



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS & CORPORATE ACCOUNTABILITY

HUMAN RIGHTS MONITOR - DECEMBER 2014



UN Photo/Sebastiao Barbosa

SPECIAL EDITION PRODUCED FOR THE UN FORUM ON HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS AND CORPORATE ACCOUNTABILITY

Human Rights Monitor – December 2014

About this Monitor.....	1
Opinion.....	1
Preview: UN Forum on Business and Human Rights	3
The situation and role of human rights defenders working on corporate accountability	5
Elevating human rights defenders on the global business and human rights agenda.....	9
How the UN's latest initiatives on business and human rights can serve defenders.....	12
Protecting and supporting defenders working on business and human rights at the national level	14
The role of business	18
Human rights defender profiles	20
Key resources for human rights defenders working for business and human rights	25
A view from the regions: business, human rights defenders and regional mechanisms....	31
New training for human rights defenders on business and human rights	35

About this Monitor

In the lead up the United Nations' Business and Human Rights Forum, ISHR is devoting this Human Rights Monitor to the issue of defending human rights in the context of corporate accountability.

Themes covered include how to elevate the role of human rights defenders on the global business and human rights agenda, the protection of defenders at the regional and national level, to the role and duty of business to engage constructively with activists, and key resources and opportunities for human rights

defenders. The monitor includes the voices of key UN experts, leading international non-governmental organisations and legal specialists.

All the articles in this publication are also available in Spanish. Please [contact ISHR](#) if you would like to receive it.

Opinion

SUPPORTING AND PROTECTING DEFENDERS WHO WORK ON BUSINESS AND HUMAN RIGHTS

By Michel Forst, UN Special Rapporteur on Human Rights Defenders

(Paris, 16 November 2014) - It is increasingly well documented that many human rights defenders who work to promote corporate respect for human rights, or to expose and seek accountability for human rights violations perpetrated by business, face particular risks, restrictions and attacks.

The Special Procedures of the UN Human Rights Council have played an important role in calling attention to this issue. In the last few months alone, for example, the UN Working Group on Business and Human Rights has [expressed concern at the detention of human rights defenders and the imposition of funding and registration restrictions](#) against non-governmental organizations working on business and human rights in Azerbaijan, while a group of Special Rapporteurs, including myself, issued a [joint statement calling on the Australian state of Tasmania to withdraw a proposed law](#) which explicitly targets those who protest against the activities of the forestry, agriculture, or mining industries.

Human rights defenders working in this context commonly face threats, harassment, intimidation, criminalization and physical attacks. In many cases, defenders are labelled as 'enemies of the State', 'anti-government' or 'against development' if they oppose business and development projects. In this context, defenders working on access to land, natural resources and environmental issues, and those campaigning against illegal or forced evictions in the context of mega-projects, are at particular risk. In fact, defenders working on land and natural resource issues are among those defenders at the highest risk of being killed.

Women defenders working in such contexts are particularly vulnerable as they often work in isolated communities and have to face pressure and violence, often gender-based violence, from their own communities or vested interests. Security guards employed by oil and mining companies have allegedly threatened to kill, harassed and attacked human rights defenders during peaceful protests. There have also been cases where local authorities have allegedly colluded with the private sector, and cases in which private companies had aided and abetted the commission of violations against human rights defenders. The affected communities and those defending their rights in this context are in dire need of protection and they also need access to appropriate remedy.

In my first report to the UN General Assembly, presented last month, I identified human rights defenders working on issues of business and human rights, together with those working on the related issues of land and environment rights, as among those who are most exposed to restrictions, threats and attacks.

The good news, however, is that, led by civil society, some States and the UN human rights system are beginning to respond.

In September 2013, the United Kingdom became the first State to adopt a National Action Plan on Business and Human Rights, which includes explicit commitments to protect and support human rights defenders. More States should follow suit.

Earlier this year, at its 26th session in June, the UN Human Rights Council adopted two resolutions on business and human rights – one led by Norway, Argentina, Ghana and Russia and the other by Ecuador and South Africa – both of which contain provisions recognizing the valuable role played by civil society organisations in promoting corporate respect for human rights and exposing and seeking remedy for corporate violations. Regrettably, neither resolution responded adequately to NGO calls to recognize the worsening risks and attacks that human rights defenders who work on issues of business and human rights face, together with the obligations of States to protect and support them in this regard. Such recognition is vital if defenders are to be conferred with the protection they need and if the prevailing climate of impunity for attacks is to be addressed. The prompt and thorough investigation of attacks against human rights defenders by both State and non-State actors, together with the bringing to account of perpetrators, is a crucial element of a safe and enabling environment for their work.

Despite this modest progress, however, much remains to be done by States, corporations and the UN human rights system itself.

As alluded to in my first report to the General Assembly, I urge States to consider enacting specific laws and policies to effectively implement the Declaration on Human Rights Defenders at the national level, and for both home and host states to include concrete commitments and measures to protect defenders in National Action Plans on Business and Human Rights.

I also encourage States to take specific measures to protect human rights defenders who voice their opposition to the work of resource and extractive industries or other major development projects. Defenders have a right to participate and demand participation in decision-making processes, to exercise their rights to freedom of expression, assembly and peaceful protest, and not to be subject to such stigmatizing labels as ‘anti-development’ or economic ‘saboteurs’.

Corporations also have a role to play in protecting human rights defenders and in consulting and engaging with them so as to identify, mitigate and remedy the adverse human rights impacts of their operations. Corporations must respect the right of human rights defenders and other civil society actors to protest against business activities and refrain from obstructing or interfering with their legitimate activities in this regard. This extends to ensuring that private security firms acting for or on behalf of the corporation are not involved in attacks against human rights defenders or other human rights abuses and, in the case of investors, should include due diligence to ensure they are not indirectly financing any such attacks or abuses.

For my part, as Special Rapporteur on Human Rights Defenders, I will endeavor to work closely with other mandate holders – including the Working Group on Business and Human Rights, together with the Special Rapporteurs on Freedom of Expression and on Association and Assembly with whom I already issued a joint statement on the Tasmanian anti-protest bill – to ensure that the situation of human rights defenders working on corporate accountability issues is consistently taken up in reports, communications and on missions. I also propose to explore the possibility of a joint mission with the Working Group in this regard.

Human rights defenders have a vital role to play in promoting corporate respect for human rights abuses, corporate accountability for violations, and access to justice for victims of human rights abuses by business. States, corporations and the UN human rights mechanisms themselves can and must do more to safeguard this important but often dangerous work.

Michel Forst is the UN Special Rapporteur on the situation of human rights defenders. Follow him on Twitter at @ForstMichel.

Preview: UN Forum on Business and Human Rights

The 2014 Forum on Business and Human Rights (1 - 3 December) will once again feature an almost overwhelming array of different discussions, debates and networking opportunities for human rights defenders. At the time of writing, the exact programme is still in flux, and for most events no detailed information is available.

However, from the current draft programme, a number of key opportunities emerge to highlight the threats, challenges and risks faced by human rights defenders working on corporate accountability, and explore ways in which these can be addressed. The below is a brief overview of the programme including a non-exhaustive selection of events. Consultation of the programme itself and the civil society website UN Forum Watch with its tweet-stream using #UNForumWatch is strongly encouraged.

- While the Forum itself takes place on 2 and 3 December, the events planned for 1 December form an integral part of the conversation. Among others, the UNWG will present its new guidance document on National Action Plans (1 December, 10–11:20 am, Room 21), followed by a discussion on the role of civil society and national human rights institutions (1

December, 11:25–13:15, Room 21), which will be a critical opportunity to discuss the role of NAPs in protecting human rights defenders.

- Overall, the program for the Forum is organised in a series of plenary sessions, with parallel sessions interspersed throughout the two days. Each block of parallel sessions will feature up to three ‘official’ tracks organised by the UNWG, and up to three events organised by external stakeholders. The ‘official’ tracks loosely focus on:
 - embedding the Guiding Principles in global governance;
 - good practice;
 - access to remedy.
- The opening panel of the Forum is expected to have a strong focus on human rights defenders, with the keynote speakers including Alejandra Ancheita, the Executive Director of ProDESC and 2014 Laureate of the Martin Ennals Award, as well as Hina Jilani, the former Special Representative of the Secretary-General on human rights defenders;
- Several events will specifically consider the protection of human rights defenders working on corporate accountability. For the first time ever, the Forum will feature a dedicated event on [Business and Human Rights Defenders: Challenges and Good Practices](#) in its main program. It will consider the role and responsibility of States, business and the UN to support and protect human rights defenders who work on issues of corporate accountability, together with the constructive role that human rights defenders can play in promoting corporate responsibility (3 December, 14:30–16:00, Room 21). The event on **‘Improving protection and ensuring participation of land and environment defenders in all business initiatives and discussions’**, organised jointly by the FIDH-OMCT Observatory for the protection of human rights defenders, PBI and Franciscans International on land and environment defenders (3 December, 8:00–9:30 am, Room 9);
- While they are not specifically framed as events on human rights defenders, several other events are likely to showcase threats and challenges faced by defenders, including the event by the Friedrich Ebert Stiftung and others on ‘Discussing case studies - triggering change’ (1 December, 16:30–18:00, room 11);
- A range of events will consider the increasing work of UN human rights mechanisms in preventing, mitigating and providing accountability for human rights violations in the context of business operations, and their potential to ensure that human rights defenders who advocate on business and human rights are adequately protected from intimidation and harassment, attacks and restrictions associated with their work. For instance, an official event on **‘The Guiding Principles and UN human rights mechanisms’** will provide an opportunity to analyse the Working Group’s track record in this regard, and highlight the potential of other UN human rights mechanisms, including the treaty bodies and other Special Procedures to contribute to this agenda. Similarly, the event on **‘the treaty process - implications for business’** may serve to explore the required steps to ensure that human rights defenders and their protection are at the core of the development and content of such a treaty. Unfortunately, both events happen simultaneously on 3 December from 11:30–13:00 (Room 20 for the Guiding Principles event and Room 9 for the treaty-process event).

- In the margins of the Forum, the European Union will organise an event to mark the 10th anniversary of the EU Guidelines on the protection of human rights defenders (2 December, 13:00–14:30, Room 20).

Many other events and discussions will provide opportunities for human rights defenders to raise the threats, challenges and risks they face, and for all stakeholders to explore the critical role in preventing, mitigating, exposing and seeking accountability for business-related human rights violations.

The situation and role of human rights defenders working on corporate accountability

THE CHALLENGES FOR WOMEN DEFENDERS WORKING ON BUSINESS AND HUMAN RIGHTS

By Alejandra Ancheita, 2014 Martin Ennals Award Laureate and Executive Director of ProDESC

(Mexico City, 22 November 2014) - The challenges and risks that human rights defenders (HRDs) are facing in Mexico and other Latin American countries are diverse and growing daily in the absence of comprehensive State action to address this situation.

The inadequate response of the Mexican government to the hundreds of cases of attacks and intimidation has become evident in various spaces. For instance in the recent Universal Periodic Review of the United Nations, the Mexican State received 24 recommendations on the situation of human rights defenders and journalists in the country, whilst the Protection Mechanism for Human Rights Defenders and Journalists, in the Interior Ministry, has received 130 applications for protection.

Its response has been insufficient, particularly for those groups of defenders who face particular and heightened risks. As a woman human rights defender who works on issues related to business and the environment, I ought to know.

Situations of particular vulnerability require a tailored response

The report of the Special Rapporteur on the situation of human rights defenders to the UN General Assembly (2013) informs that HRDs are commonly branded as being against development *per se* if their actions oppose the implementation of development projects that have a direct impact on natural resources, people's land and the environment. But, rather than demonstrating opposition to development, such actions should be embraced as legitimate attempts to defend the rights of those affected directly and indirectly by development projects and policies, as long as such defense is pursued through peaceful means.

Importantly, the fact that women human rights defenders face specific threats has been well established. However, existing protection mechanisms have not yet adjusted to incorporate this reality into their functioning, thus leaving women defenders vulnerable to gender-specific threats and aggressions. This is a global phenomenon and, in over 15 years as a human rights defender in Mexico, I have personally suffered violations of my human rights because of my gender and numerous colleagues have found themselves in the same situation.

Because women HRDs face gender-specific risks, it is essential to make protection measures gender-specific. Women defenders are convinced that their security requires a holistic approach. This

involves not only applying a gender-specific interpretation of traditional security measures, but also addressing the root causes of insecurity for women HRDs and guaranteeing the conditions necessary to enable them to carry out their work.

Integral security for women defenders must also seek to transform public opinion to understand and support our work. The first step in this regard is for States to recognize that working to defend certain rights can make women HRDs particularly vulnerable, for example by working on indigenous land rights in Latin America. Public statements made by public officials on the importance of our role and the legitimacy of our work are key. Authorities must investigate and punish those responsible for statements that seek to defame or attack defenders or delegitimize their work, even when such statements are made by non-State actors like community leaders or company representatives. Given the severe impact inflammatory statements have on women defenders' work and wellbeing, they must be treated as aggressions in and of themselves.

Governmental protection mechanisms: the Mexican example

In the vast majority of countries there are no specific mechanisms in place to protect human rights defenders. Where mechanisms have been created they are often hindered by operational failings, a lack of financial or human resources, the absence of gender-sensitivity, limited options for collective or community measures, and absent political will. Rather than taking preventive measures or tackling the structural causes of violence and discrimination against women defenders, these mechanisms focus on securing the physical integrity of individual defenders in the short term, using a rigid approach with a common set of measures applicable to all. States need to address this situation in order to comply with their obligation to create a safe and enabling environment for women defenders and those working on business and human rights.

As my work is based in Mexico, and due to my incorporation into the Federal Protection Mechanism for human rights defenders and journalists last year, this is the Mechanism I am best-placed to comment on. One very positive aspect of the mechanism is that four of the nine members of the decision-making body come from civil society. However, the Mechanism is also faced with several challenges.

The Mechanism falls short in the preventative aspect. Recently, various actors including Amnesty International, Human Rights Watch and the CEDAW Committee have highlighted impunity for violations against women defenders as the greatest obstacle in improving their safety. In spite of this concern, the law establishing the Mechanism does not guarantee the adequate investigation and prosecution of perpetrators.

The Mechanism also fails to incorporate a gender perspective to better understand the situation facing women HRDs. I believe that the Mexican authorities have the opportunity to set best practices in this regard, by providing gender-sensitive training to staff and by developing gender indicators to guide the granting, planning and implementation of protection measures.

Mexican authorities responsible for the Mechanism must also effectively involve defenders in the design and implementation of protection measures, as well as conducting risk assessments in a more transparent way. This is particularly important in the case of defenders working on issues that impact upon private actors such as business, or those defending land rights in isolated communities. Finally, cooperation and coordination between federal, state and local authorities in the implementation of protection measures need to drastically improve.

Global business, global response

But the responsibility doesn't stop there. The international community also owes a duty to support the work carried out by HRDs. For example, in 2004 the European Union adopted Guidelines for the support and protection of human rights defenders, instructing EU missions to adopt a proactive policy for their protection. It is important to recall the responsibility which third States have to prevent human rights violations that arise from the activities of companies based within their jurisdiction, particularly given the lack of political will and weak institutional capacity which often exist in the countries where large transnational companies operate, such as Mexico.

Human rights defenders: steadfast

Whilst States must take on these multiple aspects to ensure our security, as human rights defenders we will not tire of demanding impartial investigations, the sanctioning of those who perpetrate against us and guarantees of no-repetition. These are our rights of access to justice and it is crucial that we demand an end to the impunity which currently propitiates the painful maelstrom of violence in Mexico.

Alejandra Ancheita is the Executive Director of Mexican human rights NGO ProDESC. In October she became the 2014 winner of the Martin Ennals Awards

THE DANGEROUS WORK OF DEFENDING TRANSPARENCY

By Lisa Misol, Senior Advisor, Human Rights Watch

(New York, 21 November 2014) – The bold activists around the world who stand up to corporate and government economic interests frequently face a harsh backlash. Individuals and communities are threatened, and activists may be arrested or killed with impunity in retaliation for speaking out against abuses of worker rights, hazardous environmental conditions, and displacement from large-scale infrastructure projects, to name some all-too-common examples.

The retaliation against activists who promote corporate transparency and combat business-related corruption is less well-known, but just as dangerous. Rafael Marques de Morais, a [globally prominent](#) human rights [advocate](#) and investigative journalist from Angola, may be the exception. He is known for [exposing](#) abuses tied to oil-fueled corruption and “blood diamonds” and for naming the companies and individuals allegedly responsible. Marques has been imprisoned, repeatedly harassed, and [beaten](#). In the [latest effort](#) to silence his reporting, he faces trial on criminal libel charges.

Many of Marques's fellow anti-corruption campaigners face similar challenges. The UN Office of the High Commissioner for Human Rights has recognized that activists working on “good governance” can be considered [human rights defenders](#). Indeed, their work to prevent bribery, promote government openness, and ensure corporate transparency advances the cause of economic and social rights by combating the diversion of public funds and encouraging sound social investments. And they seek to promote space for public participation, in line with a rights agenda. Some of these activists avoid that label, though, because protecting human rights is highly controversial in their countries.

Yet transparency work can touch on very sensitive issues, such as the lucrative deals between governments and companies to extract natural resources. A large and growing [movement](#) pushes for public disclosure of payments to governments by oil, gas, and mining companies. Nongovernmental groups are asking how those revenues are spent, who [owns](#) the businesses that [benefit](#) from

concessions, and the terms of the [contracts](#) they [sign](#) with governments. Powerful players can feel very threatened by such moves.

In July, activists calling for [greater transparency and fairness](#) in dealings between the government of Niger and a foreign mining firm were arrested. They were released under international pressure.

In Azerbaijan, independent groups working on corporate transparency and anti-corruption have been targeted amid a far-reaching [government crackdown](#) in which leading human rights figures have been imprisoned or exiled. Transparency activists have been smeared in the press as traitors and pressured by government officials to end criticisms that could harm Azerbaijan's business reputation. The authorities have [frozen](#) their personal and organizational bank accounts arbitrarily and without recourse. They have been subjected to intimidating interrogations, spurious tax inspections, and direct threats to their safety.

The UN Working Group on Business and Human Rights, during a mission to Azerbaijan in August, identified [some of these concerns](#) and expressed hope that the government would ease harsh restrictions on foreign financing of civic groups. Instead, in October the parliament approved [changes](#) that will make it even harder for them to receive outside funds.

Curiously, the only international body to censure Azerbaijan for its crackdown is not a human rights organization. The [Extractive Industries Transparency Initiative \(EITI\)](#) is an international coalition of companies, governments, and civil society groups formed to encourage public disclosures about the oil, gas, and mining sectors. It [aims](#) to improve governance and development by making data available to citizens that they can use to press for better management of natural resources and the resulting revenues.

EITI's [rules](#) recognize that, for the process to work, civic groups require an “enabling environment” to freely engage, critique, and help shape public debate and government decision-making on natural resource governance. The initiative is [finalizing](#) a new edition of its Civil Society Protocol to entrench these requirements, which have been applied unevenly.

Azerbaijan's worsening clampdown eventually [triggered action](#) by EITI's leadership. In October, the initiative's chair [announced](#) that “clearly problematic” conditions had sparked “deep concern” and would prompt a formal review in January. This move signaled that Azerbaijan's continued membership in the initiative was at risk.

The [Open Government Partnership](#), another international effort from which Azerbaijan draws prestige, also recently approved a [new policy](#) on defending civic space in participating countries. The updated EITI and OGP provisions seek to strengthen protections for transparency activists. While far from perfect, they will hopefully bring these initiatives into closer alignment with international human rights standards.

With the UN Forum in Geneva set to again emphasize the “protect, respect, and remedy” framework of the UN Guiding Principles, it is time to consider how to ensure that all defenders working on business and human rights issues are protected from harm and that their rights are respected and they have access to justice. As we confront this serious challenge, we should include many more transparency activists in our understanding of human rights defenders.

Lisa Misol is senior advisor for business and human rights at Human Rights Watch. Follow her on Twitter at @LisaMisol

Elevating human rights defenders on the global business and human rights agenda

HUMAN RIGHTS DEFENDERS MUST BE AT CORE OF DEVELOPING THE BUSINESS AND HUMAN RIGHTS AGENDAS

By Michael Ineichen, ISHR

(Geneva, 26 November 2014) - Human rights defenders working on corporate accountability play a critical role in preventing, mitigating, exposing and seeking accountability for business-related human rights violations.

The Guiding Principles on Business and Human Rights, adopted by consensus by the Human Rights Council, enshrine that businesses should engage in meaningful consultations with 'potentially affected groups and other relevant stakeholders' to identify the human rights impacts of their work.

Human rights defenders are both directly affected by, and key stakeholders regarding, the human rights impacts of business; coming from, living in, representing, and supporting affected communities. Constructive engagement and consultation with human rights defenders is therefore a business obligation arising under the Guiding Principles. Additionally, as leading commercial law firm Allens has written, there is a strong [business case for companies](#) to engage proactively and positively with defenders. Human rights defenders should also play a critical role as both stakeholders and beneficiaries in the development of [National Action Plans on Business and Human Rights](#).

Regrettably, despite both the obligation and imperative of business to respect and engage with human rights defenders, defenders in all regions of the world face harassment, threats and attacks by consequence of their work to promote corporate respect for human rights and accountability for violations. This is very powerfully shown in this special edition of ISHR's Human Rights Monitor, including by defenders themselves such as Rafaela Nicola from Brazil, Emmanuel Umpula Nkumba from the Democratic Republic of Congo, and [Sukhgerel Dugersuren](#) from Mongolia. There are some notable efforts by the UN human rights system to respond to these concerns, such as those outlined by Michael Addo, the [Chair of the Working Group on BHR](#), or recent moves by the treaty bodies including the [Committee on the Rights of the Child](#). However, as Michel Forst, the [Special Rapporteur on human rights defenders](#), explains, while the international response is evolving, it nevertheless remains inadequate.

It is therefore essential that all relevant mechanisms and processes reaffirm and reinforce the central role that human rights defenders play in this area, and through that contribute to enhancing the protection they need to play this role effectively. As the world's peak multilateral body on human rights, the UN Human Rights Council can and should be the focus of much of this work.

There is therefore a clear need for a major emphasis on the role of human rights defenders in both of the two primary 'policy strands' that are being developed within the Council, namely: the UN Working Group with its focus on implementation of the Guiding Principles; and the newly created 'open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises' (IGWG). While the two strands are often characterised as competing, the main sponsors of each initiative, [Norway](#) and [Ecuador](#) respectively, increasingly recognise the potential for complementarity of the two processes (which is to be welcomed, as pointed out [elsewhere](#)).

Most importantly, both Norway and Ecuador agree on the central role human rights defenders should play in the further development of the Guiding Principles and treaty initiatives. To live up to that central role, the following elements are critical:

Working Group and Guiding Principles: consistent inclusion of defenders' protection in all activities

On the one hand, the Working Group - whose main task is to implement the Guiding Principles - has identified human rights defenders as a group of stakeholders that requires particular attention. This is not only by virtue of threats and challenges that they face as a result of seeking accountability for business related human rights violations, but also because of the increasing recognition of the positive role defenders play in preventing and mitigating violations in the first place.

While the early years of the Working Group's work have been met with some criticism from civil society and human rights defenders for the lack of attention paid to individual cases of human rights violations and the protection needs of defenders, the picture seems to be improving. Recent visits of the Working Group - such as to Azerbaijan - have prioritised attention to human rights defenders' issues and protection, which was not the case during earlier visits.

The increasing use of individual communications, mirroring the function of other thematic UN human rights expert mandates, along with the sending of joint communications with the Special Rapporteur on human rights defenders, is further testimony to this emerging focus of the Working Group's work. It is critical that this be strengthened and further developed, including as it relates to the crucial issue of intimidation or reprisals against human rights defenders who cooperate with UN human rights mechanisms. Just as different kinds of threats and attacks on defenders pose a particular challenge to human rights defenders working on corporate accountability issues, the kinds of reprisals suffered for that work may require specific responses and protection, which the Working Group would be well placed to develop.

As shown in the seminal work of the International Corporate Accountability Roundtable (ICAR), [National Action Plans are not only critical tools in the implementation of the Guiding Principles as a whole, but important tools for the protection of human rights defenders](#). Accordingly, there needs to be increased emphasis and sharing of good practices to ensure full participation of human rights defenders in the development of NAPs. Moreover, all NAPs should include concrete and specific commitments and measures to ensure that human rights defenders working on issues of corporate accountability are supported and enabled to do so, free and protected from attacks and others forms of harassment or interference.

Intergovernmental working group towards a legally binding treaty: include focus on defenders' protection

As a newly established process supported by many NGOs, the expectations on the IGWG by civil society and human rights defenders around the world are high. This is even more the case since it was advertised as a response to business related human rights violations, and as the long-awaited avenue for putting an end to the widespread impunity for such violations.

Focusing on the specific aspect of the role of human rights defenders in the process and outcome, the following indicators/benchmarks may serve to measure the success of the IGWG. The specific suggestions and concrete ways in strengthening this role may evolve over the period of creation of the IGWG and the negotiations, but to date should be:

Process:

- **Full and effective participation of human rights defenders and affected communities:** The resolution establishing the IGWG recognises the important and legitimate role of civil society actors, and requests the IGWG to collect written input from relevant stakeholders. It is therefore critical that human rights defenders are transparently informed about, and effectively consulted on, all aspects of the work of the IGWG. This should include, but is not limited to:
 - Conduct of the work, including appointment of the chair person;
 - Devising and feeding into the ‘independent expertise and expert advice’ the resolution requests the IGWG to benefit from; and
 - Input into the program of work and agenda of the IGWG.
- **Openness to the participation of both ECOSOC and non-ECOSOC accredited organisations:** As with many other international standard setting processes, such as the process for drafting the Convention on the Rights of Persons with Disabilities, the IGWG should benefit from the expertise and insight of all human rights defenders and civil society organisations wishing to participate, irrespective of their existing consultative relationships with ECOSOC/DPI.
- **Adequate space, time and modalities for human rights defenders and civil society to participate:** In conducting the work of the IGWG, civil society should be permitted to participate fully. The experience of the Human Rights Council’s institution-building process could be instructive in that regard.
- **Protection for human rights defenders and civil society:** Human rights defenders working on issues of corporate accountability are frequently victims of threats, intimidation and attacks as a result of their work, from both State and non-State actors. The United Nations and member States have both a moral and legal obligation to ensure that those who contribute to the work of the IGWG can do so safely, without hindrance or fear, and without negative consequences for themselves or their organisations. This should include, but is not limited to, protection from direct threats against human rights defenders, threats against their organisations, or threats by businesses or governments to suspend other ongoing cooperation or dialogues.

Outcome:

Any international treaty on the issue of business and human rights should, at a minimum:

1. Reaffirm the State obligation to protect and support human rights defenders who work on issues of corporate accountability, including from threats by State or non-State actors, and the State obligation to create a [safe and enabling environment](#) in which human rights defenders can operate free from hindrance or fear;
2. Reaffirm the obligation of the State to investigate and ensure accountability for any threats and attacks against human rights defenders and others in connection with their work on business and human rights;

3. Reaffirm the obligation of companies to engage with human rights defenders, particularly in the conduct of human rights impact assessments and the development of risk mitigation strategies and programs;
4. Clearly set out the obligations of business to refrain from interfering with the work of human rights defenders, as well as their responsibility to contribute to the creation of a safe and enabling environment for defenders; and
5. Provide for accessible, affordable and effective judicial and non-judicial remedies for any violations, threats and attacks against human rights defenders.

Conclusion: respect and protect the central role of human rights defenders

Human rights defenders are the catalysts of change. If the United Nations, States and businesses are serious about promoting and protecting human rights in the context of business operations in an effective and efficient manner, they must consult and protect them. Anything less would not only neglect a critical opportunity to advance human rights protection, but would undermine decades of work to enhance the protection of defenders.

The above steps and benchmarks outlined for each of the two principle avenues of current development within the UN will go some way in seizing that opportunity.

Michael Ineichen leads and coordinates ISHR's work at the UN Human Rights Council and in relation to the issue of business and human rights. Contact him at m.ineichen@ishr.ch and follow him on Twitter at [@IneichenM](https://twitter.com/IneichenM)

How the UN's latest initiatives on business and human rights can serve defenders

ISHR has invited the leaders of the two [main initiatives](#) on business and human rights at the Human Rights Council - the Ambassadors of [Ecuador](#) and [Norway](#) - to explain how the business and human rights initiatives which they have led at the UN can both serve and benefit from human rights defenders on the ground, given that both resolutions contain paragraphs which recognise the valuable role played by civil society organisations in promoting corporate respect for human rights and exposing and seeking remedy for corporate violations.

BUSINESS AND HUMAN RIGHTS: PERCEIVED AND REAL ISSUES

By H.E. Steffen Kongstad the Ambassador of Norway to the UN in Geneva

(Geneva, 25 November 2014) - The UN Guiding Principles for Business and Human Rights (UNGPs) have become the authoritative tool for dealing with human rights abuses involving business. Business, particularly larger enterprises, as well as international institutions have picked up the Principles, including the OECD, ASEAN, African Union and IFC. National action by states to implement the Principles includes both hard regulation and other incentives, like public procurement regulations, aimed at strengthening respect for human rights in business enterprises.

Where the UNGPs are acted upon, they help reduce the overall incidence of corporate-related human rights abuses. Yet, it is increasingly well documented that many stakeholders who speak out publicly about adverse human rights impacts linked to business operations often face threats, attacks and reprisals.

The Declaration on Human Rights Defenders affirms that everyone has the right to defend their own rights and those of other people. When States do not follow up their responsibility to protect human rights defenders, or when business fails to respect human rights, this is not due to a lack of clarity in international obligations. Rather, the primary issue is the lack of *implementation* of these obligations, which requires concrete action and political will in practice, not only in principle.

Against this backdrop, the Human Rights Council resolution on business and human rights adopted by consensus in June 2014 called for a range of short term actions and implementation of the UNGPs by business, states and the UN. Furthermore, the resolution initiated longer-term processes aimed at clarifying relevant legal issues and initiating discussion of legal and practical measures among states, with the view to improving access to remedy now, rather than in the future.

The apparent conflict between those favouring a new international treaty and those who do not, is rather abstract. The real issue is between those committed to the implementation of the UNGPs and ensuring that human rights are respected, promoted and protected on a daily basis, and those who demonstrate little engagement to respect human rights and protect human rights defenders in practical terms. Norway shares civil society's view that there is a large implementation gap. This is precisely why we need the voices of human rights defenders and victims of corporate related human rights abuses to encourage and support firm, concrete and immediate action on the ground by States, businesses and the UN.

HUMAN RIGHTS DEFENDERS: THE CORNERSTONE FOR THE DEVELOPMENT OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT IN BUSINESS AND HUMAN RIGHTS

By H.E. Luis Gallegos Chiriboga the Ambassador of Ecuador to the UN in Geneva

Resolution A/HRC/RES/26/9¹ represents a further step for the tireless struggle of human rights defenders against corporate abuses. The possible adoption of an international legally binding instrument on business and human rights could level the playing field of victims deprived of a voice for many years in search of corporate liability and accountability.

In this regard, the proposal of Ecuador and South Africa tries to cover this flaw. Under the new international instrument, one option for States is to require companies to carry out human rights impact risk assessments² before allowing them to initiate its operations. This should cover the application of the principle of due diligence of the company in every step of the ladder, including its relationship with the community where it operates and therefore with human rights defenders. The application of a deterrent sanction to both, the legal entity and the agent responsible of its action, is necessary if any corporation violates those obligations.

Therefore, human rights defenders must become active participants in the debates of the Inter-Governmental Working Group (IGWG), as they are an "institution" of memory, truth and trust

¹ Human Rights Council, Resolution A/HRC/RES/26/9, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights" adopted by the Human Rights Council during its 26^o Ordinary Session, 26 June 2014.

² International Commission of Jurists, Needs and Options for a New International Instrument in the Field of Business and Human Rights (Geneve, June 2014).

among all the stakeholders involved. The United Nations should also pay special attention in this regard, and facilitate all resources needed to ensure their effective participation and collaboration.

States and other relevant stakeholders should keep a constructive dialogue among the IGWG, the Working Group of Experts on Business and Human Rights and the UN Special Rapporteur on Human Rights Defenders with the aimed of guaranteeing effective justice and redress for victims of corporate abuses.

Finally, the support given by more than 600 NGOs during the negotiation and adoption of the resolution is a remarkable example of their role in this important issue. In this sense, human rights defenders, as part of civil society, are the cornerstone for the protection of the rights of victims and every proposal designed in this area must take into account their participation.

Protecting and supporting defenders working on business and human rights at the national level

FULL IMPLEMENTATION OF THE GUIDING PRINCIPLES MEANS PROTECTING HUMAN RIGHTS DEFENDERS

By Michael K. Addo, Chair of the UN Working Group on Business and Human Rights

(Exeter, 26 November 2014) - Free and vibrant social dialogue is critically important to the promotion of business and human rights. It allows different views to be aired to ensure well-informed policymaking. Human rights defenders are the key actors in that regard.

The Guiding Principles recognise the important and valuable role played by human rights defenders, and the risks they face as a result. Principle 18 urges businesses to consult human rights defenders as an important expert resource and highlights their role as watchdogs, advocates and facilitators. The risks faced by defenders are highlighted through Principle 26, the commentary to which requires States to ensure that the legitimate activities of human rights defenders are not obstructed. The mandate of the Special Rapporteur on human rights defenders has developed the concept of a 'safe and enabling environment', in which defenders can carry out their work free from hindrance and insecurity. This is also the benchmark guiding the work of Working Group on Business and Human Rights on defenders, as we strive to ensure States and businesses alike implement their human rights obligations and responsibilities.

The threats faced by defenders are clearly documented in the Working Group's report, submitted to the Human Rights Council in June 2014. Communications received have addressed alleged murders of, attacks on, and acts of intimidation against human rights defenders who campaign against the adverse impacts of extractive company operations and allegations regarding the impact of mining and hydroelectric projects on indigenous peoples. It is a matter of grave concern to read about the continuing trend of attacks and acts of intimidation by State and non-State actors against those who protest against the actual and potential adverse impacts of business operations and major development projects.

Despite the increasingly well recognised potential role human rights defenders play in preventing, mitigating and addressing human rights violations in the context of business operations, and the State obligations and business responsibility to protect them, implementation remains patchy. The Working Group will continue to focus attention on the critical issue of the role and security of human rights defenders.

This year's Forum on Business and Human Rights, the organization of which is guided by the Working Group, will examine the role of human rights defenders as one of the key strategic issues informed by the current business and human rights agenda, and the wider global context. Building on the 2013 panel on 'defending human rights' which first brought the issue to the table, the 2014 Forum will hold a panel on human rights defenders. It will be an opportunity to ensure that the 'business case' for constructive engagement with human rights defenders is well understood, that human rights defenders are appropriately supported and capacitated in their engagement with business, and that human rights defenders are protected from threats and attacks associated with their business and human rights advocacy. I expect that this panel, along with several civil society-organised side events, will firmly establish the issue of human rights defenders and their protection needs on the business and human rights agenda, and send a clear signal that the international community is serious about creating a safe and enabling environment for these crucial actors of change. I hope it will also be a critical opportunity to demonstrate to both defenders and business the value of building trust, and the mutual benefit of developing more cooperative engagement models. The regional forum convened by the Working Group in Addis Ababa in September 2013 also included a focus on the critical role of, and challenges faced by, human rights defenders..

Secondly, in the context of our country visits, the Working Group has addressed threats faced by human rights defenders both with States and companies. Most recently following our visit to Azerbaijan, we expressed grave concern at restrictions on human rights defenders and non-governmental organisations working on issues of business and human rights. It is of particular concern that a number of prominent civil society actors were placed in pre-trial detention just before our visit and that human rights organisations were facing problems with accessing bank accounts and registering.

Thirdly, the Working Group has adopted a roadmap to support the development of national action plans. The Working Group expects national authorities to use their NAPs also to ensure that human rights defenders who focus on business-related impacts are not obstructed, but instead given adequate protection against threats and harassment. The process of developing such plans should ensure that the voices of all relevant parties, including human rights defenders, are heard and accounted for. While there is an emerging good practice in this regard, we look to States currently in the process of preparing NAPs to raise the bar in this regard.

Fourth, the Working Group through its communications procedure enters into dialogue with States and companies about alleged human rights violations brought to its attention. While the number of communications received and sent is increasing, the Working Group seeks to make strategic use of the communications as a means to strengthen protection of human rights defenders.

Fifth, and moving forward, in seeking to support the important work of human rights defenders, the Working Group acts in close cooperation with relevant stakeholders, including other Special Procedures mandate holders, and the High Commissioner and his office both in Geneva and through its field presences. Last, but by no means least, I am convinced we will be able to solicit the firm support of the business community as a key ally in ensuring human rights defenders can operate in a safe and enabling environment. After all, it makes business sense to ensure that human rights defenders can develop their full potential of making sure that business and development activities increase rather than undermine human rights protection.

Mr Michael K. Addo is the current Chair of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises. He is an academic expert in international human

rights law with a particular focus on its implications for international business policy. He researches and teaches international law, human rights and human rights & business policy at the University of Exeter. Mr Addo is a lawyer by training and an advocate at the Ghana Bar.

THE ROLE OF NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS IN PROTECTING HUMAN RIGHTS DEFENDERS

By Sara Blackwell and Katie Shay, International Corporate Accountability Roundtable (ICAR)

(Washington DC, 15 November 2014) - Around the world, business-related human rights abuses against individuals and communities continue to an astounding degree. In particular, and perhaps not as widely discussed, human rights defenders (HRDs) face significant risks to their lives and livelihoods on a daily basis as they work under the threat of extrajudicial killings, abductions, surveillance and intimidation as a result of their efforts to defend human rights in the face of harmful business activities. Essential to the protection of HRDs is the development of National Action Plans (NAPs) on business and human rights.³

Recently, a number of positive initiatives, including development of NAPs, have arisen with the aim of developing laws, policies, and regulations that effectuate standards on the role of the private sector in respecting human rights. Notably, the UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011, putting forth the first widely agreed-upon articulation of the State duty to protect people from human rights abuses perpetrated by business; the responsibility of businesses to respect human rights; and the indispensable role of access to effective remedy for victims of business-related human rights harms.

The UNGPs have generally been seen as a positive development, but the fact that they are non-binding requires further State action. In response, there has been a push for States to develop NAPs on business and human rights to articulate: (1) how the State has thus far implemented the UNGPs and other business and human rights frameworks; and (2) how the State aims to address gaps in implementation going forward. As such, NAPs on business and human rights have come to be viewed as something that every State can, and must, develop.

For HRDs who work on issues of corporate accountability and related issues, NAPs are essential. Through the development of NAPs, States can identify areas in which gaps in the existing law may put HRDs at risk or not offer adequate protection and then commit to addressing these. NAPs also provide an opportunity for civil society to hold States accountable for their existing policies and programs to protect and support HRDs, as well as for States' future plans to supplement those

³ In June 2014, the International Corporate Accountability Roundtable (ICAR) released a joint report with the Danish Institute for Human Rights (DIHR), entitled *National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks*. The "NAPs Toolkit" is intended to guide and assist governments and other actors in producing both National Baseline Assessments of current State implementation of business and human rights frameworks, including the UN Guiding Principles, and actual NAPs on business and human rights. It also presents a mapping and analysis of options at the international and regional levels for monitoring and review of NAPs once they are developed in order to improve governance, regulation, and, ultimately, respect for human rights. The NAPs Toolkit is available at <http://accountabilityroundtable.org/analysis/napsreport/>.

policies and programs in order to address violations committed against HRDs working on business and human rights issues.⁴

When developing NAPs, States should pay careful attention to both the process and content of the NAP to ensure maximum effectiveness.

To ensure an effective process, every State must first conduct a national baseline assessment of the State's current implementation of the UNGPs and other business and human rights frameworks. This should form the basis for the content of the NAP. Furthermore, each State must ensure effective participation by all relevant stakeholders, including HRDs and the communities they represent. This should be done through stakeholder mapping, capacity building, and engagement of disempowered or at-risk stakeholders. Importantly, the NAPs process must involve consultation that reinforces the legally enforceable mechanisms regulating such engagement, including the guarantee of free, prior, and informed consent of all representatives of the community. This process must also be fully transparent, including the publication of drafts of the NAP and summary reports of any stakeholder engagement with HRDs and other impacted groups so that the incorporation of their experiences and inputs is clearly understood. Lastly, the NAP itself must identify the role of HRDs and other stakeholders in the implementation of individual action points within the NAP and overall follow-up.

In terms of relevant content, the human rights of freedom of association, assembly, and peaceful protest should be an essential component of every State's NAP, and the de-criminalisation of HRDs and their work must be prioritised in States where the government itself has played a role in negatively impacting the rights of those working to hold corporations to account. States should also ensure that HRDs have access to effective remedies, both judicial and non-judicial. Furthermore, the content of NAPs must be specific and measurable, and effective judicial investigations and remediation for victims, training for government officials regarding human rights and HRDs that is in line with international human rights law, and practical guidance for diplomats on how to support HRDs, must all be taken into account.

As more and more States engage in the process of developing NAPs on business and human rights, it is essential that HRDs and their work be considered throughout the process. Across all world regions and across all stakeholder categories, a view is being expressed that States should undertake inclusive, rights-based processes to implement and embed the UNGPs and other business and human rights standards into their laws and policies. NAPs are a promising avenue for such implementation, providing a positive forum to address the many unabated violations that continue to be committed against HRDs and the communities they represent.

Sara Blackwell (@sara__blackwell) is the Legal & Policy Associate and Katie Shay is the Legal & Policy Coordinator (@km_shay) with the International Corporate Accountability Roundtable (@theICAR)

⁴ For more on the role of NAPs in the context of HRDs, see Peace Brigade International's letter to President Obama in the wake of the U.S. government's announcement that it will develop a U.S. NAP on responsible business conduct, available at http://www.mypbi.net/fileadmin/user_files/projects/colombia/files/press_kits/1410_PBI_Letter_

The role of business

THE DUTY AND BUSINESS CASE FOR CORPORATIONS TO ENGAGE CONSTRUCTIVELY WITH HUMAN RIGHTS DEFENDERS

By Rachel Nicolson, Dora Banyasz and Anna McMahon of Allens

(Melbourne, 16 November 2014) – Momentum for corporate action in the human rights sphere has built rapidly in recent years and the relationship between business and human rights is now governed by a range of instruments, laws, guidelines and standards.

Human rights defenders can play a crucial role in assisting businesses to navigate the growing body of business human rights obligations and to implement procedures to manage and address the human rights risks associated with their operations and activities.

The global standard of conduct for states and corporations in relation to business and human rights is established by the United Nations 'Protect, Respect and Remedy' Framework (the **Framework**) and the related UN Guiding Principles on Business and Human Rights (the **UN Guiding Principles**). Whilst the Framework and the UN Guiding Principles do not create binding legal obligations, they have been endorsed by the United Nations, and are regarded as the authoritative global standard for preventing and addressing adverse human rights impacts linked to business activity.

The human rights that business is required to respect are the internationally recognised human rights, understood at a minimum as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work. As a matter of best practice this also includes other key international human rights instruments such as the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples, and other voluntary initiatives and guidelines including the IFC Performance Standards on Environmental and Social Sustainability, the Equator Principles, the Voluntary Principles on Security and Human Rights and the UN Global Compact.

Business engaging constructively with human rights defenders makes good business sense. It demonstrates that a business is committed to respecting and supporting human rights as required by the Framework and the UN Guiding Principles. It gives business a strong foundation to manage the legal and non-legal consequences that can arise from human rights abuse engaged in directly or indirectly by business. This engagement is also a recognised component of the corporate responsibility to respect human rights. There is an expectation that business engage with affected stakeholders in identifying and assessing actual and potential human rights impacts and risks, in tracking and reporting on company efforts to prevent and manage those impacts, and in designing effective grievance mechanisms and remediation processes. Set out below are a number of ways in which business can engage constructively with human rights defenders, in line with these standards.

Business leaders can engage with human rights defenders to assist them to integrate human rights considerations into business decision making, including by implementing broader human rights risk management procedures. For example, Rio Tinto worked with the Danish Institute for Human Rights (**DIHR**) to conduct a desktop human rights risk assessment for operating in the Democratic Republic of Congo, where the company had no previous presence. Recommendations from the DIHR report were integrated into management plans that included proactive mitigation strategies.

Addressing human rights risks from the outset of a project will go some way to preventing human rights abuse by business in the first place, and human rights defenders will often be well placed to facilitate the building of trust and confidence among local stakeholders in this regard. This type of partnership can reduce cost and operational burdens by minimising the risk of community conflict, which can result in interruptions to production, higher security costs, staff time lost to crisis management and litigation. It is for these reasons that financial markets are increasingly rewarding companies that are proactively and effectively managing human rights risks and other dimensions of social, environmental and governance risk. Such companies may be considered better able to adapt to change, and evidence that management is aware of and taking steps to mitigate risks is an indicator of management quality.

Understanding the business risks of human rights abuses and acting to eliminate or minimise them before they occur is an important aspect of reputation and brand protection. It is increasingly viewed by key stakeholders – customers, employees, suppliers, distributors, investors, government agencies and local communities – as the mark of a forward-thinking and well-managed business. In recognition of this, as a way to mitigate reputational risks associated with human rights abuse, a number of companies are engaging with human rights defenders by participating in multi-stakeholder initiatives with governments, other companies and civil society. Working with governments and human rights defenders in these types of initiatives can reduce political instability caused by opaque governance, which is a clear threat to investments. It can also provide additional legitimacy around a particular business or project. Some examples of these initiatives include the Extractive Industries Transparency Initiative, the Global Network Initiative in the ICT sector, and the Ethical Trading Initiative in the context of workers' rights.

Human rights defenders can also assist business to monitor and evaluate the company's efforts to manage and address human rights risks and impacts associated with the particular business activity in question on an ongoing basis. This sets a solid foundation for the long-term security and effectiveness of an operation. For example, in August 2007, Anglo American, BHP Billiton and Xstrata, equal owners of the Cerrejon coal mine in Colombia, commissioned an independent 'social review' of Cerrejon's past and current social engagement to provide a credible assessment of the mine's social impact and outstanding concerns. The review was conducted independently of Cerrejon management by a panel of four internationally recognised experts in consultation with local communities and human rights NGOs.

Finally, given that human rights defenders will often have extensive experience in dealing with the impacts of business on human rights, they are well placed to assist business in the design and implementation of company grievance mechanisms. Grievance mechanisms play a key role in facilitating the effective management of human rights related risks. For example, in 2005 Exxon Mobil formed a multiparty commission to establish eligibility for land compensation and address concerns and grievances relating to the company's acquisition of land for its Chad-Cameroon pipeline project. The commission was comprised of government officials, village chiefs, traditional authorities, Exxon Mobil representatives and two NGOs. It was formed at an early stage in anticipation of potentially conflicting claims of land ownership due to a complex land-use system in Cameroon which allowed multiple individuals to have claims on the same use of land. To promote transparency, the final compensation payments took place at public hearings in the affected villages, with one of the NGOs serving the role of witness to the process.

Whilst businesses are expected to engage with affected stakeholders, including human rights defenders, as part of the responsibility to respect human rights, there is also a strong business case

to do so. Sustainable business benefits flow from engaging with human rights defenders, and most companies will increase their knowledge of the operating environment, as well as their ability to identify, manage and prevent potential human rights risks, by doing so.

Rachel Nicolson is a Partner, Dora Banyasz a Senior Associate, and Anna McMahon an Associate with Allens, a leading international law firm.

Human rights defender profiles

SUKHGEREL DUGERSUREN: DEFENDER WORKING ON CORPORATE ACCOUNTABILITY IN MONGOLIA

(Ulan Bator, 25 November 2014) - ***Mongolia is a brand new star on the extractive industry's stage. Being brand new means it does not have the necessary legal framework, norms and standards aimed at protecting the environment and the rights of local communities.***

Rio Tinto leads the list of large foreign and transnational corporations operating in Mongolia.

The World Bank leads a team of international financial institutions, namely the International Financial Corporation (IFC), European Bank for Reconstruction and Development (EBRD) and Asian Development Bank (ADB), that are financing mining and supporting infrastructure projects.

Owing to this support, the mining sector is booming nationwide regardless whether there is water in the Gobi desert or that minerals have to be transported on bare soil through national protected areas.

There is an urgent need to start holding all players in the minerals sector responsible for their footprint.

The Government is 'issuing' laws as demanded by mining corporations, or as they prefer to call themselves – foreign investors. In the past one year, the Government eliminated the *Law on Prohibiting Mineral Extraction and Exploration in Headwaters of Rivers and Forest Resource Areas* (also known as 'The Law with the Long Name'). This law had been passed in 2009 thanks to the efforts of a decade-long civil society struggle.

Meanwhile, the Government introduced a *Policy on the Minerals Sector*, a legal guideline on the main principles of operation in the minerals sector. In 2014, the Government subsequently amended it and adopted the *Law on Conventional Minerals* to bring it in line with the Policy, which permits minerals exploration without impact assessments required by the *Law on Environmental and Social Impact Assessment*.

These abusive practices by corporations, with Government complicity, are made possible due to the lack of knowledge in Mongolia about corporate responsibility as well as environmental and human rights standards. The Government, international financial institutions and corporations have obligations under UN conventions, safeguard policies of institutions and standards set by the International Council on Mining and Minerals (ICMM).

Oyu Tolgoi Watch (OT Watch) has started using various international accountability mechanisms to raise awareness to these human rights and environmental instruments in Mongolia, especially among the civil society organisations.

Oyu Tolgoi is the largest mining project owned and managed by Rio Tinto (66%) and the Government (34%). We have been engaging with Ivanhoe Mines and Rio Tinto since 2010, attempting to draw attention and raise awareness around the violations of international environmental and human rights standards.

Our goal is to create demand at community level for corporate accountability.

We are basing this on the fact that companies react to demand and they are acutely sensitive to reputational damage. Rio Tinto, for example, fails to comply with its own policies as well as standards set by potential lenders. We have two complaints in mediation since 2012 through the IFC's Compliance Advisor/Ombudsman mechanism. Word about the use of complaints mechanisms has reached other communities and there are requests to assist them in filing complaints with relevant accountability mechanisms. The process is slow - but it is slowly moving.

Challenges of human rights defenders in Mongolia start with the fact that there is no knowledge about who HRDs are, what they do and how the Government should create a legal and practical framework for their activities.

Some emblematic examples of the types of threats faced by HRDs in Mongolia working in the area of land and environmental rights are as follows:

Ts. Munkhbayar is a 2007 Goldman Environmental Prize winner and known for his work with the government and grassroots organisations to shut down destructive mining operations along Mongolia's scarce waterways. Ts. Munkhbayar is a former nomadic herder who lost access to traditional pasture and water resources as a result of mining operations. He had organised a nationwide movement to develop and push through parliament 'The Law with the Long Name', and was subsequently jailed for 7 years in attempts to safeguard this law from problematic amendments. On 16 September 2013, as deliberations were underway to repeal 'The Law with the Long Name', he entered the Government compound armed with a rifle in a symbolic act to demonstrate that all legal means of struggle had been exhausted. This act did not cause any damage and there are no victims in this incident.

On 12 August 2014, Eugene Simonov, an Environmental Whitley Fund winner, was deported from Mongolia for requesting access to technical documents of hydro-engineering projects financed by a World Bank loan under the Mining Infrastructure Investment Support (MINIS) project. All three hydro projects have the potential to cause harm to UN-protected sites in Mongolia, Russia and China. He was not informed of his deportation until he tried to make his way back to Mongolia from China.

Four members of the local community of Govi-Altai aimag were taken to court by an iron ore mining company for briefing a Government working group on the negative impacts of the mine on their community. They were part of the briefing due to their public service roles: a Bagh governor (smallest administrative-territorial unit), a medical doctor, a kindergarten manager and a head of a cooperative.

Mining corporations or businesses generally have a record of using police, prosecution and judiciary to harass local community members for attempts to protect their rights.

The Government unfortunately engages in vilification, indirect threat and influence on judicial decisions evidenced by speeches of top-tier country leaders, as well as the lack of

investigation or accountability on allegations of threats, intimidation and harassment by representatives of corporations.

Challenges faced by HRDs working on corporate accountability in Mongolia include the absence of an enabling legal environment, the vilification and smear campaigns, the denial of the right to information, the lack of redress and effective remedies, as concluded by the 2012 fact-finding mission undertaken by FORUM-ASIA. Since then, there have been many recommendations to the Government to create necessary enabling environment. The UN Working Group on Transnational Corporations has also conducted a country visit to Mongolia and expressed their concerns officially to the Government.

Engagement with the UN human rights bodies, especially with the UPR process since 2010, has raised awareness on the issue of business and human rights in Mongolia.

The issue appears to have moved forwards as a result of several activities including briefing the UPR Working Group, drafting the submission of a civil society report to the UPR and engagement with all relevant Government ministries, parliament bodies and political party caucuses seeking information on government plans to implement the Business and Human Rights Guidance.

The UPR system is promising in terms of engagement with States to show that the UN is serious about its conventions and their implementation. It brings in much broader engagement, exposure and support to start implementing commitments. I hope the next round of review will actually look at the budgets set aside for their implementation and move on from voluntary to mandatory recommendations where necessary. We are also hoping for more capacity building support to civil society engaged in this process, especially beginning to work on the new Business and Human Rights Guidance monitoring.

We hope that the Government will implement the recommendations of the UN Working Group on Transnational Corporations as per its report on Mongolia from its first fact-finding mission to a member State.

In 2013, a 7-member delegation led by a Parliament member visited the Human Rights Council but never attended the Forum itself. Our engagement with Government found that there is no knowledge of the Guiding Principles on Business and Human Rights, the Working Group report mentioned above and generally no clarity about its role in ensuring that businesses respect human rights on its territory.

Monitoring the compliance of foreign and transnational corporations without engagement of international human rights systems is simply dangerous as well as ineffective.

In a globalized world, the goal should be to bring international norms and standards together with the transnational corporations, to eliminate double standards in business operations in Mongolia.

Rio Tinto has been able to monitor and prevent a major disaster in its Kennecott's Bingham Canyon mine in the US but does not prevent mine collapses in other parts of the world they operate in. In Mongolia they have huge white clouds floating over their mine, which they would not do in the US.

If transnational corporations publicly commit to upholding international standards everywhere they work, they should do so in practice and we will monitor compliance with their own commitments.

RAFAELA DANIELLI NICOLA: ENVIRONMENTAL HUMAN RIGHTS DEFENDER

(Campo Grande, 28 November 2014) Rafaela has been an environmental human rights defender for many years. Since 2013 she works with Forum Suape, a 'social environmental space' composed by NGOs (both local and international), researchers, grassroots associations, and indigenous communities.

The creation of this forum has been the ultimate response to a long-lasting story of struggles carried on by people worried about environmental and social issues in Brazil, and its main goal is to tackle the systematic human rights violations taking place, in particular, in Pernambuco State.

The current pattern of violations in this area, Rafaela explains, is the result of the construction in the early 80's of the 'Complexo Portuário e Industrial de Suape' (CIPS). The CIPS is a major development scheme created by the Brazilian Government (without the consent of the local population), which has progressively given permission to an increasing number of private corporations – including extractive and mining companies, refineries and other highly polluting businesses- to build their facilities in a very vast area (13000 yards) which was originally inhabited by the local population.

'Suddenly, local communities felt totally powerless. The region continues transforming so fast, that people do not know how to react to it.'

As the CIPS is source of great income for the state, the Brazilian government tends to prioritise the expansion of the private companies active in the area over the life and wellbeing of the population affected by the excessive industrialisation. Violations include land and property expropriation, forced displacement, and high pollution. The little value given to people's rights face the priority given to business is the main reason why Rafaela chose to be an activist.

'It may sound simplistic, but how can someone not be valued for its life? It is a violence in itself when indigenous are depicted as invaders while it clearly is the other way around.'

Despite the efforts of Forum Suape, defenders, journalists and the local population itself face a number of obstacles in pursuing their goals. The constant reluctance of the media to talk about issues such land expropriation and rights to land, combined with a complete lack of transparency (e.g. the impossibility to access documents about impact assessment) and the refusal by companies to engage in a constructive dialogue with the civil society, undermines the impact activists can have on the ground.

In practice, Rafaela notes, the Brazilian government should create an integrated plan, and start taking into accounts the cumulative environmental and social impact of aggregated businesses. Also, it should engage in more dialogue with the locals, take into account their needs, and carry on decontamination plans. Social responsibility, corporate accountability and transparency are the keywords.

The activities carried on by Forum Suape represent a very important step to try and put an end to such issues. However, at the international level the visibility of these problems is still too low, and their gravity seem to be somehow underestimated.

'International stakeholders should pay more attention to what is going on in South America. And especially the UN should really underline the fact that there is no lifestyle better than

any other, and that individuals have the right to be able to keep their lifestyle face business expansion.'

EMMANUEL UMPULA NKUMBA: HUMAN RIGHTS DEFENDER FROM THE DEMOCRATIC REPUBLIC OF CONGO

(Lubumbashi, 27 November 2014) - Emmanuel Umpula Nkumba is a human rights defender from the Democratic Republic of Congo. After working with *Association Contre l'Impunité pour les Droits de l'Homme* (ACIDH), Emmanuel is now executive director of AFREWATCH, a NGO that works towards a sensible use of natural resources.

'Our main advocacy objectives are to ensure that the exploitation of those resources fully respects the norms and benefits the whole population.'

However, Emmanuel's first area of focus was civil and political rights. 'In 2002, new legislation was introduced, mainly the new Investment Code and the Mining Code, bringing private actors into the sector of natural resources, and since then, the problems were multiplied' he recalls. The spectrum of issues is broad: pollution, displacement of populations, negative impact of mine exploitation on the environment, child labour, etc. Many NGOs were created or expanded their work to the protection of human rights in the context of development projects, extractive industries and exploitation of natural resources.

The challenges for defenders working on business and human rights in DRC are of giant scope. Covering the loopholes of the legislation is of course a priority, but it needs to be followed by a correct process of implementation. When there is no political will to respect the law, any efforts made on the shaping of a legal framework that upholds the rights of local populations are vane.

'In the DRC, all the institutions habilitated to give answers to the problems that arise from the exploitation of natural resources are almost completely dysfunctional.'

This is the second - and probably the biggest - obstacle that defenders encounter. Whenever an organisation decides to take action on a given case, they know in advance that there will be no adequate response from neither the judiciary nor the administrative mechanisms at the national level.

'Of course, the regional and international mechanisms can be used to tackle the shortcomings, but to my opinion, only to a certain extent', Emmanuel states. According to him, using those mechanisms is not an easy task: they are less accessible than national institutions, too complex for local communities, and they require the deployment of a great load of resources. On top of that, international mechanisms imply a process of selection: all the cases cannot be brought before them, otherwise they would saturate. 'They should remain means of last resort, used only when all domestic remedies are exhausted, yet they are seen as a primary remedy' Emmanuel laments. That is why he believes it is better to focus on the capacity-building of national institutions in order to tackle cases in a quicker, more effective and more comprehensive way. 'Victims should have access to justice and reparation at a national level, and not be forced to come directly to the international arena', he adds.

'Some UN initiatives, such as the 'Protect, Respect and Remedy' Framework, are very promising, but their success relies on the way they are operationalised.'

The main concern of Emmanuel when it comes to international tools such as the UN frameworks and special procedures, the OECD guidelines, or all the 'naming and shaming' campaigns, is that they

are not binding. ‘When victims decide to take action against perpetrators of human rights abuses, what they seek, mainly, is reparation for the damages they suffered’, M. Umpala explains. The ‘voluntary’ character of the available international means holds back victims from spending their time and energy into something that does not guarantee any remedy.

Some regional mechanisms are also praiseworthy but insufficient. Emmanuel has engaged in the past with the African Commission on Human and People’s Rights. He believes that the concerns are very similar: it takes time to come to the final stage of the procedure, some cases remain pending up to five years, and time weakens victims. In addition, it is common that the condemned State avoids taking steps to fulfil its obligations, and victims are left without remedy.

‘Human rights defenders in DRC face obstacles in all aspects of their work, especially because neither companies nor the Government understand, or are willing to understand, their important role in the society.’

It is thus very common that members of NGOs, journalists or other actors of civil society that undertake a legitimate struggle to ensure the monitoring and respect of human rights suffer from threats, detention and other hindrances to their work. When this happens, the first reaction is to issue press releases and try to reach an international echo. Then, judicial and administrative procedures are triggered. ‘However, if in some cases we manage to put an end to the attack, there is very little hope that the perpetrator will be sanctioned’.

Key resources for human rights defenders working for business and human rights

This is a brief compilation of key resources available to human rights defenders working on corporate accountability at international and regional level, and through civil society initiatives.

It intends to provide a starting point for orienting advocacy work by and for human rights defenders working on corporate accountability at international and regional level, and not to provide an exhaustive list of initiatives in the area of business and human rights.

THE UN’S FOCUS ON BUSINESS AND HUMAN RIGHTS

The UN established in June 2011 a [Working Group on the issue of human rights and transnational corporations and other business enterprises](#). The key mandate of the Working Group is to promote the effective and comprehensive dissemination and implementation of the [Guiding Principles on Business and Human Rights](#), using the usual range of tools available to [Special Procedures of the Human Rights Council](#) (country visits, thematic reports, individual communications).

The [Special Rapporteur on the situation of human rights defenders](#) and the [Special Rapporteur on the rights to freedom of peaceful assembly and of association](#) have both expressed concern about human rights defenders working on these issues, with the previous Special Rapporteur on human rights defenders devoting a [report to the issue of human rights defenders working on major development projects](#) and the Special Rapporteur on the rights to freedom of peaceful assembly and of association devoting his next report to the issue of freedom of association and the extractive industries.

In order to discuss the trends and challenges in the implementation of those [Guiding Principles](#) and to promote dialogue and cooperation on issues linked to business and human rights, a [Forum on](#)

[Business and Human Rights](#) has been held every year since 2012 and is open to all relevant stakeholders.

In June 2014, the Human Rights Council mandated an Intergovernmental Working Group, tasked with commencing work towards the drafting of an international legally binding treaty on business and human rights.

There is also the [UN Global Compact](#) initiative, which is intended as a practical framework for the development, implementation, and disclosure of sustainability policies and practices by businesses that are committed to aligning their operations and strategies with [ten universally accepted principles](#).

BUSINESS AND HUMAN RIGHTS AT THE AFRICAN LEVEL

The ACHPR has a Working Group on Extractive Industries, Environment and Human Rights Violations, established by Resolution 148 which was adopted at the 46th Ordinary Session held in 2009. The mandate of the Working Group is principally to examine the impact of extractive industries within the context on the African Charter and undertake research on issues pertaining to the right of all peoples to freely dispose of their wealth and natural resources, as well as gathering information on cases and on how to hold liable non-state actors. The resolutions and reports are available [here](#).

The Working Group also collaborates with interested donors and NGOs. To find out how NGOs can engage with the Commission, obtain an observer status, participate to the NGO Forum and submit shadow reports, click [here](#).

BUSINESS AND HUMAN RIGHTS AT THE EUROPEAN LEVEL

The Council of Europe's Steering Committee on Human Rights (CDDH), on the Committee of Minister's request, prepared a [preliminary document listing the existing standards and outstanding issues](#) in the field of business and human rights. The CDDH was then instructed with the task of drafting a political declaration supporting the UN Guiding Principles, as well as a non-binding instrument, which may include a guide of good practice, addressing gaps in the implementation of the Guiding Principles at the European level. For this purpose, it set up a Drafting Group on Human Rights and Business, which already elaborated a [Declaration of the Committee of Ministers supporting the UN Guiding Principles](#). For more information and documentation, click [here](#).

BUSINESS AND HUMAN RIGHTS IN THE ASEAN REGION

In June 2014, the ASEAN Interamerican Commission on Human Rights (AICHR) finalized its [first thematic study](#), which focuses on Corporate Social Responsibility and Human Rights in ASEAN. The study can be used as a tool of promotion and protection of human rights in the business sector, and shows the commitment of this ASEAN human rights body to take into account corporate responsibility in future policy frameworks in the region.

Two NGOs have released reports on Business and Human Rights in ASEAN : the Human Rights Resource Centre (HRRC) report '[Business and Human Rights in ASEAN: A Baseline Study](#)', and FORUM-ASIA report '[Corporate Accountability in ASEAN: A Human Rights-Based Approach](#)'.

BUSINESS AND HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM

Although there is no Special Procedures on the issue of business and human rights at the Inter-American Commission on Human Rights (IACHR), the human rights independent body of the Organisation of American States (OAS), there is however a [Rapporteurship on Human Rights Defenders](#) and a [Unit on Economic, Social and Cultural Rights](#).

It is noteworthy that the General Assembly of the OAS adopted in June a [resolution entitled "Promotion and Protection of Human Rights in Business"](#). The Resolution, amongst others, urged States and the IACHR to disseminate the UN Guiding Principles, and requested the Permanent Council to hold a special meeting, through the OAS Committee on Juridical and Political Affairs in first quarter 2015, to foster exchange of experiences and best practices on the topic.

The Mexican office of the High Commissioner for Human Rights has released a [document in Spanish](#) on the right of indigenous peoples to be consulted in the context of large-scale development projects. Many references to cases brought before the [Inter-American Court of Human Rights](#) can be found.

THE OECD GUIDELINES ON BUSINESS AND HUMAN RIGHTS

The [OECD Guidelines for Multinational Enterprises](#) (also available in [French](#)) are recommendations for responsible business conduct that 44 adhering governments encourage their enterprises to observe wherever they operate.

The Guidelines establish that firms should respect human rights in every country in which they operate, as well as environmental and labour standards.

NGOs can submit a "specific instance" or a "complaint" about alleged breaches of the OECD Guidelines for Multinational Enterprises (Guidelines) to a government's National Contact Point (NCP). For a guide on how NGOs should use this procedure, click [here](#).

THE BUSINESS AND HUMAN RIGHTS RESOURCE CENTRE

Founded in 2002, the [Business and Human Rights Resource Centre](#) offers a broad range of resources related to human rights abuses and advances of companies around the world. Amongst the 'Big Issues' covered, there is a whole section on [human rights defenders](#).

The Business and Human Rights Resource Centre also has its own [publications](#) such as briefings on corporate legal accountability, on business and freedom of association, on information and communications technology, on business and children, on private military and security companies, as well as country and regional briefings.

CHILDREN'S RIGHTS AND BUSINESS

Developed by UNICEF, the UN Global Compact and Save the Children, the [Children's Rights and Business Principles](#) are a comprehensive set of principles to guide companies on the full range of actions they can take in the workplace, marketplace and community to respect and support children's rights.

For a guide on how companies should assess their performance in meeting their responsibility to respect children's rights, see '[Children rights in Impact Assessments: a Tool for Companies](#)'.

GUIDES FOR NGOs, VICTIMS AND COMMUNITY-BASED HUMAN RIGHTS DEFENDERS

FIDH has elaborated a comprehensive, practical tool for victims, NGOs and other civil society groups to seek justice and obtain reparation for victims of human rights abuses involving multinational corporations. The guide explores the different types of recourse mechanisms available, and is available in [English](#) and in [French](#).

There is also a number of guides on how to use the Right to Free, Prior and Informed Consent (FPIC) in order to assist communities affected by large-scale development projects. Some examples of such guides are the [Oxfam Guide to FPIC](#), the [UN-REDD Programme Guidelines on FPIC](#), and [FAO's 'Respecting FPIC'](#).

Finally, we can note initiatives to elaborate simpler, more accessible guides for community-based human rights defenders. Examples of such initiatives are the Protection Guide for Human Rights Defenders in Rural Areas, available in [Spanish](#) and [Q'eqchi'](#), and the Protection Manual for Community-based Human Rights Defenders in [Thai](#).

GUIDELINES ON HUMAN RIGHTS DEFENDERS

In the absence of specific guidelines on human rights defenders working on business and human rights, there is still the possibility to refer to all the available guidelines on the protection of human rights defenders in general. Useful examples are the [EU Guidelines on Human Rights Defenders](#), the [OSCE Guidelines on the Protection of Human Rights Defenders](#), and the [Swiss Guidelines on the Protection of Human Rights Defenders](#).

There is a number of NGOs that work towards the protection of human rights and the promotion of a safe and enabling environment for human rights defenders. Many of these NGOs dedicate a whole section of their work to issues related to business and human rights, corporate and social accountability or extractive industries and natural resources. Some examples are [Human Rights Watch](#), [Amnesty International](#), the [Observatory for the Protection of Human Rights Defenders](#), and [Frontline](#).

KEY 2015 OPPORTUNITIES FOR HUMAN RIGHTS DEFENDERS AT THE UN ON CORPORATE ACCOUNTABILITY

Throughout 2015, there are a number of opportunities for human rights defenders working on issues around corporate accountability to leverage the UN human rights system to further their advocacy goals. This is an indicative, non-exhaustive outlook.

- The 28th session of the [Human Rights Council](#) (the Council) in Geneva (**March**) will see, among other things, the [UN Special Rapporteur on human rights defenders'](#) annual thematic report. It is likely to contain a section on defenders working on business and human rights issues. The high-level segment of the Council, and in particular the civil society portion of it, will also provide an opportunity to profile human rights defenders issues.
- During the 29th session of the Council (**June**) the [Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association](#) will present a report on extractive industries and the right to freedom of association and assembly, and the [Working Group on the issue of human rights and transnational corporations and other business enterprises](#) will also present its annual report. Concurrently, it is expected that Norway with its core group of States will

present a resolution on business and human rights, following up to the [June 2014 resolution](#).

- The Human Rights Council's decision to commence intergovernmental work towards an international treaty on business and human rights provides potential for human rights defenders working on corporate accountability to [increase their protection](#). The newly created 'intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises', also known as 'IGWG', is set to commence its work. At this stage, the most likely timing is around **July 2015**, for a period of five days. The initial task for the IGWG is to conduct 'constructive deliberations on the content, scope, nature and form of the future international instrument'.
- The 2015 edition of the [Forum on Business and Human Rights](#) is likely to take place in December, with input by stakeholders on proposed panels and discussions expected around June 2015

FERTILE GROUND FOR CORPORATE ACCOUNTABILITY ADVOCATES: CRC GENERAL COMMENT ON BUSINESS AND CHILDREN'S RIGHTS

By McKernan, Global Initiative on Economic, Social and Cultural Rights

(Geneva, 19 November 2014) - For human rights defenders working on children's rights or corporate accountability issues, the General Comment⁵ on business and children's rights⁶ by the Committee on the Rights of the Child (CRC) has a lot to offer. It provides a detailed and progressive explanation of State obligations with respect to business impacts on children's rights offering fertile ground for human rights advocates to engage with the Committee and with States on rights abuses involving business.

The focus of the General Comment is on State obligations under the Convention on the Rights of the Child, with respect to impacts on human rights by business operators and activities within its territory and business activities outside its territory but undertaken by its domiciled business entities. The Committee takes a comprehensive approach such that it covers a very wide variety of actors, situations and issues and importantly prescribes in detail what States should do to ensure direct domestic legal accountability for business human rights abuses.

For instance, in recognition of the role played by international organizations (eg: World Bank, IMF, WTO) in rights abuses and impacts and the intertwining of international organizations and business in large scale development projects, the General Comment addresses international organisations. States are reminded that they must comply with their Convention obligations when acting as members of such organizations and in the field of development cooperation,⁷ including 'in their decision-making and operations, as well as when entering into agreements or establishing guidelines relevant to the business sector.' International organizations 'should put in place procedures and mechanisms to identify, address and remedy violations... including when they are committed by or result from the

⁵ A General Comment (also called General Recommendation by some Committees) is a treaty body's interpretation of the content of Convention articles or on thematic issues or its methods of work. General Comments often seek to clarify the reporting duties of State Parties with respect to certain provisions and suggest approaches to implementing treaty provisions.

⁶ Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, UN Doc CRC/C/GC/16.

⁷ *Op cit.* Para 47

activities of businesses linked to or funded by them.⁸ This is significant since, despite a number of treaty bodies insisting on State obligations extending to the context of international organisations, many States and international organizations continue to deny the direct applicability of human rights obligations in this context. This was evidenced recently in the rolling back of rights protections in the World Bank's draft social and environmental safeguards policies.⁹

The General Comment's broad and comprehensive approach also means that the door is open for issues not solely about children to be brought before the Committee. For instance, the General Comment talks about land dispossession (impacting whole communities including children) involving business actors,¹⁰ IMF loan conditionality,¹¹ privatization of public services,¹² the working conditions of and job creation and skills training for parents,¹³ taxation of corporations and anti-bribery measures to ensure that States have the maximum available resources to realize children's rights¹⁴ and regulation of pharmaceutical industry and of intellectual property rights to ensure access to medicines.¹⁵

By way of example, GIESCR and its partner NGOs recently highlighted the issue of the impact of privatization in education on children's right to education in Morocco¹⁶ and Ghana¹⁷ using General Comment 16 to support our arguments that States have an obligation to ensure that privatization in education does not lead to extreme inequalities. The Committee questioned Morocco about this during its review and followed up with strong Concluding Observations condemning the impact of privatization in education on children's right to education.¹⁸

Another important issue addressed by this General Comment which presents advocacy opportunities, is extra-territorial obligations (ETOs).¹⁹ The extra-territorial reach of human rights treaty obligations is contested by States despite the growing body of treaty body jurisprudence²⁰ affirming such obligations. Yet for many victims of rights violations involving business, international human rights protections will remain meaningless unless they operate across borders. In recognition of the difficulties of achieving corporate accountability due to complex legal structures and cross-

⁸ *Op cit.* para 48

⁹ See for example: <http://www.bicusa.org/safeguards-reaction-roundup/> ; <http://www.hrw.org/news/2014/10/10/world-bank-group-proposed-policy-setback-rights>

¹⁰ Para 38

¹¹ Para 47

¹² Para 33, 34

¹³ Para 36

¹⁴ Para 55

¹⁵ *Op cit.* CRC General Comment 16, Para 57

¹⁶ See <http://globalinitiative-escr.org/advocacy/privatization-in-education-research-initiative/research-project-on-the-impact-of-the-development-of-private-education-in-morocco/>

¹⁷ See <http://globalinitiative-escr.org/the-un-asks-ghana-to-explain-itself-on-privatisation-in-education/>

¹⁸ See <http://globalinitiative-escr.org/the-un-denounces-the-fast-paced-and-unregulated-development-of-private-education-which-reinforces-inequalities-with-regards-to-the-right-to-education-in-morocco/>

¹⁹ This refers to the issue of whether States' human rights treaty obligations extend to persons or activities occurring outside its territorial boundaries. See General Comment 16, para 39 and 42 – 46.

²⁰ See for example 'A Practitioner's Guide to Interpreting Human Rights Obligations in a Global Economy', ESCR-Net, available here http://www.etoconsortium.org/nc/en/library/documents/detail/?tx_drblob_pi1%5BdownloadUId%5D=115

border nature of business, the Committee has detailed the distinct obligations of both home²¹ and host²² States with respect to children's rights.

For instance, contrary to current home State practice of reducing opportunities for foreign victims to bring claims in their domestic Courts, General Comment 16 says home States must enable access to effective remedy for foreign victims of human rights violations by business, 'where there is a reasonable link between the State and the conduct concerned.'²³ Another expansive interpretation of ETOs is the requirement that States ensure export credit agencies 'take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children's rights before offering support to businesses operating abroad.'²⁴

These issues were addressed in the CRC's review of Australia. The Committee expressed concern about:

Australian mining companies' participation and complicity in serious violations of human rights in countries such as the Democratic Republic of Congo, the Philippines, Indonesia and Fiji, where children have been victims of evictions, land dispossession and killings. about reports of child labour and conditions of work of children that are in contravention of international standards in fishing industry enterprises operated by Australian enterprises in Thailand.²⁵

The Committee recommended that Australia:

Examine and adapt its legislative framework... to ensure the legal accountability of Australian companies and their subsidiaries regarding abuses to human rights, especially child rights, committed in the territory of the State party or overseas and establish monitoring mechanisms, investigation, and redress of such abuses.;

and

establish the mechanisms for the Export Credit Agency of Australia to deal with the risk of abuses to human rights before it provides insurance or guarantees to facilitate investments broad.²⁶

There are numerous other useful provisions in General Comment 16 which offer broad advocacy avenues and our experience is that the Committee is receptive to new issues and creative advocacy which highlights serious children's rights issues involving non-State actors.

Lucy McKernan is UN Advocate with the Global Initiative on Economic, Social and Cultural Rights. Follow her on Twitter at @LucMcK

²¹ The home State is the State where a corporation, or its parent company, is registered or domiciled. It is usually where the corporation is head-quartered.

²² The host State is the State where a corporation is undertaking activities or operations, usually through a subsidiary company that is registered in the home State. Usually key decision-making is undertaken by the parent company in the home State and profits are remitted to the parent company in the home State.

²³ Para 44

²⁴ Para 45(c)

²⁵ UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia, 28 August 2012, CRC/C/AUS/CO/4, para 27.

²⁶ Para 28 (a) & (c)

A view from the regions: business, human rights defenders and regional mechanisms

ISHR asked representatives in and around the regional human rights systems of [Africa](#), [Asia](#) and the [Americas](#) to explain why human rights defenders and regional protection is vital in the issue of corporate accountability. The Chair of the African Commission Working Group on extractive industries, the Inter-American Special Rapporteur on human rights defenders and Forum Asia's ASEAN Advocacy Programme Manager tell us why.

DEFENDING THE DEFENDERS: A NEED TO ENSURE THE PROTECTION OF HUMAN RIGHTS DEFENDERS IN THE EXTRACTIVE SECTOR

*By **Pacifique Manirakiza**, Commissioner at the African Commission on Human and People's right and the chair of the Working Group on Extractive industries, environment and Human Rights Violation.*

(Ottawa, 28 November 2014) - For the last decades, the extractive industry has been booming in Africa. For instance, mining and developmental projects are conceived and implemented all over Africa. The implementation of those projects poses a new and serious challenge to the African human rights community. Human rights defenders operating in this area face serious and specific challenges. They have to work in an environment where they have to denounce not only human rights abuses by States, but also those committed by non-state actors, i.e. multinational companies. In their work, they are facing resistance and harassment from both States and multinationals.

In the course of the work of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (WGEL), we heard stories from human rights defenders about numerous threats, including death threats, and harassment they face when working to denounce rights violations and other abuses committed by extractive industries. It is crucial that States fulfill their obligation to protect human right defenders, including those who work to promote transparency and accountability in the extractive industry sector. Human rights defenders are key partners to the work of the WGEL and the Commission as a whole. In fact, our Working Group has an umbilical link with human rights defenders. This mechanism was created thanks to their advocacy work in order to assist the Commission in addressing the adverse impact of the exploitation of natural resources in Africa and to ensure that all African peoples freely dispose of their wealth and natural resources as guaranteed by article 21 of the African Charter.

Human right defenders are the voices of the communities who suffer from the adverse impact of extractive activities. States and extractive industries should ensure that both communities and defenders are consulted and involved in the human rights impact assessment of the exploitation of natural resources. The African Commission WGEL is committed to engaging African states and extractive industries on the need to ensure that defenders working on the extractive sector are protected and recognized as key partners in the conception and the implementation of development projects.

THE IMPORTANCE AND PROTECTION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS

*By **Commissioner José de Jesús Orozco Henríquez**, Rapporteur on Human Rights Defenders of the Inter-American Commission on Human Rights*

(Washington DC, 27 Ma 2014) - Since its foundation 50 years ago, the Inter-American Commission on Human Rights (IAHCR) has monitored the situation of human rights defenders in the Americas and has employed protection mechanisms to protect the life and physical integrity of persons persecuted for their activities to defend human rights.

In 2011, responding to need for the grave situation faced by defenders to be given greater visibility, and to enable follow up to specific cases, the IAHCR created the mandate of the Special Rapporteur on Human Rights Defenders. The Rapporteur is also charged with monitoring the situation of judges, prosecutors and public defenders in as far as their work relates to access to justice.

Amongst the most frequent violations defenders face in their work to promote and protect human rights are assassinations, threats, harassment, illegal, arbitrary or undue interference in their work, and violence meted out during social protests. These acts are designed to generate fear, discourage the human rights defender community, and silence and terrorise victims. In recent years, the Office of the Rapporteur has noted an additional obstacle – that of criminalisation, understood as being subjected to penal investigations and judicial complaints that are without foundation, aimed at intimidating defenders and paralysing their work.

There is a lack of effective State measures to protect defenders in situations of most risk, and a very low rate of effective investigation of threats and attacks. The majority of States in the Americas have not put specialised protection measures in place. Those measures that have been created fall short, either providing security to defenders without investigating the origin of the threats, or vice versa. This shows a lack of comprehensive State protection policies, which perpetuates the vulnerability of defenders and adversely affects their work.

The challenges the Office of the Rapporteur faces include ensuring a timely response to situations where the rights of defenders are compromised, and choosing the most effective amongst the mechanisms used by the Commission to urge States to take decisive action to protect defenders, such as by developing effective policies and practices for the protection of human rights. There are several such means and mechanisms available to the Commission, namely: requesting information from States; issuing press statements; holding public hearings and working meetings; adopting precautionary measures and requesting provisional measures from the Court for the protection of defenders; considering individual petitions; and elaborating thematic reports.

The Commission is clear that the most effective way to address the challenges faced by defenders is through the adoption by States of a comprehensive framework of protection aimed at undercutting the risks faced by individuals and enabling the continuation of their work. Such a framework should include: refraining from putting obstacles in the way of defenders' work; adopting public policies and norms that enable the work of defenders; protecting them from threats and risks to their lives and physical integrity; and guaranteeing investigations of violations committed against them. Furthermore, given that a third of precautionary measures issued by the Commission are aimed at protecting the life and integrity of human rights defenders, it is essential that the national protection policies include measures to establish systems for the swift and effective implementation of protection measures, including those coming from the Commission. A further critical component of these policies is the public acknowledgement of the legitimacy of the work of defenders and their contribution to the strengthening of the rule of law and protection of human rights.

Thanks to the system of petitions and cases, we have seen developments in Inter-American jurisprudence regarding the protection of defenders and the independence of justice operators. In a

series of cases, the Inter-American Court has noted that States have specific obligations to protect activities to defend human rights. These developments all contribute to setting out more clearly the obligations of States with respect to creating an enabling environment for human rights defenders and provide a useful framework for the Commission when issuing recommendations and protection measures to States.

BUSINESS AND HUMAN RIGHTS DEFENDERS IN THE ASEAN REGION

By **Atnike Nova Sigiro**, ASEAN Advocacy Programme Manager at Asian Forum for Human Rights and Development (FORUM-ASIA)

(Jakarta, 28 November 2014) - Aiming to be an ASEAN Economic Community (AEC) by 2015, the ASEAN region has accelerated its integration into the global market economy driven by business interests from within and outside ASEAN, with a strong backing by the region's governments. Projects proposed under the AEC include transport cooperation, energy cooperation and mining cooperation. Much political emphasis has been placed on the AEC to further liberalise the region's economy and facilitate trade and investment. Far less emphasis has been placed on addressing the social and environmental consequences of economic growth and safeguarding human rights, which are within the mandate of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

ASEAN integration has also entailed the construction of large infrastructure (such as roads, hydropower dams and fossil fuel-fired power stations), proliferation of the mining industry, creation of polluting industrial zones, and the expansion of a range of land-intensive agro-business. Development-induced displacement is also endemic and many people are losing access to the natural resources upon which they depend. Development based on resource extraction and exploitation not only leads to environmental degradation, but in a number of cases has also triggered violations of human rights by government and business without redress. Increasingly, human rights defenders in ASEAN working to expose human rights abuses in these connections are more vulnerable to threats from both State and non-State actors.

Nevertheless, several initiatives to address these issues have taken place within the ASEAN region. In October 2010, organisations from five ASEAN member States – Singapore, Indonesia, Malaysia, Thailand and the Philippines – established the ASEAN CSR Network. In 2013, at least two reports on business and human rights were produced by NGOs, namely: the Human Rights Resource Centre (HRRC) report "[Business and Human Rights in ASEAN: A Baseline Study](#)", and FORUM-ASIA report "[Corporate Accountability in ASEAN: A Human Rights-Based Approach](#)".

Finally, in June 2014, the AICHR finalized its long-awaited first thematic study which focused on Corporate Social Responsibility and Human Rights in ASEAN^[1]. Similar to FORUM-ASIA's report, the AICHR's report also admits that the concept of CSR has its limitation to be used as a tool for promotion and protection of human rights, especially for its voluntary principle. Nevertheless, the report recognized the importance of CSR for awareness-raising and recognition of the role of the business sector towards human rights. The report also encourage ASEAN Members States to further accelerate and strengthen the implementation and enforcement of the existing rules and regulations that deal directly with such adverse impacts of business conducts at national and regional level. Despite the prolonged process and the lack of consultation with broader stakeholders, particularly CSOs, the report shows an important start for ASEAN, particularly through its human rights body,

the AICHR, to recognize and to envisage future policy framework on human rights based approach in the work of business in ASEAN region.

New strategy workshop for human rights defenders on business and human rights

A group of human rights defenders from Asia, Africa and Latin America have participated in a strategy workshop this week facilitated by ISHR in Geneva, ahead of the UN Forum on Business and Human Rights.

The workshop was tailored to the needs of defenders working on corporate accountability issues, and included sessions on constructive engagement with business to promote corporate responsibility and strategic advocacy at the UN to promote corporate accountability.

A [photo album](#) of the workshop can be found on ISHR's Facebook!



ISHR

SUPPORTING HUMAN RIGHTS
DEFENDERS FOR **30 YEARS**

For more information about our
work, or any of the issues covered in this
publication, please visit our website:

www.ishr.ch

or contact us:

information@ishr.ch

www.facebook.com/ISHRGlobal

www.twitter.com/ISHRGlobal

www.youtube.com/ISHRGlobal

GENEVA OFFICE

Rue de Varembé 1, 5th floor
P.O.Box 16
CH-1211 Geneva 20 CIC
Switzerland

NEW YORK OFFICE

777 UN Plaza, 8th floor
New York, NY 10017
USA



ISHR

SUPPORTING HUMAN RIGHTS
DEFENDERS FOR **30 YEARS**