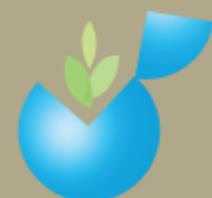
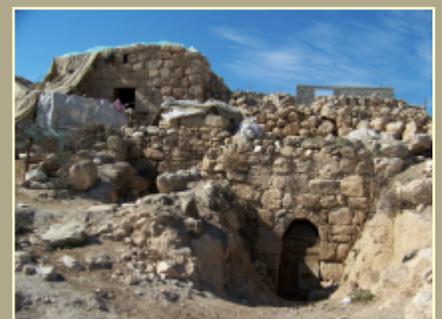
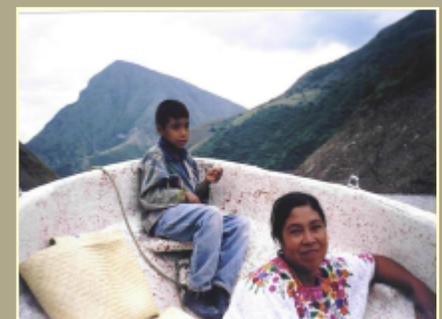


GI-ESCR Issue Brief:

The dangerous work of
defending rights to land,
housing and productive
resources



The effective protection of human rights associated with land, housing and productive resources requires grassroots and national advocates who can raise the alarm on rights violations and hold decision- and policy-makers accountable for the consequences of their actions. Yet, those defending the rights of local communities to land, housing and productive resources and highlighting abuses are coming under increasing attack for their work.

This is of course not a new phenomenon but the growing pressure on land globally means that disputes over land and productive resources are intensifying and human rights defenders at the forefront are facing intimidation, harassment, physical attacks, murder and enforced disappearance (EDs). A more recent trend has been the proliferation of domestic laws that restrict and seek to silence NGOs working on rights issues. For instance, in December 2013 the Government of Ecuador revoked the permission for an NGO, Fundación Pachamama, to operate in the country. The NGO was working on indigenous rights, access to land and opposition to certain oil development projects in Ecuador and this move appears to be a reprisal against the NGO for its human rights work and strong opposition to government projects.¹ Egypt in the same month saw the offices of The Egyptian Centre for Economic and Social Rights raided by the police and five staff members and volunteers were arrested and detained.²

These attacks and restrictions on defenders of economic, social and cultural (ESC) rights obviously have serious consequences for individuals and their families, but also for their communities and their campaign against the underlying rights violations. Such attacks have a devastatingly chilling effect on other opponents and voices of dissent, which can lead to impunity for rights violations. Further, as a result of attacks on human rights defenders, frequently other ESC rights violations occur, such as impacts on the physical and psychological health of the victims and their families, and impacts on the ability of the victims and their families to work and maintain an adequate standard of living. In this way economic, social and cultural rights can be both a cause and consequence of attacks on ESC rights defenders. In fact, the interrelated nature of these issues reminds us of the indivisibility and non-hierarchical nature of all human rights, and gives impetus to the calls for a comprehensive and multi-faceted approach to addressing rights violations.

This issue is receiving attention at the UN Human Rights Council, the General Assembly and from a number of mechanisms in the UN human rights system. For instance 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.³ She identified harassment and violence against labour rights and trade union activists as the most prevalent ESC rights related repression seen by her mandate.⁴ The second most prevalent concerned those advocating on land and natural resources issues, and those campaigning against forced evictions.⁵ She noted that there was a global trend towards targeting of ESC rights advocates, particularly in the Asian and Latin American regions.

Similar trends have been noted by the Special Rapporteur on Extreme Poverty and Human Rights and by the current Special Rapporteur on Human Rights Defenders.⁶ Further, the Working Group on Human Rights and Transnational Corporations and other Business Enterprises has also highlighted this issue in the context of the private sector its 2013 report to the Human Rights Council.

'Land-grabbing' and large scale development projects

Access to, use of and control over land, housing and other productive resources are critical to the security, livelihoods and well-being of poor people and particularly those living in rural areas who frequently rely on these resources to produce their own food and income and gather water, 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 deaths or migration of spouses or male relatives, divorce or abandonment. In these circumstances, access to productive resources may become even more critical for the sustainment of the family. For many communities, land is also inextricably linked to identity, culture, traditions and sense of community, and depriving these communities of their traditional land is also a violation of their cultural rights and can cause very serious injury to the community, their way of life and identity. Access to, and secure tenure over, land and productive resources are essential elements of poverty reduction, food security strategies, economic empowerment and sustainable livelihoods.

At the same time the phenomenon of 'land-grabbing' (often in the context of land acquisition for large scale

development projects) 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 (both domestic and foreign) for ‘development’ and investment purposes, particularly in the extractives and agricultural industries or for infrastructure construction. It is occurring at an alarmingly fast pace and often under a veil of secrecy without any meaningful participation of local communities occupying the land. For example, the lucrative palm oil industry 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.

Land grabbing often results in numerous violations of ESC rights and harassment and attacks on opponents. It often involves mass forced evictions, which are a violation of international human rights law and 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 traditional access to water being cut off;

- *right to a clean environment*, if the resettlement site is on degraded or polluted land;
- *rights to health and education*, if people are resettled to areas that are inaccessible for health and education services; and/or
- *rights to food*, if due to loss of farming land they are no longer able to grow or produce their own food.⁷

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 with 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.⁸

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.⁹ She found that the situation of human rights defenders working on

land rights, natural resources and environmental issues seemed to have worsened since 2007.¹⁰ The Report urges States to adopt a human rights based approach to large development projects which the Special Rapporteur outlines and which 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'.¹¹ 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.

A recent example of a 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 Laotian 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.¹²

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.¹³

The project of advancing ESC rights is seriously undermined when dissent is silenced with threats and physical attacks on ESC rights defenders and the result is the further entrenchment of the communities' poverty and on-going rights violations and impunity on the part of violators.

The role of non-State actors As a consequence of the scale and complexity of these development, extractives industry and agro-industrial 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. Ms Jilani 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.¹⁴ 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.¹⁵

The UN 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.¹⁶

The ‘UN Guiding Principles on Business and Human Rights Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’¹⁷ require corporations and other business enterprises to abide by their **obligation to respect** human rights (ie. 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 human rights in the context of activities both domestically and abroad. The **obligation to remedy** requires both 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. For example, the case of Exxon Mobil Corporation, which operated a large natural gas extraction and processing facility in the Aceh province of Indonesia, 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 US 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.¹⁸

Where non-State actors collude in, assist in or are otherwise complicit in attacks on human rights defenders, they must be held accountable and be required to make reparations to victims. Scrutinizing the role of non-State actors in such abuses is particularly important where accountability in the victims’ domestic jurisdiction is non-existent due to weak judicial systems, corruption or inadequate rule of law.

Domestic litigation in the home State of the transnational corporations has generally been difficult due to jurisdictional rules, complex corporate structures and corporate liability shield laws. Recently this option suffered a significant blow with the US Supreme Court's decision in the Kiobel case against Shell, which effectively cut off one popular avenue for judicial accountability in the United States.

One avenue for accountability in the international human rights system is to focus on the home States of the relevant transnational corporations and the failure of those States to adequately regulate the corporate entities within their jurisdiction. That is the failure of States to enact laws requiring entities incorporated in their jurisdiction to comply with that States' human rights obligations, including in relation to the corporate entities' activities abroad.¹⁹ The extra-territorial obligations of the home State of transnational corporations are receiving increasing attention from UN human rights mechanisms. The legal principles underpinning the case for extra-territorial obligations under the ICESCR were helpfully articulated by a group of human rights law experts in 2012: the Maastricht Principles on Extra-Territorial Obligations of States.²⁰ We hope to see these issues further ventilated at the various UN mechanisms. Aligned with this push is a call for a legally binding international

instrument (presumably a treaty) dealing with the obligations of corporate entities and establishing an enforcement mechanism.

Conclusion

We think this is an important issue to highlight and to begin to map the trends so as to gain a better understanding of the nature of those attacks, risk factors and, importantly, for developing strategies and tools for prevention.

To this end, the Global Initiative for Economic, Social and Cultural Rights will continue to advance recognition of the human rights dimensions of access to, use of and control of land, housing and productive resources, as well as the notion of extra-territorial obligations related to such rights. The Global Initiative will also continue to work with the UN Working Group on Enforced and Involuntary Disappearances as it continues to examine enforced or involuntary disappearances in the context of economic, social and cultural rights.

ENDNOTES

- 1 See ESCR-Net: <http://www.escr-net.org/node/365355>
- 2 See <http://www.fidh.org/en/north-africa-middle-east/egypt/14430-egypt-raid-of-the-headquarters-of-the-egyptian-centre-for-economic-and>
- 3 A/HRC/4/37
- 4 *Op. cit.* para 49
- 5 *Op. cit.* paras 39-47 and 61-66
- 6 A/68/262
- 7 See for example: 'What is a House Without Food? Mozambique's Coal Mining Boom and Resettlements', Human Rights Watch, 23 May 2013, www.hrw.org/reports/2013/05/23/what-house-without-food; 'Waiting Here for Death: Forced Displacement and 'Villagization' in Ethiopia's Gambella Region', 18 January 2012, www.hrw.org/reports/2012/01/17/waiting-here-death
- 8 See <http://www.irrawaddy.org/burma/tensions-high-letpadaung-mine-police-gather-protest-camps.html>; <http://www.humanrights.asia/news/press-releases/AHRC-PRL-007-2013>
- 9 A/68/262
- 10 *Ibid.* at para 18
- 11 A/HRC/4/18, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. See here http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf
- 12 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; <http://www.theguardian.com/environment/2013/mar/13/laos-campaigner-abduction-activist-community>
- 13 See 'Waiting for Justice: Kenya's Mt Elgon Region', Human Rights Watch, 27 October 2011, www.hrw.org/reports/2011/10/27/hold-your-heart
- 14 *Op. cit.* para 83
- 15 A/HRC/4/37, paras 10 and 11
- 16 Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/23/32, para 13
- 17 A/HRC/17/31
- 18 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>
- 19 And including activities undertaken via a subsidiary corporate entity not incorporated in the first State. The proposed test is for corporate headquarters to have legal responsibility for its overseas operations and activities where it has 'control' over those operations and activities.
- 20 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights Rights, (adopted 28 September 2011).



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