence of science based, global, transparent and effective control and regulatory mechanisms') at the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD) with the adoption of decision X/33.

² For an analysis of this impasse through the concept of an imperial mode of living, see (Brand & Wissen, 2021).

In parallel with this pattern of state responses to the Paris Agreement, there are a variety of environmental movements dedicated, with different emphases, to a broader notion of environmental justice³. This notion insists that state measures of climate mitigation are participatory processes of just transition within and between states. This varied movement acknowledges the importance of the Paris Agreement and participates in the Conference of the Parties (COP) meetings.⁴ However, the organisational framework of these Conferences, while it offers a space for these environmental NGOs to engage in critical exchange (Stoddart et al., 2023), remains one which continues to limit the capacity to ensure the incorporation of their notion of environmental justice (Lefstad & Paavola, 2023). As a result, the environmental movement has also retained strongly local, national, and regional forms of organisation to confront the need and urgency for a broader collective approach to the triple environmental crisis: pollution, biodiversity loss, and climate change.

It is within this context that the analysis focuses upon environmental movements in the Balkans with particular reference to the more recently designated region of the Western Balkans.⁵ Here, these environmental groups⁶ operate in a context that, in the main, has limited their capacity to gain and mobilise wider support. These difficulties predominantly relate to the degree

³ For example, global environmental NGOs, such as Climate Action Network International, Friends of the Earth International and Greenpeace International.

⁴ For a list of UNFCCC admitted NGOs, see <https://unfccc.int/process/parties-non-party-stakeholders/non-party-stakeholders/admitted-ngos/list-of-admitted-ngos>.

⁵ The term 'Western Balkans' is primarily a political, rather than a geographical notion, designating those countries in the Balkans who, at present, are not member states of the European Union. This designation currently refers to Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

⁶ For example, the Albanian GREEN 27+ consortium of environmental groups; Ekotim (BiH), the Rivers of Bosnia and Herzegovina – Be a change (BiH) and Eco forum Zenica (BiH); EcoZ (Kosovo), GAIA Kosovo, Kosovo Environmental Network (KEN), Rilindja Gjellbër – Green Renaissance (Kosovo); the Montenegrin Coalition 27 of environmental groups and the recently formed coalition 'Big Beach, Not a Big Lie'; The Ecologist's Movement of [North] Macedonia (DEM) and Alliance of Environmental Organizations of Serbia (SEOS).

of resistance encountered in their relationships with central and local governments as well as private actors (Korañçe, 2022; Lemeš, 2015). This, in turn, reflects the broader character of democratic party systems and state institutions in the Western Balkans (Laštro & Bieber, 2023; Kapidžić & Stojarová, 2023).

For these movements, as part of the current progressive politics in the region (Balunović, 2024; Horvat, 2024; Rone & Dinev, 2025; Štikš & Stojaković, 2024), react to the activity of states and private actors in relation to the environment and seek to develop an alternative environmental politics of green change based upon environmental justice.

The purpose of the analysis is to contribute to, and reinforce, the continued existence and development of environmental groups in the Western Balkans through a complementary focus which considers these environmental groups as environmental human rights defenders. In the first part, in contrast to the Paris Agreement 2015, the normative foundation for this human rights orientation is identified in the Aarhus Convention 1998 and the Convention's Special Rapporteur on Environmental Defenders. In the second part, the concept of an environmental human rights defender is further examined, with a specific focus is upon environmental movements. In the third part, the analysis turns to the main forms of state and private resistance that these movements have encountered in the Balkans. In the fourth part, the analysis suggests how the concept of an environmental human rights defender can assist in responding to these forms of resistance.

2. From Paris to Aarhus: The Normative Foundation of Environmental Human Rights Defenders

The Paris Agreement 2015 is viewed as the central framework for coordinated international action on climate change. The regular Conferences of the Parties (COP) meetings provide the further framework for continual and extended discussion and agreement on responding to the triple ecological crisis. This framework is primarily based upon negotiations between states and

creates obligations and responsibilities upon states. The Paris Agreement lacks a mechanism for enforcement and, therefore, makes the process of active mitigation entirely dependent upon the degree to which states fulfil these obligations. This difficulty is further reinforced by the more recent phenomenon of states withdrawing from the Agreement itself.

Rather than the wider environmental movement remaining dependent upon this framework, an alternative international legal framework is provided by the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) from 1998. In contrast to the Paris Agreement, this framework is centred upon obligations between states and their populations. The Aarhus Convention is viewed as primarily creating reporting obligations upon states to their populations. These are then further strengthened by the Kyiv Protocol on Pollutant Release and Transfer Registers 2009. The Protocol created a state obligation to introduce and maintain pollutant release and transfer registers (PRTs).

However, following Baritt (2024), this is to ignore the importance of Article 1 of the Convention, which creates a right for the populations (present and future) and a corresponding duty for their states to live in a healthy environment. In other words, that the reporting obligations are not themselves the primary purpose of the Convention, but, rather, provide the information regarding the right and corresponding duty to live in a healthy environment. Beyond the reinterpretation of Article 1, it is also possible to acknowledge its central position through the creation, under the Convention, of the Special Rapporteur on Environmental Defenders in 2022.

The Special Rapporteur is also the point at which the concept of an environmental human rights defender is introduced into the framework of the Convention. This is an important modification as it transforms the sense of the right, under Article 1, from an individual right into a wider question of asserting the right through active organisation. In this way, the Special Rap-

porteur extends and reinforces the work of the preceding UN Special Rapporteur on Human Rights Defenders, the situation of environmental human rights defenders (2016), and the UN Human Rights Council Resolution 40/11. Thus, it recognises the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection, and sustainable development (2019). In addition, it transforms the understanding of the response to the triple environmental crisis into one of environmental justice.

3. Environmental Human Rights Defenders and Political Organisation

The legal concept of an environmental human rights defender recognised by international human rights instruments provides supplementary support for the existence and development of environmental movements. This concept was defined in the UN Special Rapporteur on Human Rights Defenders Report, *The Situation of Environmental Human Rights Defenders 2016*. The definition is contained in paragraph 7 and is most effectively understood by dividing the paragraph into two parts. In the first part, it states:

[I]ndividuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna. Land and environmental rights are interlinked and are often inseparable. As a result, the two broad categories of defenders advocating for the environment and for land rights are often characterized as “land and environmental rights defenders”, “environmental rights defenders”, or just “environmental activists”. The report defines those defenders through the inclusive term “environmental human rights defenders”, whose rights to exercise such fundamental freedoms as the rights to expression, privacy, association and peaceful assembly have been enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. (UN Special Rapporteur on Human

The first part adopts a broad definition of the identity of environmental human rights defenders, including both those advocating for land rights and those advocating for the environment. The advocacy by environmental human rights defenders – the protection and promotion of human rights related to the environment – will necessarily involve the exercise of the rights of freedom of expression, privacy, and assembly as contained in the International Covenant on Civil and Political Rights, adopted in 1966.

This is then extended and developed in the second part, which states:

With regard to exercising the right to protect environmental and land rights, article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms – the Declaration on Human Rights Defenders – further holds that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. (UN Special Rapporteur on Human Rights Defenders, The Situation of Environmental human rights defenders, A/71/281, 3 August 2016, §7)

Although the Declaration is not itself a legally binding international instrument, the principles and rights contained in it are a more specific elaboration of fundamental rights and freedoms that are already established in existing legally binding international human rights instruments.

This legal recognition and definition of an environmental human rights defender are then integrated into the Aarhus Convention with the creation of the UN Special Rapporteur on Environmental Defenders. This is evident from the initial statement by the

UN Special Rapporteur and the subsequent publication of the 2024 Position Paper 'State repression of environmental protest and civil disobedience: A major threat to human rights and democracy'.

The effect is to reverse the predominant focus from the state to groups and individuals involved in environmental movements. In this reversal, these groups and individuals, as environmental human rights defenders, have a legally protected status in international human rights law. This legally protected status relates to both the vertical relationship with the state and the horizontal relationship with other individuals, groups, and corporations.

Whilst acknowledging that climate litigation – the legal challenge to state and corporate policies and practices in relation to the environment – is an aspect of environmental movements, the focus will be upon another aspect of these movements. The consideration of the notion of environmental human rights defenders will centre upon the broader challenge of environmental groups and organisations to vertical (state) and horizontal (individual, group, corporation) policies and practices. The central question here is the extent to which the notion of environmental human rights defenders can provide an additional resource to support and reinforce the resilience and further development of environmental movements in the Western Balkans.

4. The Central Challenges to Environmental Movements in the Western Balkans

The environmental movements in the Western Balkans have arisen within a context that continues to be significantly affected by the triple environmental crisis (Belis et al., 2024). This indicates that state policies and responses, in relation to these serious environmental challenges, whether in terms of active state intervention or regulation of the private sector, remain insufficient (Džihic, 2020; Frey, 2024; Hoxha, 2023; Ignjatović et al., 2024; Jacimovic & Korohodova, 2023; Rajchinovska Pandeva, 2023; Štreimikienė, 2024). In this context, these movements are centrally important for the advocacy, organisation, and action for

environmental justice in the Balkans. The advocacy and action of these movements for environmental justice will necessarily involve challenging states, corporations, groups, and individuals. These challenges are and continue to be met with a range of state and private responses which aim to obstruct, limit, and marginalise these movements.⁷ The broader logic of these state and private responses is to facilitate a process of societal capture: 'the continued rule of the incumbent political elite and the fabrication of democratic legitimization' (Cvetičanin et al., 2024). This, in turn, enables states in the Balkans to maintain their deficient approach to the triple environmental crisis.

From this context, the analysis identifies three primary forms of response to environmental movements in the Balkans. These three forms, in their different ways, are intended to strongly obstruct, limit, and marginalise these movements. The analysis acknowledges that each of these three forms will not be utilised in every country in the Balkans in the same manner or with the same frequency. Rather, the three forms indicate the main potential ways which states and private actors within the region can utilise to undermine environmental movements.

i) Criminalisation of Environmental Protest and Civil Disobedience

The most overt and conventional potential state response to all forms of protest and demonstrations is criminalisation. In rela-

⁷ For example, in Albania, Strategic Lawsuit Against Public Participation (SLAPP) against the environmental group TOKA; in BiH, the (SLAPP) against environmental activists, Sunčica Kovačević and Sara Tuševljak (2022); in Kosovo, the (SLAPP) against environmental activist, Shpresa Loshaj (2020); in Montenegro, the local police passing the telephone number of environmental activist Ivana Čogurić to the individual she had reported for alleged illegal waste disposal, and the criminal proceedings filed against Vasilije Ivanović and Denis Mekić (2024); in North Macedonia, the (SLAPP) against the Investigative Reporting Lab, IRL (2023), relating to their investigative documentary on the significant impact upon air quality of the importation and burning of low-quality oils; in Serbia, the SLAPP against environmental activist Dragana Arsić, the 'Let's Defend the Forests of Fruška Gora' movement and the citizen's association 'Fruškač' (2022), the installation of spyware on the mobile phones of Serbian environmental activists involved in the Jadar mine protests (2024).

tion to this potential state response, environmental movements are not in themselves the exclusive or dedicated object in comparison with other social movements and forms of demonstration and protest. In addition, the comparative recourse of each state in the Western Balkans to the response of criminalisation differs, with states having become less inclined to utilise the response of criminalisation⁸.

However, if the state, through its institutions of law enforcement, responds to environmental protest and civil disobedience by arresting, detaining, and prosecuting those engaged in the protests and disobedience, such criminalisation interferes with political and civil rights, particularly the freedom of assembly, which encompasses the capacity to gather or assemble together in order to engage in peaceful protest (Jarman, 2019).

The interference has the potential to prevent the exercise of the freedom of assembly at two interconnected levels. The first level relates to the definition and character of the criminal offences, conferring the legal authority upon the institutions of law enforcement to exercise their powers of arrest and detention. Here, this will be determined by whether the offences are defined using general, vague definitions of the harm or wrong which is criminalised. In addition, it will be reinforced to the degree that the same approach to criminalisation is extended to the preparation for, rather than participation in, peaceful protests and disobedience.

The extent to which the harm or wrong of the offence relates to a wider threat, rather than the activity or activities of the demonstration itself, will increase the seriousness of the offence. The

⁸ For example, in Serbia, in which the state has become progressively less inclined to utilise the response of criminalisation in relation to five protest waves over the last decade, as Spasojević and Lončar (2023) analyse. Also, for example, in Bosnia and Herzegovina, there is a difference between the use of police against a group of women protesting in Kruščica in 2017 and the current approach to environmental protest (Džihic, 2023). In contrast, compare the analysis of Malaj & Pail (2024) in relation to local environmental protests in Albania.

corresponding severe criminal penalties are then intended to operate as a deterrent to the organisation and participation in environmental protest.

The degree of vagueness and generality of the definition of the harm or wrong will result in broad, unregulated enforcement. It will be reflected in a pattern and process of law enforcement in which the powers of arrest and detention can be exercised easily and widely. In addition, beyond the seriousness of the offences themselves, this also encourages the exercise of disproportionate force.

ii) Covert Surveillance: Spyware and Digital Extraction

In contrast, this form of response is both much more recent, due to technological advances, and essentially covert. It is, however, also a response which involves the state exceeding its own definition of the legitimate and lawful use of this technology for covert surveillance. The technology, provided by specialised international technology companies, is usually contractually limited to use in the criminal investigation of organised crime and terrorism. Thus, the decision to use it against members of environmental movements is not only an interference with the right to privacy, but also a broader type of state illegality (Amnesty International, 2024).

The technology – spyware and digital extraction – is covertly placed on an individual's electronic devices. The spyware enables covert surveillance of the individual's electronic device, while digital forensic extraction enables wider, covert data gathering from the data stored on the electronic device. This facilitates not only the covert surveillance monitoring of individuals, but also the extraction of information relating to environmental movements.

iii) Strategic Lawsuits Against Public Participation (SLAPPS)

These are also a newer form of response, and, in contrast to spyware and digital extraction, they are non-covert and appear to be

the legitimate instigation of formal legal proceedings. Here, in comparison with the first and second forms, these are initiated by private individuals or corporations on the basis of concrete, explicitly stated allegations.

However, as the designation of these proceedings indicates, their real purpose is, through an apparent legal action, to effectively suppress and, thereby censor the individuals or groups from the environmental movements (Bosilkova-Antovska & Mladenovska, 2024). The activity of the individual or group is alleged to affect the reputation of that individual or corporation and is the basis for legal proceedings. Despite the recent recriminalisation of defamation, in Republika Srpska (2023), the predominant approach has been one of decriminalisation, making defamation and libel civil offences. However, civil proceedings, as the basis for the SLAPP, remain capable of significantly suppressing and censoring environmental movements.⁹

For, once the legal proceedings are initiated, it requires the individual or group to respond and to seek and pay for legal advice and representation. There is a potentially lengthy period until the formal legal proceedings take place, combined with the knowledge of the sum of damages, if civil, or potential criminal conviction, if criminal, should the individual or group be held liable. The consequence of a finding against the individual or group, if civil, may potentially result in a significant financial penalty or criminal conviction and fine. This may affect not only the future of the individual but also the potential existence of the group.

5. The Contribution of the Concept of an Environmental Human Rights Defender

In response to these central challenges to environmental movements in the Balkans, the concept of an environmental human

⁹ The examples of SLAPPs, including those relating to members of environmental movements in the Western Balkans, are contained in Balkan Civil Society Development Network Report (Bosilkova-Antovska & Mladenovska, 2024) as well as the separate Albanian country report for the Balkan Civil Society Development Network (Kërut, 2024).

rights defender aims to complement their organisational practices and activities.

The concept of an environmental human rights defender understands environmental justice as the interconnection of substantive (the right to live in a healthy environment) and procedural rights (the civil and political rights required to effectively exercise the substantive right). From this position, the environmental human rights defender pursues the advocacy and organisation for environmental justice in relation to both the state (vertical) and individuals, groups, and corporations (horizontal). This, in turn, facilitates the adoption of an overarching approach to these challenges, rather than considering them in isolation.

The recommendations in relation to protest (Jarmin, 2019; UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, 2024), spyware/digital extraction (Amnesty, 2024), and SLAPPs (Bosilkova-Antovska & Mladenovska, 2024; Council of Europe & European Union, 2024) should be collated into a comprehensive response. This composite response becomes the effective guarantee of civil and political rights, which are the conditions for the effective exercise of the right to a healthy environment.

Beyond these legislative proposals, the concept of an environmental human rights defender provides a normative space which recognises a diversity of organisational forms and non-instrumental relationships to the environment.

6. Conclusion

The concept of an environmental human rights defender has been developed by international human rights law, through the further developments under the Aarhus Convention, particularly the creation of the UN Special Rapporteur on Environmental Defenders (2024). Therefore, as a concept of international human rights law, it is necessarily a general and universal concept potentially applicable to guarantee and protect the fundamental rights and freedoms of members of environmental organisations worldwide.

From this level of international human rights law, the analysis has sought to indicate that it could have potential application to environmental movements in the Western Balkans. For this region continues to experience the significant effects of the triple environmental crisis, coupled with an insufficient response to this crisis at the level of local and national government within the states in the region.

It is in relation to these insufficiencies that environmental movements in the Western Balkans have emerged and developed. These organisations indicate an important and distinctive understanding of the response to the triple environmental crisis. It involves challenging the existing activities of both the state (local and national) and individuals, groups, and corporations in relation to the environment. It is this challenge which, in turn, leads to a potential range of state and private reactions seeking to undermine and marginalise them.

It is against this marginalisation that the concept of an environmental human rights defender is introduced. The concept is introduced from the level of the rights and freedoms of international human rights law, and applied to three main challenges – criminalisation, spyware, and digital Extraction and SLAPPs – which these movements have confronted. It seeks to indicate that these challenges affect the rights and freedoms of the individual environmental activists as human rights defenders.

In this manner, it offers a modest proposal for an additional resource for the environmental movements in the Western Balkans. It enables these challenges to be understood and confronted as ones which relate to the composite of rights and freedoms of an environmental human rights defender, rather than ones which are isolated or compartmentalised. It seeks, with the concept of an environmental human rights defender, to heighten the fundamental importance of environmental movements in the Western Balkans.

The proposal is modest because it is, at the same time, perfectly aware that this is a normative concept of international human

rights law. In other words, that its further effectiveness rests upon its use, recognition, and enforcement within the domestic legal systems of the Western Balkans.

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