



Advocacy Update on Rights to Housing, Land and Productive Resources and Other Emerging Issues

2013 Highlights

The Global Initiative for Economic, Social and Cultural Rights seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. To further this vision, the Global Initiative works to support and engage advocates, social movements and grassroots communities at national and local levels to more effectively claim and enforce economic, social and cultural rights, including by engaging international mechanisms for local impact. We work to strengthen the international human rights framework through creative standard setting so that all people, and in particular marginalized individuals and groups, are able to fully enjoy their economic, social and cultural rights without discrimination and on the basis of equality. We provide innovative tools to policy makers, development actors and others on the practical implementation of economic, social and cultural rights. And, we enforce economic, social and cultural rights at international, regional and national mechanisms, ensuring remedies for violations of these rights, with a focus on creating beneficial jurisprudence aimed at transformative change.

This publication represents the first in a series of updates that we are planning to publish throughout 2014 and beyond, particularly highlighting in particular important advancements in the areas of housing, land and access to productive resources. It is meant to help inform advocates, policy makers, civil society organizations and other stakeholders about recent developments in the field, and draw attention to emerging areas of work. It also includes a special 'IN FOCUS' section on 'Defenders of Rights to Land, Housing and Productive Resources under Increasing Attack.'

We hope that this publication will be a useful resource for you and that it helps to raise awareness of the many advancements that are taking place at international, regional and national levels.

Recent Developments in Human Rights Associated with Housing, Land and Productive Resources

Complaint Filed before Human Rights Committee Condemning Forced Evictions in the Philippines

The Global Initiative represented residents of Corazon de Jesus, a community in San Juan City, Metro Manila, in filing an Individual Complaint before the UN Human Rights Committee. The Complaint seeks accountability and remedies from the Government of the Philippines for the brutal forced eviction of the community that took place last year. The Complaint also seeks a permanent halt to any further evictions. The Global Initiative worked closely with its local partner, Defend Job Philippines, a human rights organization based in the Philippines, and the International Human Rights Clinic at the New England University School of Law in the United States.

This complaint follows on the [work of the Global Initiative in opening the International Covenant on Civil and Political Rights as an instrument under which to seek justice for forced evictions](#).

Special Rapporteur on the Right to Adequate Housing

The Special Rapporteur on the right to adequate housing, Ms. Raquel Rolnik, reported to the Human Rights Council 22nd session in March 2013 on the thematic issue of security of tenure. In that [report](#) she focused on mapping and framing security of tenure. She has been continuing this work with further consultations on security of tenure for the urban poor during 2013 and the preparation of draft recommendations and good practices for States on implementation of security of tenure as a crucial element of the right to adequate housing. These recommendations will be the basis for her March 2014 report to the Human Rights Council. She also [reported](#) to the 68th session of the General Assembly in October 2013 on alternative housing policies for the urban poor (rental and collective housing) and recommended a shift away from financialisation of housing to a human rights based approach.

Developments at the UN on the Right to Water and Sanitation

The Special Rapporteur on the right to water and sanitation, Ms Catarina de Albuquerque, [reported](#) to the Human Rights Council in September 2013 on sustainability and non-retrogression in the realisation of the right to water and sanitation. She emphasised holistic and coordinated planning, sustainable financing including support from donors, elimination of inequalities in access, meaningful participation of users, effective monitoring and independent regulation and accountability.

The September Council session also saw the passing of an important resolution on the right to water and sanitation: [A/HRC/RES/24/18](#). This resolution, which was co-sponsored by 111 States recognised the right to safe drinking water *and sanitation* and for the first time elaborated the key elements of the right. This significant advance was marred by the statement of the U.S. disassociating itself from the definition of the right, explaining that it did not agree with the “expansive way this right has been articulated.” Following the success in the Human Rights Council, in November the Third Committee of UN General Assembly unanimously adopted resolution [A/C.3/68/L.34/Rev.1](#) which for the first time saw all UN States affirm the right to water and sanitation. Unfortunately, the final text was significantly weakened by the removal from the draft text of an important paragraph describing the content of the right, which had been included in the consensus Human Rights Council resolution in September. The amendments were made in order to achieve consensus, notably the agreement of the United States. Switzerland described the outcome as a ‘regrettable setback’ and other delegates and many civil society organisations were equally disappointed.

Following on from her [report](#) to the General Assembly in September 2012 on integrating non-discrimination and equality into the post-2015 development agenda for water, sanitation and hygiene the Special Rapporteur also entered the public discussions about the post-2015 development framework, highlighting the huge inequalities in access to safe drinking water and sanitation facilities and that certain groups (such as indigenous peoples, migrants and poor people) are frequently excluded. She urged States to include in the new development framework, equality and non-discrimination as foundational principles, measures to determine how progress is distributed and who is excluded and a focus on the most disadvantaged.

Women’s Rights to Land and Productive Resources

New Publication - UN-Women/OHCHR Handbook on Women’s Rights to Land and Other Productive Resources

In 2013, UN-Women and the United Nations Office of the High Commissioner for Human Rights (OHCHR) released a new handbook that provides detailed guidance to support the adoption and effective implementation of laws, policies and programmes to respect, protect and fulfil women’s rights to land and other productive resources: [Realising Women’s Rights to Land and Other Productive Resources](#). It presents an overview of international and regional legal and policy

instruments recognizing women's rights to land and other productive resources, and discusses ways of advancing a human rights-based approach to women's rights to land and other productive resources. It sets out recommendations in a range of areas accompanied by explanatory commentaries, good practice examples and case studies from countries. The publication is based on the results of an expert group meeting held in June 2012. It is hoped will be a useful tool for policy makers, civil society organizations and other stakeholders in their efforts to realize women's rights to land other productive resources.

Strategic Meeting to Advance Women's Land and Property Rights in Africa Leads to Landmark Resolution of the African Commission on Human and People's Rights

On 1 March 2013, the Global Initiative convened a Strategic Meeting to Advance Women's Land and Property Rights in Africa, which was held in New York during the 57th session of the UN Commission on the Status of Women (CSW). The group agreed to work collaboratively on the adoption of: 1) a thematic resolution on Women's Land and Property Rights in Africa, and 2) a General Comment to the Maputo Protocol addressing Women's Land and Property Rights.

With the support of Commissioner Soyata Maiga (the Special Rapporteur on the Rights of Women in Africa), the first goal was achieved in November 2013 when the African Commission on Human and Peoples' Rights adopted a ground-breaking [Resolution on women's right to land and other productive resources](#). With this resolution, the African Commission urged States "to fully comply with their obligations and commitments to ensure, protect and promote women's right to land and property" and encouraged them "to repeal discriminatory laws and adopt legislative measures to sanction customary practices that limit or have a negative impact on women's access to, use of and control over land and other productive resources." The Commission also called on States "to organise sustained public sensitisation, information and education campaigns for community and religious leaders in order to transform socio-cultural patterns of conduct that deprive women of their security of enjoyment of and equal access to property, land and adequate housing" as well as "to undertake land and agrarian reforms to ensure equal treatment for women in rural development, land distribution and social housing projects."

United Nations Committee on the Elimination of Discrimination against Women Committee (CEDAW Committee) Focuses on the Rights of Rural Women

The CEDAW Committee has turned its attention to the unique and important issues of rural women around the world and is in the process of elaborating a General Recommendation on the rights of rural women. This presents an important opportunity for developing a framework that expands the interpretation of state obligation, ensures the elimination of discrimination and promotes substantive equality of rural women, particularly in the context of rights to land and access to other productive resources.

As part of this process, in February 2013, the Global Initiative convened a Thematic Briefing for the CEDAW Committee on 'Rural Women and Land and Property Rights,' held in Geneva, Switzerland. From this Briefing, CEDAW Committee members gained new knowledge on the relevance of women's land and property rights, as well as knowledge of how other UN agencies and UN human rights treaty bodies have addressed these issues. Committee members expressed a willingness to apply this knowledge to the drafting of their General Recommendation on the Rights of Rural Women.

In October 2013, the CEDAW Committee held a [Day of Discussion on rural women](#) which aimed to further inform the draft General Recommendation on the Rights of Rural Women. Civil society representatives of rural women from all around the world briefed the Committee on the situation of the human rights of rural women. A common theme that arose was the importance and transformative nature of secure access to land and other productive resources, for the lives of rural women and their families. The Global Initiative's Mayra Gomez gave a [keynote presentation](#) on this

issue, and the Global Initiative's partner Landesa also made a [statement on behalf of 7 organizations](#).¹

Landmark Case on Women's Land Rights in Botswana

The rights of women in Botswana to inherit the family home received a significant boost in September this year when the [Botswana Court of Appeal held that a customary law which only entitled sons to inherit family property, was discriminatory and unconstitutional](#). The Mmusi sisters who brought the case were found to be entitled to inherit the family property. This is a great victory for gender equality in Botswana. Judge Lesetedi declared that "Constitutional values of equality before the law, and the increased levelling of the power structures with more and more women heading households and participating with men as equals in the public sphere and increasingly in the private sphere, demonstrate that there is no rational and justifiable basis for sticking to the narrow norms of days gone by when such norms go against current value systems."

New Publication - FAO Technical Guide on Gender Equity in Land Tenure Governance

In 2013 the Food and Agriculture Organisation (FAO) published a technical guide on governance of tenure entitled '[Governing Land for Women and Men: A technical guide to support the achievement of responsible, gender-equitable governance of land tenure](#).' This technical guide is intended as a companion to the FAO's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security by providing guidance on implementation. The technical guide focuses on implementation of one of the Guidelines' key principles, gender equality in tenure governance. The guide explains the meaning of equity in this context and on how land tenure can be governed in ways that address the different needs and priorities of women and men. It aims to mainstream gender issues in tenure governance particularly by achieving more gender-equitable participation in the processes and institutions that underlie all decision-making about land.

Non-State Actors and ETOs

The issue of extra-territorial obligations (ETOs) of States in international human rights law continued to receive attention in 2013, including through a number of new treaty body communications, treaty body State Party reviews, NGO conferences and State initiatives to highlight the gap in regulation and accountability of transnational corporations and business enterprises. Importantly, following the gradual and strategic introduction of social and economic rights issues to the Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR), and acceptance by the Human Rights Committee of issues such as forced evictions for consideration under the International Covenant on Civil and Political Rights (ICCPR), the Committee is now in a position to consider States' extra-territorial obligations with respect to economic and social rights violations.

Human Rights Committee to Assess Canada's Extra-Territorial Obligations in Respect of Human Rights Abuses in Palestine

The Global Initiative, working with Israeli lawyers, filed an Individual Complaint on behalf of the Palestinian village of Bil'in against Canada. The complaint was filed by the Bil'in Village Council, along with 11 village residents, with the UN Human Rights Committee. It addresses Canada's failure to prevent two Canadian corporations from engaging in human rights violations related to settlement construction in Palestine. The complaint alleges that the two Canadian corporations, Greenpark International, Inc. and Greenmount International, Inc., aided and abetted in the human rights abuses against villagers in relation to the building of Israeli settlements in occupied territory.

¹ ActionAid, Global Initiative for Economic Social and Cultural Rights, Huairou Commission, International Accountability Project, International Center for Research on Women (ICRW), International Land Coalition (ILC) Secretariat, and Landesa.

In 2008, the Bil'in complainants filed a lawsuit in Montreal, Canada against the two Quebec-registered companies, claiming violations of international and Canadian law pertaining to aiding and abetting the commission of a war crime. Both the trial and appellate courts refused to hear the case on the merits, claiming that the proper forum for the case is the Israeli courts. Given that the Canadian Supreme Court refused to review the Bil'in lawsuit, Canada has also failed to provide an effective judicial remedy to the residents of Bil'in for violations of their human rights.

This case follows on the [work of the Global Initiative to open the International Covenant on Civil and Political Rights for advocacy on extra-territorial human rights obligations](#).

Human Rights Committee Set to Scrutinize the United States Regarding ETOs

The Human Rights Committee is set to scrutinize the United States regarding its extra-territorial human rights obligations under the Covenant. The U.S. will appear before the Committee in March 2014 for its periodic review.

In early 2013, the Global Initiative successfully intervened with a Parallel Report at the List of Issues stage laying out the extra-territorial obligations under the ICCPR and requesting that the Committee include scrutiny on those obligations within the periodic review of the United States. The List of Issues adopted by the Committee requires the U.S. to discuss its understanding of "the scope of applicability of the Covenant with respect to individuals under its jurisdiction but outside its territory; in times of peace, as well as in times of armed conflict." This provides advocates the opportunity to address the issue of ETOs and provides the Committee the opportunity to finally settle this misinterpretation by the U.S. of its treaty obligations.

World Bank Must Ensure and Abide by Human Rights Obligations

The Compliance Advisor Ombudsman (CAO) of the World Bank's International Finance Corporation (IFC) has been asked to consider human rights violations against Honduran villages, as part of its audit of a \$30 million loan to the Dinant Corporation, a Honduran African palm oil producer controlled by Honduras' largest landowner, Miguel Facusse. The World Bank loan was made in late 2009, to Dinant Corporation and the military-backed regime that came to power in Honduras after the June 2009 military coup, and that was engaged in widespread repression and human rights abuses against the Honduran people.

In March 2013, the Global Initiative and Rights Action submitted a brief to the CAO explaining that, as a Specialized Agency of the United Nations, the World Bank is obligated by international law² to further the objectives of the United Nations Charter, which include "universal respect for, and observance of, human rights and fundamental freedoms for all." Thus the policies and directives of the Bank must be interpreted and defined in accordance with international human rights law and the Bank should defer to the UN human rights mechanisms in order to determine if loans contribute to the violation of human rights. The Bank must ensure that the victims are afforded just remedies and allowed to participate in decisions relating to any further development in their territories.

The brief further argues that Member States of the World Bank are legally obligated to abide by their respective extra-territorial human rights obligations within the context of decisions and actions taken as Member States and urges the CAO to find Member States of the World Bank in violation of their respective human rights obligations in relation to violations that resulted from the Dinant Corporation loan.

In early 2014, The World Bank's Office of the Compliance Advisor Ombudsman (CAO) has found that World Bank's International Finance Corporation (IFC) failed to abide by its own ethical standards, including failing to ensure that human rights obligations are met, by continuing to finance Corporación Dinant, and Honduran corporation involved in palm oil plantations. The CAO's investigation was commenced after receiving information in 2011 from [Rights Action](#), the [International Federation for](#)

² Article 59 of the United Nations Charter.

[Human Rights \(FIDH\)](#) and other advocacy groups regarding violations by Corporación Dinant, including:

The CAO relied heavily on a human rights analysis in finding that the IFC failed to adequately supervise the funded project and failed to ensure that Dinant abided by environmental and social standards, including international human rights standards. According to the CAO, the “IFC’s Policy on Social and Environmental Sustainability (Sustainability Policy) expresses the Corporation’s mission in terms of promoting sustainable private sector development” and the Sustainability Policy requires the IFC to “avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to” and that “in this context the Sustainability Policy (2012) provides that the IFC will be guided by the International Bill of Human Rights and the eight core conventions of the International Labour Organization (ILO).”

Special Rapporteurs Request Urgent Action from States to Address Allegations of Human Rights Abuses Committed Abroad by Corporate Entities Domiciled in their Territory

In October 2013, several UN Special Rapporteurs and independent experts [expressed concern](#) about the construction of a mega-steel plant in Odisha in Eastern India, which reportedly “threatens to displace over 22,000 people in the Jagatsinghpur District, and disrupt the livelihoods of many thousands more in the surrounding area.” They stressed that “While India has the primary duty to protect the rights of those whose homes and livelihoods are threatened by the project, the experts underlined that POSCO also has a responsibility to respect human rights, and the Republic of Korea, where POSCO is based, should also take measures to ensure that businesses based in its territory do not adversely impact human rights when operating abroad.”

The Committee on Economic, Social and Cultural Rights (CESCR) Addresses ETOs of States in its Reviews of Austria and Norway

At its most recent session, CESCR was asked to consider States’ ETOs in relation to two State Party reviews. NGO reports submitted by FIAN in relation to [Austria](#) and [Norway](#) alerted the Committee to those States’ ETOs for violations of human rights committed abroad.

The reports heavily referenced the Maastricht Principles and drew attention to State obligations with respect to: international co-operation through development assistance;³ as members of international financial institutions; as EU member States (with respect to the impacts of EU agrofuels and agricultural trade policies); as providers of export and investment promotion and assistance to home state corporate enterprises;⁴ as owners of a government pension fund which invests in overseas projects; and as influential decision-makers in a non-State corporate entity within the States’ jurisdiction making overseas investments. The majority of the examples given in the reports involved land grabbing and violations of the right to food, the right to adequate housing and the right to water.

In the case of both States, the Committee delivered Concluding Observations addressing the States’ extra-territorial obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). In relation to Norway, the Committee recommended that the State 1) ensure that investments in foreign companies operating in third countries made by the Norway Government pension fund “are subject to a comprehensive human rights impact assessment (prior to and during the investment)” and 2) “adopt policies and other measures to prevent human rights contraventions abroad by corporations which have their main offices under the jurisdiction of the State Party, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant” (see [here](#)). In relation to Austria, the Committee called “upon the State party to adopt a human rights-based approach to its policies on official development assistance and on agriculture and trade” through human rights impact assessments prior to making funding decisions, establishing

³ ICESCR Article 2.1, Maastricht Principles 29 & 33.

⁴ Maastricht Principles 24 & 25.

effective monitoring and remedial mechanisms and ensuring that there is an accessible complaint mechanism for victims in receiving countries. Further, the Committee urged Austria to ensure that ESCRs are fully respected and protected “in the context of corporate activities, including by establishing appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations” (see [here](#)).

Group of States Calls for a New Treaty on Transnational Corporations

At the September 2013 session of the Human Rights Council, Ecuador led a group of States, including States in the African Group, the Arab Group, Pakistan, Sri Lanka, Kyrgyzstan, Cuba, Nicaragua, Bolivia, Venezuela, Peru, in calling for a new binding instrument of international law to regulate the activities of transnational corporations. The initiative was quickly and loudly supported by a large number of NGOs and civil society organisations, including the Global Initiative (see [here](#)). Notably absent from these calls were the ‘home States’ of many of the largest transnational corporations. The call is for a legally binding instrument that clarifies the scope and nature of human rights obligations of transnational corporations and business enterprises and a remedial and enforcement mechanism. There are few details of the proposal at this stage, for instance in relation to what sort of remedial mechanism is proposed (another UN treaty body or an international tribunal?) and how such an international mechanism will apply to non-State actors. Ecuador has said that it will hold a side event and meetings on the elaboration of a new international treaty on transnational corporations, at the March 2014 session of the Human Rights Council.

Human Rights and Post-2015

Human Rights must be at the Core of Post-2015 Development Framework

On 5 April 2013 the United Nations observed the 1,000-day mark to the 2015 target date for achieving MDGs. As the MDGs enter their final days before expiring in 2015, many [human rights organizations](#), [development agencies](#), [women’s rights groups](#), and [environmental groups](#) are demanding that human rights be at the core of any post-2015 development framework. At the center has been the call to ensure that the post-2015 framework is “anchored in human rights” and that the new framework “*moves from a model of charity to one of justice*, based on the inherent dignity of people as human rights-holders, domestic governments as primary duty-bearers, and all development actors sharing common but differentiated responsibilities.” (see [here](#)). Advocates have also highlighted that relying on human rights standards and principles to give moral and legal force to development targets is more in line with the principle of accountability than relying on goal-setting alone, and would yield better results in terms of achieving actual development objectives.⁵

This call had been increasingly echoed by others. For example, on 21 May 2013, 17 Special Procedures mandate-holders of the United Nations Human Rights Council issued a [joint statement](#) calling for “[g]rounding development priorities in human rights.” It states that “human rights norms and standards provide concrete guidance as to how goals and targets for the post-2015 development agenda should be framed. Governments have already committed to uphold human rights in numerous international treaties. Grounding development priorities in human rights is not only a legal and moral imperative, but can also enhance effectiveness and accountability.” The statement also puts forward three key recommendations for a post-2015 agenda, namely: 1) incorporation of equality as a stand-alone and cross-cutting goal, 2) inclusion of a goal on the provision of social protection floors, and 3) putting accountability at the core of the post-2015 development framework.

On 30 May 2013 the UN High-level Panel of Eminent Persons on the Post-2015 Development Agenda submitted its report ‘[A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development](#)’ and in September the UN Development Group

⁵ See: Ellen Dorsey, Mayra Gómez, Bret Thiele, and Paul Nelson, ‘Falling Short of Our Goals: Transforming the Millennium Development Goals into Millennium Development Rights,’ *Netherlands Quarterly of Human Rights*, Vol. 28, No. 4, December 2010, pp. 516-522.

launched its report '[A Million Voices: The World We Want, A Sustainable Future with Dignity for All](#)' following a year-long global consultation which collected the perspectives of over 1 million people. The Global Initiative welcomed some positive aspects of the UN High Level Report, but is concerned that the report fails to fully place international human rights at the core of the post-2015 development agenda. Human rights standards, including ESC rights standards, are clearly defined and should be used as the foundation and means of implementation of any forthcoming development framework.

On 6 June 2013, the United Nations High Commissioner for Human Rights, Navi Pillay, also wrote an [open letter to permanent representatives of UN Member States in New York and Geneva](#), outlining her key messages for the post-2015 development agenda. In her letter, the High Commissioner proposes ten elements for the post-2015 agenda, which include: a human rights-based approach; freedom from fear as well as freedom from want; equality as a separate goal (rather than economic growth); inclusion of marginalized groups; an end to poverty; a healthy environment as the underlying determinant of internationally guaranteed human rights; international reform, to ensure human rights-based policy coherence at the international level; universal applicability; a strong accountability framework; and greater responsibility to be shown by the private sector, with appropriate government regulation. On 25 June 2013, the [European Union Council Conclusions on the Overarching Post 2015 Agenda](#) also emphasize that the post-2015 framework “[e]nsure a rights-based approach encompassing all human rights.”

In addition, civil society organizations have also expressed their views in the form of consensus documents. Most notably, the [Vienna+20 CSO Declaration](#), adopted in Vienna on 26 June 2013, addresses human rights in the post-2015 sustainable development agenda, calling upon States to “reaffirm the primacy of human rights in the post-2015 sustainable development agenda ... [and] to transform the current aid-based model into a new universally applicable framework based on human rights and well-being, gender equality, social and economic justice and respect for planetary boundaries.”

These developments point to a widespread consensus around this idea of employing a human rights approach to development. However, placing human rights at the center of the post-2015 development framework remains a significant challenge. Some have said that “Human rights could be [a] faultline in post-2015 development agenda” and some politicians have even suggested that Governments may have “red lines” when it comes to the integration of human rights in the post-2015 framework (see [here](#)).

The UN Secretary-General presented to the 68th session of the General Assembly on 25 September 2013 his report '[A Life of Dignity for All: accelerating progress towards the Millennium Development Goals and advancing the UN development agenda towards 2015](#).' In addition, the President of the UN General Assembly held a special event on the MDGs to follow up efforts made towards achieving the MDGs, in which world leaders committed to meet the MDGs targets and agreed to hold a high-level Summit in September 2015 to adopt a new set of Goals.

As Governments met at the UN in December to debate aspects of the sustainable development agenda to replace the MDGs in 2015, over 300 civil society organizations from all parts of the world came together to demand human rights be integrated into every aspect of the new framework. The joint statement 'Human Rights for All Post-2015' (see [here](#)) was presented to the Open Working Group (OWG) on the Sustainable Development Goals (SDGs) at its 6th session in December. It sets out 10 practical, baseline implications of embedding existing human rights standards into the core of the sustainable development agenda.

There is a need now to redouble efforts to ensure that human rights become the foundation and the central organising principle in the post-2015 development framework. September 2014 will see the presentation of the final findings of the Open Working Group on the Sustainable Development Goals, to be presented to the UN General Assembly, as well as a High Level Political Forum meeting

to discuss the post-2015 development agenda. The Intergovernmental negotiation process will continue until the new framework is ultimately adopted by States, and it is vital that civil society organizations and other stakeholders make their voices heard.

IN FOCUS

Defenders of Rights to Land, Housing and Productive Resources under Increasing Attack

On 8 November the Global Initiative participated in an expert consultation held by the Working Group on Enforced or Involuntary Disappearances on the issue of ‘Enforced Disappearances and Economic, Social and Cultural Rights.’ This allowed us to give additional attention to the interplay between Enforced Disappearances (EDs) and economic, social and cultural rights (ESC rights), and more broadly on the importance of protecting those human rights defenders who work to defend the rights of local communities against ESC rights violations. Those defending the rights of local communities to land, housing and productive resources are coming under increasing attack for their work. This is of course not a new phenomenon, but the growing pressure on land globally has meant that disputes over land and productive resources are intensifying and human rights defenders at the forefront of these struggles are facing greater intimidation, harassment, physical attacks, murder and EDs.

ESCRs can be seen as both a cause and consequence of EDs and other attacks on rights defenders. They are so interlinked that they form a ‘vicious circle’ which highlights the indivisibility and non-hierarchical nature of human rights and gives impetus to the calls for a multi-faceted approach to addressing rights violations. In order to improve the recognition, protection and enjoyment of the rights associated with EDs and attacks on human rights defenders (eg: right to be free from torture, freedom of expression and association), ESC rights must be addressed, and vice versa. For instance, in order to ensure justice and reparations for victims of EDs, their right to health care for their physical and psychological injuries must be fulfilled. Similarly, in order to ensure the rights to clean and safe water, those raising the alarm on issues of polluted water must be free from harassment and free to protest peacefully without fear of harm.

This issue is receiving attention from a number of mechanisms in the UN human rights system. Ms Hina Jilani, the former Special Rapporteur on Human Rights Defenders produced a report in 2007 detailing the increasing instances of harassment of human rights defenders working on ESC rights issues.⁶ She identified labour rights and trade union activists as the most prevalent ESC rights issue seen by her mandate.⁷ The second most prevalent issue was land and natural resources issues and those campaigning against forced evictions.⁸ She noted that there was a global trend towards targeting of ESC rights advocates, although it was more marked in the Asian and Latin American regions.

Similar trends have been noted by the Special Rapporteur on Extreme Poverty and Human Rights⁹ and by the current Special Rapporteur on Human Rights Defenders.¹⁰

Defenders of rights to land, property and natural resources

Access to and use of land and other productive resources are critical to the security, livelihoods and well-being of rights holders and particularly those living in poorer countries that rely on these resources to produce their own food and income and gather fodder and fuel wood. This is particularly so for rural women who are the main producers of food throughout the world and frequently are becoming the single heads of households in developing countries due to HIV/AIDS

⁶ UN Doc. A/HRC/4/37 (24 January 2007).

⁷ *Op. cit.* para 49.

⁸ *Op. cit.* paras 39-47 and 61-66.

⁹ Comments made by Magdalena Sepulveda at the expert consultation on 8 November 2013.

¹⁰ UN Doc. A/68/262 (5 August 2013),

deaths or migration of spouses or male relatives, divorce or abandonment. In these circumstances land/housing/water become even more critical for the sustainment of the family. For many communities land is also inextricably linked to their identity, culture, traditions and community and depriving these communities of their traditional land is also a violation of their cultural rights and causes very serious injury to the community, their way of life and identity.

At the same time the phenomenon of 'land-grabbing' is occurring across the globe and particularly in Africa and Asia. It involves very large acquisitions (acquisition, lease or transfer) of land or natural resources by States (often foreign States) and corporate entities for 'development' and investment purposes, particularly in the extractives and agricultural industries or for infrastructure construction.¹¹ It is occurring at an alarmingly fast pace and often under a veil of secrecy without consultation with local communities occupying the land.

Land grabbing often results in numerous violations of ESC rights and harassment and attacks on opponents. It often involves mass forced evictions and often violations of the right to adequate housing, the right to food and the right to water and sanitation. For example, where people are moved off their land and resettled, there might be implications for the peoples' right to water and sanitation, if safe drinking water and sanitation facilities are not available at the resettlement site or they are cut off from traditional sources of water; rights to health and education, if people are resettled to areas that are inaccessible for health and education services; or rights to food, if due to loss of farming land they are no longer able to grow or produce their own food.¹²

These large scale development projects are thus causing conflict and attracting vocal opposition from local communities, and, since the stakes are high, opponents are targeted for threats, intimidation and physical attacks. An example is the land conflict in Mon Ywar district, Sagaing Division, Burma in relation to the Letpadaung copper mine operated by a Chinese corporation and a Burmese State-owned corporation. Local people have complained that the mine is polluting the rivers and farmlands and that they were not fairly compensated for the confiscation of their farmlands. It is alleged that on a number of occasions the police used brutal force, including incendiary weapons to disperse peaceful protesters.¹³

In her most recent report to the General Assembly in August 2013, the current Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, considered the relationship between large scale development projects and human rights defenders. She found that the situation of human rights defenders working on land rights, natural resources and environmental issues seemed to have worsened since 2007. The Report urges States to adopt a human rights based approach to large development projects and addresses key human rights principles such as non-discrimination, participation, transparency and access to information and accountability mechanisms and redress.

A useful tool for avoiding conflicts in relation to competition for land and evictions are the 'Basic Principles and Guidelines on Development-based Evictions and Displacement.' States should be encouraged to implement these Principles and Guidelines so as to avoid conflicts with local communities and rights violations. Further, there is growing evidence to show that a rights based approach to development projects produces more inclusive and sustainable development outcomes. Another useful tool for States are the 'Voluntary Guidelines on the Responsible Governance of

¹¹ For example the lucrative palm oil business is acquiring and clearing large swaths of land across Africa (eg: Liberia and Cameroon) and South East Asia (eg: Indonesia), usually without the consent of the traditional land occupiers.

¹² See for example: Human Rights Watch, 'What is a House Without Food? Mozambique's Coal Mining Boom and Resettlements,' 23 May 2013, available online at: www.hrw.org/reports/2013/05/23/what-house-without-food; See also: Human Rights Watch, 'Waiting Here for Death: Forced Displacement and 'Villagization' in Ethiopia's Gambella Region,' 18 January 2012, available online at: www.hrw.org/reports/2012/01/17/waiting-here-death

¹³ See: <http://www.irrawaddy.org/burma/tensions-high-letpadaung-mine-police-gather-protest-camps.html>; and <http://www.humanrights.asia/news/press-releases/AHRC-PRL-007-2013>

Tenure of Land, Fisheries and Forests in the Context of National Food Security' published by the UN Food and Agriculture Organisation.¹⁴

A recent example of an enforced disappearance case involving land and natural resource rights is that of Mr. Sombath Somphone, the Lao civil society leader, who was working on sustainable development issues in Laos before his disappearance in December 2012. Shortly before his disappearance, Mr Somphone was involved in the Asia-Europe People's Forum at which some villagers spoke up about the devastating impacts to their families, communities and the environment of the Lao government's practice of confiscating lands and resources long used by local villagers and turning them over to foreign companies for large development projects. Mr Somphone supported the claims of those villagers and as a result he and the villagers received direct threats at the conference, followed by visits by police to their families and villages.¹⁵

Another example is the situation of over 300 people forcibly disappeared in 2008 in the Mt Elgon region of Kenya, allegedly by the Kenyan army and a local Kenyan militia, in relation to the peoples' opposition, or perceived opposition to forced evictions and land grabbing.¹⁶

Of course attacks on ESC rights defenders also has a chilling effect not only on the victim and her/his family, but on the whole community. The project of advancing ESC rights is seriously undermined when dissent is silenced with threats and attacks on ESC rights defenders and the result is the further entrenchment of the communities' poverty and on-going rights violations.

The role of non-State actors

Because of the scale and complexity of many development projects and extractives industry projects and because of the opportunities to deliver huge profits from such projects in developing countries, in many cases non-State foreign actors are involved (either as direct investors or financiers). Corporations and private or inter-governmental financial institutions or donors frequently play a significant role in these projects and therefore stand to gain a great deal from the elimination of vocal opponents to the project. Ms Hilani in her 2007 report noted her concerns about collusion between States and private sector actors, which have led to harassment and attacks on human rights defenders.¹⁷ In her 2010 Report she also highlighted this issue and cases where private companies had aided and abetted the commission of violations against human rights defenders.¹⁸

The Working Group on the issue of human rights and transnational corporations and other business enterprises in March 2013 also noted the very high number of cases brought to their attention relating to conflict over land and natural resources and the harassment and attacks on persons protesting against the impact of business activities.¹⁹

The 'UN Guiding Principles on Business and Human Rights Implementing the United Nations 'Protect, Respect and Remedy' Framework'²⁰ require corporations and other business enterprises to respect human rights (i.e., those contained in international treaties) by avoiding infringing the human rights of local populations and addressing adverse human rights impacts with which they are involved. Further, the obligation to protect requires States to ensure that corporations do not violate

¹⁴ See: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

¹⁵ See, for example: <http://www.bbc.co.uk/news/world-asia-23862691>; http://www.amnestyusa.org/sites/default/files/laos_-_caught_on_camera_-_the_enforced_disappearance_of_sombath_somphone.pdf; and <http://www.theguardian.com/environment/2013/mar/13/laos-campaigner-abduction-activist-community>

¹⁶ See: 'Waiting for Justice: Kenya's Mt Elgon Region,' Human Rights Watch, 27 October 2011, available online at: www.hrw.org/reports/2011/10/27/hold-your-heart

¹⁷ *Op. cit.* para 83

¹⁸ UN Doc. A/HRC/4/37 (24 January 2007), paras 10 and 11.

¹⁹ Working Group on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/23/32 (14 March 2013), para 13.

²⁰ UN Doc. A/HRC/17/31 (21 March 2011).

human rights in the context of activities both domestically and abroad. The obligation to remedy requires both corporations and other business entities and States (whether in their capacity as home State, host State or financial investor) to ensure that victims have access to adequate remedies.

These obligations relate directly to attacks carried out against opponents of large development projects involving private actors. Corporations implicated in such abuses have obligations under the UN Guiding Principles (if not also under the host or home State laws) to investigate violations and provide remedies and to undertake thorough human rights due diligence prior to commencing projects. An example is the case of Exxon Mobil Corporation which operated a large natural gas extraction and processing facility in the Aceh province of Indonesia. The case involves allegations against the company of complicity in very serious human rights violations against the local villagers, committed by Indonesian military soldiers guarding the pipeline and facility. A claim is pending in the U.S. Supreme Court in relation to this matter specifically alleging that ExxonMobil ‘supervised, controlled and directed’ the military soldiers assigned to it in an effort to protect its project.²¹

Where non-State actors collude in, assist in or are complicit in EDs they must be held accountable and be required to make reparations to victims. Scrutinizing the role of non-State actors will assist to raise awareness about their involvement, assist in the work of those seeking to hold non-State actors accountable and may act as a preventative tool for those engaging with non-State actors involved in conflicts with local populations over land and natural resources.



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²¹ See: <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ExxonMobillawsuitreAceh> ;<http://www.globalpost.com/dispatch/news/regions/asia-pacific/indonesia/130424/aceh-exxonmobil-us-court-human-rights-abuses>