



The Observatory
for the Protection
of Human Rights Defenders

“We are not afraid” **Land rights defenders: attacked for confronting unbridled development**

Foreword: Michel Forst



ANNUAL REPORT 2014



fidh

“We are not afraid”
Land rights defenders:
attacked for confronting
unbridled development

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Cover: Villagers protest against a copper mine project in front of Lapdaung hill during a visit by Myanmar pro-democracy leader Aung San Suu Kyi in Sarlingyi township March 13, 2013. © REUTERS/Soe Zeya Tun

**OBSERVATORY FOR THE PROTECTION
OF HUMAN RIGHTS DEFENDERS**

FIDH / OMCT

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**FOREWORD BY
MICHEL FORST**

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The Observatory for the Protection of Human Rights Defenders would like to express its appreciation and heartfelt thanks to all the individuals and organisations that provided information for its 2014 Annual Report¹.

FOREWORD

Mr. Michel Forst
United Nations Special Rapporteur
on the situation of human rights defenders

The United Nations (UN) Declaration on Human Rights Defenders, in its preamble, recognises the legitimacy and valuable work of individuals, groups and associations for the promotion of economic, social and cultural rights, but also for the elimination of human rights violations, including those resulting from “the refusal to recognize the right of (...) every people to exercise full sovereignty over its wealth and natural resources”.

In many countries around the globe, the acceleration of competition for land tracts has pushed an increasing number of those individuals, groups and associations to speak out against human rights violations resulting in particular from the activities of large-scale investments or mega projects carried out by extractive industries, agro-industries, or logging companies.

The Observatory for the Protection of Human Rights Defenders has done outstanding work in terms of protection and documentation since its creation in 1997. I commend this year's Annual Report, which addresses a burning and growing issue in many countries around the globe, where land rights defenders have been subjected to a variety of obstacles and abuses because of their commitment to defend and protect human rights, from judicial harassment to arbitrary detention, from defamation to illegal surveillance, from threats to killings.

As outlined in this year's Annual Report of the Observatory, the environment of operation of land rights defenders is particularly deleterious. Their isolation and the implication of powerful economic actors make them particularly vulnerable.

In 2006, the former Special Representative of the UN Secretary General on the Situation of Human Rights Defenders, my friend Ms. Hina Jilani, found that those working on land rights and natural resources were *“the second most vulnerable group when it comes to danger of being killed because of their activities in the defence of human rights”*. In 2012, my predecessor Margaret Sekaggya also dedicated a report to *“selected groups of defenders at risk”*, which included defenders working on land issues. In her report, she deplored that between December 2006 and May 2011, 106 communications sent to governments concerned alleged violations against defenders and activists working on land and environmental issues, and regretted that too many of these communications had remained unanswered.

In the course of my mandate, the reduction of the implementation gap will be a key priority. Looking ahead, I will centre one of my reports to the UN Human Rights Council on the question of the impunity for violations against human rights defenders, paying particular attention to those working on land-related issues. And I will more generally continue to focus on the protection of land rights defenders, insisting on the need to increase accountability, both in my communications to States and during my country visits.

In doing so, I will certainly rely upon findings of this Annual Report, which provides the keys to understanding the patterns of violations against land rights defenders, and contains tailored recommendations to states and other stakeholders about ways to better ensure their protection.

Our combined efforts should ultimately lead to improved respect for the rights of land rights defenders, and to greater accountability of governments, corporations and other stakeholders in implementing their commitments.

Mr. Michel Forst

United Nations Special Rapporteur on the situation
of human rights defenders

INTRODUCTION

Overview

Land is a crucial issue for all. Everyone's lives depend on land in one way or another, for food, shelter, water, income, spirituality or culture. For some individuals, peoples and communities, land is intrinsically related to their identity and standard of living. On the other hand, while development is a legitimate objective for States and can contribute to the fulfilment of human rights – especially economic, social and cultural rights – development projects should be carried out following a human rights-based approach to development. Land issues, and more particularly large-scale land deals thus raise important economic, social, cultural and political questions.

Although no international human rights instrument refers to a human right to land as such – with the exception of the right to land and territory of indigenous peoples –, **land rights stand as a key human rights issue, as the fulfilment of many human rights may depend directly on land**, including the rights to adequate housing, food, health, or to self-determination. These human rights are then closely linked, for their fulfilment, to the conditions in which those individuals, peoples and communities benefit from access, occupation, enjoyment, ownership, use, control, and/or transfer of lands and its resources.

While the land rush is not a new phenomenon, since 2007 **the world has experienced a sharp acceleration in the competition to secure tracts of land for large-scale investments**. Such land deals, in particular large-scale ones, have been generating massive human rights violations and agrarian disputes in many countries, in a context of insecure land rights and weak land governance. Such land deals have various aims: for agro-industry, the extractive industry, logging, infrastructure, and/or conservation – either for immediate use or financial speculation. On a larger scale, inequality in land ownership is also a key factor in agrarian disputes, including violent conflicts.

As a consequence, across the world, in Europe, Africa, the Americas, Asia and the Oceania, individuals, communities and peoples mobilise and speak out against the potential and actual negative impacts of large-scale land deals.

“Land rights defenders are those individuals, groups or organs of society who seek to promote and protect land-related human rights, in particular through peacefully confronting adverse impacts of investment projects”.

Land rights defenders are those individuals, groups or organs of society who seek to promote and protect land-related human rights, in particular through peacefully confronting adverse impacts of investment projects. Individually or collectively, they stand up against attempts to grab land and claim

respect for land-related human rights, through peaceful means protected under international law, such as legal actions, public campaigns, protests or demonstrations.

Over the last years, the Observatory for the Protection of Human Rights Defenders has been documenting an increasing number of cases of harassment targeting land rights defenders. The latter have been facing multiple human rights violations, including the most extreme forms of reprisals and intimidation, such as threats and violence, forced disappearances and extra-judicial killings, smear campaigns, illegal surveillance, judicial harassment and arbitrary detention, even though the action of the defenders is not only legitimate but also protected under international human rights law.

The situation of land rights defenders remains alarming at the global level as there is still a long way to go before States, but also all other stakeholders, including companies, are fully aware of their responsibility to effectively protect land rights defenders and fight against the impunity of attacks and abuses against them, including by publicly promoting the legitimacy of their activities.

In the context of the growing land crises, there is an urgent need to recognise the particular vulnerability of land rights defenders as a first step and then to develop an agenda that ensures that they are better protected and empowered to carry out their activities in an enabling environment. Land rights defenders have a key role to play in ensuring greater accountability and respect for human rights in projects, policies and investments that affect land. Therefore, it is crucial to ensure that they can pursue voicing

the concerns of victims of human rights violations and act as watchdogs against further deterioration of land-related human rights issues. This is why the Observatory has decided to dedicate its Annual Report 2014 to the specific situation of land rights defenders.

The objectives of this report are to firmly establish that those engaged in the promotion and protection of land-related rights are human rights defenders and should be protected as such; to give full recognition to the legitimate and necessary role they play; to contribute to ensuring that they operate in a conducive environment and without threat of attack by State or non-State actors; and to combat the impunity of human rights violations against land rights defenders, in accordance with the 1998 United Nations (UN) Declaration on Human Rights Defenders.

With that in mind, the report will first discuss the global context in which land rights defenders are operating and the specific nature of the rights they defend (Chapter 1), then it will present the trends of harassment suffered by land rights defenders (Chapter 2) and finally present mechanisms that can be activated for the protection and empowerment of land rights defenders (Chapter 3).

It is hoped that this report will make all stakeholders – States (including home governments and host countries of corporations), companies, inter-governmental organisations, donors and NGOs – aware of the urgency of protecting land rights defenders and enhance their capacity to do so. To that end, specific recommendations have been formulated at the end of the Report.

Several of the land rights defenders interviewed said, “*we are not afraid*”, to underscore that they cannot be deterred from defending land human rights despite all the obstacles and reprisals they face. This report is a tribute to their strength, courage and commitment.

Who are land rights defenders?

Human rights defenders

“Human rights defenders” is a term used to refer to *anyone, individuals, groups and organs of society, who, in conformity with the international instruments of protection of human rights, acts on behalf of individuals or groups for the promotion and protection of universally recognised human rights and fundamental freedoms, whether individually or in association with others.*

With the adoption by the UN General Assembly 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”, commonly known as the “Declaration on Human Rights Defenders”, in 1998, the General Assembly codified the right and the responsibility to defend human rights. For the first time, UN Member States explicitly committed themselves to promoting the work and protecting the rights of those acting towards the implementation of the ideals enshrined in the Universal Declaration of Human Rights (UDHR) and other human rights instruments.

The Declaration provides for a dynamic definition of human rights defenders based on their commitment to protecting human rights, rather than by who they are. This broad categorisation encompasses everyone, without discrimination, who peacefully defends universally accepted human rights for all. The Declaration also specifies that activities conducted by human rights defenders must be “peaceful” (articles 12.1 and 12.2). Therefore, the key characteristics of human rights defenders are a) that they promote or protect universally accepted human rights and b) that their actions are peaceful.

The Declaration is not itself a binding instrument; however, it contains a series of rights and principles which are based on and reflect existing, legally binding, human rights standards. It recalls rights attached to the activities of human rights defenders, including, *inter alia*, the rights to freedoms of expression, association and peaceful assembly, to protest, and to conduct advocacy at national, regional and international levels, as well as the right to seek, obtain, receive and hold information relating to human rights, the right to make complaints about official policies and acts relating

to human rights and to have such complaints reviewed, and the right to benefit from an effective remedy, etc.

Land rights defenders

Land rights defenders are the subset group of human rights defenders who seek to promote and protect human rights related to land.

Land rights defenders form a heterogeneous group. They include land users affected by practices or policies negatively impacting on their access to land who have committed themselves to the promotion and protection of the land rights of larger groups. Some examples of this would be the leaders or members of rural communities, and indigenous peoples who seek respect for their collective right to land, peasants, hunters and pastoralists, or urban dwellers wanting to preserve their right to an adequate standard of living, including housing. They also can be professionals who are not personally affected by land dispute but act as allies of those who seek respect for their right to land and related human rights, such as representatives and/or members of non-governmental organisations (NGOs), lawyers, journalists, and even sometimes government officials and members of the private sector, etc.

Indeed, in some instances, land rights are held collectively and defended as such. Thus, in some cases, land rights defenders can refer to groups from the affected communities who organise collectively in order to claim respect for the human rights of one, several or all communities.

Furthermore, in terms of the specificity of land rights defenders, it should be highlighted that this category may use particular modes of action to claim the respect of land-related rights.

Broadly speaking, human rights defenders working on land issues have the same type of activities as those who defend other human rights: investigation of human rights violations, documented reports, communications to national and international bodies, litigation, advocacy at the national and international levels, peaceful demonstrations, and other forms of protest.

However, the Observatory has found that many land rights defenders were using specific forms of protest such as the refusal to comply with an eviction order, the occupation of a house or piece of land as a symbolic act to oppose eviction or reclaim rights (“land occupation”) or the blocking of roads or the entrance of a project site. This relates to the specificity of human rights violations linked with access to land. Indeed, such viola-

tions often include the forced displacement or eviction of communities and peoples, preventing them from accessing and using land. Therefore, as Mr. De Schutter said to the Observatory: *“Human rights defenders defending land rights rely less on protests, using their exercise of freedom of expression and assembly, but rather a form of direct action based on the occupation of land or resistance against expulsions”*¹. These direct actions, as long as they are “peaceful” and aim at promoting and protecting human rights, clearly fall under the scope of legitimate human rights activities and therefore specific protection should be given to these human rights defenders to guarantee that they can freely exercise their rights².

Land rights defenders often face specific threats and difficulties making them a category of human rights defenders particularly at risk. This is because the rights they claim may compete with economic interests defended both by States and powerful business actors and stakeholders. Their vulnerability is considered to be increased when they operate in remote areas, when corruption is widespread, and when law enforcement and the rule of law is weak and impunity is commonplace. The lack of tools and means to communicate with bodies that could provide them protection is also to be considered, together with weak land governance systems both at global and domestic levels.

Moreover, ethnic, social and gender specificities are factors that may exacerbate the vulnerability of land rights defenders. Indeed, in many instances, people most affected by large-scale land deals already account as some of the most vulnerable categories, such as rural and urban marginalised groups, indigenous peoples, women and the poor. These groups particularly lack the capacity and resources necessary to protect and defend their rights and face societal discrimination, which render their efforts as defenders even more difficult and perilous.

While writing this Report, it was clear that the community of organisations, groups and individuals working on land issues with a human rights approach was often disconnected from more traditional human rights organisations and as a consequence also less frequently resorting to international and regional protection mechanisms for human rights

1. Interview conducted on June 6, 2014.

2. See UN Human Rights Council, Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, UN Document A/HRC/4/37, January 24, 2007; UN Commission on Human Rights, Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani - Mission to Thailand, UN Document E/CN.4/2004/94/Add.1, March 12, 2004; UN General Assembly, Report of the Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, UN Document A/66/203, July 2011.

defenders. In some countries, the two groups overlap and are familiar with each other, but in other places they have never worked together. This is also the case, to some extent, for international NGOs. These two human rights communities have much to gain from exchanging skills and experience and pooling efforts. In order to contribute to empowering land rights defenders and to reducing their vulnerability, mainstream human rights organisations should therefore aim to work more closely with them.

Intersections of land, environment and human rights

Land and environmental issues are interlinked and are often inseparable. For instance, at the international level, indigenous peoples' networks fight for the recognition and respect of their rights to knowledge and resources (including land) in environmental policies (UN Convention on Biological Diversity, Climate Change Convention etc.), and they have often stressed the interconnectedness of land, environment, culture and spirituality.

As a result, the two categories of defenders fighting for the environment and for land rights are often brought under the same category as "land and environmental rights defenders", or put under the banner of "environmental rights defenders" or just "environmental defenders".

A majority of human rights defenders interviewed during the research for this Report talked about their struggles in terms of access to land and to natural resources, its control and its sustainable use. *"What we need? Respect. Respect our rights, respect our land rights, because it's key to our survival"*, said one indigenous land rights defender from Russia.

For the purpose of this report the Observatory has chosen to put the emphasis of its research on land-related human rights and qualify this category of defenders as "land rights defenders" in order to reflect adequately their specific struggle and challenges as described in this report.

Other aspects, such as the imperative of protecting the environment and the protection of environmental defenders have not been the focus of this research. However, it is important to recognize that **environmental aspects are often interconnected to the struggles for land rights and do often play an important role for a comprehensive resolution of land conflicts.** The broader issue of an effective protection of environmental defenders would require and deserve in our view separate comprehensive research in its own right. In the same way, we recognize the important role that anti-corruption activists frequently play in relation to major development projects affecting land rights and land rights defenders and the urgent need for their protection.

Methodology

This Report is based on the work conducted by the Observatory on land rights defenders over the last few years (in particular through its urgent interventions and other publications) as well as on data collected specifically for the report through individual interviews and questionnaires³ sent to all partner and member organisations of the Observatory together with other resource NGOs with a view to collect information and material on the situation of land rights defenders.

During the research, particular attention was paid to countries with a high rate of killings of land rights defenders⁴ and countries experiencing massive land deals⁵, while attempting to reflect geographical and situational diversity.

Owing to the global scope of the research, the complexity of the issues covered and the limited information publicly available, this Annual Report does not attempt to provide an exhaustive and comprehensive overview on the global context of land pressures and the situation of land rights defenders in all countries. In some countries, very little information was available. Therefore, the failure to mention a country should not be understood as reflecting the absence of violations against land rights defenders.

3. A total of 32 questionnaires were sent back by FIDH and OMCT partner organisations. Eight other organisations sent documentation useful for the research. In addition, the authors interviewed over 30 land rights defenders and experts on the issue. See acknowledgement in Annex 2.

4. See Global Witness Report, *Deadly Environment: The Dramatic Rise in Killings of Environmental and Land Defenders*, April 2014.

5. See www.landmatrix.org.



CHAPTER I

What are land rights defenders fighting for?

Introduction to the context of land disputes

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The protection of access to land under international and regional human rights law	26
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insecure land rights, poor land governance and inequalities	35

In order to understand why land rights defenders are targeted and are so vulnerable, it is critical to understand the context in which they are operating and the nature of the rights they promote and protect.

Over the past decade, the tensions regarding land have strongly increased worldwide. This has given rise to a multiplication of large-scale land deals, with many of them negatively impacting on the human rights of land users. In many areas, affected people often have no formal or written title to the lands on which they live and depend. They rarely enjoy the protection of local authorities or have the means to defend their access to land.

Left: Jakarta, Indonesia, has been the economic heartbeat of the world's fourth most populous country for almost 500 years, but Jakarta's days as Indonesia's capital could be numbered, as the traffic- and garbage-choked city along the northwest Java coast has been pushed to breaking point as its population surges above 12 million and its foundations sink under the weight of rampant development.

© AFP PHOTO / Bay ISMOYO

This lack of protection has become a major cause for conflict when land and/or resources are grabbed without governments and economic actors caring to respect the human rights of those who live there. Some groups have been particularly vulnerable, such as indigenous peoples. Women, too, tend to be particularly vulnerable. Despite the emerging consensus that a right to land needs to be explicitly recognised and codified under international human rights law and despite ongoing negotiations for a declaration on the rights of peasants and other people working in rural areas, there is no human rights instrument explicitly referring to a self-standing human right to land (with the exception of indigenous peoples). However land rights are instrumental to and may even be seen as a key component of several human rights that are protected under international law. Equally, human rights law as well as treaties on the environment and indigenous peoples do increasingly provide obligations to consult affected communities, an element that is key to a human rights approach to development and plays an important part in preventing social conflicts.



Villagers protest against a copper mine project in front of Lapdaung hill during a visit by Myanmar pro-democracy leader Aung San Suu Kyi in Sarlingyi township March 13, 2013.

© REUTERS/Soe Zeya Tun

Land is linked to people's lives in many ways and is critical to their survival. About half of the world's population lives in rural areas¹ and thus directly relies on land for their everyday livelihoods, through farming, grazing cattle, hunting, gathering and fishing.

Land is unique and irreplaceable and can hardly be reduced to a mere uniform and tradable commodity. Therefore, land rights cannot be reduced to access in a limited sense but it also encompasses the benefits deriving from the land, such as, for instance, access to clean water and the possibility to maintain one's culture. Many peoples, in particular indigenous peoples, have strong cultural and spiritual links with specific parcels of land. Yet, many policies and projects fail to recognise this broader context and aspect of land rights. As Mr. De Schutter, former UN Special Rapporteur on the Right to Food stated, recalling Polanyi's² warnings in 1944 "*It is this point that we have now reached: we have forgotten the cultural significance of land, and we reduce land to its productive elements—we treat it as a commodity, when it means social status and a lifeline for the poorest rural households*"³.

In 2012, a study by the UN Human Rights Council Advisory Committee found that "*Smallholder farmers, landless people, tenant farmers, agricultural labourers and people living from traditional fishing, hunting and herding activities are among the most discriminated and vulnerable people in many parts of the world. Every year, thousands of peasant farmers are the victims of expropriation of land, forced evictions and displacements – a situation that is reaching an unprecedented level owing to the new phenomenon of the global 'land grab'*"⁴.

1. See World Bank Website, Data, "Rural Population (% of Total Population)," 2013, <http://data.world-bank.org/indicator/SPRUR.TOTL.ZS/countries?display=graph>.

2. Karl Paul Polanyi, born October 25, 1886, was a Hungarian-American economic historian, economic anthropologist, political economist, historical sociologist and social philosopher.

3. See Olivier De Schutter, "How Not to Think of Land-Grabbing: Three Critiques of Large-Scale Investments in Farmland," *Journal of Peasant Studies* 38, no. 2 (2011): 249–79, doi:10.1080/03066150.2011.559008; Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Beacon Press, 2001).

4. See Human Rights Council Advisory Committee, *Final Study of the Human Rights Council Advisory Committee on the Advancement of the Rights of Peasants and Other People Working in Rural Areas*, UN Document A/HRC/19/75, February 24, 2012, para. 73.

The context of “land rush” and land disputes

While the competition for the control of land is not new, the increase in the pressures and tensions related to land has been unanimously recognised⁵. This phenomenon cannot be attributed to a singular factor⁶. The recent increase in the quest for rural lands, which has led to, very roughly, around 45-65 million hectares being leased or sold to investors worldwide⁷, can be attributed notably to changes in investment strategies of the global market and the policies of States. Other factors such as long-term trends to capture land and natural resources (colonisation, primitive accumulation, etc.) may intervene. These forces combine with factors that put a strain on all resources because of higher levels of consumption and population growth, especially for countries with increasing resource-intensive consumption patterns, such as *China* and *India*. In rural areas, the growth of populations combined with erosion and soil depletion leads to cultivated plots becoming smaller per capita and per household⁸.

Although large-scale violations of land rights often occur in rural areas, pressure on land also occurs in cities. For example when cities expand, taking over areas of the urban perimeter for the construction of buildings or roads, or to clear informal settlements considered unsightly within the framework of “beautification” projects. Cities expanding in size and population require resources and expansion over rural lands and informal settlements. While in turn, the pressure on land in rural areas forces people to move to urban centres. When, as is often the case, individuals lack titles to the land they occupy and live in, especially in informal settlements, it is more difficult for them to resist evictions. Those situations require adequate policies to ensure the respect of human rights.

5. *Idem*.

6. See Lorenzo Cotula, “The International Political Economy of the Global Land Rush: A Critical Appraisal of Trends, Scale, Geography and Drivers”, in *Journal of Peasant Studies*, Volume 39, no. 3-4, 2012.

7. The precise figure is the object of a heated debate. See Klaus Deininger and Derek Byerlee, *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits*, 2010; Saturnino M. Borras et al., “Towards a Better Understanding of Global Land Grabbing: An Editorial Introduction”, in *Journal of Peasant Studies*, Volume 38, no. 2, 2011; Land Matrix, <http://www.landmatrix.org/en/>.

8. See UN General Assembly, *Report of the Special Rapporteur on the Right to Food to the UN General Assembly*, UN Document A/65/281, August 11, 2010.

Recent increases in the demand of land for investment, development and conservation projects at a global level explain the increased pressure on land for large-scale economic projects and contracts. In this context, international actors and policies increasingly interfere in the local enjoyment of land. This increase in demand can be attributed to a number of factors. Firstly, around two thirds of major land deals serve agro-industrial projects (palm oil, sugarcane, corn plantations, etc.)⁹. It is estimated that most

“Recent increases in the demand of land for investment, development and conservation projects at a global level explain the increased pressure on land for large-scale economic projects and contracts”.

of these deals take place in Africa¹⁰. The increase in demand for land for agro-industrial investments is linked, by most authors, to the surge in the prices of food commodity that occurred in 2007-2008 and in 2010-2011¹¹. This has made investments in agro-industries more profitable, even in relatively remote areas. Another key driver in the increasing food prices and the interest in land is the rising demand for biofuels, such as ethanol, produced by crops including sugarcane and corn¹². For example in the *United States of America (USA)*, the Energy Independence and Security Act passed in 2007 requires an increase in the amount of “renewable fuel” in 2022¹³. Together, these factors have led to a strong increase in the price of food/biofuel commodities.

Secondly, due to the exhaustion of natural resource reserves, it has been argued that **extractive industries**, such as mining, oil extraction or logging, tend to reach for more areas¹⁴, including those where tribal and indigenous

9. See W. Anseeuw et al., *Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project*, 2012; Lorenzo Cotula, “The International Political Economy of the Global Land Rush: A Critical Appraisal of Trends, Scale, Geography and Drivers,” *Journal of Peasant Studies* 39, no. 3–4 (2012): 649–80, doi:10.1080/03066150.2012.674940.

10. See W. Anseeuw et al., *Land Rights and the Rush for Land: Findings of the Global Commercial Pressures on Land Research Project*, 2012; Lorenzo Cotula, “The International Political Economy of the Global Land Rush: A Critical Appraisal of Trends, Scale, Geography and Drivers”, in *Journal of Peasant Studies* 39, no. 3–4, 2012.

11. See Lorenzo Cotula, “The International Political Economy of the Global Land Rush: A Critical Appraisal of Trends, Scale, Geography and Drivers”, in *Journal of Peasant Studies*, Volume 39, no. 3–4, 2012.

12. See Klaus Deininger and Derek Byerlee, *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits*, 2010.

13. The Energy Independence and Security Act passed in 2007 requires an increase in the amount of “renewable fuel” from 4.7 billion US gallons (18,000,000 m³) which were used at the time to a total target volume of 36 billion US gallons (140,000,000 m³) by 2022.

14. See Michael T. Klare, *The Race for What’s Left: The Global Scramble for the World’s Last Resources*, Picador, 2012.

peoples live. Furthermore, many of these projects require additional land for transport infrastructures, such as railways, roads, ports and pipelines as well as, where relevant, power plants, treatment facilities or other infrastructures. Extractive industries are also pursuing “unconventional” deposits such as shale gas or coastal sand dredging, made profitable by high energy prices. Moreover, some of these projects lead to the pollution of neighbouring resources, thereby making them inaccessible to local communities.

Thirdly, **protected areas** aimed at “conservation” have exponentially increased since the 1900s. From 1990 to 2012, they occupied 48% more land, driven by international politics and funding¹⁵. Although not all protected areas exclude people, many attempts to “conserve” the environment have failed to take into consideration the human rights of local users¹⁶.

Fourthly, over the last decade, many **large-scale infrastructure** projects have been built, including pipelines, recreational infrastructures or dams, such as the Three Gorges dam in *China* or the Belo Monte dam in *Brazil*. In addition to the economic and social drivers, many of such projects are set in long-term development “visions” of governments.

Fifthly, **tourism and urbanization projects** have also led to major land deals and grabs, and have negatively impacted access to land for local land users.

Finally, there are also a number of land purchases and leases that follow a **speculative purpose** aiming at selling the land at a profit later on.

In addition, international actors and policies increasingly interfere in such economic projects and, as a result, in the local enjoyment of land. Indeed, international and regional financial institutions, such as the World Bank Group for example, have been strongly criticised for promoting national policies that facilitate access to farmland by cutting down administrative and legal requirements in the name of “development”¹⁷. Such policies have,

15. See UN Environment Programme (UNEP) World Conservation Monitoring Centre (WCMC), *Protected Planet Report 2012, 2012*; and Dan Brockington, *Fortress Conservation: The Preservation of the Mkomazi Game Reserve, Tanzania*, Indiana University Press, 2002.

16. See Jon Hutton, William M. Adams and James Murombedzi, “Back to the Barriers? Changing Narratives in Biodiversity Conservation”, in *Forum for Development Studies* 2, no. 32, 2005; Dilys Roe, “The Origins and Evolution of the Conservation-Poverty Debate: A Review of Key Literature, Events and Policy Processes”, in *Oryx* 42, no. 04, 2008; Dawn Chatty and Marcus Colchester, *Conservation and Mobile Indigenous Peoples*, 2002; Dan Brockington, *Fortress Conservation: The Preservation of the Mkomazi Game Reserve, Tanzania*, Indiana University Press, 2002 and www.justconservation.org.

17. See Oakland Institute, *(Mis)Investment in Agriculture: The Role of the International Finance Corporation in the Global Land Grab, and Willful Blindness - How World Bank's Country Rankings Impoverish Smallholder Farmers*, 2014.



Prey Lang, primary forest in central Cambodia was badly cut (due to the infamous Economic Land Concessions and illegal logging). © ADHOC

in many cases, been criticized for being conducive to human rights and environmental abuses, such as forced evictions, environmental degradation, etc. Investment agreements also need to be deeply revised in order to ensure they do not hinder the protection of human rights. Such agreements typically grant considerable protection for investors without corresponding duties and responsibilities towards affected communities. Often, they contain investment arbitration clauses allowing investors to directly sue States and free them from domestic jurisdictions. Such arbitration mechanisms have been criticized for their lack of transparency and for their lack of due consideration to international human rights law. The obligations of investors are under-regulated in the current framework of international investment law. Such treaties even create a legal regime that accelerates the rush for land. These agreements reduce the ability of States to adopt protective measures and policies benefiting the rights of local land users. In *Zimbabwe*¹⁸ and *South Africa* for example, investment treaty protection has served investors to challenge State initiatives fighting discriminatory

18. See International Centre for Settlement of Investment Disputes (ICSID) judgement, *Bernhard von Pezold and Others v. Republic of Zimbabwe*, ICSID Case No. ARB/10/15, Procedural Order No. 2, 26 June 2012. On June 26, 2012, the tribunal rejected the petition despite acknowledging that the proceedings may impact upon the rights of the affected indigenous communities. The tribunal asserts in its decision that international human rights law has no relevance to the dispute. This decision demonstrates a deficit of human rights provisions in bilaterally negotiated trade and investment treaties.

trends regarding access to land¹⁹. Therefore, globally, development, trade and investment policies should be reframed in order to respect, protect and fulfil human rights.

Moreover, the business structures implicated in large-scale contracts is often opaque, bringing together unknown actors from various countries, and diluting in consequence the clear line of responsibilities. In many countries, the immediate owners of land concessions are not published, even if the law requires so. It can also be difficult to trace the ownership structure of local companies. Even when a foreign company is known as the owner, it can be structured in a series of ‘Russian dolls’, so that one company owns another, which owns another, etc. If one of these companies is registered in a jurisdiction lacking transparency, it can become literally impossible for local actors to know its owners²⁰. Individual owners may also use nominee services that hide their names. **This lack of transparency is an important challenge to good governance because it also makes it impossible to know whether government officials have personal stakes in the companies²¹.**

The role played by companies in land deals should not occult the (active) role of States in facilitating and promoting these deals. As members of Justicia Global from Brazil told the Observatory, *“where ends the State, where starts the company, we do not know”*²². Indeed, **many of the large-scale land deals take place within the framework of States’ long-term “development” strategies, which too often ignore the negative impact of such projects on local users.** In many countries, as land lies at the heart of economic and social reforms, such projects raise significant political issues.



INDONESIA

In Indonesia for instance, the Masterplan for Acceleration and Expansion of Indonesia’s Economic Development (MP3EI), a massive plan launched in 2011 with the objective of transforming Indonesia into a “developed country” by 2025, seeks to facilitate the exploitation of abundant natural resources and encourage large-scale investments, including massive land deals. As Haris Hazar, KontraS Coordinator, told us *“MP3EI has led to further marginalisation of the poor and indigenous people, while the Government further strengthens this project with regulations and laws in favour of the owners of capital and*

19. See *Piero Foresti v. South Africa*, ICSID Case No. ARB(AF)/07/1 (the case was discontinued); *Bernadus Henricus Funnekotter and others V. Zimbabwe*, ICSID Case No. ARB/05/6, Award, 22 April 2009.

20. See <http://www.financialsecrecyindex.com/>.

21. See <http://www.publishwhatyoupay.org/>; Global Witness, *Corruption in Malaysia Laid Bare as Investigation Catches Sarawak’s Ruling Elite on Camera*, March 19, 2013, and *Secret Sales in DRC*, 2014.

22. Interview conducted on June 3, 2014.

does not prioritise respect for human rights. In addition, there is no complaint mechanism in MP3EI, although human rights violations that occurred as a result of this project have been going on”²³.

The lack of coordination within governments and the absence of impact assessments before the attribution of land titles for large-scale deals is also a major concern. Uncoordinated land deals may lead to situations where a community might be caught between several large-scale land projects, each of which diminishes their access to land. **This often compounds with a lack of proper and meaningful consultation of affected communities, and respect for the right to free, prior and informed consent as far as indigenous peoples are concerned.** Similarly, the requirements for social and environmental impact studies are not always respected and studies may fail to adequately assess the actual impact of the project. Access to and meaningful participation in impact assessment studies remains a key challenge for those affected or likely to be affected by the projects, including human rights defenders. In cases where access to the studies is granted, those can be too technical or written in a language that is not spoken by affected groups. Finally, projects are often well under way when communities start realising their potential and actual impacts on their lives.



CAMEROON

For instance in Cameroon, the attribution of mining concessions accelerated until 2011 when an informal moratorium on the attribution of new exploration permits was established²⁴. According to the last known allocations, exploratory mining permits overlapped with each other and they also overlapped with areas designated as protected areas and logging concessions. This was due to the lack of coordination in land planning amongst ministries and even within the same ministry. These allocations also overlapped with the customary lands of communities²⁵.

Large-scale land deals may have different impacts on land users. They can include: pollution, evictions or displacement of populations, restriction of access to natural resources, population influx, urbanisation/migratory pressures, destruction of goods, livelihoods, culture, identity, spirituality or

23. See FIDH and KontraS International Fact-finding Report, *Indonesia: No development without rights*, June 19, 2014.

24. Unfortunately, NGOs have not been able to monitor whether the grant of concessions have effectively stopped as the authorities have failed to make public a list of current permits since 2011.

25. See Network Against Hunger (*Réseau de lutte contre la faim* - RELUFA), WWF and Centre for Environment and Development (*Centre pour l'environnement et le développement* - CED), *Emerging Trends in Land-Use Conflicts in Cameroon*, Ad Hoc Working Paper prepared by Brendan Schwartz, David Hoyle and Samuel Nguiffo, June 2012.

health, raising inequalities, social or agrarian conflicts, armed conflicts, etc. These impacts result in violations of economic, social and cultural rights and civil and political rights protected under international and regional human rights instruments.

The protection of access to land under international and regional human rights law

Development is a legitimate objective for states and in many cases development facilitates the enjoyment of economic, social and cultural rights. However, development policies cannot displace a country's legal human rights obligations. To the contrary **human rights law does set the legal and rule of law parameters within which development policies have to be placed. Complying with human rights law, including the principle of consultation, very ultimately serves also to prevent social tensions and conflict and is thus in the ultimate interest of States and other actors, such as transnational co-operations and global investors.** In the following we are looking at key elements of the human rights regime applicable to land rights and land disputes.

While not explicitly recognised *per se* under international human rights law – with the exception of the right to land and territory of indigenous peoples –, there is growing consensus that a human right to land needs to be codified in order to strengthen the protection of land users' rights in particular and strengthen the protection of human rights which depend on access to land for their fulfilment²⁶. For example UN Special Rapporteurs on the right to food and the right to adequate housing both called on the Human Rights Council to “ensure the recognition in international human rights law of land as a human right”²⁷.

26. See Jérémie Gilbert, “Land Rights as Human Rights: The Case for a Specific Right to Land”, in *Sur: International Journal on Human Rights* 10, No. 18, July 2013; Olivier de Schutter, “The emerging human right to land”, in *International Community Law Review* 12 (2010) 303-334; Elizabeth Wickeri and Anil Kalhan, “Land Rights Issues in International Human Rights Law”, in *Malaysian Journal on Human Rights* 4, No. 10, 2010; UN General Assembly, *Report of the Special Rapporteur on the Right to Food to the UN General Assembly*, UN Document A/65/281, August 11, 2010.

27. See UN Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari*, UN Document A/HRC/4/18, May 2, 2007.

According to the UN Human Settlements Programme (UN HABITAT), land rights refer to “socially or legally recognised entitlements to access, use and control areas of land and related natural resources”²⁸. In this report, the Observatory adopted

“Land rights’ will therefore be considered as those human rights which, partly or in all, rely on land, for their realisation, and are protected under international law”.

a broader definition when referring to “land rights” and takes into account benefits which may derive from access to the land, including quality and sustainability. “Land rights” will therefore be considered as those human rights which, partly or in all, rely on land, for their realisation, and are protected under international law. The report is therefore using “land-related human rights”, “land rights”, “access to land”, “land use” and other similar expressions in the same way.

Access to land is necessary for the fulfilment of economic, social and cultural rights such as the right, to an adequate standard of living, and which include the rights to food, water, adequate housing and health as well as all other rights which may be indirectly affected. For example, when people cannot access the lands on which they depend for their livelihoods, by hunting, fishing, grazing cattle or farming, this could constitute a violation of their right to food and water protected *inter alia* by article 25 of the UDHR and article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The importance of access to land and security of tenure for the enjoyment of the right to an adequate standard of living has been repeatedly stressed by the relevant UN Special Rapporteurs²⁹.

Land seizure resulting in forced evictions can generate numerous and serious human rights violations, including the right to an adequate housing. As reiterated by the CESCR, where some evictions may be justifiable, those only take place under certain circumstances. The protection from evictions generally extends to forms of land occupation that are not recognised by a legal title, such as those based on informal or customary tenure³⁰.

28. See UN HABITAT Report, *Secure Land Rights for All*, 2008.

29. See UN General Assembly, *Report of the Special Rapporteur on the Right to Food to the UN General Assembly*, UN Document A/65/281, August 11, 2010.

30. See UN CESCR General comment No. 7, The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions, 1997 and Human Rights Council, *Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living - Basic Principles and Guidelines on Development-Based Evictions and Displacement*, UN Document A/HRC/4/18, annex I, 2007. See also UN General Assembly, Report of the Special Rapporteur on the Right to Food to the UN General Assembly, UN Document A/65/281, August 11, 2010.

The newly-appointed UN Special Rapporteur on the right to adequate housing, Ms. Leilani Farha, highlighted in August 2014 that “*security of tenure is the cornerstone of the right to housing*”. She deplored that “*most poor people living in urban settings do not own land, and therefore have no land rights. Instead, in order to be housed they rely on those who do have land rights: they rent or live in informal settlements*”. “*It is very common during forced eviction for households to be removed from their homes as well as from their productive lands, particularly so in the rural context*”, she continued, recommending that “*regardless of where they live, poor people do have the right to adequate housing and associated rights to food, water and sanitation*”³¹.

Moreover, some aspects of land rights are also protected under civil and political rights such as the right to private life or the right to property contained in regional human rights instruments. For instance, the Inter-American Commission on Human Rights (IACHR) has held that in order to fully respect and comply with article 23 of the American Declaration of the Rights and Duties of Man, which recognises the right to property, there appears to be a minimum standard that requires States Parties to consult with indigenous peoples regarding any development within their traditionally used and occupied territories or lands³². Moreover, the European Court on Human Rights (ECtHR), in *Lopez Ostra v. Spain*, held that a failure by the State to control industrial pollution was a violation of article 8 where there was a sufficiently serious interference with the applicants’ enjoyment on their home and private life³³.

Restrictions placed on the enjoyment of land may also constitute a violation on the right to the enjoyment of the highest attainable standard of physical and mental health protected *inter alia* by article 25 of the UDHR and article 12 of the ICESCR. For example, the CESCR considered that, with respect to indigenous peoples, “[t]he vital medicinal plants, animals and minerals necessary to the full enjoyment of health of indigenous peoples should also be protected. [...] development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health”³⁴.

31. Interview with Ms. Leilani Farha, August 7, 2014.

32. See IACHR, *Maya Indigenous Communities of the Toledo Dist. v. Belize*, Case 12.053, (2004), para 194.

33. See ECtHR, *Lopez Ostra v Spain*, 16798/90 [1994].

34. See UN CESCR General Comment No. 14, The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Document E/C.12/2000/4, August 11, 2000.

Land rights are also linked with the preservation of the environment, which is covered *inter alia* by the Rio Conventions on Climate Change, Biodiversity and Desertification and which is also a requirement for the respect of several human rights recognised under international human rights law, such as for instance the right to health and the right to life. As explained above land rights include benefits derived from the land as well as the quality of such benefits. The UN Expert on Human Rights and the Environment has stressed the link between health, food, housing and a healthy environment, while failing to explicitly connect this issue to land use³⁵.

Land is also closely linked to the right to self-determination of peoples, by virtue of which “*they freely determine their political status and freely pursue their economic, social and cultural development*” (article 1 of the International Covenant on Civil and Political Rights (ICCPR) and ICESCR). Self-determination encompasses both land rights and self-governance. As highlighted below, the linkages between land rights and the right to self-determination have been particularly highlighted with regard to the protection of indigenous peoples’ rights³⁶. As stated by UN Human Rights Committee (CCPR) in its General Comment No. 12, “[t]he right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights”³⁷.

Furthermore, land rights can be protected under provisions related to the cultural rights, as stated by the UN Human Rights Committee (CCPR): “*With regard to the exercise of the cultural rights protected under article 27 [of the ICCPR], the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law*”³⁸.

More specifically, with respect to indigenous peoples, strong links between indigenous peoples’ rights and access to their lands have been recognised under several instruments. In 1991, a legally binding international instrument, the International Labour Organisation (ILO) Convention

35. See UN Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, UN Document A/HRC/25/53, December 30, 2013.

36. See IACtHR, *Saramaka People v. Suriname*, Judgement of November 28, 2007.

37. See UN Human Rights Committee, General Comment No. 12, UN Document CCPR/GEC/6626/E, April 12, 1984.

38. See UN Human Rights Committee, General Comment No. 23, UN Document CCPR/C/21/Rev.1/Add.5, April 26, 1994.

concerning indigenous and tribal Peoples in independent countries (ILO Convention No. 169), which deals specifically with the rights of indigenous and tribal peoples, entered into force. Today, it has been ratified by 20 countries. The principles of consultation and participation constitute the cornerstone of the convention on which all its provisions are based. It requires that indigenous and tribal peoples be consulted on issues that affect them. Article 7 of the convention states that indigenous and tribal peoples have the right to “decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control over their economic, social and cultural development”. In 2007, the recognition of the **links between indigenous peoples and their lands** led to the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration states that States should prohibit “*any action which has the aim or effect of dispossessing [indigenous peoples] of their lands, territories or resources*” (article 8 (2) (b)). States have to seek the approval of indigenous peoples by obtaining their free, prior and informed consent (FPIC) before “*adopting and implementing legislative or administrative measures that may affect them*” (article 19) – such as using their customary lands. **Regional courts have issued solid jurisprudence to confirm the rights of indigenous peoples to their customary lands.** As the former UN Special Rapporteur on the Right to Food explains, “*The Inter-American Court of Human Rights and the African Commission on Human and Peoples’ Rights consider that indigenous people’s traditional possession of their lands has effects equivalent to those of a State-granted full property title: therefore, where members of indigenous peoples have unwillingly lost possession of their lands after a lawful transfer to innocent third parties, they are entitled to the restitution thereof or to obtain other lands of equal extension and quality*”³⁹. In particular, in a landmark decision made public on February 4, 2010, the African Commission on Human and People’s Rights ruled that the Endorois’ eviction from their traditional land in **Kenya** for tourism development violated their right as an indigenous people to property, health, culture, religion, and natural resources. It is the first ruling to determine who are indigenous peoples in Africa, and what are their rights to land⁴⁰.

39. See UN General Assembly, *Report of the Special Rapporteur on the Right to Food to the UN General Assembly*, UN Document A/65/281, August 11, 2010; Inter-American Court of Human Rights (IACtHR), *Sawhoyamaya Indigenous Community v. Paraguay*, Judgement of March 29, 2006; African Commission on Human and Peoples’ Rights (ACHPR), *Centre for Minority Rights Development (Kenya) and Centre for Minority Rights Development (CEMERIDE) and Minority Rights Group International (MRGI) on behalf of Endorois Welfare Council v. Kenya*, Communication No. 276/2003, 2009; IACtHR, *Mayagna (Sumo) Indigenous Community of Awas Tingni v. Nicaragua*, Judgement of August 31, 2001.

40. See *Centre for Minority Rights Development (CEMERIDE) and Minority Rights Group International (MRGI) on behalf of Endorois Welfare Council v. Kenya*, Communication No. 276/2003, 2009.



Belongings of a Palestinian family after Jerusalem municipality workers had used bulldozers to demolish a residential building in an East Jerusalem neighborhood on October 29, 2013 of Beit Hanina, West Bank. The building was demolished after Israeli authorities claimed that the structure had been built without the necessary authorisation. © Photo by Oren Ziv/Getty Images

In 2007, the Inter-American Court of Human Rights (IACtHR) recognised similar rights to customary lands to non indigenous traditional communities in the landmark decision *Saramaka v Suriname*. The Saramaka are descendants of self-liberated African slaves who have been living on their lands since the early 1700s. This community lives in *Suriname* in a traditional way, by fishing, hunting and woodworking, and their relationship with the land is economic, spiritual and cultural. The Constitution of Suriname, adopted in 1986, specifies that all non-titled lands and resources belong to the State. In the 1990s, Suriname granted logging and mining concessions to companies within the territory of the Saramaka, without seeking their consent. Loggers devastated their territories, which led them to get organised and petition the IACtHR in 2000. They won their case in 2007 and the court required that “The State shall delimit, demarcate, and grant collective title over the territory of the members of the Saramaka people, in accordance with their customary laws, and through previous, effective and fully informed consultations with the Saramaka people”. The Court argued the Saramaka share special relationship with their ancestral territory and have their own norms and traditions, much like indigenous peoples, thus they have the same rights, including over their

traditional lands. Nevertheless, the Government of Suriname failed to implement a number of the measures. Most importantly, Suriname did not grant titles to the Saramaka and has even continued to allocate titles inside the ancestral territories of the Saramaka⁴¹.

The principle of non-discrimination is fundamental when dealing with land rights, as many of the policies as well as the associated treatment may have discriminatory underpinnings. Human rights instruments, documents and jurisprudence also refer to access to land when dealing with discrimination issues, for example regarding women, who face discrimination in their access to land globally. As stated by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in its article 14, “*States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas (...) and, in particular, shall ensure to such women the right: (...) (g) To have (...) equal treatment in land and agrarian reform as well as in land resettlement schemes*”. The CEDAW Committee has cited land rights in nearly all of its observations, thereby demonstrating that access to land and security of tenure are central to the fulfilment of women’s human rights, including to property, water, food and health⁴². At the African level, the Protocol to the African Charter on the Rights of Women in Africa adopted in 2003 obliges member states to “provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food” (article 15.a), and to “promote women’s access to and control over productive resources such as land and guarantee their right to property” (article 19.c). Ten years later, in 2013, the ACHPR adopted its first resolution on women’s right to land⁴³.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) also stipulates in its article 5 a general undertaking of State Parties to eliminate racial discrimination and to guarantee “the right to own property alone as well as in association with others”.

41. See IACtHR, *Saramaka People v. Suriname*, Judgment of November 28, 2007 and the following comments: ESCR-Net, “Case of the Saramaka People v. Suriname”; Cultural Survival, “Saramaka People v Suriname: A Human Rights Victory and Its Messy Aftermath”; Forest Peoples Programme, “Request for Consideration of the Situation of the Saramaka People of Suriname under the UN CERD’s Urgent Action and Early Warning Procedures. February 12, 2013”.

42. See Jeremy Gilbert, “Land Rights as Human Rights”, in *International Journal on Human Rights*, 2013. Also see CEDAW, Concluding Observations on India, UN Document CEDAW/C/IND/CO/4-5 (2014), paras. 28 and 32-33; CEDAW, Concluding Observations on Peru, UN Document CEDAW/C/PER/CO/7-8 (2014), paras. 37-40; CEDAW Concluding Observations on Cameroon, UN Document CEDAW/C/CMR/CO/4-5 (2014), paras. 11 (c) and 34-35.

43. See ACHPR Resolution No. 262, Resolution on women’s right to land and productive resources, November 5, 2013.

Finally, it should be noted that fundamental due process rights such as the right to remedy, or the right to be heard should be strictly respected when any human rights violations arise. In this regard, we have included in Chapter 3 an overview and analysis of the mechanisms available to land rights defenders in case of harassment.

In conclusion, a comprehensive picture of the international protection of land rights and related human rights supposes the referring to a broad range of international instruments to be read in light of the relevant jurisprudence and authoritative interpretations given notably by the dedicated monitoring bodies. Specific attention should also be paid to the on-going debates that aim to consolidate or to develop international law, by filling in the existing normative and implementation gaps.

Numerous civil society organisations and social movements have been advocating for the recognition of a human right to land. In 2010, the UN Human Rights Council mandated the Advisory Committee to undertake a preliminary study on ways and means to further advance the rights of people working in rural areas⁴⁴, which presented a draft declaration on the rights of peasants and other people working in rural area in 2012⁴⁵. The outcome was the establishment by the Human Rights Council of an Open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas⁴⁶. The current draft states that, “*Peasants have the right to security of tenure and not to be forcibly evicted from their lands and territories. No relocation should take place without free, prior and informed consent of the peasants concerned and after agreement on just and fair compensation and, where possible, with the option of return*” (article 4.5)⁴⁷. **This process which highlights the need for the international community to recognise the human rights to land of those working in rural areas, including smallholder farmers, landless people, tenant farmers, agricultural labourers and people living from tra-**

44. See UN Human Rights Council, *Resolution adopted by the Human Rights Council 13/4 - The right to food*, UN Document A/HRC/RES/13/4, April 14, 2010.

45. See UN Human Rights Council, *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, UN Document A/HRC/19/75, February 24, 2012.

46. See UN Human Rights Council, *Resolution adopted by the Human Rights Council 21/19 - Promotion and protection of the human rights of peasants and other people working in rural areas*, UN Document A/HRC/RES/21/19, October 11, 2012.

47. Peasant here is understood as “a man or woman of the land, who has a direct and special relationship with the land and nature through the production of food or other agricultural products” (article 1). See Open-ended intergovernmental working group on the rights of peasants and other people working in rural areas, *Declaration on the rights of peasants and other people working in rural areas*, UN Document A/HRC/WG.15/1/2, June 20, 2013.

ditional fishing, hunting and herding activities, should be encouraged. In parallel, while several UN special procedures have emphasised that land is a central human rights issue and that several human rights depend on access to land for their fulfilment, other expert mechanisms, such as the UN Committee on Economic Social and Cultural Rights (UN CESCR), could also provide useful guidance in strengthening the analysis of the human right dimension of land, notably through a dedicated general comment⁴⁸.

A clearer and more explicit legal framework at the international level regarding land rights which encompassed all aspects of land – social, political, cultural in addition to economic – **would improve the environment of work of land rights defenders** and increase their legitimacy and visibility, especially in those contexts in which land disputes are prevalent, as will be discussed more in depth in the following section. **Moreover, it is also in the interest of States and companies to respect international human rights principles since this could contribute to the prevention of conflicts by channelling disputes through the meaningful participation of affected communities.**

Given the human rights implications of land, States, companies and other stakeholders bear specific obligations, duties and responsibilities when they develop and implement projects impacting on land.

48. In an article published in February 2013, Rolf Künemann and Sofía Monsalve Suárez define the right to land as “*the right of every human being to access – individually or in community – local natural resources in order to feed themselves sustainably, to house themselves and to live their culture*”. They specify that “*the right to land is not a right to property and it does not refer to rights to buy or sell land; nor it is a right to make profit with land, the right is limited to its use for communities and individuals feeding themselves and nurturing their cultures. The human right to land does not provide a right to far away land. The lands meant under the right to land are local*”.

They conclude that for the right to land to be fully protected, a number of prerequisites need to be fulfilled by States:

- “*Civil codes and domestic property law might need to be revised in order to fully recognize customary/ancestral/informal land rights and their governing systems and to overcome legal doctrines which deprive people of the lands they use to feed and house themselves and live their cultures*”;
- “*States must protect such use of land - and control over - land from interference by profit seeking third parties*”;
- “*States must fulfil and facilitate sustainable access to, use and control over land for those who use it in the sense of the human right to land [by structuring] the land tenure system in a way which would allow all residents access to land to feed themselves, to house themselves and to provide an adequate standard of living for themselves*”;
- “*States must thus ensure policy environments which allow people to make sustainable use of the land to feed themselves, and to decide in a self-determined way how to develop their lands taking into account the right to land of future generations. In this sense, a sustainable use of land, conservation of soil fertility and biodiversity are also important components of the right to land*”.

The legal context in countries in which land disputes are prevalent: insecure land rights, poor land governance and inequalities

Even if international human rights instruments indirectly provide for the protection of land rights, land users often face insecurity in the enjoyment of their land rights, which may not be recognised and respected at the national level. Indeed, national laws often fail to incorporate the requirements of the international human rights instruments that countries adhered to. Land users often face insecurity in the enjoyment of their land rights, which may not be recognised and respected at the national level⁴⁹. In turn, when international human rights provisions have been incorporated, they may not be adequately implemented.



THE PHILIPPINES

For example, in the Philippines, the Indigenous Peoples' Rights Act requires the respect of the right to free, prior and informed consent (FPIC) of indigenous peoples before exploration, development and use of natural resources; research and bio-prospecting; displacement and relocation; archaeological explorations; policies affecting indigenous peoples; and entry of military personnel. Nevertheless, despite these clear requirements, the State has failed to uphold their obligations and com-

panies have generally failed to respect local institutions, customary laws and practices, and community opinions and preferences prior to projects taking place. Interviews conducted tend to confirm earlier studies and reveal how consultations, when occurring, are not adequate. Populations do not enjoy the fulfilment of FPIC requirements, as they have to make decisions based on partial information provided by companies. The same applies regarding the

“...land users often face insecurity in the enjoyment of their land rights, which may not be recognised and respected at the national level”.

49. See UN Human Settlements Programme (UN HABITAT) Report, *Secure land rights for all*, 2008.

requirement that the consent has to be free, because some companies use very questionable means to influence decision-making.

The allocation of land rights is also at times undermined by ‘flawed’ laws resulting from historical power relations. Although countries have different tenure structures, there is often a commonality in countries that were colonised⁵⁰. Colonial governments have generally applied a policy of *terra nullius* to so-called unoccupied lands, which were in fact used by local communities for fallows, hunting, fishing, cult and other activities. This approach conveniently gave possession to the colonial States of nearly all the lands. This was especially the case for those with a less visible use, which were more easily defined as “unused”, such as lands used for pastoralism, shifting cultivation, hunting and gathering. Colonial States also actively re-organised landscapes and moved people to fit their needs and assert their control over land⁵¹. Many times, this ownership, or a form of care-taking, was pursued following independence by the newly constituted States. For this reason in many formerly colonised countries, communal land is formally owned by the State.



CAMEROON

For example, in Cameroon, most of the land is classified as national land and is controlled by the State⁵². Most of the communal land held under customary law is deemed to be national land. In addition, according to the Ordinance No. 74/1 of July 6, 1974 (so-called “Land Law”), the Government can convert national land into State land and allocate rights of usage to it, such as concessions, or convert it to private ownership. Only those who can prove they occupied land prior to the 1974 law can apply for a title, but this is very difficult in practice. Furthermore, this law is especially discriminatory towards indigenous peoples whose nomadic lifestyle and livelihoods do not fit into these criteria. As a result, today most of the land used by rural communities in Cameroon is classified as national land and, while they have usage rights, their customary tenure is not recognised under the law and their land tenure is insecure⁵³.

50. See Antonio B. Quizon, *Land Governance in Asia: Understanding the Debates on Land Tenure Rights and Land Reforms in the Asian Context*, 2013; Kojo Sebastian Amanor, “Land Governance in Africa: How Historical Context Has Shaped Key Contemporary Issues Relating to Policy on Land”, in International Land Coalition (ILC), *Land Governance In The 21st Century: Framing The Debate Series*, 2012.

51. See James C. Scott, *Seeing like a State*, Yale University Press New Haven, 1998.

52. According to the Ministry of State Property and Land Tenure (MINDAF), in the early 2000s, less than 2% of the land in Cameroon was registered or titled. The rest being public land - i.e. land managed by the State on behalf of the public, such as roads -, and national land - i.e. unoccupied land and land held under customary law.

53. See Focus on Land in Africa Brief, *Land Registration in Cameroon*, April 2013.

The struggle of land rights defenders is closely linked to land governance. Land rights can be governed under **different sets of formal, informal and/or customary land tenure systems**⁵⁴. In practice, in many countries, different land tenure systems co-exist. These systems often conflict with each other. **In many areas, rural populations effectively use and administer land parcels through customary tenure systems, which are rarely recognised under domestic law.** These processes generally attribute rights of use, but not rights to sell the land. In the rare cases where customary land tenure is recognised under statutory law, the latter is very often poorly enforced and protected by law-enforcement bodies and is therefore vulnerable to abuses, such as land grabs.



CAMBODIA

For example, in Cambodia, while the 2001 Land Law recognizes the right of indigenous communities to collective ownership of their land and the right to assert and enforce their interests against third parties, the land rights of most indigenous communities are not registered or recognized, leaving them vulnerable to claims of external parties, including well-organized land grabs. The lack of transparency in many rural land transactions and extensive granting of concessions by the state for economic development have resulted in widespread disputes and conflict over land ownership and use. It is estimated that over half of the indigenous population has lost communal land to the ruling elite's land grabbing and agro-industrial projects in the last decade⁵⁵.

Furthermore, flawed legal frameworks concerning land may interact with existing discriminations and inequalities in access to land, such as those faced by women as described above, as well as minorities, poor and marginalized groups, etc. As a result, **tensions can rise from the very unequal allocation of land ownership and control amongst individuals, resulting in social and sometimes armed conflicts.**



COLOMBIA

In Colombia, for example, the concentrated ownership of land at the end of colonisation has worsened because of a number of economic and social factors. The unequal land tenure was arguably at the roots of the internal conflict. This conflict forced many people to flee the violent clashes between armed

54. *Idem.*

55. For more information, see ADHOC and LICADHO. On October 7, 2014, Lawyer Richard J. Rogers of Global Diligence LLP filed a communication to the International Criminal Court (ICC) – on behalf of individual Cambodian victims, alleging that crimes stemming from widespread and systematic land grabbing conducted by the Cambodian ruling elite for over a decade amount to a crime against humanity. The communication, which is supported by FIDH, requests the ICC Office of the Prosecutor to open a preliminary examination.

groups amongst themselves and with the State and paramilitaries⁵⁶. 5.7 million people were displaced as a result of the conflicts⁵⁷. Although a number of laws aiming at land reform were passed since the 1960s, the effectiveness of the redistribution of land was limited because of the lack of good governance⁵⁸. The Victims Law, passed in 2011, aimed to restore land to those who were forcefully displaced. Nevertheless, almost all restitution cases are still pending and displaced communities who seek to regain their lands face threats, violence and murders at a large scale, much of it in impunity.

Indigenous peoples face marginalisation and discrimination within the mainstream society, in particular in terms of recognition and protection of their customary rights. As stated in the Preamble to the UNDRIP, they “*have suffered from historic injustices as a result of, inter alia, their colonisation and dispossession of their lands, territories and resources*”.



BRAZIL

The reallocation of land in unequal societies is difficult. In Brazil, where the Constitution recognises property of the land traditionally occupied by the indigenous peoples, the reallocation of land is facing strong resistance by landowners. For instance, the Guarani indigenous people, tired of waiting decades for court settlement to regain the lands that they legally owned, reclaim parcels of their land through “retomadas” (moving back in-mass to their land). Although they have the legal right to be on this land, the Guarani of Mato Grosso do Sul are constantly harassed by security guards of the ranchers who occasionally even fire at them, and benefit from insufficient protection by the State⁵⁹.

Discrimination in land tenure also occurs between genders. In many countries, women face discrimination in relation to their access to land, including the level of legal protection of their land rights⁶⁰. According to the Food and Agriculture Organisation of the United Nations (FAO), in developing countries where data is available, only ten to twenty per cent of landholders are women⁶¹. In some communities, land may exclusively

56. See Jacobo Grajales, “State Involvement, Land Grabbing and Counter-Insurgency in Colombia”, in *Development and Change* 44, no. 2, March 1, 2013.

57. See Internal Displacement Monitoring Centre (IDMC) Colombia.

58. See Jacobo Grajales, “State Involvement, Land Grabbing and Counter-Insurgency in Colombia”, in *Development and Change* 44, no. 2, March 1, 2013; Michael Albertus and Oliver Kaplan, “Land Reform as a Counterinsurgency Policy Evidence from Colombia”, in *Journal of Conflict Resolution* 57, no. 2, April 1, 2013.

59. See Survival International: <http://www.survivalinternational.org/tribes/guarani>.

60. See Ward Anseeuw, Liz Alden Wily, Lorenzo Cotula, and Michael Taylor, *Land rights and the rush for land - Findings of the Global Commercial Pressures on Land Research Project*, January 2012.

61. See FAO, *The State of Food and Agriculture - Women in Agriculture Closing the Gender Gap for Development*, 2011.



Demonstration in support of Yorm Bopha, Pray Sar. Maret 2013, Phnom Penh (Cambodia).
© Cambodian League for the Promotion and Defense of Human Rights (LICADHO).

belong to men, so that when the husband dies, his spouse becomes landless⁶². The lack of access to productive land increases specific vulnerabilities and lack of benefit of decent standard of living for women.



VIET NAM

In Viet Nam, laws provide for gender equality regarding access to property and land rights. In practice, however, women have been left behind. For instance, women's names are often not included on "Land Use Rights Certificates" (LURC). Such certificates, which are mandated by law, are necessary for formal state recognition of use rights, secure tenure and legal protection of land-use rights. As a result, widows often lose ownership of the land when their husbands die⁶³.

62. See Leslie Gray and Michael Kevane, "Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa", in *African Studies Review* 42, no. 02, 1999.

63. See Vietnam Committee on Human Rights (VCHR), *Alternative Report on the Implementation of the UN Convention on the Elimination of Discrimination against Women (CEDAW)*, January 2007.

While access to land is indirectly protected under international human rights law, in many countries, it remains poorly enforced at the domestic level, resulting in the multiplication of land disputes. In a context of weak land governance systems, strong economic pressures and historical and social inequalities combine to exacerbate such disputes, those who defend land rights are caught in the cross fire. Indeed, as documented in this report, land disputes are too often accompanied by patterns of civil and political rights violations targeting land rights defenders in reprisal for their human rights activities. These patterns are described in Chapter II.



CHAPTER II

The multiform harassment of land rights defenders

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This chapter presents examples of the most common types of pressures that land rights defenders face across the world. Individuals and communities fighting for the defence of land rights are subject to a broad range of human rights violations. The Observatory has documented cases in which they have been threatened, attacked, killed, arbitrarily arrested and detained, judicially harassed, monitored and slandered by State and non-State actors as a result of their activities.

Left: Andean people protest against Newmont Mining's Conga gold project during a march near the Cortada lagoon in Peru's region of Cajamarca November 24, 2011. © REUTERS/Enrique Castro-Mendivil (PERU)

Land rights defenders are often targets of attacks whose aim is to punish them, silence them, damage their reputation or obstruct the conduct of their human rights activities. In many cases, perpetrators target human rights defenders who lead or epitomise the protest movement in an attempt to kill the protest movement in the bud. In many other cases, large groups and even whole communities defending their land rights are targeted. Land rights defenders often operate in a very perilous environment, putting their life and their liberty as well as the safety of their family in jeopardy. In addition, as most of them operate in remote rural areas, they have little or no access to potential protection mechanisms such as national human rights institutions, or actors of influence such as the media and foreign embassies. Therefore, they account for one of the most vulnerable groups among human rights defenders.

In the majority of the cases analysed during the research, State institutions were involved in attacks on land rights defenders either because they themselves prioritized the economic interests of land projects, or because the companies/investors used their money and power to get the authorities to silence land rights defenders.

Moreover, land conflicts often involve high financial stakes, where grassroots movements with little financial means must confront very powerful economic or political actors. Such actors often use their influence and power to attack (or convince others to attack) comparatively under-resourced land rights defenders. Perpetrators of these attacks may be local state officials, such as police officers and members of the military, or non-state actors such as company employees, paramilitaries, or henchmen paid by companies, businessmen or politicians.

“Since January 2011, the Observatory has documented 106 cases of harassment targeting 282 land rights defenders and 19 NGOs”.

Since January 2011, the Observatory has documented 106 cases of harassment targeting 282 land rights defenders and 19 NGOs, that fall into four main categories: 1) infringements on their physical integrity, including threats and actual attacks, murders, and enforced disappearances; 2) judicial harassment and repressive laws; 3) slander; and 4) illegal surveillance.

Threats and infringements on physical integrity: threats, assaults, killings and enforced disappearances

As a result of their activities, land rights defenders are victims of a broad range of threats and actual physical abuse including attacks, ill-treatment, killings and enforced disappearances.

Between January 2011 and August 2014, the Observatory documented 63 situations of infringements to physical integrity targeting 112 land rights defenders. Today land rights defenders form the most vulnerable category of human rights defenders in terms of physical attacks. This is particularly the case in Asia and Latin America.

“Between January 2011 and August 2014, the Observatory documented 63 situations of infringements to physical integrity targeting 112 land rights defenders”.

The analysis carried out by the Observatory has concluded that land rights defenders are at particular risk in the following situations:

- in violent-conflict and post-violent-conflict zones where the level of violence is high and where land rights defenders may be wrongly identified as belonging to guerrilla or other opposition groups (e.g. *Colombia, the Philippines*).
- when land conflicts arise around profit-making projects such as extractive, agro-industrial, logging, infrastructure, or energy projects;
- when the authorities have opted to use state security forces to respond to land conflicts, for example by militarising the area where the conflict is taking place. The deployment of very large military and police contingents, allegedly engaged to secure investment projects, are also often used to intimidate land rights defenders.

Recently, land rights defenders have been increasingly subjected to a combination of different types of acts of intimidation, with an increasing level of violence. Indeed, land rights defenders are often the subjects of threats before being physically attacked. Therefore, protection measures in

favour of human rights defenders should be promptly adopted whenever the first signs of harassment appear in order to prevent a further escalation of attacks.



BANGLADESH

In Bangladesh, activists working on land grabbing, illegal encroachment and pollution issues have been subject to various threats and attacks. For instance, defenders denouncing the negative impacts of illegal sand extraction¹ by the private companies *Micro International and Four Point General Trading & Contracting Co.* in the area of Mayadip Island, Sonargaon Upazilla, Narayanganj District, have been violently attacked. Mr. **Shahed Kayes**, Founder and Executive Director of the Subornogram Foundation as well as Chief Advisor of the Illegal Sand Extraction Prevention Committee in Mayadip-Nunertek, had been receiving death threats through unregistered mobile phone numbers since September 2012. On July 2, 2013, he was assaulted and severely beaten by around 40 people, some of them whom were reportedly involved in sand grabbing. One of his aggressors told him, “You are fighting against us and we’ve lost lots of money because of your movement. We made the mistake of not killing you before; this time we will kill you. We will cut the veins in your wrists and legs, tie your hands and legs together and throw you in the river.” The police eventually rescued Mr. Kayes but only arrested one assailant. Although Mr. Kayes filed a case at the Sonargaon police station, no investigation has been carried out². Similarly, on April 16, 2014, the husband of Ms. **Syeda Rizwana Hasan**, Executive Director of the Bangladesh Environmental Lawyer’s Association, was abducted by two unidentified men. He was finally released after 35 hours of captivity. As of August 2014, there had not been much progress in the investigation. Over the past several years, Ms. Hasan and her relatives had been subjected to several threats due to her work in defence of land and environment-related human rights³.

1. Threats

In environments experiencing land disputes, land rights defenders are regularly subjected to threats, made in person, by email or by phone.

In cases documented by the Observatory where companies are involved, employees themselves may participate in issuing threats against land rights

1. The extraction of sand from the river leads to important erosion that reduces available land and affects the fish stock, leading to food scarcity, which in turn forces inhabitants to move elsewhere.

2. See Observatory Fact-finding Mission Report, *Bangladesh: Human rights defenders trapped in a polarised political environment*, November 2013, p. 39.

3. *Idem*, p. 41.

defenders. However, it is difficult to determine whether this follows from instructions provided by their superiors at the company. Independent and complete investigations should be systematically carried out in such cases to determine the potential existence of corporate responsibility.



LIBERIA

In Liberia, the NGO Green Advocates visited the Golden Veroleum palm oil plantation in June 2014, which was the subject of a complaint before the Round-table on Sustainable Palm Oil (RSPO) for failing to respect the FPIC of customary landowners and not conducting a comprehensive and participatory independent social and environmental impact assessment. Representatives of Green Advocates were accompanied by the RSPO complaint panel and officials from the company. On the way out of the plantation, between 50 and 100 people had gathered and blocked the gate. Armed with shotguns, machetes, sticks and tools used to dig holes to plant palm trees, they specifically targeted Mr. **Alfred Brownell**, President of Green Advocates, saying, “My boss is going to drink out of your skull” and “we are going to eat your heart”. The company denied that it was its employees, although witnesses said that they were wearing the company uniforms, with gloves and work tools⁴.

Threats can also be made by members of law enforcement bodies.



COLOMBIA

For instance, since the end of 2013, the Government of Colombia has increased the military presence in Tulua, where two hydroelectric plants have been in construction for six years, and where exploration of the subsoil has revealed abundant reserves of minerals. Since they took control of the zone, members of the Military Battalion “Alta Montaña No. 10” have harassed, persecuted, insulted and robbed farmers, workers associations and local human rights organisations. For example, on February 17, 2014, Ms. **Dianelis Hoyos**, a member of the Association of Rural Workers of the Cauca Valley (*Asociación de Trabajadores Campesinos del Valle del Cauca*) and of the Human Rights Network Francisco Isaías Cifuentes, was insulted by a soldier as a result of her human rights activities⁵.

4. See Green Advocates and press articles: <http://allafrica.com/stories/201406240649.html> and <http://agendapublic.wordpress.com/2014/09/25/foiled-assassination-attempt-2/>.

5. See Permanent Committee for the Defence of Human Rights (*Comité Permanente por la Defensa de los Derechos Humanos* - CPDH), http://www.comitepermanente.org/index.php?option=com_content&view=article&id=506:continuan-violaciones-de-derechos-humanos-contra-campesinos-en-tulua&catid=19&Itemid=120.

The threats that the Observatory has documented have been issued both privately, such as by email or phone to land rights defenders' private numbers, or more publicly, such as open threats while land rights defenders were conducting field investigations.



CAMBODIA

On May 9, 2014, Mr. **Vann Sophath**, Land Reform Project Coordinator at the Cambodian Center for Human Rights (CCHR), was subjected to intimidation and death threats while conducting a visit at the site of a land dispute with the Khun Sear Company in Sangkat Boeung Kak I, Khan Tuol Kork, Phnom Penh, Cambodia. He was taking footage for a documentary on the demolition of the houses of three families. He was interrupted by a group of approximately six armed civilians, known to be the security guards of the Khun Sear Company, who insulted him, made death threats, and pushed him out of the site. Earlier, on April 25, 2014, Mr. Vann Sophath and his team had already been verbally attacked and photographed by Khun Sear Company security guards. On June 16, 2014, Mr. Vann Sophath lodged a complaint to denounce those threats but, as of August 2014, no court action had been undertaken and he was not granted any protection measures⁶.



COLOMBIA

In Colombia, there have been several cases of threats and acts of harassment against members of the *Comisión Intercesal de Justicia y Paz* (CIJP) in relation to their activities in favour of land restitution and for shedding light on the responsibility of the State, military and economic sectors in cases of land grabbing. For example, on February 27, 2014, Mr. **José Rocamora** was followed by three men when he left his house and had to seek refuge in a building nearby, with the three men waiting for over 30 minutes at the entrance. Moreover, a computer in which he had information about the situation in prisons or the paramilitary presence in diverse conflict areas was stolen while all other valuables were left behind⁷. The Observatory has also documented in 2014 how other members of CIPJ, such as Mr. **Janeth Hernández**, Mr. **Abilio Peña** or Mr. **Danilo Rueda**⁸ have also been followed and harassed.

In Colombia, it has been documented how numerous land rights defenders opposing the interests of paramilitary groups have been informed, generally by email that they have been listed as “military targets”.

6. See Observatory Urgent Appeal KHM 003 / 0514 / OBS 037, May 12, 2014.

7. See Observatory Urgent Appeal COL 002 / 0314 / OBS 024, March 31, 2014.

8. *Idem*.



COLOMBIA

In Colombia, human rights defenders working for the restitution of lands for victims of the armed conflict, including leaders of displaced communities and NGO members, are particularly at risk, especially since the implementation of the Victims and Land Restitution Law in 2011⁹. The UN High Commissioner for Human Rights has shown her concern about this particular risk, especially concerning the regions of Cauca, Sucre and Urabá¹⁰. According to the “We are Defenders” Programme (*Programa No Gubernamental de Protección a Defensores de Derechos Humanos “Somos Defensores”* – SIADDHH), 366 attacks against human rights defenders were registered in 2013, among which 209 cases of threats and 78 murders, targeting in majority community, peasant and indigenous leaders, with for example 56 murders out of 78 targeting these groups¹¹. For instance, between February 6 and 12, 2014, Ms. **Marta Díaz**, Technical Secretary of the National Movement of Victims of State Crimes (*Movimiento Nacional de Víctimas de Crímenes de Estado* – MOVICE) and President of the Association of Families United for a Single Pain (*Asociación de Familias Unidas por un Solo Dolor* - AFUSODO), accompanying land restitution cases in the Atlántico Region, received four messages from unknown phone numbers threatening her with murder if she did not leave town¹².

On February 20, 2014, Ms. Marta Díaz, Ms. **Rosario Arroyo**, member of MOVICE and AFUSODO, and four other members of the Departmental Committee of Victims of the Atlántico (Mesa Departamental de Víctimas del Atlántico) received death threats on their cellphone¹³. Similarly, on June 25, 2014, Ms. Marta Díaz, Ms. **Yesenia Pérez**, Ms. **Leslie Orozco** and Messrs. **Juan David Díaz**, **Andrés Navárez** and **Gerlin Vergara**, members of the Departmental Committee of Victims in the Atlántico and Sucre regions, received an email from the paramilitary group Los Rastrojos Urban Commandos (*Los Rastrojos Comandos Urbanos*), which identified them as “military targets for being collaborators with the guerilla”. The senders warned the defenders that if they did not stop the human rights activities that were “attempting against [their] organisation”, they would be obliged to “silence them and their relatives”¹⁴.

9. See Observatory Fact-finding Mission Report, *Colombia: Continua La Inseguridad Para Los Defensores de Los Derechos Humanos, En Particular Los Lideres de Comunidades Desplazadas*, May 2012 (only available in Spanish).

10. See Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, UN Document A/HRC/16/22, February 3, 2011.

11. See We Are Defenders Programme Report, *D for Defense: 2013 Annual Report Information System on Attacks Against Human Rights Defenders in Colombia*, February 2014.

12. See Observatory Urgent Appeal COL 001 / 0214 / OBS 010, February 13, 2014.

13. See Observatory Urgent Appeal COL 001 / 0214 / OBS 010.1, February 27, 2014.

14. See Observatory Urgent Appeal COL 006 / 0614 / OBS 059, June 25, 2014.

All these threats were denounced to the competent authorities, including the General Prosecutor of Barranquilla, the Ombudsman and the police, but as of August 2014, no investigation had been opened.

2. Assault

Land rights defenders are also subjected to physical attacks and acts of ill-treatment, which may occur on different occasions. In nearly all the countries studied, those who opposed forced eviction and/or displacement by local authorities of people from lands they occupied have faced acts of violence.

Land rights defenders regularly organise, participate in and / or monitor demonstrations, sit-ins and protests. On these occasions, even though their activities are entirely non-violent, they are vulnerable to disproportionate acts of violence committed by law enforcement bodies, private security groups, and sometimes thugs or henchmen.



KENYA

In Kenya, on February 14, 2014, police used excessive force against almost 300 members of the Endorois community who peacefully assembled in the Mochongoi Forest (Baringo County) to protest against the Ministry of Land's plan to issue, without prior consultation with the Endorois community, title deeds and parcelling of lands to unknown individuals. A video footage shows police officers severely beating up and arresting members of the Endorois community¹⁵. Some of the victims who were seriously injured went to hospital where they filed police medical examination reports. At the time of the writing of this report, no investigation had been carried out to shed light on the circumstances which led to the violence, to identify and sanction those responsible. Following this incident, the Government of Kenya set up a task-force composed of the Chairman of the National Land Commission, representatives from the provincial administration and members of the Endorois community to investigate and address the historical injustices and remaining challenges faced by members of this community. However, up to now, no concrete measures have been taken to give effect to this task force¹⁶.

These hindrances to the rights of the Endorois community had already been denounced by the African Commission on Human and Peoples' Rights (ACHPR).

15. This video is accessible on: https://www.youtube.com/watch?v=pn93Ki2g8lw&list=UUekTpzKod-0bp0cmvVCFUvTw&index=17&ytsession=FdgBzMtK_Y11SFRTqVv.

16. See Minority Rights Group International (MRG) Press Release, *Rights group urges Kenyan government to stop parcelling Endorois community land without consultation*, February 20, 2014 and Kenya Human Rights Commission (KHRC).



1



2

1. Alfred Brownell, Green Advocates (Liberia). © Photo by Flore de Preneuf/ PROFOR

2. May 13, Khoper, Central Russia – Participants of a civil peaceful watch camp at Khoper were brutally beaten by the guards of the nickel mining company LLC Mednogorsky Copper and Sulfur Plant.
© Authorisation from Revolution news

In a case brought in 2003 before the ACHPR against the government of Kenya, the Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) alleged violations resulting from the displacement of the Endorois community from their ancestral lands, the State's failure to adequately compensate them for their loss of property, violations of their right to practise their religion and culture and violation of their right to development. In its decision, rendered in 2009, the ACHPR recognised Kenya's responsibility in those violations and called upon the authorities to recognise the rights of ownership to the Endorois, to return their ancestral land, ensure that they have unrestricted access to Lake Bogoria and surrounding sites for religious and cultural rites and for grazing their cattle, to pay adequate compensation to the community for all the loss suffered, to pay royalties to the Endorois from existing economic activities and to ensure that they benefit from employment possibilities within the reserve. Despite this landmark decision, the government of Kenya has so far failed to fully implement its provisions¹⁷.



RUSSIA

In Russia, on May 13, 2013, several members of the Save Koper Movement were attacked and beaten by employees of a private security firm, hired by the Voronezhgeologiya company conducting geological surveys for the copper-nickel mining activities developed by LLC Mednogorsky Copper and Sulfur Plant in Novokhopersky District, Voronezh Region¹⁸, as they were approaching a metal fence, which they considered had been installed illegally and encroached on agricultural lands. Some of them were seriously injured and hospitalised. The police opened a criminal investigation into these events¹⁹.

Land rights defenders participating in demonstrations, protests and assemblies may also be later abusively accused and charged for minor or serious offences, after having been the victim of the disproportionate use of force by law enforcement bodies. Judicial harassment is further analysed in the following section.

17. See Centre for Minority Rights Development (CIMERIDE) and Minority Rights Group International (MRGI) on behalf of Endorois Welfare Council v. Kenya, Communication No. 276/2003, 2009.

18. In the region, several rallies have been organised by activists and the local population to denounce the pollution resulting from the implementation of the project, including radioactivity, of the surrounding land.

19. See SaveKoper.ru Statement, May 13, 2013, Available at: http://savekoper.ru/?p=2380&utm_source=twitterfeed&utm_medium=twitter; FIDH and ADC Memorial, *Russia 2012-2013: Attack on Freedom*, February 2014.



INDONESIA

On August 25, 2013, farmers who were demonstrating against the construction of Bubur Gadung Dam in Indramayu, West Java, Indonesia, denouncing the impacts the dam would have on their lands and irregularities in the land allocation process, were intimidated and physically attacked by the police and henchmen. Moreover, thugs who posed as peasants also beat thirty farmers who were on their way to join the demonstration. Dozens of thugs also stormed farmers' villages and beat those who were found in their houses. Police officers who were present on the site of the protest did not intervene to protect the farmers. Only when, as a reaction to the violence, some farmers decided to burn an excavator present on the construction site, did the police intervene by using rubber bullets and tear gas against the demonstrators. The police also arrested five demonstrators who were all members of the Indramayu Peasant Union (STI): Messrs. **Tuan Abdul Rojak** (STI Secretary General), **Khamsyah Fansuri** (STI Deputy), **Wajo, Watno** and **Rokhman**. While Messrs. Wajo, Watno and Rokhman were subsequently released, Messrs. Abdul Rojak and Khamsyah Fansuri were accused without evidence of being responsible for the burning of the excavator and sentenced in appeal by the High Court of Bandung to one and half year in jail under Article 160 of the Criminal Code for "provoking" destruction of property on January 21, 2014. In reality, they had only sent text messages to farmers calling them to join the demonstration as peaceful protesters²⁰. As of August 2014, the two were still serving their sentence.

There were numerous reports of public or private security forces and henchmen hired by companies attacking, beating and sometimes even shooting community members and leaders opposing evictions.



GUATEMALA

On May 23, 2014, the group Peaceful Resistance of La Puya was violently evicted from its protest camp which it had maintained since March 2012 in opposition to the mining project located in La Puya, an area between the municipalities of San José del Golfo and San Pedro Ayampuc, in Guatemala. This project, called "El Tambor," is a gold mine operated by the company EXMINGUA, a subsidiary of the American engineering firm Kappes, Cassidy & Associates. Local communities are gravely concerned for the negative repercussions on their water supply once the mine is operational. Before dawn on May 23, heavy machinery from the mining company arrived at the protest camp. Shortly thereafter, about 500 officers of the national civilian police (*Policía Nacional Civil* - PNC) began to appear. At 2 p.m., the police began the forced eviction, using tear-gas, clubs

20. See KPA Statements, August 30, 2013 and March 17, 2014; ILC Asia Statement, February 4, 2014; FIDH-KontraS Report, *Indonesia: no development without rights*, June 2014.

and stones against the demonstrators. 23 members of the Peaceful Resistance were reportedly left injured²¹.



OCCUPIED PALESTINIAN TERRITORY (OPT)

In the Occupied Palestinian Territory (OPT), since January 2014, Palestinian and some international defenders peacefully opposing the eviction of the village of Ein-Hijleh have faced a series of attacks from the Israeli Defence Forces (IDF). On February 6, 2014, when the IDF proceeded to the forced eviction of the village, more than 40 persons who peacefully occupied the village were injured, and 19 representatives and members of committees and youth movements were arrested and detained during several hours, including Messrs. **Abdullah Abu Rahmeh, Issa Amr, Mohammad Al Khatib, Bassem Tamimi and Mahmoud Zawhara**, and journalists Ms. **Diana Alzeer**, Ms. **Lema Nazeeh** and Ms. **Ashira Ramadan**²².

3. Killings

Murders and extra-judicial killings targeting land rights defenders are

“Murders and extra-judicial killings targeting land rights defenders are frequent, particularly in Latin America and in Asia, where the Observatory has documented 43 occurrences since 2011”.

frequent, particularly in Latin America and in Asia²³, where the Observatory has documented 43 occurrences since 2011. They are particularly prevalent in some countries, such as *Colombia, Guatemala, Honduras, Mexico, the Philippines*²⁴.



MEXICO

Land rights defenders are particularly vulnerable in Mexico: between 2009 and 2012, the Mexican Centre for Environmental Law (*Centro Mexicano de Derecho Ambiental – CEMDA*) numbered more than 50 cases of attacks, including killings, against land and environmental human rights defenders, in 17 states of Mexico. Most of them were linked to mining projects (15) and forest projects (15). In addition, there were cases linked to tourism projects (3), real estate projects (2), and hydraulic (7), energy (7) and traffic-related (5) infrastructures.

21. See Observatory Urgent Appeal GTM 001 / 0514 / OBS 036.1, June 3, 2014.

22. See reports of Al-Haq, <http://www.alhaq.org/>.

23. According to Global Witness, more than 371 land and environmental activists were killed between 2011 and 2013, highlighting that land rights defenders are one of the most vulnerable categories of human rights defenders. Most of the murders took place in Asia and Latin America. See Global Witness Report, *Deadly Environment: The Dramatic Rise in Killings of Environmental and Land Defenders*, 2014.

24. See Observatory & others Leaflet, *Land and environmental rights defenders in danger: an overview of recent cases*.

In the State of Oaxaca, in Mexico, members of the Popular Assembly of the Juchiteco People (*Asamblea Popular del Pueblo Juchiteco* - APPJ) have been threatened, attacked and even killed following their protests against the construction of wind farms by the Spanish company “Gas Natural Fenosa” in July 2013. In particular, on July 21, 2013, Mr. **Hector Regalado Jimenez**, APPJ member, was killed. On August 25, 2013, several members of the APPJ were subjected to death threats and attacks by gunmen suspected of working for the company while visiting the area in which the wind farm Bif Hioxho is being built, to assess the damages caused by the construction of the project²⁵.



THE PHILIPPINES

On June 16, 2012, Mr. **Moises C. Fuentes**, a human rights defender from Maramag, Bukidnon, the Philippines, was gunned down by an unknown assailant at his residence in front of his wife. Since 1999, he had been a local leader of the farmers’ organisation Kuya Christian Farmers’ Association, which has been struggling for three decades to recover their land, which had been leased in 1986 to a company represented by the late Bukidnon Governor Timoteo Ocaya and which was partly redistributed to them in 2010 by the Department of Agrarian Reform (DAR). A few months before his murder, a threatening hit-list had reportedly been read on a local radio station, containing leaders of farmers groups, including the Kuya Christian Farmers’ Association. The family of Moises Fuentes did not file a complaint against the perpetrators in the absence of any positive identification and therefore the murder remains in impunity²⁶.

Many land rights defenders who fall victim of killings are rural or indigenous leaders. They may also be lawyers and, more generally, all those fighting against the impunity of specific human rights violations account among the targets.



HONDURAS

For instance, in Honduras, members of the Authentic Aguán Movement for Demands (*Movimiento Autentico Reivindicador del Aguán* - MARCA), a peasant organisation struggling since 1994 for the restitution of their lands in Bajo Aguán, have been constantly subjected to threats, physical attacks and extrajudicial killings by the State authorities and landowners’ private security guards. On September 22, 2012, Mr. **Antonio Trejo Cabrera**, lawyer of MARCA peasants, was assassinated, after having received death threats. His brother, **José Trejo** who publicly demanded an exhaustive investigation and punishment of the perpetrators and masterminds of his brother’s death, was also assassinated

25. See Observatory Open Letter to the President of Mexico, October 7, 2014.

26. See Observatory Urgent Appeal PHL 004 / 0712 / OBS 072, July 20, 2012.

in Tocoa on February 16, 2013. As of August 2014, investigations into the two killings were still ongoing and no suspect has been identified²⁷.



THAILAND

In Thailand, Mr. **Tatkamol Ob-om** was killed by gunmen on September 10, 2011, shortly after he helped Karen villagers report on alleged abuses, violence, illegal logging, and poaching committed by park officials. In January 2012, the Phetchaburi Provincial Court accepted a case against Mr. Chaiwat, the head of the Kaengkrachan National Park Office, for allegedly masterminding the murder. Yet, Mr. Chaiwat was not suspended from duty as required under disciplinary regulations regarding officials under criminal investigation²⁸.



COLOMBIA

In Colombia, in April 2013, Mr. **Elver Cordero Oviedo**, a human rights defender working in Córdoba with victims for the restitution of their lands, was assassinated. It is relevant to note that his assassination took place following the unfortunate statements of the Colombia Ministry of Defence linking the participants of the National March for Peace (*Marcha Nacional por la Paz*) to the Revolutionary Armed Forces of Colombia (FARC)²⁹. The Observatory has documented the assassination over the last two years of various prominent land rights defenders in Colombia including Messrs. **Juan Álvaro Pai**³⁰, **Sergio Ulcue Perdomo**³¹, **César García**³² and **Nelson Giraldo Posada**³³ among others.



SOUTH AFRICA

In South Africa, there have been several cases of violence, harassment and acts of intimidation against land rights defenders. Since its establishment in early 2005, members of the movement Abahlali baseMjondolo (Shack Dwellers - AbM), created to promote land and housing rights, access to economic and social rights to the most vulnerable, and community-driven processes of industrialisation, have been subjected to various forms of well documented acts of repression and harassment, materialised by cases of assassination, assaults, regular threats and acts of intimidation. Over the past two years, in the municipality of KwaNdengezi – a rural area located in the Eastern part of the country – at least three members of the movement have been assassinated, meetings have been prohibited, members have been repressed and arbitrarily arrested

27. See Observatory Press Release, October 1, 2012.

28. See HRW Statement, April 20, 2014.

29. See Observatory Urgent Appeal COL 006 / 0413 / OBS 038, April 16, 2014.

30. See Observatory Urgent Appeal COL 016 / 1213 / OBS 096, December 9, 2013.

31. See Observatory Urgent Appeal COL 015 / 1113 / OBS 094, November 22, 2013.

32. See Observatory Urgent Appeal COL 014 / 1113 / OBS 087, November 6, 2013.

33. See Observatory Urgent Appeal COL 013 / 0913 / OBS 082, September 27, 2013.

on several occasions during peaceful protests, and allegations of acts of torture against some of those arrested have been reported.

This violent repression followed the denunciation, since 2010, of a “housing project” carried out by the municipality of KwaNdengezi, without prior consultation and consent of the populations using the lands where this project was to be implemented. Despite the concerns raised by those populations, over the risks for the protection of their families’ graveyards, the municipality continued the construction of new houses on their lands. AbM organised peaceful protests to denounce the constructions and the alleged related cases of corruption in which some members of the municipality would have involved. The repression of the movement in KwaNdengezi reached its climax on March 29, 2013, when the grand-mother and uncle of a well-known member of the movement were killed in their home. Both of them were also active within AbM. More recently, on September 29, 2014, Ms. **Thuli Ndlovu**, Chairperson of AbM in the KwaNdengezi, was also killed in her house by an unidentified man who shot her seven times. An hour before the incident, Ms. Ndlovu is reported to have seen Mr. Muduzi Ngcobo, the local councillor known as Nqola, who is at the initiative of the contested “housing project”, moving around her house. Ms. Ndlovu is said to have warned her mother, who was also in the house, that “today, we are going to be shot”. On several occasions, members of AbM in KwaNdengezi, in particular Ms. Ndlovu, had reported cases of intimidation and harassment against them by Mr. Nqola. While members of AbM have filed complaints before the local police, all cases of killings, threats, arbitrary arrests and acts of torture have so far remained non-investigated and those allegedly responsible have never been interrogated³⁴.

4. Enforced disappearances

The Observatory has also documented seven cases of enforced disappearance of land rights defenders since 2011 (*Colombia*³⁵, *Lao People’s Democratic Republic*³⁶, *Mexico*³⁷, *Thailand*).



THAILAND

In Thailand, Mr. **Porlagee “Billy” Rakchongcharoen**, a community leader of the Karen indigenous peoples in Bangkloybon village, near Kaengkrachan national park, disappeared after he was briefly detained on April 17, 2014 by the authorities of the park, allegedly because he was carrying wild honey. That day, Billy

34. For more information see AbM on <http://abahlali.org/> and Lawyers for Human Rights on www.lhr.org.za/.

35. See Observatory Urgent Appeal COL 009 / 0412 / OBS 044, April 27, 2012.

36. See Observatory Joint Statement, December 13, 2013.

37. See Observatory Urgent Appeal MEX 001 / 0112 / OBS 006, January 17, 2012.

was expected to meet with his fellow villagers and activists to prepare for an upcoming court hearing. On April 24, 2014, Billy's wife, Ms. Pinapa Pruksapan, filed a petition to the Petchaburi Provincial Court to request an urgent investigation into his disappearance. On July 17, 2014, a court in Phetchaburi dismissed a *habeas corpus* petition filed by Billy's wife and her lawyers, finding there was insufficient evidence that Billy was still in detention³⁸.

In 2012, the villagers had filed a lawsuit against the Ministry of Natural Resources and Environment's National Park, the Wildlife and Plant Conservation Department, and the Head of Kaengkrachan National Park, Wildlife and Plant Conservation Office with the Central Administrative Court. The lawsuit alleged that park authorities destroyed houses and property belonging to more than 20 ethnic Karen families in Bangkloybon village in July 2011. Like in other national parks in northern Thailand, the Karen people, who were living in the area prior to the establishment of the park, are being forcibly evicted from their ancestral lands in the name of "conservation".



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1. Thuli Ndlovu, killed in her house by an unidentified man who shot her seven times (Republic of South Africa). © Abahlali baseMjondolo
2. Portagee « Billy » Rakcharoen, disappeared after he was briefly detained on April 17, 2014 by the authorities of Kaengkrachan national park (Thailand). © chiangraitimes.com

Judicial harassment, criminalising laws and other restrictions

In many countries, land rights defenders face judicial harassment, which takes many forms, including arbitrary arrest and detention and prosecution on trumped-up charges. In some cases legislation has been enacted in order to specifically criminalise activities related to the defence of human rights. Justice then becomes a tool of repression against land rights defenders rather than a mechanism to enforce human rights standards.

1. Judicial harassment

In many instances, land rights defenders have been arrested and kept in jail for a few hours or days or even longer under preventive detention. There is often no trial following their preventive detention, and they are released without an explanation or formal charges. Regardless of its duration, such detention can be used as a form of intimidation or reprisal, especially if there is physical or psychological violence during the arrest or while in jail. The Observatory has documented numerous cases of arbitrary detention of land rights defenders. **As of June 2014, 17 land rights defenders addressed through urgent actions of the Observatory since January 2011 have remained in jail or under house arrest, such as in *Burma, the DRC, Ecuador, Guatemala and Mexico*³⁹.**



ETHIOPIA

For example, in Ethiopia, those who have voiced concerns about the large-scale “villagization” programme in the Gambella Region, which aims at relocating 1.5 million people into villages, allegedly to improve their access to basic services⁴⁰, have been arbitrarily arrested (in most cases for less than two weeks) without being charged or appearing before a judge. Some of them were reportedly told they were arrested for “not being cooperative”. Some were also beaten by police officers or soldiers. Even Government employees who

39. For more details on cases, see FIDH and OMCT’s websites.

40. The villagization programme, which allegedly aims at improving their access to basic services, would in reality aim at clearing land from its population to allocate it to large-scale investors.

raised questions on the programme were demoted, fired and at least three were arrested. All these human rights violations remain in impunity⁴¹.

In addition to preventive detention, some land rights defenders have been charged with criminal offences and convicted under trumped-up charges. The effect of such legal proceedings is threefold: hampering the ability

“From January 2011 to August 2014, the Observatory has documented 32 situations of judicial harassment targeting 123 land rights defenders”.

of land rights defenders to do their work, scaring land rights defenders, and smearing their reputation. From January 2011 to August 2014, the Observatory has documented 32 situations of judicial harassment targeting 123 land rights defenders.

Most cases of judicial harassment against land rights defenders are based on land rights defenders’ involvement in the organisation of or participation in demonstrations, sit-ins, rallies or other peaceful activities.



NICARAGUA

For example, in Nicaragua, small miners from Santo Domingo, Chontales, and their leaders have been denouncing since 2012 the irregularities of the Canadian mining corporation B2Gold project, and its adverse effects on their lands, water, lifestyle and economic activities. On February 9, 2013, while blocking the entrance of the site, they were violently evicted by around two hundred riot police. In total, 141 persons were injured and 47 were arrested. Most of them were released but twelve leaders of Save Santo Domingo (*Salvemos Santo Domingo* - SSD), Messrs. **Boanerges Luna Suárez**, its Coordinator, **Sergio Mercedes Zavala Mejía**, **Nixon Reyno Sequeira Bravo**, **Naser Yobran Toledo Núñez**, **Cristino Borge Rodríguez**, **Nelson González Jirón**, **Rùben Elías Andino Vargas**, **Aldomar Antonio Kausman Delgadillo**, **Rolando Simòn Andino Miranda**, **Yesner Yoliens Miranda Urtecho**, **Erling Antonio Gòmez González** and **Hosmar Joseph Mairena Castellòn** were transferred to the jail of “Chipote” in Managua. They remained detained incommunicado for one month, and pressured by the authorities to give up their protest in exchange of their release. On April 25, 2013, they were finally released after the trial was cancelled due lack of evidence⁴².

41. For security reasons, no information concerning the identities of the victims can be published. See Human Rights Watch (HRW) Report, *Waiting Here for Death: Forced Displacement and ‘Villagization’ in Ethiopia’s Gambella Region*, January 17, 2012; Oakland Institute Report, *Understanding Land Investment Deals in Africa: Ethiopia*, 2011.

42. See Nicaraguan Center for Human Rights (*Centro Nicaragüense de Derechos Humanos* - CENIDH) Press Release, March 1, 2013.

The nature of charges usually filed against land rights defenders range from common misdemeanour offences to heavy security offences, including charges aimed at blatantly criminalising the exercise of freedom of expression or opinion. Another negative impact of criminalisation is that land rights defenders tend then to appear in the public eye as criminal offenders or thugs. Under some circumstances, such criminalisation campaigns may be interpreted as a blank check for further harassment, such as assault.

Land rights defenders are routinely accused of common offences such as “destruction of property” or “disrupting public works” following their participation in peaceful protests.



INDONESIA

In South Sumatra, Indonesia, after the fall of President Suharto, land reclaim movements developed following years of land grabs and abuses. For instance, several land conflicts have opposed local communities to State-owned sugar plantation company PT Perkebunan Nusantara VII (PTPN 7) Cinta Manis since the 1980s, asking the authorities and PTPN 7 to return the land to them. As a consequence, leaders of the movement have been regularly intimidated by representatives of the local government, police, and the company. For instance, on January 29, 2013, Messrs. **Anwar Sadat** and **Dede Chaniago**, respectively Director and Deputy Director of the Indonesian Forum for Environment (WALHI) South Sumatra, and Mr. **Kemalheddin**, a member of the Sriwijaya Farmers Union (SPS), were beaten, arrested, and detained by the police during a peaceful demonstration organised before the South Sumatra Regional Police Area in Lampung to denounce the interference of the police in favour of the company PTPN 7, in particular the arrest of some village farmers of Betung Village District, District Lubuk Keliat, Ogan Ilir Regency, and to call for the removal of a police officer, allegedly responsible for the death of a child, Angga bin Dharmawan, during a police operation. Police responded to the demonstration by using force against the protesters and arrested 25 of them. While 22 were interrogated and later released, the three were charged with “destruction of public property” (the gate of the regional police station in Palembang) and “organising a provocative action” (a demonstration).

During interrogation, all questions focused on Mr. Anwar Sadat and the role he played in the demonstration and in the destruction of the gate. Some of the arrestees stated that they had been coerced to point to the responsibility of Mr. Anwar Sadat. All such testimonies were then withdrawn. In May 2013, on the sole basis of testimonies provided by police officers, Messrs. Anwar Sadat and Dede Chaniago were sentenced to seven months in prison and Mr. Kemalheddin to 16 months in prison.

In July 2013, Messrs. Anwar Sadat and Dede Chaniago were sentenced on appeal to five and a half months in prison on charges of “organising a

provocative action". The court also upheld Mr. Kemalheddin's 16-month jail sentence on charges of "violence against the police". Messrs. Anwar Sadat and Dede Chaniago were released as they had already served their five and a half month sentences, while Mr. Kemalheddin was released a few months later. The three appealed the sentence before the Supreme Court and the decision was yet to be made public as of August 2014⁴³.

In some cases, land rights defenders have been charged for slander, defamation, propagation of false information, damaging reputation, etc., following complaints filed by those they have been denouncing as perpetrators of human rights violations.



CAMEROON

On May 10, 2013, Mr. **Musa Usman Ndamba**, National Vice-President of the Mbororo Social and Cultural Development Association (MBOSCUA), an organisation defending the rights of Mbororo pastoralists in Cameroon since 1992, was summoned to appear before the Court of First Instance in Bamenda, North Western Cameroon, following a complaint brought by Mr. Baba Ahmadou Danpullo, a billionaire businessman, cattle rancher, tea plantation owner and member of the Central Committee of the ruling RDPC Party, for "propagating false information liable to injure public authorities", "being a party in a judicial proceeding on oath and making false declarations", "making a false report against Baba Ahmadou Danpullo, liable to lead to his prosecution" and "injuring the reputation of Baba Ahmadou Danpullo by imputation of unprovable facts", offences punishable by a prison sentence and a fine. On a positive note, on May 23, 2014, the Court of First Instance in the North-West Regional City of Bamenda dismissed the case for lack of diligent prosecution. However, on September 10, 2014, the lawyer of Mr. Musa Usman Ndamba fortuitously found that his client was scheduled to appear before a judge at the Court of First Instance of Bamenda on charges of "defamation". As no summons was served to his client, he requested a new date and the hearing was postponed until October 8, 2014. Reportedly, the charges of defamation currently against Mr. Musa Usman Ndamba are the same as those previously brought in a lawsuit against him, but were dismissed in May 2014 for lack of a diligent prosecution. This case of judicial harassment also relates to another criminal case on the assassination attempt of Mr. **Jeidoh Duni**, MBOSCUA Para Legal Officer, on July 1, 2012. On July 18, 19 and 20, 2012, five MBOSCUA members, Mr. Jeidoh Duni, Mr. **Adamou Isa**, Executive Member, Mr. **Sali Haman**, Regional President of the Littoral Branch, Mr. **Dahiru Beloumi**, Local Councillor and member, and Mr. **Njawga Duni**, Veterinary Nurse and member, appeared as witnesses in an

62 43. See FIDH-KontraS Report, *Indonesia: no development without rights*, June 2014.



Issa Amro (R), then a coordinator for Israel's B'Tselem human rights group in Hebron, shoots video near Israeli soldiers in the West Bank city of Hebron August 11, 2008. © PALESTINIANS-ISRAEL/CAMERAS REUTERS/Nayef Hashlamoun (WEST BANK)

investigation into the attempted murder of Mr. Jeidoh Duni in order to identify the suspects of the assassination attempt as well as the person who hired them. MBOSCUA members maintained that those who shot and injured Mr. Duni were hired killers and demanded full justice in this case. Of the five suspects who were arrested three weeks after the incident, three confessed to the crime and one even went so far as mentioning landowner Baba Ahmadou Danpullo as being the 'sponsor' of the attack. However, all the suspects were released; soon after they were handed over to the Gendarme authorities of the North-West Legion. In an apparent act of retaliation against their testimony, on April 23, 2013, the five MBOSCUA members were summoned and appeared before the Bafoussam Military Tribunal and were charged with "assault", "defamation" and of "possession of fire-arms" at the time of the arrest of the suspects on July 18, 2012. They were then told to go and wait to be called for a hearing. At that time, Mr. Duni was in hospital recovering from serious injuries and the suspects of the attack against him were arrested by officers of the government's rapid intervention anti-crime brigade (BIR). On September 16, 2013, the Bafoussam Military Tribunal dismissed the case and all charges against the above for lack of evidence. Another case of judicial harassment is presently on-going against a prominent MBOSCUA member and Mbororo community leader, Mr. **Lamido**



Members of the Chaupe Acuña family at home in Tragadero Grande (Peru).
© Alexander Luna; Proyecto Guardianes

Roufai, and his close associates: Messrs. **Ahmadou Ahidjo** and **Elhadj Seini**, Ms. **Hawaou Nana** as well as seven others in Fouban in the West Region. The case was brought against them by close associates of Mr. Baba Ahmadou Danpullo⁴⁴.

In other cases that the Observatory has documented, charges have been a combination of security offences and common criminal offences such as assault or damaging property.



THE OPT

In the OPT, Mr. Issa Amr has continuously been subject to arbitrary arrests and detentions, death threats, ill-treatments and movement restrictions over the past few years for his activities denouncing land-related human rights violations arising from the Israeli occupation in the West Bank. For example, he was arrested following his participation in a demonstration on March 20, 2013 in Al-Shuhada St. in Hebron to call for an end to Israeli practices including apartheid. He and the rest of the 20 protesters wore Obama and Martin Luther King face masks. The protesters were initially attacked by settlers. According to Amr's testimony the protesters did not respond and did not even defend themselves. About 20 soldiers came closer to the protesters and arrested Amr together with another two Palestinian protester as well as three international protesters.

The Palestinian protesters were initially taken to a police station in Hebron. The following day they appeared before a military court in Ramallah. Mr. Amr was accused of “incitement against the state of Israel”, “disturbing the activities of the military”, “assaulting a settler” and “breaking a camera” that he had with him. Further, they were accused of entering a closed military zone. The court decided to release them on bail on the same day. Besides, the court decided to prevent them from entering the Al-Shuhada St for three months. Mr. Amr appeared before the court again on December 30, 2013 but the court decided to postpone the case until further notice. He is still waiting to be summoned by the court to another hearing. Mr. Amr has never been convicted as a result of the numerous arrests he was subject to: eight times for the 2012 year only⁴⁵.



PERU

In Peru, in July 2013, Mr. **Oscar Mollohuanca**, Mayor of the Espinar Province, along with two municipal workers, Messrs. **Herbert Huaman** and **Sergio Huamani**, were charged with “obstruction to the functioning of public services”, “threats to the internal security” and “illegal possession of weapons”, while three other municipal workers, Messrs. **Ezequiel Qquehue Chquecota**, **Juan Alberto Huaytapuma** and **Daniel Alfredo** Condori were charged with “manufacturing and possession of dangerous substances”, in relation to their participation in social protests organised in 2012 against the adverse environmental impacts of the Anglo-Swiss mining company Glencore - Xstrata. The Prosecutor requested ten years of prison for Mr. Oscar Mollohuanca, Herbert Huaman and Sergio Huamani. On March 11, 2014, the Ica First Investigation Court finally recognised that the evidence was not sufficient to condemn the accused and dropped the case. Similarly, the Mayor of the Cajamarca Region, Mr. **Gregorio Santos**, was charged with “rebellion” for the discourse he issued during a social protest against the American Newmont Mining Corporation’s project Conga in 2012, in which he accused the Peruvian President of having failed his electoral promise to protect water sources against the harmful activities of the Conga mining project. In August 2013, the case against Mr. Santos was rejected on appeal by the Third Superior Prosecutor of Lambayeque Appeals Court⁴⁶.



MEXICO

Since 2006, Mr. **Juan Carlos Flores Solís**, Spokesman for the Peoples’ Front in Defensive of Water and the Land of Morelos, Puebla and Tlaxcala (*Frente de Pueblos en Defensa del Agua y la Tierra de Morelos, Puebla y Tlaxcala*) in Mexico, has been opposing the construction of the pipeline Morelos, which is part of the “Morelos” energy mega-project (*Proyecto Integral Morelos - PMI*),

45. See reports of Al-Haq, <http://www.alhaq.org/>.

46. See Association For Human Rights (*Asociación Pro Derechos Humanos - APRODEH*), <http://dhsf-cusco.blogspot.ch/2013/11/acusaciones-sin-fundamento-un.html>.

led by the Spanish and Italian companies Abengoa, Elecnor, Enagás and Bonatti, in the States of Morelos, Puebla and Tlaxcala. The project is criticised for violating the right of local communities to participate in decision-making processes regarding development plans and the right to be consulted. In addition, its implementation would affect their right to life, health and water. On April 7, 2014, Mr. Juan Carlos Flores Solis was arbitrarily arrested and detained by 12 men in civilian clothing, after he submitted a complaint on the same date to the Human Rights Commission for the detention of community leader Ms. **Enedina Rosas Velez** for “aggravated robbery” and “opposition to public works” in Atlixco, Puebla. Mr. Solis was accused of “riot”, “plunder”, “attacks to hydraulic work” and “extortion” for events that allegedly occurred during a protest in Acuexcomac, Puebla, in April 2012. On April 14, 2014, despite evidence that he did not participate in the protest, the Judge issued a detention order, which meant he could spend up to 32 years in prison. On May 6, 2014, a new arrest warrant was issued against him for “opposition to public work” and “aggravated robbery” against the Italian company Bonatti Spa in charge of the construction of the pipeline. As of August 2014, Mr. Solis and Ms. Enedina Rosas Velez were in preventive detention⁴⁷.



GUATEMALA

In Guatemala, there have been various examples of judicial harassment against land rights defenders opposing the mining activities in “La Puya”. On April 30, 2014, Messrs. **Alonso de Jesús Torres Catalán**, **Valerio Carrillo Sandoval** and **Jorge Adalberto López Reyes** were sentenced to nine years in prison for “threat” and “co-action” to three workers of the EXMINGUA mine, in a legal procedure that did not meet the due process standards and in which the judge reportedly recognised that the evidence was not sufficient to condemn the accused. In the same context, on May 27, 2014, charges against Ms. Telma Yolanda Oquelí del Cid, leader of the Northern Front of the Metropolitan Area (Frente Norte del Área Metropolitana - FRENAM), a movement of community members who defend the land from the expansion of mining activities in San José del Golfo and San Pedro Ayampuc, were dismissed, partly on the basis that, as a woman, she would not be able to carry a machete or threaten. However, as of August 2014, Messrs. **Jacinto Pineda Catalán**, **Fernando Castro Carrillo**, **Eusebio Muralles Díaz** and **Gregorio de Jesús Catalán Morales** remained prosecuted in relation to the same incident, which took place on May 3, 2012⁴⁸.

47. See Mexican Commission for the Defense and Promotion of Human Rights (*Comisión Mexicana de Defensa y Promoción de los Derechos Humanos - CMDPDH*), <http://cmdpdh.org/> and Human Rights Centre Miguel Agustín Pro Juárez (*Centro de derechos humanos Miguel Agustín Pro Juárez*), www.centroprodh.org.mx.

48. See Observatory Urgent Appeal GTM 001 / 0514 / OBS 036.1, June 3, 2014.



Demonstration in support of Juan Carlos Flores, and other prisoners of conscience (Mexico).
© Agencia Esmagen

In a few cases documented by the Observatory, judicial harassment has been based on charges that explicitly aim to restrict the exercise of freedom of expression or opinion, such as offences for publicising information or “insulting the State”.



VIET NAM

In Viet Nam, many activists, including bloggers, documenting land confiscations and campaigning for land rights have been arrested, convicted and jailed in the past few years. For instance, on May 30, 2012, Ms. **Thi Bich Khuong**, a farmer who denounced land confiscation targeting farmers and peasants via the Internet, was sentenced on appeal by the People’s Court in Ngh An province to five years in prison and three years of house arrest under article 88 of the Criminal Code on charges of “propaganda against the Socialist Republic of Viet Nam”. As of August 2014, Ms. Thi Bich Khuong was still in jail in the Nghe An prison camp⁴⁹. In June 2012, Dr. **Nguyen Xuan Dien**, a scholar at the Institute of Han-Nom Studies in Hanoi, was accused of publishing “slandorous and false information” after having posted on his blog photos and videos of thousands of riot police evicting peasants in Van Giang, Hung Yen Province,

49. See Observatory Joint Statement, February 25, 2014.

for the construction of a massive development project. In June 2012, the Deputy Prime Minister ordered the Ministry of Information and Communications (MIC) to close down his blog and to order a fine for “making use of a personal blog to circulate information harmful to public order”⁵⁰. In August 2012, Mr. **Dinh Dang Dinh** was convicted in an unfair trial at the People’s Court in Dak Nong and sentenced to six years in prison for “circulating propaganda against the Socialist Republic of Viet Nam”. Mr. Dinh had published many articles online about the adverse impacts of Bauxite mining in the Central Highlands. In jail, while he was suffering stomach cancer, he was denied access to medical treatment. Mr. Dinh was finally released by a presidential amnesty on March 21, 2014, but died soon after⁵¹.

On October 29, 2013, Messrs. **Tran Anh Hung** and **Nguyen Manh Ha** were sentenced to six and five years in prison, respectively, by the Provincial People’s Court of Khanh Hoa on charges of “intentionally revealing State secrets” (article 263.2 of the Criminal Code). Mr. Nguyen Manh Ha, former inspector of the Government Inspectorate of Viet Nam, had given a draft report on a controversial urban area project in Phuoc Long, Ward Nha Trang City (Khanh Hoa province) which had caused the forced eviction of residents to Mr. Tran Anh Hung, a resident of Nha Trang who opposed the project. This report, which revealed corruption amongst the local officials, was leaked to the press so that the evicted victims could use it to claim proper compensation or avoid eviction. As of August 2014, the two land rights defenders were to be serving their sentence in jail⁵².



CAMBODIA

In Cambodia, development projects have been used to justify the removal of the population from the land they use. This policy of land grabbing is said to have adversely affected an estimated 6% of the population, mostly the most vulnerable. In this context, land rights defenders face harassment, threats, imprisonment and killings. In 2012 alone, 232 rights workers and activists were arrested in relation to land and housing issues. In many cases they were held without charge, and without basic rights, like the right to contact a lawyer or family members⁵³. In several other cases, they were typically charged with charges

50. See Observatory Joint Statement, August 1, 2012.

51. See Observatory Joint Statement, February 25, 2014.

52. See Vietnam Committee on Human Rights Press Release, November 27, 2013. www.queme.net/eng/news_detail.php?numb=2179.

53. See Cambodian Human Rights and Development Association (ADHOC) Report, *A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012*, February 2013. In 2013 ADHOC registered a decrease in the number of people arrested and detained in connection to land disputes: 109 persons were charged, 43 arrested and 19 imprisoned. In the first three months of 2014, at least 50 people were charged and arrested and 12 were jailed. See ADHOC Report, *Land Situation in Cambodia in 2013*.

of “destruction of private property”, “intentional violence”, “defamation”, “disinformation” and “incitement”. One famous example is of Mr. **Mam Sonando**, Director of the *FM station 105 (Beehive Radio)*, one of the few independent media outlets in Cambodia, and an outspoken critic of the Government’s serious and systematic violations of land and housing rights. He was arrested on July 15, 2012, after reporting on the radio on a complaint lodged at the International Criminal Court (ICC) arguing that land grabbing in Cambodia amounted to a crime against humanity. The next day, the Prime Minister personally called for his arrest on national television and he was arrested shortly after. On March 6, 2013, the Prosecutor dropped three of the original and most serious charges against Mr. Mam Sonando, but requested that the Court charge him with “illegal logging” under article 97(6) of the Forestry Law. On March, 14, 2013, the Court of Appeal sentenced him to a five-year suspended imprisonment term for “instigation of a crime”, “obstruction of public officials”, “unlawful interference in the discharge of public duties” and “illegal logging”. Mr. Sonando was released on March 15, 2013 after spending eight months in prison⁵⁴.

In some cases, the land rights defenders were not jailed, but the legal proceedings against them were not cleared altogether: either the sentence was suspended or the trial was “forgotten”. Thus, the criminal charges (and risk of arrest) have been hanging as a Damocles sword over their heads.



CAMBODIA

An emblematic case is the one of Ms. **Yorm Bopha**, a land housing rights defender opposing forced evictions from the Boeung Kak area of Phnom Penh, who was sentenced on December 27, 2012 to three years in prison for “intentional violence with aggravating circumstances” under article 218 of the Criminal Code by the Phnom Penh Municipal Court for allegedly assaulting two people on August 7, 2012. This charge was not in line with the evidence presented and she claimed she was not even present on the scene. On November 22, 2013, she was released on bail by the Supreme Court after 444 days in prison and her case was sent back to the Appeals Court for further investigation. As of August 2014, she has remained free⁵⁵.



BURMA

In Burma, Mr. **Ko Htin Kyaw**, leader of the Movement for Democracy Current Force (MDCF), a community-based organisation that advocates against land-grabbing and other human rights violations is regularly subjected to judicial harassment. He staged a peaceful protest outside Rangoon’s North Okkalapa Court to denounce the seizure of part of the land of three

54. See Observatory Press Release, March 12, 2013.

55. See Observatory Press Release, September 22, 2013.

community members by a businessman, on July 30, 2013. On August 2, 2013, three days after the demonstration, he was summoned to the police station “for a discussion”. Once on the spot, he was charged under Article 505(c) of the Penal Code for “insulting the State” and immediately sent to court, which sanctioned his arrest. In October and November 2013, courts in various jurisdictions sentenced him to at least 33 months in jail.

In November 2013, the UN WGAD issued an Opinion calling for the release of Mr. Htin Kyaw after concluding that his detention was arbitrary, as the latter had exercised his “right to freedom of opinion and expression and to freedom of association” by engaging in a peaceful protest against the eviction of some people from their lands. The UN WGAD had also found on that occasion that the Act on the Right to Peaceful Assembly and Peaceful Procession as well as Article 505 (b) of the Penal Code “fall below the standards of international human rights law, offending in particular articles 9, 19 and 20 of the Universal Declaration of Human Rights”. On December 11, 2013, Mr. Htin Kyaw was released under a presidential amnesty but the authorities re-arrested him the same day on sedition charges. He was eventually released under another presidential amnesty on December 31, 2013. From June to August 2014, Mr. Htin Kyaw received eight sentences in eight courts under Article 505(b) of the Penal Code related to a series of peaceful protests he participated in between February and May 2014, including to denounce forced evictions. These sentences totalled seven and a half years of imprisonment.

Mr. Htin Kyaw also received two three-month sentences under Section 18 of the Act on the Right to Peaceful Assembly and Peaceful Procession for protests related to land rights. On June 4, 2014, the Kyauktada Township Court sentenced him under Section 18 for protesting forced evictions in Hlegu Township. On July 9, 2014, the Bahan Township Court sentenced him under Section 18, after the authorities considered his April 3 attempt to meet with Daw Aung San Suu Kyi to discuss a land eviction case as an unauthorised protest. Mr. Htin Kyaw was arrested on May 5, 2014, and jailed in Rangoon’s Insein Prison. As of August 2014, he was facing trials in four courts across Rangoon⁵⁶.



CAMEROON

In Cameroon, members of the NGO Struggle to Economize Future Environment (SEFE), a local environmental organisation based in Mundemba, Ndian division, Southwest Cameroon which defends the rights and represents the indigenous population in a public litigation that has been brought to court since August 2011 against the SG Sustainable Oils Cameroon (SGSOC) – a local subsidiary of Herakles Farms – projecting to build a large-scale palm oil plantation which would lead to massive deforestation and threaten the livelihoods of

residents in an area home to vital biodiversity, face judicial harassment. SEFE Director, Mr. **Nasako Besingi** was scheduled to appear before the Mundemba Court on charges of “publication of false news via the Internet”, following a complaint filed by the New York based company Herakles Farms. It followed the publication by Mr. Nasako in Meangwe of an email in August 2012, in which he reported how he was physically attacked on August 29, 2012 by a group of men identified as junior managers of Herakles Farms. He faces a maximum penalty of six months of imprisonment and a fine of 2,980 Euros. Mr. Besingi’s trial, which began on January 14, 2014 in Mundemba court, has already been postponed 10 times⁵⁷.

Finally, in a limited number of cases documented by the Observatory, land rights defenders have been equated to terrorists and abusively charged with blatantly disproportionate charges such as terrorism.



CHILE

In Chile, the Mapuche people and their leaders have been continuously criminalised and judicially harassed as a result of their struggle against the occupation and commercial exploitation of their ancestral lands. The State has used Law 18 314, commonly known as the “Counter-Terrorism Law”, and enacted in 1984 by the military dictatorship of General Pinochet, in connection with Mapuche land protests. Some of the activists targeted include land rights defenders. For example, in an emblematic ruling of July 30, 2014 related to the case *Norin Catriman and al v. Chile*, the Inter-American Court of Human Rights condemned the Chilean State for having used its anti-terrorist legislation against Mapuche leaders and community members peacefully working in the defence of their ancestral lands. The Court found that in its 2001 and 2002 sentences against the three Lonkos (Mapuche spiritual leaders) **Juan Ciriaco Millacheo Licán**, **Pascual Huentequo Pichún Paillalao**, and **Segundo Aniceto Norín Catrimán**, and against Messrs **Víctor Manuel Ancalaf Llaupe**, **Juan Patricio Marileo Saravia**, **Florencio Jaime Marileo Saravia** and **José Benicio Huenchunao Mariñán**, and Ms. **Patricia Roxana Troncoso Robles**, based on charges of “terrorist threat” and “terrorist arson”, the State of Chile had violated, *inter alia*, the principles of legality, equality and non-discrimination; the right to a fair trial, including the right to presumption of innocence, the right to equal protection, the right of the defence to examine witnesses, the right to personal liberty, including the right not to be subject to arbitrary arrest or imprisonment; and the right to freedom of thought and expression. It concluded that the excessive criminal sentences against Mapuche were arbitrary and urged the State to take all appropriate measures to cancel them. This ruling

57. See Observatory Urgent Appeal CMR 001 / 1112 / OBS 111.1, August 18, 2014.

Province of Imbabura. On June 11, 2014, Mr. Ramírez was denied the recourse for unconstitutionality. At the hearings, the Public Prosecutor declared that releasing him would be a “bad example for the community”. As of August 2014, Mr. Darwin Javier Ramírez Piedra was still detained and a hearing was scheduled for September 4, 2014⁵⁹.

Moreover, in some cases, charges filed against land rights defenders have been completely unrelated to what they have done, but nonetheless abusive and aimed at hindering their human rights activities.



EGYPT

For example, in Egypt, members of the Land Center for Human Rights (LCHR) have faced multiple threats linked to their work in defence of land rights. The organisation faced administrative harassment by the authorities between 2009 and 2012. The authorities searched the office several times, accusing them of evading taxes and insurance whereas the organisation has officially stopped receiving funding since 2011, and they now only rely on volunteers. Moreover, in May 2013, Mr. **Karim Saber**, Executive Director of LCHR and a member of OMCT General Assembly, was sentenced in absentia to five years’ imprisonment on charges of “defamation of religion”. In 2010 he authored a book titled *Ayn Allah* (Where is God), which was used as evidence. Mr. Saber believes that the lawsuit against him is linked to the fact that the LCHR successfully established 65 independent trade unions for farmers, fishermen and workers. At his appeal on June 5, 2014, the sentence was confirmed and Mr. Saber faces arrest at any time⁶⁰.

2. Criminalising laws and other restrictions

A number of governments have adopted legislation that is or can be used to criminalise human rights defenders and restrict their activities more systematically. Some of these laws have an especially negative impact on defenders who focus on land issues as the legislation often criminalises the main tools used by these defenders, including collective mobilisation and social protests.

59. See Ecumenical Commission for Human Rights (*Comisión Ecueménica de Derechos Humanos - CEDHU*), http://cedhu.org/index.php?option=com_content&view=article&id=278:comision-de-organizaciones-defensoras-de-derechos-humanos-y-la-naturaleza-para-el-monitoreo-de-la-situacion-de-la-poblacion-de-la-zona-de-intag-provincia-de-imbabura-&catid=24:noticias-antteriores.

60. See FIDH Press Release, *Egypt: Ongoing Crackdown against Freedom of Expression*, June 18, 2014.



GUATEMALA

In Guatemala, the “Túmulos Law” of 2014 (Decree 8-2014), supposed to guarantee the circulation of vehicles without obstacles, opens the door to the prohibition of social protest. It imposes criminal sanctions ranging from fines to up to one-year prison sentences for people deemed to have blocked public roads and hampered circulation⁶¹. Moreover, the Guatemalan parliament is currently debating a law initiative to prevent commercial and industrial terrorism and espionage⁶² which if passed would threaten human rights defenders and specifically land rights defenders, with criminalisation for merely criticising corporations under the argument of protecting corporations’ reputation. If passed, this would be the fourth repressive law passed in 2014⁶³.



BURMA

In Burma, human rights defenders, including land rights activists, who are peacefully protesting to denounce human rights violations have often been charged under article 18 of the Peaceful Gathering and Demonstration Law on the basis that they have not been granted prior permission to demonstrate from the authorities. For example, Mr. **Thaw Zin**, a member of the Yangon People’s Support Network and a human rights defender campaigning for farmers affected by the Letpadaung copper mine in Salingyi Township, Sagaing Division, is currently serving a 15-month sentence in Monywa prison, Sagaing Division. In April 2013, authorities detained him under article 18 of the Peaceful Gathering and Demonstration Law for organising protests against the expansion of the Letpadaung mine without obtaining the authorities’ prior permission. The charges were later dropped under a December 2013 presidential amnesty. On February 11, 2014, plain-clothed police officers re-arrested Mr. Thaw Zin under article 505(b) of the Criminal Code for disturbing public tranquillity and for violating article 447 of the Criminal Code related to criminal trespass for his role in helping local villagers protest against land seizures related to the Letpadaung copper mine. He was sentenced in March 2014 to 15 months in prison⁶⁴.

61. See questionnaire sent to the Observatory by UDEFEGUA.

62. *Iniciativa de Ley para Prevenir el Terrorismo y Espionaje Comercial e Industrial*.

63. Information provided to the Observatory by UDEFEGUA.

64. See Observatory Urgent Appeal MMR 001 / 0214 / OBS 009, February 12, 2014.



Handcuffed peasants of Bajo Aguan, Honduras, are escorted by policemen as they are transferred in Tegucigalpa on August 22, 2012, while union members demand their freedom. At least 30 peasants of Bajo Aguan were arrested during this protest. © AFP PHOTO/Orolando SIERRA



CANADA

In Canada, a number of organisations fear that the 2001 Anti-Terrorism Act (ATA) could be used against activists as civil disobedience becomes associated with “terrorism”. This law appears to be directed in particular at First Nations land rights defenders. In 2002, after the adoption of the ATA, the Canadian Security Intelligence Service stated in its annual report that “Canada is confronted by domestic terrorism issues related to Aboriginal rights, White supremacists, sovereignty, animal rights and anti-globalization issues”⁶⁵. Nevertheless, as of August 2014 no charges had been framed against land rights defenders under the ATA⁶⁶.



UGANDA

In Uganda, on October 2, 2013, President Yoweri Museveni adopted the Public Order Management Act (POM Act), which aims “to provide for the regulation of public meetings; to provide for the duties and responsibilities of police,

65. See Proceedings of the Canadian Special Senate Committee on the Anti-terrorism Act, available at http://www.parl.gc.ca/Content/SEN/Committee/381/anti/15evb-e.htm?comm_id=597&Language=E&Parl=38&Ses=1.

66. See International Civil Liberties Monitoring Group (ICLMCG) on www.iclmg.ca/ and Mining Watch Canada on www.miningwatch.ca/.

organisers and participants in relation to public meetings; [and] to prescribe measures for safeguarding public order”. Subsequently, on April 23, 2014, the senior security management warned Twerwaneho Listeners Club (TLC) during a meeting held in the office of the District police Commander that was attended by the Resident District Commissioner, the District Police Commander and the District Internal Security Organ officer that if any meeting was held, organisers would be arrested and charged on the basis of the POM Act for organising an illegal assembly. The same day, the police denied TLC the right to hold a public meeting with communities of people who were evicted by the Uganda Wildlife Game Reserve on the basis of the POM Act. Police refused granting permission on the grounds that all parties in the community meeting had no mandate to hold such a meeting.

On July 4, 2014, police indeed arrested two TLC activists, Messrs. **Byaruhanga Salongo** and **Ibrahim** from Hakibaale, for holding a public community meeting to discuss the land ownership status which a local Member of Parliament was attempting to grab from an 89-year-old man. Police also used tear gas to disperse the meeting before arresting the three activists along with Mr. Nyaruhuma Erikanjeru, the 89-year-old man. The Police released them a few hours later on the same day following TLC’s intervention to inquire the reason for the arrest. The activists were not charged but they were repeatedly accused by the police of having held an illegal assembly⁶⁷.

In some countries, NGOs working on land rights have even been shut down, threatened with closure, or had the scope of their activities restricted (e.g *Cameroon, Ecuador, Cambodia*), on the grounds that they pose a threat for the security of the State or were conducting illegal activities.



ECUADOR

On December 4, 2013, the **Pachamama Foundation** (Fundación Pachamama), an NGO dedicated to the defence of indigenous peoples and environmental rights which opposed petroleum projects in the southern part of the Amazonian forest, was dissolved by the Ministry of Environment of Ecuador. This decision was taken on the basis of article 26 of the Presidential Decree 16 adopted on June 20, 2013 with the aim of controlling all forms of social organisation and prohibiting “political activities reserved to political parties and movements (...) that interfere with public policies and undermine national or external security of the State or compromise public peace”. As of August 2014, the Pachamama Foundation was still suspended⁶⁸.

67. See questionnaire sent to the Observatory by Twerwaneho Listeners Club (TLC).

68. See Observatory Press Release, December 6, 2013.



CAMBODIA

In Cambodia, the NGO **Ponlok Khmer** has been threatened with closure for supporting the Kuoy community members of Prame Commune, Preah Vihear Province, in a land dispute with the Chinese Company Roy Feng International Co. Ltd. In order to stand up against the violation of their land rights, the villagers decided to destroy the company's sugar plantation on April 1, 2014. Mr. **Lut Sang**, a staff member of Ponlok Khmer, was present to monitor the protest. Mr. Oum Mara, Governor of Preah Vihear Province subsequently addressed a letter to the Ministry of Interior, asking for the closure of the local office of Ponlok Khmer, on the grounds that the NGO had incited the villagers to commit illegal activities. Moreover, Mr. Lut Sang and three community leaders, Ms. **Noun Mon**, Ms. **Roeung Khann** and Ms. **Seung Sang**, were summoned by the provincial police chief to appear at the local police station. However, on the same day, the police adjourned the hearing without any further notice. As of August 2014, Ponlok Khmer was still operating. However, the Governor's letter represents a serious threat and is a clear attempt to silence Ponlok Khmer⁶⁹.



CAMEROON

In Cameroon, the right of the NGO **Nature Cameroon** to organise public meetings and demonstrations was suspended. Nature Cameroon is a community-based NGO group in the village of Nguti that opposes a palm oil project operated by the US agribusiness company Herakles Farms destroying natural forests and livelihoods in the country's Southwest region. In September 2013, its members received an official letter from the Divisional Officer for Nguti Sub-division dated September 11, 2013 informing them they no longer had the right to organise any meetings. The decision argued that Nature Cameroon had organised several meetings "not authorised by the administration" – although the administration refrained from actually naming any of those alleged meetings⁷⁰.

In many cases, local authorities also impose administrative procedures, aimed at preventing the work of land rights defenders by forbidding them access to certain areas or requiring complex paperwork, extensive documentation or lengthy administrative processes. These requirements are generally not specified by law and are thus often entirely arbitrary. The administrative barriers make it more difficult for land rights defenders to work, and also serve to provide surveillance of their whereabouts and activities by local authorities.

69. See Observatory Urgent Appeal KHM 002 / 0414 / OBS 026, April 11, 2014.

70. See Observatory Urgent Appeal CMR 001 / 1112 / OBS 111.1, August 18, 2014.

Slander

Another form of attack often suffered by land rights defenders is the denigration of their work and reputation by various actors who attempt to portray their human rights work negatively. Indeed, because they often demand respect for human rights in opposition to large-scale economic projects, land rights defenders are often branded as “enemies of development” (*Indonesia, Russia*), “enemies of the State” (*Cameroon*), “foreign spies” (*Indonesia*), “eco-hysteric” (*Guatemala*), “radicals” (*Canada*), “tarnishing the image of the country” (*Honduras*), “gang members” (*Ecuador*) or “ecologists”, a term which is considered an insult in some contexts (*Ecuador*). These insults often appear in statements by State officials (both formal and informal statements) and in media communications. Such labels seek to stigmatise and discredit land rights defenders who stand up against the potential or real negative impacts of massive land deals and exploitation of natural resources. As Mr. Samuel Nguiffo, Director of the Cameroonian Centre for Environment and Development (CED), put it: “*Because the State gives land allocation, the defender can very quickly be perceived as an obstacle to the decisions of the State. He is then treated as an enemy of the State, because he delays the completion or progress of the investment*”⁷¹. This was echoed by Ms. Margaret Sekaggya, former UN Special Rapporteur on the Situation of Human Rights Defenders, in her 2013 Report to the UN General Assembly⁷².



HONDURAS

In Honduras, on February 18, 2013, during a press conference, the Commander of the Joint Task Force “Xatruch III”, Mr. German Antonio Alfaro Escalante, reportedly accused two leaders from the United Peasant Movement of Aguán (*Movimiento Unificado Campesino del Aguán - MUCA*), Messrs. **Yoni Rivas** and **Vitalino Álvarez**, of “tarnishing the image of the Honduran nation” and “creating constant problems irrespective of laws and legally established institutions, provoking instability and insecurity”. MUCA campaigns for the land rights of peasant farmers amid ongoing disputes over land ownership in the region of Honduras known as Bajo Aguán, in the Departments of Colón and Yoro⁷³. In December 2, 2013, the same commander accused during a press conference MUCA of having had several meetings to incite disorder through invasions and murder. He added that foreign national Ms. **Annie Bird**, who represents

71. Interview conducted on May 27, 2014.

72. See UN Special Rapporteur on the situation of Human Rights Defenders Statement, OHCHR Press Release, October 29, 2013.

73. See questionnaire provided to the Observatory by COFADEH.



Movimiento Unificado Campesino del Aguan (MUCA) farmers organization leader Yoni Rivas answers questions during a press conference in Tegucigalpa on September 27, 2012 (Honduras). © AFP PHOTO/Orlando SIERRA.

several of the peasant organisations before the IACHR, was conducting activities of destabilisation by meeting peasant leaders and questioning the judiciary system in Honduras. The commander appeared on the television show on Channel 11 together with Roger Pineda, executive officer for Dinant Corporation, a company owned by Miguel Facussé, one of the three richest businessmen in the country, with large economic interests in the Bajo Aguan region. Following a petition filed in October 2013, on May 8, 2014, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures in favour of 123 leaders of peasant movements struggling for land in Bajo Aguan belonging to MUCA, MARCA, Peasant Movement to recover the Aguán (*Movimiento Campesino Recuperación del Aguán - MOCRA*) and the Peasant Movement Gregorio Chávez (*Movimiento Campesino Gregorio Chávez – MCGC*).

Acts of harassment have continued after these incidents. On May 21, 2014, a police and military contingent accompanied by private security guards entered the premises of MUCA's cooperative La Trinidad and ordered members of the cooperative to collect their own equipment and leave the premises within the next 20 minutes. Five minutes later, the contingent started shooting and throwing tear gas. 16 farmers were arrested including MUCA President Mr. **Walter Cárcamo**. Nine were charged with “usurpation”. Five of them were beneficiaries of precautionary measures granted on May 8, 2014 by the IACtHR, Messrs. **Jaime Cabrera**, **Walter Cárcamo**, **José Chávez**, **Antonio Rodriguez** and **Jeremiah Cruz**⁷⁴.

74. See questionnaire provided to the Observatory by COFADEH.

When this type of slander is made via official statements by State officials, it makes it difficult for a genuinely open discussion between stakeholders about potential human rights violations and development choices to take place. Worse, such statements send a signal that it is acceptable to target land rights defenders, and can be understood as a tacit endorsement by the government to stifle their work.



LIBERIA

In her 2014 Annual Message, the President of Liberia stated that: *“More recently the emphasis [of NGOs] has been on democracy and governance; human rights; environment and natural resources. In these latter functions, some NGOs have sought to become super-national bodies challenging national sovereignty even as they themselves lack national and international governance status and rules in transparency and accessibility”*⁷⁵.

“Anti-development” arguments are also often used to divide communities, especially during consultations, which add to the burden of land rights defenders by ostracising them from their communities. Authorities and companies seek to discredit land rights defenders by asserting that those who oppose large-scale land deals stifle their community’s local development. It is not rare that during meetings with affected populations, representatives of local authorities and private economic operators accuse defenders of standing against a project that would bring new jobs and/or infrastructure to the community. Such a strategy creates dissension and divisions among the community.



CANADA

On September 1, 2012, the Minister of Natural Resources of Canada, Mr. Joe Oliver, wrote in an open letter arguing that Canada should “streamline the regulatory process” to develop oil, gas, metal and mineral projects more quickly in order to increase exports to Asian economies. Part of the regulatory process for new projects includes the consultation of stakeholders such as First Nations. The Minister directly targeted groups that seek to ensure due process in extractive industry projects, by saying *“Unfortunately, there are environmental and other radical groups that would seek to block this opportunity to diversify our trade. Their goal is to stop any major project no matter what the cost to Canadian families in lost jobs and economic growth. No forestry. No mining. No oil. No gas. No more hydroelectric dams. (...) They use funding from foreign special interest*

75. See President of the Republic of Liberia, *Annual Message to the Third Session of the 53rd National Legislature of the Republic of Liberia, on the Theme: ‘Consolidating the Processes of Transformation’*, January 27, 2014.

groups to undermine Canada's national economic interest". The Prime Minister Stephen Harper had issued similar statements in January 2012⁷⁶.

Illegal surveillance

Illegal surveillance – particularly of digital communication – is often used to gather information on land rights defenders and/or to intimidate them. The reach of surveillance in a specific country is generally very difficult to assess. When surveillance is aimed at gathering data, it can be very hard to know with certainty when one person or group is being monitored. Indeed, surveillance is generally kept covert so that people do not know they are being watched and therefore do not take precautions. Nevertheless, in a number of cases, it has been possible to discover surveillance mechanisms used by governments and companies⁷⁷. It is also worth noting that a number of governments have outsourced their surveillance activities to private sector suppliers⁷⁸, so that the limited technical capacity of a company or government does not preclude it from engaging in high-tech snooping. In some cases, States and companies have exchanged the information they collected with non-State actors (e.g. *Canada, Brazil*).



CANADA

In Canada, it was revealed that since 2006, the Government had given instructions to the Department of Indian and Northern Affairs Canada (INAC) to take a lead role in spying on First Nations, in an attempt to predict future protests and other activities organized by First Nations communities⁷⁹. The newspaper *Globe and Mail* also accessed eight official reports by the Canadian Forces' National Counter-Intelligence Unit, which looked at the activities of native organisations between January 2010 and July 2011⁸⁰. Furthermore, the paper *The Dominion* revealed in 2012 that the Government organised meetings with energy companies where they could "review selected classified reports" with officials from the national secret intelligence. This raised legitimate concerns

76. See Trish Audette Article, "Harper Concerned 'Foreign' Money Could 'Hijack' Gateway Pipeline", in *Postmedia News*, January 6, 2012.

77. FIDH is involved in several complaints brought against surveillance companies for allegedly selling surveillance equipment to the Libyan and Syrian governments.

78. See www.globalcause.net/.

79. See Indigenous Peoples Solidarity Movement Ottawa Statement, June 13, 2011.

80. See Steven Chase Article "Military Intelligence Unit Keeps Watch on Native Groups", in *The Globe and Mail*, October 12, 2011.

that the information gathered by government services on First Nations is then provided to companies that could potentially violate their land rights⁸¹.



BRAZIL

In Brazil, the companies Vale⁸² and Belo Monte Consortium⁸³ are under investigation for allegedly conducting illegal surveillance activities on social movements and human rights defenders believed to be potential obstacles to the companies' activities, including the Landless Workers' Movement (*Movimento dos Trabalhadores Rurais Sem Terra - MST*) and the *Rede Justiça nos Trilhos* (JnT), a network of organisations defending the land-related rights of communities. In particular, Vale has allegedly engaged in acts of corruption of State agents, illegally obtained confidential information and access to databases, Belo Monte could be charged for illegal recordings, identity theft, and unfounded employee dismissals. The Brazilian Intelligence Agency (*Agência Brasileira de Inteligência - ABIN*) is alleged to have provided assistance to Belo Monte and Vale. The offences were reported to the State Prosecutor in March 2013, but so far there is little advance in the investigation or prosecution.

Furthermore, some surveillance is purposefully rendered visible, at least partly, so that defenders know that they are being monitored and thus exert self-censorship. Indeed, **surveillance creates a climate of fear and makes it harder for activists to safely and openly communicate with each other.**



INDONESIA

In Indonesia, staff of *Wahana Lingkungan Hidup Indonesia (The Indonesian Forum for Environment - WALHI)* report that their headquarters in Palembang, South Sumatra, is regularly watched by an unknown individual believed to be a plain-clothed policeman⁸⁴.

81. See Tim Groves Article, "Canada's Spy Groups Divulge Secret Intelligence to Energy Companies", in *The Dominion*, October 12, 2012; Martin Lukacs and Tim Groves Article, "Canadian Spies Met with Energy Firms, Documents Reveal", in *The Guardian*, September 10, 2013.

82. Vale is a Brazilian company which conducts mining operations, which has been accused of negatively impacting on the human rights of residents.

83. In April 2011 and following a complaint by civil society organisations on behalf of local communities, the Inter-American Commission on Human Rights (IACHR) ordered the suspension of the Belo Monte dam, due to the project's potential harm to the rights of traditional communities living within the Xingu river basin. The complaint argues that "the dam would cause irreversible social and environmental damage, including forced displacement of communities, while threatening one of the Amazon's most valuable areas for biodiversity conservation".

84. See questionnaire provided to the Observatory by KontraS.



A Brazilian peasant sprays red paint in the sidewalk of Brazilian mining company Vale S.A. (Companhia Vale do Rio Doce) headquarters during a demonstration against damages to environment on April 18, 2012 in Rio de Janeiro (Brazil). © AFP PHOTO / ANTONIO SCORZA



HONDURAS

In Honduras, Mr. **Pedro Canales Torres**, President of the Association for the Development of the Zacate Grande Peninsula (*Asociación para el Desarrollo de la Península de Zacate Grande - ADEPZA*), an NGO engaged in the defence of indigenous peoples' land rights, has been threatened and harassed by both State and private actors for supporting the community of "Los Huatales" in a land dispute against the contested landowners of Zacate el Grande. On April 4, 2013, he noted that a policeman of San Lorenzo Valley was taking pictures of his car. When challenged, the policeman was startled and claimed it was because the car was poorly parked. Earlier, on January 29, 2013, Mr. Canales Torres had received threats from a private security guard of the landowner Mr. Facussé, who warned him that "the time was coming when Pedro's family would cry tears of blood". Mr. Torres has also been victim of a series of anonymous death threats, attacks and sabotage since 2012⁸⁵.

In several countries, land rights defenders reported that they received information that their communications were being monitored. One defender in Africa received an SMS saying: "*you need to be careful, your life is being monitored here at NSA [National Security Agency]. I will not say who I am but will talk one day (...)*". It is difficult to know whether such "leaks", anonymous or not, are meant to help or threaten them.

85. See Observatory Urgent Appeal HND 001 / 0413 / OBS 036, April 10, 2013.

Impunity for the repression of land rights defenders

Generally acts of harassment suffered by land rights defenders remain in impunity because of States' failure to hold perpetrators to account, either by their action or their negligence. While land rights defenders often report to relevant authorities that they are victims of human rights violations, in many instances judicial institutions do not adequately investigate, prosecute or sanction perpetrators, and the majority of such violations remain in total impunity. Although civil society organisations and human rights defenders interviewed during our research could not provide precise figures, nearly all interviewees pointed to the impunity of violations against land rights defenders, including for threats, physical attacks and more serious crimes

such as enforced disappearances and extra-judicial killings⁸⁶. Out of the 106 situations affecting 282 land rights defenders and 19 NGOs which were covered by the Observatory from January 2011 to August 2014, more than 95% of them have remained unpunished.

“Out of the 106 situations affecting 282 land rights defenders and 19 NGOs which were covered by the Observatory from January 2011 to August 2014, more than 95% of them have remained unpunished”.

International and regional human rights instruments provide for the right to an effective remedy for anyone whose rights and freedoms have been violated. Pursuing human rights work, such as exposing human rights violations and seeking redress for them, is largely dependent on the degree of security enjoyed by human rights defenders themselves. Addressing the question of impunity is a critical element to ensure that land rights defenders operate in a safe, enabling and conducive environment.

The right to an effective remedy requires States to investigate complaints of attacks and threats against human rights defenders and to punish the perpetrators. Commitment to the protection and promotion of human rights is

86. According to Global Witness, out of nearly one thousand cases recorded against land and environmental defenders, only 1% of perpetrators of murders had been tried, convicted and punished between 2002 and 2013. See Global Witness Report, *Deadly Environment: The Dramatic Rise in Killings of Environmental and Land Defenders*, 2014.



Kaeng Krachan National Park chief Chaiwat Limlikitsorn has been summoned to court for questioning about the disappearance of Karen human rights activist Porlajee, 'Billy', Rakchongcharoen (Thailand). © BANGKOK POST PHOTO/PATTANAPONG HIRUNARD

incomplete without ending the culture of impunity. Stronger political will to tackle impunity must complement legislative and administrative measures.

1. Weak judicial system and law enforcement

This systematic impunity may in part stem from the low capacity of security forces to address such crimes, including a lack of training in the legislation protecting human rights. According to the former UN Special Rapporteur on the Right to Food, *“the actions of human rights defenders working on land tenure issues nearly always take place in remote rural areas, where the presence of the State is weak, and where sometimes impunity reigns regarding attempts to the rights of local communities committed by large landowners. It is a problem of capacity, for security forces, to ensure an adequate protection of human rights defenders. ... [G]ood training of security forces and enhanced capacity could be a solution. At the same time, we are in a paradoxical situation, because it’s not rare that security forces take the side of large landowners”*⁸⁷.

In many countries, judicial systems were also criticised for lacking independence. For instance, in *China*, law-enforcement agencies very rarely conduct serious investigations into violations and judicial authorities do not

87. Interview with Olivier De Schutter conducted on June 6, 2014.



Photo taken a few hours after the killing of Chut Wutty (Cambodia). © ADHOC

operate with sufficient independence from the Government when hearing cases related to human rights, and do not demonstrate independence in their court decisions. Furthermore, courts are often controlled by local interests, and thus cases about major projects related to the local economy may be deemed as too “sensitive” for courts to accept⁸⁸. Similarly, justice in *Cambodia* is highly controlled by the executive power, and criminal processes in *Honduras* have often been decided in favour of powerful economic interests instead of land rights defenders. Similar claims regarding the lack of investigation and independence of courts were made by organisations in many countries covered by the research.



CAMBODIA

For instance, to date, no serious investigation has taken place to clarify the circumstances and seek justice for the extra-judicial killing of Mr. **Chut Wutty**, founder of the National Resources Protection Group (NRPG) and one of the most prominent anti-logging defenders in Cambodia. On April 26, 2012, Mr. Wutty was fatally shot during a heated stand-off with security forces and representatives of the logging company Timber Green in the Koh Kong Province,



while investigating illegal logging and land seizures. Mr. In Rattana, a police officer, was also found shot dead at the scene. Following a chaotic investigation, the Koh Kong Provincial Court declared on October 4, 2012 that the investigation into Mr. Wutty's death closed after concluding that Mr. Wutty was killed by Mr. In Rattana, who was in turn accidentally shot by a security officer from Timber Green who was trying to disarm him. This security guard only received a two-year sentence for the "unintentional murder" of the police officer and was released from prison only weeks after his sentencing⁸⁹.

In this context, it is understandable that land rights defenders report to lack confidence in the justice system and do not rely on the judicial system and state security forces for support or protection.

2. Impunity and collusion between actors of repression

In many countries where attacks against land rights defenders are generally ignored with impunity, a lack of independence of justice echoes a broader context of corruption and collusion. As outlined above, various actors have been documented as involved in human rights violations against land rights defenders, including actors responsible in principle for ensuring their safety: State actors, including Government officials, local authorities, public security forces such as the police and the military and members of the judiciary, non-State actors, including companies, developers, private security guards, paramilitary and other private armed groups, unidentified actors, the media and others. These actors often attack land rights defenders simultaneously, resulting in a situation where land rights defenders are harassed from multiple directions and have nowhere to turn to. Not only is the State often responsible for developing, permitting, and implementing mega-projects that can be linked with the violation of land rights and the rights of land human right defenders (as outlined in Chapter 1), but in many cases government officials are also suspected of directly having financial stakes in private projects, or allowing themselves to be corrupted by private companies. In these cases, some government officials and the private sector cooperate against land rights defenders opposing their projects, and land rights defenders face many challenges when trying to hold perpetrators of violations accountable or seeking protection from the State against such abuses. According to some interviewees, this type of collusion also takes place among some foreign embassies, which seem to be more concerned with protecting the investments of companies from their countries of origin than respecting human rights.

89. See Observatory Press Release, April 26, 2013.



CHAPTER III

Overview of mechanisms available to land rights defenders in case of harassment

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This chapter aims to examine the different mechanisms available for the protection of land rights defenders at the national, regional and international levels when their rights are violated. It seeks to reply to the question: “if, as a human rights defender working on land rights, I am facing harassment and intimidation, where can I turn to for protection?” The response to this question offers an analysis of a complex institutional framework that can be activated for the protection of human rights defenders.

In particular, this chapter examines how these mechanisms have addressed the issue of land rights defenders so far and what are their strengths and weaknesses. It concludes that the institutional framework has significantly developed over the past few years, with more options available to land rights defenders while highlighting the urgent need to systematically integrate defenders protection across mandates and to strengthen the system to ensure a safer environment for land rights defenders.

As exposed in Chapter II, throughout the world, land rights defenders are particularly vulnerable as they are exposed to a broad range of human rights violations, including the most extreme forms of reprisals and intimidations, such as threats, attacks and ill treatments, killings, slander and judicial harassment. Where can they turn to when they face such human rights violations?

Under international human rights law, States have not only the obligation not to violate the rights of land rights defenders (negative obligation), but also to provide effective remedies for their protection and to ensure respect for these rights in the face of often powerful political and economic interests (positive obligations). While accessible remedies are of paramount importance, the experience of the Observatory regularly shows the failures of domestic remedies for land rights defenders. More often than not, remedies remain inaccessible and ineffective and the land rights community often places little confidence into the formal legal system. In turn, we have seen numerous examples over the years in which the legal system has turned to criminalising and harassing land rights activists. This lack of protection remains until today a major challenge that needs to be addressed.

“...land rights defenders often have to turn to regional or international avenues as the only reasonable option to seek protection and redress for the abuses suffered”.

In some countries, domestic mechanisms have been developed specifically aiming at providing protection to human rights defenders. However, in the absence of effective internal remedies, land rights defenders often have to turn to regional or

international avenues as the only reasonable option to seek protection and redress for the abuses suffered.

With the adoption of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, also known as the “UN Declaration on Human Rights Defenders” in 1998, the international community has marked its attachment to the protection of human rights defenders. Since then, and over the past years, positive institutional developments have taken place at the regional and international levels, with the creation of mechanisms, programmes and policy instruments specifically aimed at protecting human rights defenders at risk and at preventing violations against them.

Nonetheless, as outlined hereunder, each “mechanism” has its own advantages and limitations, both in terms of mandates and resources. In addition, a number of challenges persist as far as coordination and complementarity of their respective actions is concerned, and the lack of enforcement and supervision mechanisms ultimately leaves the responsibility for implementation to States.

Alongside, quasi-judicial and judicial bodies have remained useful tools which can be activated by land rights defenders in order to obtain medium- or long-term redress. The use of emergency mechanisms, such as “interim measures” and “precautionary measures”, constitutes another way of seeking protection to prevent irreparable harm, even though such mechanisms are often insufficiently equipped to deal with the specific situations faced by human rights defenders.

National and international mechanisms dedicated to protect – and prevent violations against – land rights defenders

1. At the domestic level: mechanisms aimed at protecting human rights defenders

At the national level, States have the primary responsibility of ensuring the realisation of human rights and the protection from violations. In most countries, judicial and administrative recourse mechanisms for rights violations have been set up, and are in place to respond to violations.

In some countries, national human rights institutions include the protection of human rights defenders within their priorities of action and have, in theory, an explicit mandate to respond to the specific threats and needs faced by human rights defenders. National human rights institutions are typically characterised by a broad human rights mandate and should even, in the absence of an explicit reference to human rights defenders, play a more active role for the protection of human rights defenders, legitimising

their role by addressing and/or dialoguing on the underlying human rights issues of land disputes.

In addition, in a few countries, national mechanisms specifically aimed at providing protection to human rights defenders have been set up to complement the judicial and administrative system, as well as the independent administrative authorities.

Indeed, the past years have witnessed some positive developments, with the **creation of specific mechanisms or programmes to protect human rights defenders**, particularly in countries where land rights defenders have been particularly targeted. This indicates that States have recognised the need to fight against the harassment specifically targeting specifically defenders for their legitimate human rights activities. To date, five countries have developed such protection programmes: *Brazil, Colombia, Guatemala, Mexico* and *Ivory Coast*. Initiatives to adopt laws aimed at protecting human rights defenders and setting up specific mechanisms have stalled in *the DRC, Honduras, Indonesia, Nepal* and the *Philippines*. Interestingly, in almost all of these countries, the situation of land rights defenders is particularly concerning, with a high rate of killings and criminalisation.

Protection programmes are different in each country¹: they provide for preventive, protective and emergency measures for human rights defenders at risk, they articulate actors' responses, and they offer human rights defenders trainings in security and physical protection. Many of them have established physical protection schemes that provide human rights defenders with cell phones, radio equipment, locks, armoured cars, or bodyguards.

However, **the few existing protection programmes have been criticised for their insufficient ability to provide effective protection**. The main dysfunctions pointed out relate to their protracted delays in processing cases, their limited resources (including budget and staffing), their weak presence in remote areas where land rights defenders are most at risk, their lack of enforcement capacities, their difficulties to adapt to the individual situation of the person at risk, and their inability to tackle the root causes of violations. Moreover, unfortunately, such mechanisms often lack political support at the highest level. Besides that, while some land rights defenders have been accepted into such programmes, **none of the existing programmes have a specific approach to land rights defenders**.

1. For more information, see Protection International Report, *Focus 2013, Public Policies for the Protection of Human Rights Defenders: The State of the Art*, March 2013.

However, while several land rights defenders have reported to the Observatory that they had eventually stopped relying on such mechanisms for protection, it should be acknowledged that they have provided some degree of protection to some of them and allowed them to pursue their activities. Nonetheless, a more systematic analysis of such mechanisms should be carried out to frame specific recommendations in order to improve their effectiveness.



MEXICO

In Mexico, the Law for the Protection of Human Rights Defenders and Journalists entered into force on June 25, 2012. While this is a positive development, by the end of February 2014, the Interior Ministry reported that 70% of the applications for protective measures granted had not been implemented as of yet. Moreover the system put in place presupposes the strengthening of the rule of law. As the Ministry of Interior is in charge of implementing protective measures, the system may appear unable to provide effective protection in those cases where human rights defenders are criminalised. In addition, procedural safeguards may be insufficient.

For instance, over the past few years, Ms. **Claudia Zenteno**, an activist defending the lake area of Xochimilco in Mexico from illegal constructions by land invaders², was subjected to threats and attacks. Her family members also suffered abuses, including ill-treatment and abduction. In January 2013, the dangerousness of her situation was recognised by State authorities and she was provided with four bodyguards by the Federal Protection Mechanism for Human Rights Defenders and Journalists. However, in December 2013, the General Attorney's office withdrew the protection without informing her before, leaving her in a very precarious situation³.



HONDURAS

In Honduras, on August 6, 2014, civil society organisations submitted amendments to the draft Bill on the Protection Mechanisms for Human Rights Defenders, Justice System Officials and Social Communication that is under discussion in the National Congress. They suggested that the bill should establish specific protocols to respond to the specific needs of vulnerable groups, including land rights defenders.

Notwithstanding the existence of judicial and administrative recourse mechanisms, many countries have failed to effectively prevent human rights violations against land rights defenders and to protect them, to fight against the impunity of abuses against them, and to deter further violations against

2. People paid by political groups to invade land plots.

3. See CMDPDH.

them. In some cases, as mentioned in Chapter II, law enforcement agencies and the judiciary have been used as tools of repression rather than as means to ensure the rule of human rights law. Accordingly, the use of international and regional mechanisms, programmes and policy instruments aimed at protecting human rights defenders at risk and at preventing violations against them remains essential, and their coordination efforts as well as protection capacities shall be encouraged and strengthened.

2. International and regional independent expert bodies dedicated to the protection of human rights defenders

Alongside domestic remedies or mechanisms, land rights defenders can also turn to the UN and regional bodies⁴. They are used to alert States on specific cases and situations and can contribute to increasing the visibility of the cases and to mobilise actors that can provide protection or remedies. Overall, these mechanisms are playing a positive role for land rights defenders, although their capacity to provide effective protection should be enhanced.

UN Special Procedures

At the international level, many UN Special Procedures have addressed the issue of land rights defenders⁵. UN Special Procedures are independent human rights experts charged with the mandate to examine the situation of human rights, either in a country or regarding a specific issue.

Since 2000, human rights defenders at particular risk can address their concerns to a dedicated UN special procedure that can take urgent action on their behalf. In taking such action, the mandate-holder usually depends on information from local human rights defenders or international organisations working on their behalf.

4. Some of these bodies require the exhaustion of domestic remedies.

5. In particular the Special Rapporteurs on the Rights to Freedom of Opinion and Expression; on the Rights to Freedom of Peaceful Assembly and of Association; on Extra-judicial, Summary or Arbitrary Executions; on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; on the Right to Food; on Adequate Housing; on the Rights of Indigenous Peoples; the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Independent Expert on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment; the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises; the Working Group on the Issue of Discrimination Against Women in Law and in Practice; as well as some country-specific Special Rapporteurs such as the one in charge of Myanmar/Burma or Cambodia.

Since 2000, the three subsequent mandate-holders have sent around 3,500 communications⁶ to governments and have visited 20 countries⁷. In 2014, Mr. Michel Forst was appointed as the new **UN Special Rapporteur on the Situation of Human Rights Defenders**. Previously, Ms. Margaret Sekaggya from 2008 to 2014, as well as her predecessor Ms. Hina Jilani, former Special Representative of the UN Secretary General on the Situation of Human Rights Defenders, were both sensitive to the question of human rights defenders working on land and natural resources issues. They have dedicated various reports on this issue and highlighted the particular risks confronting this category of defenders⁸. In addition, they have dealt with an important number of complaints from land rights defenders who have been victims of abuses. Between December 2006 and May 2011, the mandate-holder sent 106 communications to Governments, asking them to take appropriate measures to investigate and address alleged violations against land rights defenders. Amongst them, 34 communications were related to extractive industries and development projects, 29 to indigenous peoples and minority communities, 25 to women land rights defenders and nine to journalists⁹. Moreover, 90% of the communications sent by the Special Rapporteur on the Situation of Human Rights Defenders between May 2008 and December 2013 were made jointly with other mandates. The mandate-holder has also conducted ten formal country visits and denounced the specific situation of land rights

6. Such communications can be labelled as “Letters of allegation” (AL), “Joint letters of allegation” (JAL), “Joint urgent appeals” (JUL), “Other letters” (OL) or Urgent appeals (UA).

7. From 2000 to 2008, the Special Representative of the UN Secretary General on the situation of human rights defenders undertook 13 country visits in 11 different countries, namely Kyrgyzstan (2001), Colombia (2001), Guatemala (2002 and 2008, as a follow up visit), former Yugoslav Republic of Macedonia (2003 and 2007, as a follow-up visit), Thailand (2003), Turkey (2004), Angola (2004), Nigeria (2005), Israel and the OPT (2005), Brazil (2005), Indonesia (2007), Republic of Serbia, including Kosovo (2007). From 2008 to 2014, the UN Special Rapporteur on the situation of human rights defenders undertook 10 country visits to 9 different countries, namely Armenia (2010), Colombia (in 2009, as a follow-up visit), the Democratic Republic of Congo (2009), Honduras (2012), India (2011), Ireland (2012), the Republic of Korea (2013), Tunisia (2012) and Togo (in 2008 and 2013, as a follow-up visit).

8. See UN Human Rights Council Report, *Report Submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani*, UN Document A/HRC/4/37, January 24, 2007; UN General Assembly Report, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya*, UN Document A/65/223, April 8, 2010; UN Human Rights Council Report, *Report of the Special Rapporteur on the Situation of Human Rights Defenders Margaret Sekaggya to the Human Rights Council*, UN Document A/HCR/19/55, December 21, 2011; UN General Assembly Report, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya*, UN Document A/68/262, May 8, 2013.

9. See UN Human Rights Council Report, *Report of the Special Rapporteur on the Situation of Human Rights Defenders Margaret Sekaggya to the Human Rights Council*, UN Document A/HCR/19/55, December 21, 2011.

defenders in five of them: *Colombia* (September 2009), *India* (January 2011), *Honduras* (February 2012), *Ireland* (November 2012) and *the Republic of Korea* (June 2013).



REPUBLIC OF KOREA

In 2013, Ms. Margaret Sekaggya conducted an official visit to the Republic of Korea¹⁰. During her mission, she monitored the situation of defenders and local residents who protested against large-scale development projects such as in the Miryang and Jeju Island. In the case of Miryang, local residents were opposing the construction of a power-transmission tower by the Government majority-owned Korean Electric Power Corporation (KEPCO) linked to the Gori nuclear power plant. Local residents reported a lack of adequate consultation and participation in the project, and denounced the acts of intimidation, harassment and physical violence allegedly perpetrated by workers and private security firms hired by the company. In her mission report, the Special Rapporteur writes that she was “encouraged by the attitude of the KEPCO representatives, who acknowledged basic flaws in the project”. However, after the visit, she was informed that “KEPCO filed an injunction against village residents and one of the local committees opposing the project for disruption of the construction”. As a result, the Special Rapporteur recommended that the Government of the Republic of Korea “adopt a human rights-based approach to development policy and programming, including by establishing mechanisms for consultation and effective participation of the communities affected by large-scale development projects”. She also urged public and private corporations to “ensure that the conduct of workers and private security firms complies with international human rights standards and, in this connection, train employees and private security personnel on conflict resolution and international human rights standards, including the role of human rights defenders”.

10. See UN Human Rights Council Report, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, Addendum, Mission to the Republic of Korea*, UN Document A/HRC/25/55/Add.1, December 23, 2013.

Many other UN Special Procedures have addressed the situation of land rights defenders. This includes the Independent Expert on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment¹¹, and is also the case of the **UN Working Group on Arbitrary Detention (WGAD)** which may adopt opinions on the legality of the detention of land rights defenders, or of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, which may act on violations of the rights to freedoms of peaceful assembly and association faced by land rights defenders.



BURMA

During its November 2013 session, the UN WGAD adopted an Opinion on the case of **Mr. Ko Htin Kyaw**, leader of the Movement for Democracy Current Force (MDCF), a community-based organisation which represents grass-roots communities and struggles against land-grabbing and other human rights violations in Burma. On July 30, 2013, Mr. Ko Htin Kyaw staged a peaceful protest outside the North Oaklapa Court to denounce the seizure of part of the land of three community members who also took part in the protest. Three days after the demonstration, the four protesters were summoned to the police station “for a discussion”. Once there, they were charged for “insulting the State” (Section 505(c) of the Criminal Code) and immediately sent to a court, which sanctioned their arrest and sent them to Insein prison. In its Opinion, the WGAD determined that Mr. Ko Htin Kyaw’s detention was arbitrary and urged the Government to release him. On December 11, 2013, he was released under a presidential amnesty but authorities re-arrested him the same day on sedition charges. He was eventually released under another presidential amnesty on December 31, 2013. He was then arrested again on May 5, 2014. He received several sentences from various courts on June 4, June 24 and July 9, 2014 for three to six months’ imprisonment. As of August 2014, he remained held in Rangoon’s Insein prison. However, the decision of the WGAD is a positive step which can be used in local and international advocacy to call for his immediate and unconditional release and the release of other land rights defenders.

11. See Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Document A/HRC/22/43, December 24, 2012. See also Press Release of the UN Special Procedures of the Human Rights Council, including the UN Special Rapporteur on the situation of human rights defenders and the Independent Expert on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, *If we fail our environment, we fail to protect our human rights*, April 22, 2013.

Another UN Working Group, the **Working Group on the issue of human rights and transnational corporations and other business enterprises**, also known as the “Working Group on Business and Human Rights”, specifically recognised the urgent need to address situation of human rights defenders, notably in the aftermath of its country visit in Azerbaijan in August 2014¹².

In its report to the Human Rights Council’s 23rd session, the Working Group on Business and Human Rights also regretted that “conflicts between communities and businesses had led to the harassment and persecution of members of the communities affected, as well as of human rights defenders investigating, protesting, seeking accountability and access to remedies for victims of alleged abuses linked to business activities”¹³. However, despite some positive steps, including positions on some cases and situations (see above and below), the Working Group has not so far systematically integrated the protection of human rights defenders into their work, nor has it authoritatively defined the obligations and responsibilities of business under the Guidelines in respecting – and arguably also protecting – the rights of land rights defenders.



INDIA

On June 11, 2013, several Special Procedures, including the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the right to food and the Working Group on Business and Human Rights sent a communication to the Government of India regarding in particular the judicial harassment, intimidation and attacks of members of the Anti-POSCO People’s Movement. This movement is a collective, non-violent, effort that has opposed since 2005 the construction of an integrated steel plant and a captive port by the South Korean company Pohang Iron and Steel Corporation (POSCO), in Jagatsinghpur District, Odisha State. This movement highlights human rights concerns for residents living in several of the villages affected by the proposed mine¹⁴.

Finally, it is worth noting the greater impact that the different UN Special Rapporteurs can have when working together and integrating their respective areas of expertise on the protection of human rights defenders.

12. See UN Working Group on the issue of human rights and transnational corporations and other business enterprises, *Human rights must lead Azerbaijan’s future development agenda – UN expert group*, August 27, 2014.

13. See UN Working Group on the issue of human rights and transnational corporations and other business enterprises, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, UN Document A/HRC/23/32, March 14, 2013.

14. See UN Special Procedures of the Human Rights Council, *Joint Communication to the Government of India, IND 7/2013*, February 24, 2014.



UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue speaks with peasants from Bajo Aguan, in Colon department, during a visit in Tegucigalpa on August 9, 2012 (Honduras). © AFP PHOTO/Orlando SIERRA



BRAZIL

On June 3, 2013, the UN Special Rapporteurs on the situation of human rights defenders, on the rights to freedom of peaceful assembly and of association, on the rights of indigenous peoples and on extra-judicial, summary or arbitrary executions sent a joint communication to the Government of Brazil¹⁵ in relation to acts of violence perpetrated against indigenous peoples in the locality of Buriti, State of Mato Grosso do Sul. On May 30, 2013, the police used violence to forcibly evict about a thousand indigenous Terena people from a piece of land they had been occupying for two weeks within the context of an action of “land reclamation”. Officially the land was titled to a private landowner but located in an area that the Ministry of Justice had reportedly determined to be an indigenous territory. During the eviction, Mr. Gabriel Oziel was killed, allegedly by police gunfire. In September, the Brazilian Government replied that three investigations were being conducted into the death of Mr. **Gabriel Oziel**¹⁶. Nevertheless, in December 2013, these investigations were declared

15. See UN Special Procedures of the Human Rights Council, *Joint Communication to the Government of Brazil, BRA 2/2013*, June 3, 2013.

16. See UN Special Procedures of the Human Rights Council, *Joint Communication to the Government of Brazil, BRA 2/2013, State Reply*, September 16, 2013.

inconclusive by the federal police on the grounds that the bullet responsible for Mr. Oziel's death was not found¹⁷. In June 2014, at the request of the Federal Public Ministry, the federal police took over the case¹⁸. In her report about observations on communications transmitted to Governments and replies received published in February 2014, the former Special Rapporteur on the Situation of Human Rights Defenders expressed her deep concern about the reported continuous climate of violence and pressure – involving killing, harassment, intimidation and criminalisation – experienced by organisations, social movements and indigenous communities defending environmental and land-related rights in Brazil¹⁹.

Beyond special mandates for the protection of human rights defenders and those directly addressing the question of land rights there are a variety of special mandates dealing with the violations resulting from the suppression of dissent of land rights and their defenders. These mechanisms can play an important role for protection mainstreaming a defenders dimension into their work and in addressing impunity over serious human rights violations.

Regional Special Procedures

At the regional level, the Inter-American Commission on Human Rights (IACHR) and the African Commission on Human and Peoples' Rights (ACHPR) can also provide protection to land rights defenders.

Both the African and Inter-American Commission have mandated a number of Special Rapporteurs, who work in the same way as the UN Special Procedures. They contribute to strengthening the work of the Commissions in different specific areas. The regional Special Rapporteurs on human rights defenders and other regional mandates can contribute to increasing the visibility of land rights defenders through press releases, reports and seminars, and engaging dialogue with States on these issues. To this extent, it should be pointed out that the Office of the Rapporteur

17. See *Globo 1 (G1 Mato Grosso Do Sul)* Article, "Inquérito Sobre Morte de Indígena Em Fazenda É Inconclusivo, Diz PF Em MS", January 8, 2014.

18. See Gabriel Maymone and Patrícia Belarmino Article, "Na Sede Da PF, Índios Pedem Nova Investigação Sobre Morte de Oziel", in *Correio Do Estado*, May 30, 2014; Aliny Mary Dias Article, "MPF Determina E PF Retoma Investigação de Morte de Indígena Durante Confronto", in *Campo Grande News*, June 6, 2014.

19. See UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya*, UN Document A/HRC/25/55/Add.3, February 28, 2014.

on Human Rights Defenders of the IACHR has paid particular attention to human rights defenders working on land issues²⁰.

At the European level, the Commissioner on Human Rights of the Council of Europe (CoE) has also set up a mechanism to protect human rights defenders and develop an enabling environment for their activities. Its role has been reinforced with the 2008 “Declaration of the Committee of Ministers on the Council of Europe action to improve the protection of human rights defenders and promote their activities”, which has mandated the Commissioner to follow up on the issue.

Still at the CoE level, the Parliamentary Assembly of the Council of Europe (PACE) created a mandate of Rapporteur on the situation of human rights defenders, which can react publicly on individual cases of human rights defenders, and regularly reports to the PACE regarding the situation of human rights defenders in CoE member-States.

* * *

The various regional and international mechanisms and procedures that we have described are useful tools for land rights defenders to pressure States to stop and remedy human rights violations. However, their capacity to provide protection has some limitations.

Firstly, in the majority of cases, the communications to governments must be kept **confidential** until the conclusion of the interaction with the concerned Government. Complainants are thus not informed of the action taken on their case and do not know whether the State has responded to or ignored the communication.

Secondly, **the response rate by States remains low**. For example, the former Special Rapporteur on the Situation of human rights defenders Ms. Margaret Sekaggya estimated that during her tenure (2008-2014), less than half of the communications to States received a reply²¹. The replies

20. See among others IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2011. From May 28 to 30, 2012, members of the IACHR Executive Secretariat also participated in the public hearing and the international academic seminar on “The Situation of Human Rights Defenders of the Peasant Communities of Bajo Aguan”, in Tocoa, Colon, Honduras. The Bajo Aguan region is known for having one of the most violent land disputes in Central America during which land rights defenders have been victims of numerous acts of intimidation, attacks and murders.

21. See UN Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya*, UN Document A/HRC/25/55, December 23, 2013.

do not necessarily acknowledge the reality of the human rights violations, or set precise steps to stop or remedy them.

Thirdly, the mechanisms cannot ensure systematic follow-up of all the cases due to a lack of resources. It is thus difficult to monitor whether, and how, States have acted to redress violations of the rights of land rights defenders, even when they claim they will take action.

Fourthly, while some of these mechanisms may undertake country visits, these are limited, because of a lack of resources on the one hand, but also because they have to be invited or obtain the State's prior agreement to a visit.

Finally, it is important to recall that such procedures are not by themselves enforcement mechanisms. Compliance with mandate-holders' recommendations is therefore left the discretion of States, although recommendations issued by such procedures are based on legally binding provisions. Because of the lack of formal enforcement and follow up mechanisms, it is impossible to conduct any close assessment of the degree of implementation by States of these recommendations. In some cases, it is clear that recommendations have not been enforced at all.



LAO PEOPLE'S DEMOCRATIC REPUBLIC

On December 20, 2012, the Special Rapporteurs on the situation of human rights defenders, on the promotion and protection of the right to freedom of opinion and expression, on the rights to freedom of peaceful assembly and of association and the Working Group on enforced or involuntary disappearances sent a joint allegation letter to the Lao People's Democratic Republic regarding the enforced disappearance of Mr. **Sombath Somphone** on December 15, 2012²². Mr. Sombath was working on land grabbing issues in the country and assisting victims to speak out about their experiences. He disappeared after having participated in the organising committee of the Asia-Europe People's Summit Forum held in November 2012 preceding the official Asia-Europe Meeting Summit. Despite three replies by the State, between January and June 2013, in which it pledged to "*find out the truth in order to bring perpetrators to justice and ensure justice to Mr. Sombath and to his family according to the law*"²³,

22. See Special Procedures of the Human Rights Council, *Joint Communication to the Government of Lao People's Democratic Republic*, LAO 3/2012, December 20, 2012.

23. See Special Procedures of the Human Rights Council, *Joint Communication to the Government of Lao People's Democratic Republic*, LAO 3/2013, State Reply, January 3, 2013; State Reply, March 25, 2013;

the Lao Government failed to undertake proper investigations into the case and as of October 2014, the whereabouts of the defender remained unknown.

It is also worth mentioning that two intergovernmental organisations, namely the Association of South East Asian Nations (ASEAN) as well as the League of Arab States (LAS) have no mechanism in charge of protecting human rights defenders. Defenders from these regions have therefore no other choice but to rely exclusively upon alternative mechanisms, such as the UN mechanisms.

3. European Union and OSCE/ODIHR tools on the protection of human rights defenders

Over the past years, the European Union (EU) and the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE) have developed tools designed to assist their member-States in the implementation of their commitments in terms of protection of human rights defenders.

Although these instruments constitute a positive development, they are at the same time limited by the lack of monitoring or enforcement mechanisms.

Indeed, to date, both at the EU and OSCE levels, no systems of Special Rapporteurship are in place. This makes the monitoring of the implementation of the two sets of Guidelines more difficult, as it ultimately leaves the responsibility for implementation to member-States. It is to be noted however that the EU's strong institutional architecture makes the organisation better equipped to address and follow-up on the question of human rights defenders, as will be outlined below.

European Union Guidelines on the Protection of Human Rights Defenders

In 2004, the Council of the European Union (EU) adopted the Guidelines on the Protection of Human Rights Defenders, which were revised in 2008. These Guidelines contain practical suggestions addressed to EU bodies, institutions and missions (embassies of EU member-states as well as EU Delegations) aimed at strengthening EU action in terms of support and protection of human rights defenders in third countries as well as multilateral bodies. These Guidelines are not legally binding, but constitute a clear and strong political commitment of the European institutions and of EU member-states, aiming to put the protection of human rights defenders among the priorities of the EU foreign policy agenda as far as human rights are concerned. These Guidelines also help EU missions and

EU member-states' diplomatic representations to define their approach towards human rights defenders.

EU member-states and their diplomatic representations are encouraged to: organise periodic meetings with human rights defenders; provide visible recognition to human rights defenders and their work; observe trials against human rights defenders; visit human rights defenders in detention; take emergency measures for human rights defenders at risk; develop local strategies of implementation of the Guidelines; promote regional and international human rights defenders' protection mechanisms.

The European External Action Service (EEAS) and the European Commission have set up Focal Points in charge of Human Rights and Democracy within EU Delegations, both for operation and political aspects. The list of Focal Points is accessible on the following link: www.eidhr.eu/focal-points#

In addition to “local” actions, the EU Guidelines also call upon the EU Presidency, the High Representative for the Common Foreign and Security Policy, the Personal Representative of the SG/HR on Human Rights, EU Special Representatives and Envoys, representatives of the Member States or the European Commission to address the issue of the Non-EU countries. The Guidelines moreover provide that “*political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights defenders*”. In fact, the EU institutions and representatives, at different levels, have been increasingly involved on the question of human rights defenders, although their degree of involvement unfortunately continues to vary from country to country, based on political considerations.

In June 2014, the EU Council adopted conclusions on the occasion of the 10th anniversary of the EU Guidelines, stating that “*the EU will intensify outreach to those operating in remote and rural areas*”, and welcoming the strengthened focus of the renewed [European Instrument for Democracy and Human Rights] (EIDHR) on human rights and their defenders where they are the most at risk.

OSCE/ODIHR Focal Point and Guidelines On The Protection Of Human Rights Defenders

In December 2003, the Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Cooperation in Europe (OSCE) created a special programme on freedom of association and has, since 2007, established a Focal Point for human rights

defenders. This Focal Point “closely monitors the situation of human rights defenders, identifies issues of concern, and seeks to promote and protect their interests”. In June 2014, the OSCE/ODIHR launched Guidelines on the Protection of Human Rights Defenders, which provide for a set of recommendations based on existing international and regional law, standards and practices. The Guidelines call on OSCE Participating States to establish human rights defenders’ protection mechanisms both on their territories and in third countries, through their diplomatic representations, drawing inspiration from both the 2011 Commentary of the UN Declaration on Human Rights Defenders, published by the UN Special Rapporteur on the situation of human rights defenders, and from the European Union Guidelines on human rights defenders. Paragraph 16 of the OSCE/ODIHR Guidelines highlights that “*specific groups of human rights defenders who are at heightened risk may include [...] Human rights defenders working on economic, social and cultural rights, health, environmental or land issues and corporate accountability*”.

General human rights recourse mechanisms available to land rights defenders

1. International and regional quasi-judicial bodies which may be used to hold States accountable for the harassment of land rights defenders

Land rights defenders can also file complaints before quasi-judicial bodies which are competent to receive complaints on individual cases under certain conditions. Although their recommendations are not themselves legally binding, State parties, by being bound to the treaties, have the obligation to conform to their findings.

UN Treaty Bodies

Land rights defenders can use the UN Treaty Bodies when their rights have been violated. The UN Treaty Bodies are committees of independent experts that monitor the implementation of the core international human rights treaties through both the reporting system and the complaint procedure.



GUATEMALA

For instance, the Committee Against Torture (CAT), in its concluding observations on the combined fifth and sixth periodic reports on Guatemala (May 2013), pointed out the alarming situation of land rights defenders in the country. It explained that *“the Committee remains concerned about the persistently high number of threats and attacks, including murders, targeting human rights defenders, particularly those defending the rights of indigenous peoples and those working on issues related to the right to land, labour rights and the environment, despite the recommendations of numerous human rights monitoring bodies. In this connection, the Committee takes note with concern of the report that 15 human rights defenders were murdered between January and October 2012. It is also concerned about reports that only a limited number of convictions have been obtained for crimes against human rights defenders. Furthermore, the Committee notes with concern the reports that campaigns have been waged, including in the media, to discredit their activities and that the criminal justice system has been used to persecute them”*. In its recommendations, the Committee urged *“the State party to recognize publicly the essential role played by human rights defenders in helping it to fulfil its obligations under the Convention, and to take the necessary steps to facilitate their work”*. It also asked the State to *“redouble its efforts to guarantee the effective protection, safety and physical integrity of human rights defenders in face of the threats and attacks to which they are vulnerable on account of their activities; ensure the prompt, thorough and effective investigation of all threats and attacks targeting human rights defenders, and ensure that those responsible are tried and punished in accordance with the seriousness of their acts; and guarantee the continued existence of the Unit for the Analysis of Attacks on Human Rights Defenders”*²⁴.



INDONESIA

Similarly, in its concluding observations on the initial report of Indonesia in July 2013, the UN Human Rights Committee (CCPR) expressed concerns *“at reports that the State party uses its security apparatus to*



Anwar Sadat and Dede Chaniago in police custody (Indonesia).
© KontraS

24. See CAT, *Concluding observations on the combined fifth and sixth periodic reports of Guatemala*, UN document CAT/C/GTM/CO/5-6, June 24, 2013.

punish political dissidents and human rights defenders”, and called upon State authorities to take “practical steps to put an end to impunity by its security personnel regarding arbitrary and extrajudicial killings, (...) appropriate measures to protect the rights of political dissidents and human rights defenders, (and) systematically and effectively investigate, and prosecute cases of extra-judicial killings and, if convicted, punish those responsible; and provide adequate compensation to the victims’ families”²⁵.

Treaty bodies can act as quasi-judicial bodies and can receive and process **individual complaints**, which are then transmitted to the relevant State party (provided that the State in question has voluntarily accepted the competence of the relevant treaty body to review individual complaints). **Many of these bodies are competent to deal with individual cases of harassment of land rights defenders**²⁶.

The individual complaint procedure allows defenders to lodge a complaint before the UN Treaty Bodies regarding relevant human rights violations. The Treaty Body can make recommendations urging the State to take appropriate measures within 180 days when, after considering input from the State and complainant, they consider that the State is responsible for human rights violations. All Treaty Bodies have developed follow-up procedures to monitor whether State parties have implemented their recommendations. This recourse is an important tool for land rights defenders and would deserve to be used more systematically. Unfortunately, this procedure has so far been insufficiently used by human rights defenders in general and land rights defenders in particular for cases concerning their protection and the obstacles they face in their work. It should be noted that the individual complaint procedure is a quasi-judicial procedure and requires the fulfilment of certain legal conditions, such as the exhaustion of domestic remedies. Accordingly, treaty bodies can be a useful tool to be seized in order to obtain a medium- or long term decision concerning a violation, but the complaint procedure may not be the most appropriate to deal with situations of risk requiring an urgent response.

25. See HRC, *Concluding observations on the initial report of Indonesia*, UN Document CCPR/C/IDN/CO/1, August 21, 2013.

26. Relevant treaty bodies for land rights defenders include the UN Human Rights Committee (CCPR), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee Against Torture (CAT), the Committee on Enforced Disappearances (CED), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Rights to the Child (CRC) and the Committee on the Elimination of Discrimination Against Women (CEDAW).

“Interim measures”

In addition to the complaint mechanism, each committee has the facility to take **urgent action** where irreparable harm would otherwise be suffered before the case is examined in the usual course. The basis for such interim action by individual committees is set out for each procedure. The common feature is that the committee in question may, at any stage before the case is considered, issue a request to the State party for what are known as “**interim measures**” in order to prevent any irreparable harm. Typically, such requests are issued to prevent actions that cannot later be undone, for example the execution of a death sentence or the deportation of an individual facing a risk of torture²⁷.

Other regional bodies such as the European Court of Human Rights (ECtHR)²⁸ and the IACHR can take similar emergency actions. The system of “precautionary measures” of the IACHR is outlined in the section below.

Regional complaint mechanisms

The IACHR and the ACHPR also have also an individual complaint mechanism under which rights violations suffered by land rights defenders can be investigated. After analysing the communication, a commission may issue recommendations that can, *inter alia*, require the State to investigate and punish the persons responsible, make reparation for the damage caused, adopt specific measures, or amend the corresponding legislation. Under urgent or sensitive circumstances, these mechanisms can request that a State adopt “interim measures” in order to prevent irreparable harm to persons whose case is pending. In the past, land rights defenders at risk have used the remedies provided by IACHR. Yet, the complaint procedure is a rather onerous procedure, as some specific conditions must be met such as the exhaustion of domestic remedies. Delays before a complaint is reviewed are also quite long.

27. See Office of the High Commissioner for Human Rights, 23 FAQ about Treaty Body complaints procedures.

28. When the ECHR receives an application, it may decide, pursuant to Rule 39 of its Rules of Court, that a State should take certain measures provisionally while it continues its examination of a case. This usually consists of requesting a State to refrain from doing something, such as not returning individuals to countries where it is alleged that they would face death or torture. See ECHR, Factsheet



BRAZIL

In 1994, the IACHR received a complaint from the Parochial Commission of the Earth, the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas on Brazil that alleged that an assassination group established by large landowners in Pará “has been engaging, with the connivance of some local authorities, police officers and judicial agents, in the murder of persons linked or suspected of links to the occupation of lands in the region and with advocacy on the rights of rural workers”. This group had killed at least five people²⁹ named on a hit-list called “Xinguara list”, several others were kidnapped, wounded or ran away because of death threats. In 1999, the Commission concluded “that this campaign has been abetted directly by police officers, who by act and omission fail to take the action required to impose order and the rule of law (...) unwarranted delay in the police investigations despite the enormity of the charges (...) and of connivance of the police by action or inaction in non-execution of warrants for arrest (...) and in unpunished abetting of the escapes from prison of the instigators and perpetrators of that campaign”. As a result the Commission recommended the State Party to secure the “conduct of an independent, complete, serious and impartial investigation (...) in order to identify and punish all persons identified as responsible” and to “make reparation to the victims or their families for the injuries suffered by the persons identified in this report as a result of the violations of the American Convention”³⁰.



NIGERIA

In Nigeria, the Ogoni case, mentioned below in the subsection on home courts, was also brought before the ACHPR in 1996. In a decision issued in 2001, the Commission considered that “the government has destroyed Ogoni houses and villages and then, through its security forces, obstructed, harassed, beaten and, in some cases, shot and killed innocent citizens who have attempted to return to rebuild their ruined homes”. It added that “the government has also ignored the concerns of Ogoni communities regarding oil development, and has responded to protests with massive violence and executions of Ogoni leaders”. In its holding, the Commission called upon Nigeria to stop “all attacks on Ogoni communities and leaders by the Rivers State Internal Securities Task Force and permitting citizens and independent investigators free access to the territory”, as well as “to prosecute those responsible and compensate the victims”. Although this decision does not explicitly refer to the need to protect land rights defenders, it asserts that “collective rights, environmental rights, and

29. The five are Messrs. Newton Coutinho Mendes, Moacir Rosa De Andrade, José Martins Dos Santos (whose mother died instantly on learning of her son’s murder), Gilvam Martins Dos Santos and Matias De Sousa Cavalcante.

30. See IACHR Report No. 59/99, Case 11.405, *Newton Coutinho Mendes vs Brazil*, April 13, 1999.

economic and social rights are essential elements of human rights in Africa”, and that the State and the people shall be “mindful of the common good and the sacred rights of individuals and communities”³¹.

Precautionary measures

The IACHR also has also the competence to order “precautionary measures”, independently of the existence of a pending petition. Indeed, pursuant to Article 25 of its Rules of Procedure, the Inter-American Commission may, in serious and urgent situations, on its own initiative or at the request of a party, require that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case, as well as to persons under the jurisdiction of the State concerned, independently of any pending petition or case. The measures may be of a collective nature to prevent irreparable harm to persons due to their association with an organisation, a group, or a community with identified or identifiable members. As a result, the number of precautionary measures granted does not reflect the number of persons protected by their adoption. Many of the precautionary measures issued by the IACHR protect more than one person and, in certain cases, groups of persons such as communities or indigenous peoples. Such measures can benefit to land rights defenders³².



PERU

On May 5, 2014, the IACHR issued a resolution to grant precautionary measures to 16 rural community leaders and land rights defenders in Peru, including Ms. **Maxima Acuña Chaupe**, member of the Association of Women in Defence of the Livelihood (*Asociación de Mujeres en Defensa de la Vida*) and of the Latin American Women’s Union (*Unión Latinoamericana de Mujeres - ULAM*), and her family, the “rondero” (community patrol) **Luis Mayta** and the journalist **César Estrada**, who are involved in a movement opposing the Conga project of the American Newmont Mining Corporation, an extension of the mining mega-project Yanacocha. As a result of their activities, these persons have been the subject of threats, harassment, and acts of violence since 2009. These incidents took place in a broader pattern of violence, repression and excessive use of force by the police against people contesting the project. According to article 25 of the IACHR, the Commission asked the Peruvian State to discuss

31. See ACHPR case No. 155/96: “Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria”, 30th Ordinary session, October 13 to 27, 2001.

32. A list of all precautionary measures requested on behalf of human rights defenders is accessible on the web page of the IACHR Rapporteurship on Human Rights Defenders: www.oas.org/en/iachr/defenders/protection/precautionary.asp.

with the beneficiaries on the measures to adopt for their protection, take action to guarantee their life and integrity, and inform the Commission on the investigation of the threats and harassment. However, after the compliance deadline, the Peruvian authorities had still not informed the defenders at risk of the implementation of any measures. The Special Public Prosecutor of the Ministry of Justice and Human Rights declared on its website that “the precautionary measures are not an adequate means to reflect petitioners’ demands regarding the alleged violations of collective rights”. Since then, they have not provided any specific protection measures to the beneficiaries, despite the ongoing request of the concerned peasant organisations³³.

There are also specific concerns regarding the implementation of precautionary measures, supposed to ensure the life and physical integrity of complainants. In many instances, States have delayed their response, have adopted measures in total disconnection with the specific situation of human rights defenders, or have simply ignored their obligations. In this context, some defenders benefiting from precautionary measures have continued to be under serious threats or have even been killed.



HONDURAS

Since 2004, seven land rights defenders from Honduras have been killed while they were beneficiaries of precautionary measures granted by the IACHR, including **Paulino Hernández**, on March 17, 2004, **Jonni Orlando Aceituno Varela**, on June 18, 2004, **Héctor José Ulloa** and **Gilmar Santiafo Mejía**, on March 27, 2004, and January 26, 2006, respectively, **Eligio Mejía**, on February 5, 2006 and **Orfilia Amparo Mejía**, on March 26, 2012, as well as Mr. **Orlando Orellana**, President of the Cerrito Lindo Community Board (killed on May 4, 2014). They belonged to the Cerrito Lindo community in the jurisdiction of San Pedro Sula and were involved in a land dispute with a local company on the property they occupied. The complaints they initiated unleashed a series of attacks against the members of the Cerrito Lindo colony, including death threats, acts of surveillance and murders. In April 2012, the IACHR had reiterated the validity of the precautionary measures. As of August 2014, no investigation had clarified the circumstances of the four land rights defenders’ death³⁴.

33. See APRODEH.

34. See APRODEH and IACHR Press Release, May 28, 2014.

The international and regional human rights mechanisms are a very important tool for the protection of land rights defenders, though their protection capacities should be strengthened. Many land rights defenders

“The international and regional human rights mechanisms are a very important tool for the protection of land rights defenders, though their protection capacities should be strengthened”.

have emphasised the necessity of integrating these mechanisms into their strategy of protection.

However, international and regional quasi-judicial have certain limits. The main problem lies in the weak implementation of their recommendations and decisions by States. Although they are not themselves

legally binding, State parties, by being bound to the treaties, have the obligation to conform to their findings. As an example, despite these very strong injunctions to Guatemala, since the Committee’s recommendations judicial harassment against land rights defenders by State authorities, as well as acts of intimidation, threats and assassination attempts have continued³⁵.

2. Regional judicial bodies which may be used to hold States accountable for the harassment of land rights defenders

Three regional human rights systems are equipped with courts that are accessible to land rights defenders after they have exhausted domestic judicial remedies. The Inter-American, African and European Courts of Human Rights can examine complaints lodged against States that have consented to their jurisdiction for human rights violations, and issue orders to remedy the violations. **The regional courts can issue judgements on issues relevant to land rights defenders.** These decisions are binding on the States concerned and they have an obligation to execute the judgements³⁶.



HONDURAS

The case *Kawas v Honduras* constitutes the first ruling of the Inter-American Court of Human Rights (IACtHR) regarding human rights defenders working on environment, natural resources, and by extension land. On February 6, 1995, Ms. **Blanca Jeanette Kawas-Fernandez**, founder and president of the

35. See Report of the Committee against Torture, Forty-ninth session (29 October–23 November 2012) and Fiftieth session (6–31 May 2013), General Assembly Official Records, Sixty-eighth session, Supplement No. 44 (A/68/44). See UDEFEGUA.

36. For further information on this matter, see FIDH, *Practical Guide on the African Court on Human and Peoples’ Rights*, April 2010.



A woman, farmer, known as the woman who said “You cannot eat gold” (Peru). © Jacob Holdt

Foundation for the Protection of Lancetilla, Punta Sal, Punta Izopo and Texiguat (PROLANSATE), was shot dead by two unidentified men. The association contributed to the creation and managed the Punta Sal National Park, renamed after Ms. Kawas-Fernandez. It fought for the respect of the human right to a healthy environment, the protection of natural resources and the improvement of the quality of life of the people who live within the watersheds of the Bahía de Tela on the Caribbean coast. Ms. Kawas opposed in particular the illegal deforestation activities in the region. Her murder, which remained unpunished, was brought to the IACHR in 2003 by the CEJIL and the Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús (ERIC). In its judgement of April 3, 2009, the Court found that the State party had failed to respect article 4.1 (right to life), article 5.1 (right to humane treatment), article 16.1 (right to freedom of association), article 8 (due process of law) and article 25 (effective judicial remedies) of the American Convention on Human Rights, and established the link between Ms. Kawas’ murder and her activities as a human rights defender protecting the environment and the natural resources. It then concluded that human rights defenders working on those issues who are known to be at risk require the protection of State parties. As a result, the Court urged the Honduran State to pay compensation to the victim’s relatives, provide them with psychological support, initiate proceedings regarding the crime and complete them in a reasonable period of time, and carry out national awareness campaigns on the importance of the work conducted by human rights defenders active on the issues of environment and natural resources. However, in a monitoring compliance report of February 27, 2012, the

Inter-American Court indicated that the State did not provide information on compliance with the obligation to conclude the criminal proceedings related to Ms. Kawas' murder. The court also pointed out the State's failure to conduct the required awareness campaign. Moreover, despite the court's ruling and monitoring, abuses against land rights defenders in Honduras have been ongoing and impunity surrounding them has remained very high³⁷.



MEXICO

Other cases involving land rights defenders have been brought to the Inter-American Court of Human Rights. The Cabrera Garcia and Montiel Flores v Mexico case relates to the illegal detention, torture and unfair trial of Messrs. **Teodoro Cabrera Garcia** and **Rodolfo Montiel Flores**, members of the Peasant Environmentalist Organisation of the Sierra of Petatlán and Coyuca de Catalán (*Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán* - OCESP). The two defenders were opposing illegal logging operations in the mountain forests of the State of Guerrero that, according to them, threatened the environment and the livelihoods of the local peasant communities. Although, in its judgement of November 26, 2010, the Court recognised the responsibility of the State in the violation of the two men's human rights and urged for reparations, it refused, for procedural reasons, to take into account the relationship between the abuses perpetrated against the victims and their land human rights-related work, thereby reducing the scope of its decision³⁸.



BRAZIL

Escher and al. v Brazil constitutes another interesting case ruled by the IACtHR. On June 30, 2000, the National Popular Lawyers Network (*Rede Nacional Autônoma de Advogados Populares* - RENAAP) and the Center for Global Justice (Justiça Global - CJG) lodged a complaint with the IACHR alleging that members of the social organisations Communitarian Association of Rural Workers (*Associação Comunitaria de Trabalhadores Rurais* - ADECON) and Agricultural Cooperative of Conciliation Avante Ltda. (*Cooperativa Agrícola de Conciliação Avante Ltda.* - COANA), including Messrs. **Arley José Escher**, **Celso Anghinoni** and **Avanilson Alves Araujo**, were subject to illegal phone tapping by the military police. The two organisations worked for the fair distribution of land in the State of Paraná and belonged to the MST. The petition stated

37. See also FIDH Mission Report, *Violaciones de Derechos Humanos en el Bajo Aguán*, September 2011.

38. These issues were not taken up by the Court because the Inter-American Commission (which receives and considers complaints and refers them to the Court) had focused exclusively on the individual harms and judicial irregularities rather than the wider implications of the case. See Lauri, R Tanner, "Kawas v Honduras, - Protecting environmental defenders", in *Journal of Human Rights Practice* Vol 3,

that the monitoring of the two phone lines was part of an investigation into crimes supposedly perpetrated by individuals affiliated to the MST, requested by the Commander-in-Chief of the military police of Paraná. Despite the filing of a criminal complaint with the Paraná State General Prosecutor's Office, the case was not investigated and no one was brought before a competent judicial authority. In 2007, the IACHR transferred the case to the Court that found, in a sentence of July 6, 2009, that the Brazilian State had violated article 11 (right to privacy and right to honour and reputation, article 16 (freedom of association), article 8.1 (fair trial) and article 25 (right to judicial protection) of the American Convention. It also stated that *"in the instant case, according to the commission and the representatives, the alleged violation of freedom of association was related to the work of the promotion and defence of the human rights of rural workers. In this regard, as this Court has emphasised, States have the obligation to facilitate the means for human rights defenders to carry out their activities freely, to protect them when they are threatened in order to avoid attempts against their life and personal integrity, to abstain from imposing obstacles that obstruct their work, and to investigate seriously and effectively any violations perpetrated against them, combating impunity"*. In its monitoring compliance report of June 19, 2012, the court concluded that the State complied with the measures ordered in the ruling and closed the procedure for monitoring compliance with the judgement regarding the obligation to investigate the facts.

Corporate accountability for human rights violations against land rights defenders

This section will, in a nutshell, look at examples of judicial and non-judicial mechanisms defenders can turn to when dealing with violations involving corporate actors.

1. Host State courts

When faced with violations of their rights by foreign companies or other actors operating on their territories, human rights defenders have the possibility to turn to their national legal system. However, although the courts of the state hosting a foreign subsidiary or another actor are theoretically competent to hear and judge disputes arising locally, in many countries legal, political and practical barriers remain too high for land rights defenders to seek protection and reparation through their own judicial systems.

2. Home State courts through extra-territorial obligations

In some countries, it is possible to prosecute corporations for abuses committed abroad. In the past years, legal proceedings have been brought by victims seeking redress in the national courts of the company's home State, especially in the USA and the European Union (EU)³⁹. Therefore, land rights defenders who have been the victim of harassment by business actors could turn to such recourse mechanisms, with legal support. There are, however, many obstacles to justice and to redress that victims of corporate human rights abuses face when using such mechanisms. This chapter does not pretend to address such obstacles.

In the USA pieces of legislation that have been used to bring cases involving violations of international law committed abroad against private persons include the Torture Victim Protection Act (TVPA) of 1991 and the

39. *Idem*. See also Oxford Pro Bono Publico, *Obstacles to Justice and Redress for Victims of Corporate Human Rights Abuse - A Comparative Submission Prepared for Prof. John Ruggie, UN SG Special Representative on Business and Human Rights*, November 3, 2008. The report examines the legal systems of the following countries and areas: Australia, the DRC, the EU, France, Germany, India, Malaysia, China, Russia, South Africa, the UK and the USA.

Alien Tort Statute (ATS or ATCA). The TVPA allows US courts to hear cases of violations of international law committed against private persons, but these are only for allegations of torture or extra-judicial executions. The ATS of 1789 states that “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”. Based on this, the US federal courts have heard cases of human right violations abroad in which the companies were either an accomplice to the host government or themselves a perpetrator. The only connecting factor with the US has been that the defendant in the case must be present on US territory when the suit is brought. Victims of actions of companies – including land rights defenders – outside the USA have used courts against multinational corporations head-quartered in the USA, such as Chevron Texaco, ExxonMobil, Shell Oil, Southern Peru Copper and Chiquita, and against companies from the UK, Australia and Canada, such as Rio Tinto and Talisman Energy.



NIGERIA

One of the key jurisprudence of the ATS pertains to the involvement of a **company** in the judicial harassment and death of land rights defenders. **The** residents of Ogoniland in Nigeria peacefully protested against the pollution of their lands by oil extraction. In the early 1990s, the Government of Nigeria brutally countered the protests organised by residents of Ogoniland against the pollution of their lands by oil extraction by beating, raping, killing, and arresting residents and destroying or looting property. In that context, nine Ogoni human rights defenders campaigning against the operations of the Dutch oil company Shell in the Niger Delta, including **Dr. Barinem Kiobel**, were arrested on spurious charges, held incommunicado, tortured, judged by a special court, and hanged in 1995. Subsequently, the petitioners of the case, *Kiobel v. Royal Dutch Petroleum Co.*, alleged that the company had given support to the Nigerian forces to brutally repress the protests by providing them with food, transportation and compensation and by allowing them to use their property as a base. They also alleged that Shell had bribed the witnesses in the court case against the nine Ogoni⁴⁰.

Nevertheless, in 2013, the US Supreme Court held that the ATS could not apply to this specific case because the links with the US were not sufficient to displace the presumption against extraterritoriality. Thus, ATS claims must displace the presumption against extraterritoriality (i.e. so that US courts can hear cases of violations committed abroad). The presumption is linked to concerns that adjudicating a claim could cause “diplomatic strife”, or “international discord”. The Court held that “even where the claims touch and concern

40. See *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 185 L. Ed. 2d 671 (2013), Court Opinion, Bloomberg Law – Document Center for Justice and Accountability (CJA), *Overview of the Kiobel Case*, 2014.



Members of the Ogoni community in Nigeria outside of the US Supreme Court, February 28, 2012. Esther Kiobel, center.
© Erica Razook

the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application”. Although *Kiobel* limited the scope of the ATS and a number of lower federal courts have dismissed ATS cases since *Kiobel*, it remains an important tool for corporate accountability, particularly in the case of US corporations. Furthermore, other legal options are being explored such as the use of transitory tort

litigation in State Courts. State courts can hear “transitory torts”, claims arising outside their territory, if the court has personal jurisdiction over the defendant, by virtue of the defendant’s transitory presence in the United States at the time of the suit⁴¹. The Supreme Court briefly mentioned the transitory tort doctrine in *Kiobel* without questioning it⁴².

Finally, EU Member States’ courts can also recognise jurisdiction for human rights violations committed abroad by multinational corporations. The primary instrument they use in the EU to establish the civil liability of multinational corporations for human rights violations committed outside of the EU is Regulation 44/2001 of December 2000 (Brussels I), which sets out, *inter alia*, the rules of international jurisdiction in civil and commercial matters which are common to the various EU Member States. This regulation applies for corporations that are domiciled in a EU Member State. In addition, Rome II regulation, which aims at standardising rules on conflicts of law applicable to non-contractual obligations and ensure that courts of all Member States apply the same law in cross-border civil liability disputes, will apply. Generally speaking, numerous obstacles remains for victims, including defenders, to hold multinational companies accountable in EU Member States courts⁴³.

41. See Paul Hoffman and Beth Stephens, International Human Rights Cases Under State Law and in State Courts, 3 UC Irvine L. Rev. 9, 11 (2013).

42. See *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1665-66 (2013).

43. See notably recommendations for reforms formulated by NGOs and legal experts. See for instance the work of the European Coalition for Corporate Justice (ECCJ) of which FIDH is a member. See Gwynne Skinner, Robert McCorquodale, Olivier de Schutter, Andie Lambe, “The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business”, commissioned by ECCJ, CORE, ICAR, December 2013.

Article 24 of Regulation 44/2001 allow plaintiffs to request Member States courts to grant interim measures⁴⁴.

3. Dispute resolution mechanisms of the OECD

The OECD Guidelines for Multinational Enterprises request adhering member States to set up National Contact Points (NCPs) to ensure respect for the guidelines. As non-judicial mechanisms, the OECD NCP of the country where the project takes place or in the home country of the company can receive communications (referred to as “specific instances”) in cases where multinational enterprises would allegedly have failed to comply with the OECD Guidelines. As part of its general policies, the Guidelines request companies to “respect the international recognized human rights of those affected by their activities”, and to “carry-out risk-based due diligence [...] to identify, prevent and mitigate actual and potential adverse impacts”⁴⁵. Due diligence is understood as “the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems”⁴⁶. While the text of the Guidelines contains no explicit mention of human rights defenders, the general policies do call upon companies to engage with relevant stakeholders, in order to “provide meaningful opportunities for their views to be taken into account in relation to planning and decision-making for projects or other activities that may significantly impact local communities”⁴⁷. Furthermore, the Guidelines provide for a specific chapter on information disclosure, calling upon companies to be “transparent in their operations and responsive to the public’s increasingly sophisticated demands for information”⁴⁸.

The OECD Guidelines also infer a requirement for Free, Prior and Informed Consent (FPIC). In the Commentary on Human Rights (paragraph 40), they indeed allude to United Nations instruments that have “*elaborated [...] on the rights of indigenous peoples*”, such as the UN Declaration on the Rights of Indigenous Peoples and the International Labour Organisation Convention 169. In addition, in article 1 of Chapter 1 (Concepts and Principles), they note that “*some matters covered by the*

44. See FIDH Guidebook, *Corporate accountability for human rights abuses; A Guide for Victims and NGOs on Recourse Mechanisms*, March 2012, p. 220.

45. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, II. General Policies, §2, 10.

46. See OECD, *OECD Guidelines for Multinational Enterprises*, 2011, Commentary on General Policies, §14.

47. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, II. General Policies, §14.

48. OECD, *OECD Guidelines for Multinational Enterprises*, 2011, III. Commentary on disclosure.

Guidelines may also be regulated by national law or international commitments”, which include domestic protections for Indigenous peoples’ rights. In the **Intex Resources Asa** case, a mining case, the Norwegian National Contact Point explicitly recognised the applicability of nationally recognised Indigenous rights, including free, prior and informed consent⁴⁹.

There are therefore many provisions that land rights defenders whose rights are violated can invoke to justify the non-respect by companies of the OECD principles.

The NCPs primarily aim at offering mediation between the parties. Human rights defenders and civil society organisations are increasingly using NCPs because of the lack of more appropriate recourse mechanisms. They also resort to NCPs because they make it possible to address the responsibility of the parent company in the home State, and because they are relatively easy to access, not too costly and faster than judicial recourse mechanisms. They can therefore constitute an avenue for land rights defenders to raise awareness on their situation, while bearing in mind that their nature (focused on mediation) can constitute an obstacle in situations of conflict and tensions with the concerned companies.



BANGLADESH

For instance, in 2012, several organisations raised concerns with the NCP of the UK regarding the adverse impacts of the coal mining project in the Dinajpur region of Bangladesh, which is the property of the wholly owned subsidiary of GCM Resources, a company based in the UK. The complainants alleged that the mine “*will necessarily adversely affect human rights by displacing large numbers of people, including indigenous communities, destroying the basis of their subsistence and livelihoods, and having widespread, severe and lasting impacts on the local environment, food security and water supply for the population in a large area surrounding the mine*”. Furthermore, in 2006, a protest against the mine was met by a paramilitary force of the Bangladeshi Government that opened fire, killing three demonstrators. The complainants argued that the “*company should consider the risks if the mine proceeds of continuing local opposition leading to further protests and violence*”. Thus, that land rights defenders would continue to face violence unless the project stops. The complainants blamed the company for aggressively lobbying for the project’s approval and asked for the project’s end. The company retorted that their actions were in line with the OECD Guidelines, that the project would provide local employment and energy, and that the complaint does not represent the

49. See Norwegian National Contact Point, *Complaint from The Future In Our Hands (FIOH) Against Intex Resources Asa and the Mindoro Nickel Project*, Final Statement, November 30, 2011.



Police disperse members of the Oil, Gas and Port Protection Committee during a protest at the Phulbari coal mine in Dinajpur, 26 August 2006. At least five people were killed and over 50 hurt (Bangladesh). © AFP PHOTO/F Bangla

views of the community as a whole. The NCP accepted to examine the case and suggested a mediation (confidential while in progress). The NCP nevertheless noted the limitation of the approach, *“that the complainants’ objective for mediation is the company’s withdrawal from the Project, but notes that the NCP offer does not make any judgement about what the outcome of mediation should be”*⁵⁰.

50. See UK National Contact Point for the OECD Guidelines for Multinational Enterprises, and UK National Contact Point for the OECD Guidelines for Multinational Enterprises, *Initial Assessment By The UK National Contact Point For The OECD Guidelines For Multinational Enterprises*, June 2013.



Members of the Peasant Unified Movement (MUCA) of Bajo Aguan, carry mock coffins bearing pictures of murdered mates in land conflict clashes (Honduras). © AFP PHOTO/Orlando SIERRA



ECUADOR

In Ecuador, affected communities, including human rights defenders are, since 2006, mobilised against the activities of Canadian-based company Corriente Resources and its Ecuadorian subsidiary Ecuacorriente S.A, which – through the first large-scale mining project in the region – have and could generate additional human rights and environmental impacts in the provinces of Zamora and Morona Santiago. Communities and civil society organisation have denounced irregularities in the granting of environmental licences, the lack of adequate consultation (including the failure to obtain affected indigenous communities’ free, prior and informed consent), the forced eviction of dozens of families from their lands, physical and psychological attacks, discriminatory and stigmatising invective and judicial harassment, including criminal charges, trials and imprisonment by public officials and representatives of the company. On July 25, 2013, FIDH, CEDHU and MiningWatch Canada, representing a group of affected peasants and indigenous people, filed a complaint to the Canadian NCP. In addition to the lack of respect for the rights to consultation and FPIC, the violations of property rights and indigenous peoples’ rights, and the risks of impacts of the project on biodiversity, the three organisations highlighted the involvement of the company in State repression of social protest and violence against community members opposing the project and their defenders, in violation of the Guidelines. While the initial assessment procedure should take about three months, the NCP only responded on its evaluation of this phase 13 months later. The NCP refused to consider the case, arguing that claims were unsubstantiated.

In practice, the efficiency and independence of the NCPs in each country can vary considerably. These mechanisms have also been criticised for increasingly rejecting complaints that are the subject of parallel proceedings. Finally, the lack of human and financial resources is also a recurrent problem for most NCPs.

4. International financial institutions and their complaint mechanisms

International and regional financial institutions have adopted social and environmental policies or safeguards and set up complaint mechanisms which can be seized to ensure the respect of the banks' own procedures and policies. Such mechanisms can be used to ask for the suspension of projects affecting land-related rights and their defenders through the loans suspension.

However, the different policies and standards applied by these institutions remain uneven, vague and widely criticised, including for failing to explicitly incorporate international human rights standards. Standards may nevertheless include references to land-related issues, such as the World Bank policies regarding involuntary resettlement, land acquisition, indigenous peoples and environmental assessment⁵¹.

For instance, the World Bank Group Institutions have complaint mechanisms: the World Bank Inspection Panel (for the International Development Association – IDA and the International Bank for Reconstruction and Development – IBRD) and the Compliance Advisor Ombudsman (for the Multilateral Investment Guarantee Agency (MIGA) and the International Finance Corporation – IFC). However, it should be noted that individuals cannot file complaints: rather, a complainant must be a “community of persons”. In addition to affected parties, other entities may file a complaint on behalf of the affected party, such as local NGOs. From a security standpoint, the Inspection panel has to keep the names of the complainants anonymous and confidential if they so wish, which in some cases may be required by defenders submitting complaints.

51. The World Bank is currently undergoing a revision of its safeguard policies, which is being highly criticised by civil society organisations and which risks undermining the Bank's ability to prevent human rights abuses throughout its operations.

After procedural reviews and investigations when appropriate, the mechanism may issue a report of non-compliance and monitor the actions taken by the Bank to redress the situation. However, these mechanisms handle only very few complaints and they can take several years to examine and address the cases.



HONDURAS

For instance, the World Bank's Compliance Advisor Ombudsman (CAO) investigated the IFC \$30 million investment in the Honduran palm oil company *Corporación Dinant*, in the Bajo Aguán Valley⁵². As mentioned in Chapter II, over the last fifteen years, the region has witnessed one of the most serious land tenure conflicts in Central America, in which peasants and their representatives have been continuously subject to threats, violent attacks, forced evictions and extrajudicial killings⁵³. *Corporación Dinant*'s private security forces have reportedly been involved in acts of violence against peasant communities and their representatives, a concern also voiced by the UN Working Group on the Use of Mercenaries after concluding its official visit to Honduras in February 2013⁵⁴. Subsequently, the audit of the IFC-backed project by the CAO found that the Performance Standards on Social and Environmental Sustainability of the IFC stating that "*Business should respect human rights (...)*" has not been respected. The assessment made a particular reference to the allegations linking *Dinant*'s owner to violence against peasant groups and leaders, including killings by the company's security guards⁵⁵. After the audit, the IFC issued, on January 3, 2014, a 12-month action plan to address the CAO's findings and enhance the supervision of its investments⁵⁶. Following harsh criticism from Honduran and international civil society groups, the IFC published an updated version of the action plan in April 2014⁵⁷.

There are other similar mechanisms available within regional development banks, such as the European Investment Bank (EIB), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IDB), the African Development Bank (AfDB) and the Asian Development Bank (ADB).

52. See NGOs Joint Statement, March 1, 2013.

53. See Chapter 2 for more information.

54. See UN Human Rights Council, *Report of the Working Group on the Use of Mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Mission to Honduras (18–22 February 2013)*, UN Document A/HRC/24/45/Add.1, August 5, 2013.

55. See CAO, *CAO Audit of IFC investment in Corporacion Dinant S.A. de C.V Honduras*, December 20, 2013.

56. See IFC Open Letter, January 3, 2014.

57. See IFC, *Dinant enhanced Action Plan*, April 2, 2014.

However, all such mechanisms are often lengthy, and have so far failed to demonstrate their usefulness in providing protection to human rights defenders at risk⁵⁸. Finally, defenders involved in cases of corporate-related human rights abuses can also try to prevent further violations against themselves and communities they defend by exerting pressure on other private actors involved, such as companies' shareholders. Companies' voluntary commitments can also be used as a tool for enhanced accountability⁵⁹.

While there is a range of judicial and non-judicial mechanisms that defenders can turn to when seeking to hold companies accountable, none of them has a specific focus on the protection of defenders. As highlighted in the recommendations of this report, it is therefore crucial that recourse mechanisms, including company-based grievance mechanisms such as hotlines, be designed and equipped to address the specific and urgent protection needs of land rights defenders, whenever relevant. Whereas company-based grievance mechanisms and complaint mechanisms within financial institutions are often based on due diligence requirements, it is fundamental that such requirements include adequate consultation and participatory mechanisms which give land rights defenders the attention they deserve.

58. For more information on regional development banks, see FIDH Guidebook, *Corporate accountability for human rights abuses; A Guide for Victims and NGOs on Recourse Mechanisms*, March 2012.

59. For more information on shareholder activism and the use of CSR commitments as a tool for accountability, see FIDH Guidebook, *Corporate accountability for human rights abuses; A Guide for Victims and NGOs on Recourse Mechanisms*, March 2012.

CONCLUSION

Committing to an international agenda for the protection of land rights defenders

The scale of attacks against land rights defenders is particularly preoccupying and should attract our utmost reaction and urgent mobilisation. The toll they pay, together with their families and communities, is dramatic, be it killings, forced disappearances, harassment or criminalisation. Caught in the crossfire between poor land users fighting for the respect of their basic human rights and powerful economic actors fighting for juicy profits, they account as one of the most vulnerable categories of human rights defenders.

This particular vulnerability is due to various factors including the fact that they challenge important economic interests pushed by powerful actors such as States and corporations, the fact that they generally operate in remote areas in which the rule of law is weak and the access to protection mechanisms is difficult. Moreover, land rights defenders operate within a weak legal framework governing land rights and land deals, in a global context of intense pressures over land and resources.

Behind attacks against them, the situations on which they intervene are those where authorities are shunning their obligation to ensure the fulfilment of their human rights obligations. This, in turn, portrays a world where development plans and investments impacting on land, are made at the expense of the local users who depend on these lands for their survival. Authorities and political actors often favour economic actors, be they national or transnational ones, at the expense of the rights of their own populations.

The balance of power becomes dramatically unequal and the efforts to bring the respect for human rights at the centre of so-called development are clearly insufficient.

In a context of multiplication of land disputes, the particular vulnerability of land rights defenders should be recognised by all stakeholders as a first step towards the establishment of a clear and strong agenda at the regional and international levels that guarantees greater protection and empowerment in an enabling environment. The international community must ensure that they can voice the concerns of victims of human rights violations, represent their communities and act as essential watchdogs against the further deterioration of land-related human rights.

“The particular vulnerability of land rights defenders should be recognised by all stakeholders as a first step towards the establishment of a clear and strong agenda at the regional and international levels that guarantees greater protection and empowerment”.

Building a safe and enabling environment for land rights defenders

While it is legitimate for States to implement development policies, it is essential that they strictly follow four basic principles that would prevent escalation in the tense environments in which land disputes take place.

Firstly, it should be accepted that the protection of human rights defenders, actors protecting the rights of others, is the minimum baseline that should always be respected. Land issues can be contested but an inviolable space in which the right of land rights defenders to act is to be preserved.

Secondly, the principle of consultation embedded in the right to participation of affected populations as enshrined in international human rights law and in various environmental conventions must be strictly respected. In this sense, it is important to highlight the essential role of land rights defenders as interlocutors of their communities.

Thirdly, effective legal and policy frameworks to ensure the free exercise of their right to information, to meaningful participation and to protest are at the core of any enabling environment for human rights defenders. To do this, it is necessary to take stock and review laws and policies. These legal and policy frameworks have to extend to all relevant actors and stakeholders involved, state, non-state and ensure effective accountability.

Fourthly, land rights defenders need to be supported, including where necessary by providing them with specific technical and financial support. Threats to defenders are not occurring in isolation but in a hostile envi-

ronment against communities and their defenders. It is thus of central importance that state and also business authorities recognize and publicly acknowledge the legitimate role that land rights defenders play for human rights, society and also for social peace and cohesion.

Breaking isolation

Most land rights defenders operate in remote areas and do not enjoy the protection of “actors of influence” such as the media and national institutions dealing with human rights. They also tend to be less connected to nation-wide human rights organisations, foreign embassies and international organisations that may have an influence on the situation. Breaking their isolation from these actors who might provide visibility to their work and provide them legitimacy is key. The dangerous and necessary work of land rights defenders must be explained and be better understood by all stakeholders and the public.

While the media is often used as a tool to discredit human rights defenders in the situations analysed, it can also be used in support of advocacy strategies developed by land rights defenders. The media can act as a bridge in ensuring good governance by raising issues and discussing them in a public arena. Sometimes land rights defenders have effectively employed media strategies in order to make violations public and to gather broader support for their causes. Many land rights defenders use new social media technologies for communication and protection purposes. This should be encouraged.

Enhanced capacities, and increased networking, too, can make the environment of operation for land rights defenders safer, reducing their isolation.

The past years have witnessed an emerging trend of establishing national mechanisms or programmes to protect human rights defenders. However, the few existing protection programmes have been criticised for their inability to provide effective protection. The main dysfunctions pointed out relate to the lack of political support, their protracted delays in processing cases, the limited resources (including budget and staffing), their weak presence in remote areas where land rights defenders are most at risk, their lack of enforcement capacities, and their difficulties to adapt to the individual situation of the person at risk and tackle the root causes of violations. Moreover, none of the existing programmes have so far a specific approach to land rights defenders. Indeed, the threats the latter are facing

are often directly affecting physical safety and are placed in complex environment involving various actors and interests thus demanding in many instances special attention and proper integration into existing human rights defenders mechanisms.

Effective protection strategies do not only concern the State in which the defender is operating. It is also relevant to note the importance of States protecting land rights defenders beyond their borders and through their foreign policy. In this regard a good practice that this report would like to acknowledge is the adoption of guidelines on the protection of human rights defenders by States and intergovernmental organisations. These guidelines can be a very useful tool when they recognise the legitimate role of land rights defenders and when they take into account specific needs attached to categories such as land rights defenders. Unfortunately, such guidelines have to compete with trade interests and lack enforcement mechanisms. Beyond this States can play also a fundamental role in ensuring that companies placed in their jurisdiction are respecting the rights of land rights defenders.

Tackling impunity

Perpetrators may be local or federal state officials, such as police officers and members of the military or non-state actors, such as company employees, paramilitaries or henchmen paid by companies or politicians.

While land rights defenders often denounce human rights violations they are victims of to the relevant authorities, in many instances, judicial institutions have not adequately investigated, prosecuted and sanctioned perpetrators, so that the majority of the abuses remain in total impunity. Because land rights defenders play an essential role defending the rights of others and fighting against the impunity of violations of the rights of others, the impunity of the abuses against them produces a double impunity. Increasing the accountability of perpetrators of human rights violations against land rights defenders should be made a priority. In that respect the capacity and independence of judiciary systems should be strengthened. Effective steps against judicial bias towards marginal groups and minority population should be equally addressed.

Alongside domestic remedies or mechanisms, land rights defenders can also turn to UN and regional bodies. They are used to alert States on specific cases and situations and can contribute to increasing the visibility of the cases and to mobilise actors that can provide protection or reme-

dies. Overall, these mechanisms are playing a positive role for land rights defenders, although their capacity to provide effective protection should be enhanced. Moreover, international and regional intergovernmental bodies should mainstream and integrate the protection of human rights defenders, and particularly of land rights defenders into their work ensuring that policies and instruments defined and implemented under their mandate do not contribute to land rights violations, including violations of the rights of land rights defenders.

In parallel, as companies are often involved in land disputes and in some cases commit or fuel the repression of land rights defenders, corporate accountability should be strengthened. In particular, both States and companies should pay a particularly attention to the role of private security companies, as they are often involved in acts of threats against land rights defenders documented by the Observatory.

Victims are still facing important barriers to access judicial remedies in case of violations committed by companies, both domestic and multinational companies. While it is possible in some countries to invoke the extraterritorial liability of companies for human rights violations by businesses operating outside their territory, States are generally not fulfilling their obligation to guarantee the access of victims to effective remedies. In all jurisdictions, victims will face legal obstacles, including issues such as the doctrine of *forum non conveniens*, time limitations, immunities doctrine, in addition to practical obstacles such as costs, etc. The removal of such barriers is particularly relevant for land rights defenders: to date, judicial remedial mechanisms are certainly not adequate nor in a position to provide the necessary and urgent protection land rights defenders need. States must therefore adopt a series of legislative and policy measures to ensure victims have access to effective judicial remedies in cases of corporate-related human rights abuses.

Non-judicial mechanisms are often more easily accessible and reactive than judicial procedures and therefore, they can also represent interesting avenues for land rights defenders to turn to. However at the moment, mechanisms such as National Contact Points of the OECD or complaint mechanisms of international financial institutions, remain criticized for their inability to effectively prevent human rights abuses and do not have a specific focus on the protection of defenders.

In this context, civil society organisations and social movements have been, for many years, calling on strengthening the international legal framework on business and human rights. It is hoped that current discus-

sions at the UN level on the elaboration of a binding international instrument on business and human rights will contribute to better prevention and protection by: clarifying and further codifying existing obligations, addressing key legal issues victims face and ensure provisions are included to address the protection needs of human rights defenders, including specifically land rights defenders.

Shifting the development paradigm

In his report to the UN General Assembly entitled “A life of dignity for all”, the UN Secretary General Ban Ki-Moon, stated that a *“new post-2015 era demands a new vision and a responsive framework. Sustainable development — enabled by the integration of economic growth, social justice and environmental stewardship — must become our global guiding principle and operational standard. This is a universal agenda that requires profound economic transformations and a new global partnership. It also requires that the international community, including the United Nations, embrace a more coherent and effective response to support the agenda”*.

Human rights and development aims converge in many instances and are mutually beneficial. The international community has, on multiple occasions, reaffirmed its commitment to put human rights into the core of development goals.

States should therefore ensure that they are not contributing to human rights violations and enshrine a human rights-based approach to development in relevant legislation, which includes the meaningful participation, protection and access to information of those affected (or likely to be) and those defending their rights as well as the respect of the right to free, prior and informed consent of indigenous peoples. Private actors should be required to carry out adequate human rights due diligence, including through the mandatory conduct of human rights impact assessments for investment projects. Such processes should count on the meaningful participation of those affected (or likely to be) and those defending their rights, including by promoting community-based impact assessments¹.

1. See for instance FIDH's work around the importance of community-based human rights impact assessment in the context of investment projects : www.fidh.org/en/globalisation-human-rights/business-and-human-rights/7502-community-based-human-rights-impact-assessments

A stronger legal framework on land rights

Although no international human rights instrument refers to a human right to land as such, access to land stands as a key human rights issue and the fulfilment of many human rights depends directly on land, including the rights to an adequate housing, to food and water, to a safe, clean, healthy and sustainable environment, or to self-determination. The links between land and human rights outline clear requirements for States and companies when they develop and implement projects impacting on land.

The context described in this report highlights the need for the international community to recognise the human rights to land of those working in rural areas, including smallholder farmers, landless people, tenant farmers, agricultural labourers and people living from traditional fishing, hunting and herding activities. Processes aiming at strengthening the legal framework governing access to land should be encouraged. In parallel, while several UN special procedures have emphasised that land is a central human rights issue and that several human rights depend on access to land for their fulfilment, other expert mechanisms should also provide guidance.

A clearer and more protective legal framework at the international level regarding land rights which encompasses all aspects of land - social, political, cultural in addition to economic - would improve the environment of work of land rights defenders and increase their legitimacy and visibility, especially in those contexts in which land disputes are prevalent.

* * *

Within this context, land rights defenders have a key role to play to ensure greater accountability and respect for human rights in projects that affect land. It is the responsibility of all to respect their rights. It is time for all stakeholders to commit to an international agenda for the protection of land rights defenders.

RECOMMENDATIONS

Based on the situation presented in this Report, the Observatory for the Protection of Human Rights Defenders formulates the following recommendations in order to give full recognition to the legitimate role and important work land rights defenders carry out; to ensure that they are able to work effectively and without threat of attack by State or non-State actors; as well as to combat impunity for such attacks and violations:

To States

Respect and protect the rights of human rights defenders in accordance with the UN Declaration on Human Rights Defenders, create an enabling environment for their work, give full and visible recognition to the legitimate role they play and grant particular attention to their situation of particular vulnerability, notably by:

with respect to the protection of human rights defenders

- guaranteeing in all circumstances the physical and psychological integrity of all human rights defenders, including those addressing land-related concerns and developing effective protection strategies in consultation with land rights defenders.
- reviewing existing laws and policies in close consultation with human rights defenders to ensure full compliance with human rights standards in order to create an enabling environment that allows land rights defenders to be able to work effectively and without threat of attack or judicial harassment by State or non-State actors; legislation that restricts their work, including in particular legislation that unnecessarily and disproportionately restrict the exercise of the rights to freedoms of association, expression and peaceful assembly should be ended, amended and/or repealed.
- ending any criminalisation of social protest and ensuring that those peacefully protesting against land rights violations are effectively protected from violations, notably by ensuring that law enforcement officials

are properly equipped, trained and subject to effective civilian oversight and effective human rights and anti-discrimination policies.

- in consultation with civil society, establishing or upgrading national mechanisms or programmes dedicated to the protection of human rights defenders and ensuring such mechanisms have a specific approach to land rights defenders.
- paying due attention to the specific protection needs of vulnerable groups such as women human rights defenders in the context of land disputes as well as indigenous human rights defenders and more generally rural community leaders.
- combating impunity for attacks against land rights defenders and violations of their rights committed both by State and non-State actors, including by undertaking effective, independent and transparent investigations into cases of violations against land rights defenders in order to identify those responsible, bring them to justice and ensure adequate compensation and reparation.
- ensuring that private actors, including corporations, are fully respecting human rights and the rights of land rights defenders and enabling prosecutions against corporations based in their countries, including prosecution for the abuses committed through their operations abroad or complicity therein.
- applying legislative and other measures to ensure that business enterprises domiciled within their territory and/or jurisdiction are bound to carry out human rights impact assessments for investment projects and monitoring and enforcing their human rights due diligence on an ongoing basis with the meaningful participation of the affected populations and communities, including land rights defenders.
- ensuring the availability and accessibility of both judicial and non-judicial recourse mechanisms, including ombudspersons or administrative bodies, that are effective, equitable, transparent, rights-compatible, impartial and sufficiently equipped. If necessary, their mandates should be revised to allow them to receive and adjudicate complaints from land rights defenders including defenders acting outside of their territorial jurisdiction, and to provide precautionary measures of protection.

- approving and instructing the implementation of guidelines on the protection of human rights defenders for their foreign missions that specifically recognise the special vulnerability of land rights defenders operating abroad, including those who focus on human rights impacts of business activities in third countries.
- paying due attention to land rights defenders when defining country human rights strategies for their foreign policies.
- cooperating fully with international and regional human rights mechanisms, including UN Special Procedures of the Human Rights Council and UN Treaty Bodies, among others by implementing the relevant decisions, recommendations and interim or protective measures of such mechanisms and by extending an open invitation to all UN Special Procedures and regional mechanisms to visit their country.
- ratifying and recognizing the ability of international and regional treaty monitoring bodies to receive complaints to allow land rights defenders to seize relevant treaty bodies, in particular the First Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- legitimising land rights defenders in government speeches and public addresses, integrating land rights defenders into dialogues and consultations, and speaking out unambiguously, showing support in case defenders are threatened or attacked.
- ensuring that core security functions are not outsourced to private and security providers, and ensuring that any private security operator is adequately equipped and trained to fully respect human rights of rural communities and land rights defenders, and is held fully accountable for eventual abuses.

with respect to the legal framework of land rights and the integration of a land rights defenders protection component in standard-setting and policies

- adopting national policies that enable equitable access to land, that secure its tenure and fully reflect the protection of non-written, traditional or customary land titles that are to be duly protected.
- strengthening the protection of the right to participation, in particular by incorporating the obligation of prior consultation of those affected (or likely to be) in policies and legal frameworks governing land management.
- promoting and supporting initiatives to strengthen the international legal framework governing land rights such as the work by the Open-Ended Intergovernmental Working Group on a United Nations declaration on the rights of peasants and other people working in rural areas, and ensuring that such initiatives and policies include provisions recognising the role of human rights defenders and regarding their protection.
- supporting the drafting process within the United Nations of a binding international instrument on business and human rights, and ensuring that it integrates a clear reference to the protection of human rights defenders who confront adverse impacts of business activities, including land rights defenders.
- promoting the mainstreaming of the protection of human rights defenders in general, and of land rights defenders by amending, revising and ensuring the inclusion of specific provisions addressing their protection in all relevant agreements, treaties, laws or action plans impacting on land rights, including trade and investment agreements, national action plans for the implementation of the UN Guiding Principles on Business and Human Rights, human rights clauses in international agreements, etc.
- ensuring that States are not contributing to human rights violations through their development policies by enshrining a human rights-based approach to development in relevant legislation and administrative regulations, which ensures the meaningful participation, protection and access to information of those affected (or likely to be) and those defending their rights.
- ensuring the respect, in law and practice, of indigenous peoples' right to free, prior and informed consent.

To private, institutional and State donors and investors

- fully integrating a human rights-based approach in their policies for allocating funds to large-scale land deals and ensuring that funded projects do not contribute to or exacerbate violations against land rights defenders. Ensuring that blending grants and loans for development cooperation fully apply a human rights based approach and ensuring protection of land rights defenders.
- making the conduct of thorough and independent human rights impact assessments with the meaningful participation of the affected populations and communities, including land rights defenders, a requirement for obtaining funding, and ensuring the inclusion of proper safeguards mechanisms to effectively address, mitigate and/or remediate to adverse human rights impacts caused by a project.
- paying close attention to protection measures taken to ensure the protection of those affected by an investment projects as well as those mobilised to ensure the project respects human rights.
- supporting the essential role of human rights organisations, community organisations, social movements working with land rights defenders by providing them with specific technical and financial support and by publicly acknowledging their legitimacy.
- allocating funds to capacity-building for those affected by investment projects and those defending their rights.
- pro-actively disclosing information about investment projects, including key documents such as investment contracts and impact assessments, with a view to support the work of land rights defenders and ensure conflict prevention.
- establishing independent grievance mechanisms for the projects financed, including for the violations of the rights of land rights defenders, and ensuring that such mechanisms respect standards for confidentiality, have an early warning system in case of threats or other violations against those who have filed or are considering filing a petition.

- coordinating with other donors through relevant forums to ensure that urgent attention is paid to the situation of land rights defenders and ensuring the respect of human rights as a priority.
- exerting leverage on those responsible for investment projects, when needed and appropriate, to ensure compliance with international human rights standards.
- supporting initiatives for greater networking of rural or land rights defenders with human rights organisations and global support networks, supporting policy dialogues to increase protection of defenders and to support land rights defenders in using domestic and international protection mechanisms.

To companies

- adopting a public human rights policy that is endorsed by the top management and which explicitly recognizes the need to ensure meaningful participation of rights-holders potentially affected, including due recognition of the role and legitimate work of land rights defenders.
- taking measures to identify, prevent, mitigate and account for adverse human rights impacts and ensuring that their activities, including through their business relationships, do not cause or contribute to human rights violations. Such due diligence processes should be based on meaningful and direct participation of potentially affected rights-holders and therefore requires paying – whenever relevant – particular attention to land rights defenders.
- carrying out engagement processes which should fully involve rights-holders, especially affected populations and communities and those defending their rights, in all stages of large-scale land deals. Engagement with such rights-holders should be conducted in good faith and in a meaningful way to seek their meaningful participation, protection and access to information.
- being attentive to displays of concern and discontent that take place outside the processes facilitated by the company, for example public assemblies, and refraining from stigmatising those expressing themselves in such a way.

- ensuring that they, as well as contracted security companies and other subcontractors, respect the rights of land rights defenders and do not cause or contribute to any type of harassment or violent acts against them.
- pro-actively disclosing information about the investment projects they support, including key documents such as the investment contracts and impact assessments, with a view to supporting the work of land rights defenders and ensure conflict prevention.
- establishing grievance mechanisms, including project- or company-level grievance mechanisms, that are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on dialogue and engagement. Such mechanisms should, whenever possible, ensure the participation of an independent third party. They should ensure – through their direct participation – that views of defenders are duly taken into account and should also have specific procedures in place to ensure they can effectively address adverse human rights impacts on land rights defenders.

To international and regional intergovernmental bodies

- providing specific technical and financial support to land rights defenders.
- mainstreaming and integrating the protection of human rights defenders, and particularly of land rights defenders into their work.
- ensuring that policies and instruments defined and implemented under their mandate do not contribute to land human rights violations, including violations of the rights of land human rights defenders.

in particular, to the UN Human Rights Council:

- recognizing the need for a protection agenda of land rights defenders by adopting a specific resolution on the protection of land rights defenders, encouraging their participation in the sessions and mechanisms of the UN Human Rights Council, and engaging States through the universal periodic reporting process on the effective protection of land rights defenders.

in particular, to the UN Committee on Economic, Social and Cultural Rights:

- working towards the adoption of a general comment that defines and clarifies land rights and sets out the requirement for an effective protection of land rights defenders.
- paying particular attention to land rights defenders when clarifying the applicability of ICESCR in relation to business and human rights issues.

for other treaty bodies, such as the UN Committee on Civil and Political Rights, the UN Committee Against Torture or the UN Committee on Enforced Disappearances:

- taking into account the special vulnerability of rural communities more likely to be affected by other serious human rights violations, such as torture, disappearances, violence and executions.

in particular, to the UN Working Group on Business and Human Rights:

- defining the role of businesses in the protection of human rights defenders and systematically integrating the human rights defenders dimension into their work, including through protective action.
- promoting that the UN Guiding Principles on Business and Human Rights integrate and mainstream the protection of human rights defenders in general and land rights defenders in particular, specifically regarding the principles of consultation and due-diligence, in consultation with the Special Rapporteur on Human Rights Defenders.

in particular, to international and regional mechanisms in charge of the protection of human rights defenders:

- paying particular attention to the situation of vulnerability of land rights defenders.
- publicly condemning human rights violations against land rights defenders, and stressing that those responsible for such abuses must be held accountable.

- defenders through tangible measures and monitoring the implementation of such measures.
- following up on communications issued on land rights defenders and on their implementation, and work towards establishing a systematic follow-up mechanism on such communications.

ACRONYMS

Acronyms most frequently used in this report

ACHPR	African Commission on Human and Peoples' Rights
CAT	Committee against Torture
CCPR	Human Rights Committee
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Committee on the Rights of the Child
ECtHR	European Court of Human Rights
EU	European Union
FIDH	International Federation for Human Rights
FPIC	Free prior and informed consent
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSID	Centre for Settlement of Investment Disputes
ILO	International Labour Organisation

LGBTI	Lesbians, Gays, Bisexuals, Transgenders and Intersex
NCPs	National Contact Points
NGOs	Non-Governmental Organisations
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OMCT	World Organisation Against Torture
OSCE	Organisation for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN HABITAT	UN Human Settlements Programme

ANNEX I

List of main contributors

The Observatory for the Protection of Human Rights Defenders would like to express its appreciation and heartfelt thanks to all the individuals and organisations that provided information for its 2014 Annual Report. It would have been impossible to write this report without the critical contribution and collaboration, notably, of the following organisations and individuals:

- **Bangladesh:** Odhikar
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- **Botswana:** Ditshwanelo - The Botswana Centre for Human Rights
- **Brazil:** Justiça Global
- **Burma:** Alternative Asean Network on Burma (ALTSEAN-Burma)
- **Cambodia:** Cambodian Center for Human Rights (CCHR)
- **Cambodia:** Cambodian Human Rights and Development Association (ADHOC)
- **Cambodia:** Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
- **Cameroon:** Center for Environment and Development (CED)
- **Cameroon:** Friends of the Press Network (FEPNET)
- **Cameroon:** Mbororo Social and Cultural Development Association (MBOSCUDA)
- **Cameroon:** REseau de LUtte contre la FAim (RELUFa)
- **Canada:** IKANAWTIKET
- **Canada:** International Civil Liberties Monitoring Group (ICLMG)
- **Canada:** Mining Watch
- **Chile:** Observatorio Ciudadano
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- **Colombia:** Comité Permanente por la Defensa de los Derechos Humanos (CPDH)
- **Colombia:** Somos Defensores
- **Democratic Republic of the Congo (DRC):** Council for Environmental Defence through Legality and Traceability (CODELT)
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- **Ecuador:** Acción Ecológica
- **Ecuador:** Comisión Ecuémica de Derechos Humanos (CEDHU)
- **Egypt:** Land Center for Human Rights (LCHR)
- **France:** Mr. Michel Forst, UN Special Rapporteur on the Situation of Human Rights Defenders
- **France / New Caledonia:** Ligue des Droits de l'Homme et du Citoyen de Nouvelle Calédonie (LDH-NC)
- **Georgia:** Human Rights Center (HRIDC)
- **Greece:** Hellenic League for Human Rights (HLHR)
- **Guatemala:** Unidad de Protección a Defensores y Defensoras de Derechos Humanos de Guatemala (UDEFEQUA)
- **Haiti:** Réseau National de Défense des Droits Humains (RNDDH)
- **Honduras:** Comité De Familiares De Detenidos-Desaparecidos En Honduras (COFADEH)
- **Indonesia:** KontraS - The Commission of the “Disappeared” and Victims of Violence
- **Italy:** International Land Coalition (ILC)
- **Kenya:** Kenya Human Rights Commission (KHRC)
- **Laos:** Mouvement Lao pour les Droits de l'Homme (MLDH)
- **Liberia:** The Association of Environmental Lawyers of Liberia (Green Advocates)
- **Liberia:** Regional Watch for Human Rights (RWHR)
- **Mexico:** Centro de Derechos Humanos Frayba
- **Mexico:** Centro Mexicano de Derecho Ambiental (CEMDA)
- **Mexico:** Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)
- **The Netherlands:** Greenpeace
- **Nicaragua:** Centro Nicaragüense de Derechos Humanos (CENIDH)
- **Occupied Palestinian Territory:** Al-Haq
- **Pakistan:** Human Rights Commission of Pakistan (HRCP)
- **Papua New Guinea:** Turubu Ecoforestry
- **Peru:** Asociación Pro Derechos Humanos (APRODEH)
- **Philippines:** Philippine Alliance of Human Rights Advocates (PAHRA)
- **Portugal:** Liga Portuguesa dos Direitos Humanos (LPDH-Civitas)

- **Republic of South Africa:** Abahlali baseMjondolo (Shack Dwellers – AbM)
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- **Russia:** Center for Support of Indigenous Peoples of the North (CSIPN)
- **Russia:** The Planet of Hopes
- **Senegal:** Ligue Sénégalaise des Droits de l’Homme (LSDH)
- **Sierra Leone:** Green Scenery
- **South Sudan:** South Sudan Law Society (SSLS)
- **South Sudan:** South Sudan Human Rights Society for Advocacy (SSHURSA)
- **Spain:** Asociación Pro Derechos Humanos de España (APDHE)
- **Turkey:** Human Rights Association (İHD)
- **Uganda:** Twerwanohe Listeners Club (TLC)
- **Ukraine:** Green Videos
- **Ukraine:** National Ecological Centre of Ukraine (NECU)
- **United Kingdom (UK):** Latin American Mining Monitoring Program (LAMMP)
- **UK:** Forest Peoples Programme (FPP)
- **UK:** Global Witness
- **UK:** Mr. Tom Longley, Human Rights and Technology Consultant; Researcher and co-author of the Global Witness Report Deadly Environment
- **UK:** Survival International
- **United States of America (USA):** Human Rights Watch
- **USA:** Oakland Institute
- **Uzbekistan:** Uzbek Bureau for Human Rights and Rule of Law (LAS)
- **Viet Nam:** Vietnam Committee on Human Rights (VCHR)

ANNEX III

The Observatory for the Protection of Human Rights Defenders: A FIDH and OMCT Joint Programme

Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break their isolation. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims. The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a) a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- b) an observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) international missions of investigation and solidarity;
- d) a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- e) the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- f) sustained action with the United Nations (UN) and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary

with geographic and thematic Special Rapporteurs and Working Groups; g) sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are referred to it, based on the “operational definition” of human rights defenders adopted by OMCT and FIDH:

“Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments”.

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger.

This system, known as the Emergency Line, is available by:

Email: Appeals@fidh-omct.org

Tel: + 41 22 809 49 39 / Fax: + 41 22 809 49 29 (OMCT)

Tel: + 33 1 43 55 25 18 / Fax: + 33 1 43 55 18 80 (FIDH)

Animators of the Observatory

From the headquarters of OMCT (Geneva) and FIDH (Paris), the Observatory is supervised by Gerald Staberock, OMCT Secretary General, and Anne-Laurence Lacroix, OMCT Deputy Secretary General, as well as by Antoine Bernard, FIDH Chief Executive Officer, and Juliane Falloux, Executive Director.

At FIDH, the Observatory is run by Alexandra Poméon O'Neill, Director, and Hugo Gabbero, Programme Officer, and the support of Catherine Absalom, Nicolas Agostini, Hassatou Ba, Céline Balléreau, Nicolas Baudez, Corinne Bezin, Karine Bonneau, Katherine Booth, Marie-France Burq, Marion Cadier, Marie Camberlin, Montserrat Carboni, Delphine Carlens,

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At OMCT, the Observatory is run by Delphine Reculeau, Coordinator, and Miguel Martín Zumalacárregui, Coordinator a.i., with the assistance of Marc Aebersold, Carolina Barbara, Nicole Buerli, Emtyez Bellali, Carin Benninger-Budel, Halima Dekhissi, Marina Gente, Halim Meddeb, Gabriele Reiter, Karim Salem, Currun Singh, Helena Solà Martín, and Peter Zangl.

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The Observatory's activities are assisted by all FIDH and OMCT local partners.

Operators of the Observatory

OMCT

Created in 1985, the World Organisation Against Torture (OMCT) is today the main international coalition of NGOs fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 298 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT International Secretariat provides personalised medical, legal and/or social assistance to victims of torture and ensures the daily dissemination of urgent interventions across the world, in order to

prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also submits individual communications and alternative reports to the United Nations mechanisms, and actively collaborates in the respect, development and strengthening of international norms for the protection of human rights.

A delegation of the International Secretariat has been appointed to promote activities in Europe and to represent OMCT to the EU. It constitutes the link with European institutions; its role is to support and to implement the International Secretariat's mandate at the European level.

OMCT also recently opened two offices in the field. Our presence in Tunisia and Libya is part of our commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the ILO, the OIF, the ACHPR and the Council of Europe.

Its Executive Council is composed of Mr. Yves Berthelot, President (France), Mr. José Domingo Dougan Beaca, Vice-President (Equatorial Guinea), Mr. Dick Marty, Vice-President (Switzerland), Mr. Anthony Travis, Treasurer (United Kingdom), Mr. Santiago Alejandro Canton (Argentina), Ms. Aminata Dieye (Senegal), Mr. Kamel Jendoubi (Tunisia), Ms. Tinatin Khidasheli (Georgia), Ms. Jahel Quiroga Carrillo (Colombia) and Mr. Henri Tiphagne (India).

FIDH

Created in 1922, the International Federation for Human Rights (FIDH) brings together 178 leagues in more than 100 countries. It coordinates and supports their work and provides a relay for them at international level. FIDH works to protect the victims of human rights violations, to prevent these violations and to prosecute those responsible. FIDH takes concrete action for respect of the rights enshrined in the Universal Declaration of Human Rights - civil and political rights as well as economic, social and cultural rights. Seven priority themes guide the work of FIDH on a daily basis: protection of human rights defenders, promotion of women's rights,

promotion of the rights of displaced migrants and refugees, promotion of the administration of justice and the fight against impunity, strengthening of respect for human rights in the context of economic globalisation, strengthening of international and regional instruments and mechanisms to protect and support human rights and the rule of law in conflict periods, emergency situations and during political transition periods.

FIDH has either consultative or observer status with the United Nations, UNESCO, the Council of Europe, the OIF, the African Commission on Human and Peoples' Rights (ACHPR), the OAS and the ILO.

FIDH is in regular, daily contact with the UN, the EU and the International Criminal Court through its liaison offices in Geneva, New York, Brussels and The Hague. FIDH has also opened 5 regional offices in Cairo, Nairobi, Tunis, Lima and Bangkok as well as 3 joint FIDH-member organisations offices in Conakry, Bamako and Abidjan. Every year, FIDH provides guidance to over 200 representatives of its member organisations, and also relays their activities on a daily basis.

The International Board is comprised of: Karim Lahidji (Iran), President; Amina Bouayach (Morocco), Dan Van Raemdonck (Belgium), Paul Nsapu Mukulu (DRC), Pierre Esperance (Haiti), Debbie Stothard (Burma), General Secretaries; Jean-François Plantin (France), Treasurer; and Yusuf Alatas (Turkey), Aliaksandr Bialiatski (Belarus), Ezzedine Al-Asbahi (Yemen), Noeline Blackwell (Ireland), Dimitris Christopoulos (Greece), Katherine Gallagher (United States of America), Tolekan Ismailova (Kyrgyzstan), Shawan Jabarin (Palestine), Dismas Kitenge Senga (DRC), Elsie Monge (Ecuador), Sheila Muwanga (Uganda), Rosemarie R. Trajano (Philippines), Drissa Traoré (Côte d'Ivoire), Paulina Vega Gonzalez (Mexico) and Zohra Yusuf (Pakistan), Vice-Presidents.

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The Observatory
for the Protection
of Human Rights Defenders

"I commend this year's Annual Report, which addresses a burning and growing issue in many countries around the globe, where land rights defenders have been subjected to a variety of obstacles and abuses because of their commitment to defend and protect human rights, from judicial harassment to arbitrary detention, from defamation to illegal surveillance, from threats to killings".

"I will more generally continue to focus on the protection of land rights defenders, insisting on the need to increase accountability, both in my communications to States and during my country visits. In doing so, I will certainly rely upon findings of this Annual Report, which provides the keys to understanding the patterns of violations against land rights defenders, and contains tailored recommendations to states and other stakeholders about ways to better ensure their protection".

Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders

The Annual Report 2014 of the Observatory provides a global analysis on the particular vulnerability of land rights defenders in a complex economic and legal environment. This picture is illustrated with 74 case studies in 29 countries. The report highlights that we are facing an extremely violent human drama and recalls that human rights must be placed at the centre of trade, investment and development policies to prevent the multiplication of deadly land conflicts. The scale of attacks against land rights defenders is particularly preoccupying and should attract the utmost reaction and urgent mobilisation of the international community and lead to the establishment of a clear and strong agenda that guarantees greater protection and empowerment for land rights defenders.

In 2011-2014, the Observatory documented more than 106 cases of harassment targeting 282 land rights defenders and 19 NGOs.

Created in 1997 jointly by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), the Observatory for the Protection of Human Rights Defenders is the leading global programme on the protection of human rights defenders. It bases its action on the conviction that solidarity with and among human rights defenders and their organisations ensures that their voice is being heard and their isolation and marginalisation broken. It responds to threats and acts of reprisal suffered by human rights defenders through urgent interventions, vital emergency assistance for those in need, international missions and advocacy for their effective domestic and international protection.



International Federation for Human Rights



World Organisation Against Torture