

The situation of human rights defenders of economic, social and cultural rights

Briefing Paper for the Committee on Economic, Social and Cultural Rights - February 2016

Around the world, land rights advocates, community leaders, those demanding clean water, professionals denouncing obstacles to health care, members of NGOs documenting toxic waste, trade unionists, journalists exposing corruption and many other defenders of economic, social and cultural (ESC) rights are being killed, threatened, harassed, intimidated, disappeared, jailed and stigmatised - in attempts to silence them and prevent them from doing their vital work promoting, protecting and realising the rights contained in the Covenant on Economic, Social and Cultural Rights (ICESCR). This harassment threatens the realisation of the ICESCR rights they defend and undermines the work of the Committee on Economic, Social and Cultural Rights (the Committee).

Unfortunately, the targeting of economic, social and cultural (ESC) rights defenders is increasing globally and we believe the Committee can help to ameliorate the situation by recognising the important work of ESC rights defenders and calling on States to protect their rights.

WHO ARE ECONOMIC, SOCIAL AND CULTURAL RIGHTS DEFENDERS?

- The UN Declaration on Human Rights Defenders defines a human rights defender as ‘anyone working for the promotion and protection of human rights’.¹ Therefore any individual or collective promoting or protecting ESC rights by any peaceful means, is a human rights defender.
- The OHCHR has illustrated that ‘Human rights defenders address any human rights concerns [including]... discrimination, employment issues, forced evictions, access to health care, and toxic waste and its impact on the environment... the rights ... to food and water, to the highest attainable standard of health, to adequate housing, ... to education...’²
- Human rights defenders of ESC rights are not always described as ‘human rights defenders’ and they themselves may not use the term ‘human rights’ in a description of their work, focusing instead on terms such as ‘health’ or ‘housing’ which reflect their area of activity. For example, human rights defenders of ESC rights include: local communities protesting about land grabbing and environmental issues; participants of housing associations campaigning for improvements to informal settlements; parents groups campaigning for better quality education; health workers calling for access to vital medicines for all; lawyers prosecuting forced labour cases; women farmers protesting their lack of legal rights to land and productive resources.

HUMAN RIGHTS DEFENDERS ARE ESSENTIAL TO THE REALISATION OF ICESCR RIGHTS

The effective protection and realisation of ESC rights relies upon the contribution of civil society, who play a vital role by monitoring and evaluating State compliance with the ICESCR, inputting into policy formulation and service design and delivery, identifying rights violations and holding authorities accountable for the consequences of their actions. Without these human rights defenders the effective protection and realisation of ICESCR rights would be seriously undermined.

The Committee itself relies upon human rights defenders to assist it in monitoring implementation of the Covenant. Reports from civil society are crucial for the State review process and NGOs frequently assist individuals to bring cases under the Optional Protocol. Local advocates are also imperative for ensuring national level follow-up and implementation of the Committee’s recommendations.

ESC rights defenders will not always bring their own situation of threats and attacks to the attention of the Committee, preferring to use the limited civil society time to highlight the violations of ESC rights affecting the communities they represent.

If ESC rights defenders face threats, attacks, legal restrictions or phoney legal charges for documenting and denouncing the situation of ESC rights in their country, then it is unlikely that they and other

advocates will continue this work. It is probable that many will opt not to submit information about ground level realities to the Committee, nor to demand the implementation of the Committee's recommendations.

Therefore, for ESC rights to have meaning in practice, States must ensure that human rights defenders can play this vital role, by providing a safe and enabling environment and guaranteeing the rights of defenders, so that they can voice their concerns and critiques of government action without fear of reprisals. This obligation is implicit in the normative content of ESC rights, such that a failure to protect defenders of ESC rights may amount to a violation of the Covenant itself.

HEIGHTENING RISKS FOR HUMAN RIGHTS DEFENDERS WORKING ON ESC RIGHTS

The situation of defenders working on ESC rights issues is deteriorating worldwide and is detailed in a proliferation of reports by UN Experts and NGOs, describing alarming increases in threats, harassment, arbitrary detention, murder and enforced disappearances of defenders working on ESC rights.^{3, 4} A more recent trend has been the proliferation of domestic laws that restrict and seek to silence NGOs working on rights issues.⁵

In a recent report, the UN Special Rapporteur on human rights defenders highlighted those combating corruption and impunity, as well as human rights lawyers and defenders working on land and environment rights and on issues of corporate accountability, as amongst the most vulnerable.⁶

The Inter-American Commission has identified trade unionists, campesino and community leaders, indigenous and afro-descendent leaders, environmental rights defenders and migrant workers' rights defenders as five of the seven groups of defenders facing a special situation of risk in the Americas.⁷

In 2015 the UN Working Group on Enforced Disappearances confirmed the greater risk of enforced disappearance of people actively defending ESC rights, stating that 'enforced disappearance is

used as a repressive measure and a tool to deter the legitimate exercise, defence, or promotion of the enjoyment of economic, social and cultural rights.'⁸

Risks are particularly accentuated when defenders challenge large financial interests and/or non-State actors such as businesses, or for women human rights defenders, whose activism on ESC rights challenges chauvinist norms.

Examples of the situation of ESC rights defenders are:

- In the **Philippines**, 'Indigenous rights defenders are particularly exposed to retaliation because of their work on land rights, forced evictions, the environment and the defense of indigenous peoples' traditional way of life. Police, the military or private security personnel hired by corporations are responsible for violence, including killing, surveillance, threats and intimidation against them'.⁹
- In **Angola** human rights defenders whose advocacy aims to protect ESC rights are particularly at risk. Protesters on such rights face harassment, ESC rights NGOs face obstacles to registration and journalists reporting on these rights face criminalisation. In particular, human rights defenders working on issues related to housing and on transparency and corruption face threats, attacks and imprisonment.¹⁰
- Per capita **Honduras** ranks number one in the 'Global killings of land and environmental defenders 2002-2014' index with a total number of 111 victims during that period.¹¹
- In **Kenya**, human rights defenders fighting for land rights and other ESC rights face disappearance, intimidation and death threats.¹²

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THE ROLE OF THE COMMITTEE IN PROTECTING HUMAN RIGHTS DEFENDERS WORKING ON ESC RIGHTS

The Committee, through its Concluding Observations¹³ and its General Comments¹⁴, has reiterated that threats and obstacles to ESC rights defence represent impediments to the promotion and protection of ESC rights themselves and has called upon States to respect and protect the work of human rights defenders.

We encourage the Committee to continue this work by:

- Explicitly underlining the legitimacy of peaceful protest and advocacy activities for the promotion and protection of ESC rights and reiterating the breadth of actors who fall within the definition of human rights defender according to the UN Declaration;
- Advising States to take concrete measures to recognise, consult and protect ESC rights defenders, reiterating that attacks against, and restrictions upon, ESC rights defenders may amount to a violation not only of the rights of the defenders themselves, but of the ESC rights for which they advocate;
- Stating that non-State actors, and business in particular, have a responsibility to contribute to a safe and enabling environment for human rights defence; and
- Reiterating the Committee's commitment to combat intimidation and reprisals against those who provide information, contribute to, or seek to contribute to, the Committee's work to promote and protect ESC rights.

Human rights defenders are the catalysts of lasting human rights change, an ally in the promotion of the rights enshrined in the International Covenant on Economic Social and Cultural Rights, and a crucial element in the functioning of the UN treaty bodies. They require strong and urgent support: protect them, protect the system, protect the rights.

1. The Declaration on human rights defenders refers to "individuals, groups and associations ... contributing to ... the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals" (fourth preambular paragraph), General Assembly Resolution A/RES/53/144.
2. Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No. 29, United Nations.
3. Global Witness, 'Deadly Environment: The dramatic rise in killings of environmental and land defenders', April 2014, accessible here: www.globalwitness.org/sites/default/files/deadly%20environment%20embargoed.pdf.
4. FIDH, 'Land and environmental rights defenders in danger: an overview of recent cases', December 2013, accessible here: www.fidh.org/International-Federation-for-Human-Rights/human-rights-defenders/international-and-regional-protection-of-human-rights-defenders/14326-land-and-environmental-rights-defenders-in-danger-a-compilation-of-recent
5. ISHR, 'From Restriction to Protection: Research report on the legal environment for human rights defenders and the need for national laws to protect and promote their work', November 2014, accessible here: www.ishr.ch/sites/default/files/article/files/research_report_on_legal_environment_for_hrds_upload.pdf.
6. A/70/217, paragraphs 68-70 and 75, accessible here: www.un.org/ga/search/view_doc.asp?symbol=A/70/217.
7. Segundo Informe sobre la Situación de las Defensoras y Defensores de Derechos Humanos en las Américas (2012), Comisión Interamericana de Derechos Humanos.
8. A/HRC/30/38/Add.5, paragraph 33.
9. Frontline Defenders, www.frontlinedefenders.org/philippines#sthash.s3cjr3mz.dpuf.
10. ISHR and GIESCR, www.ishr.ch/sites/default/files/documents/angola_final.pdf.
11. How Many More?, Global Witness, April 2015, accessible here: www.globalwitness.org/en/campaigns/environmental-activists/how-many-more/.
12. ISHR, www.ishr.ch/sites/default/files/article/files/kenya_-_upr_briefing_paper.pdf.
13. Including to Angola 2009 (E/C.12/AGO/CO/3), Equatorial Guinea 2012 (E/C.12/GNQ/CO/1, para 14), Argentina 2011 (E/C.12/ARG/CO/3, para 13), Cambodia 2009 (E/C.12/KHM/CO/1, para 31).
14. Including General Comments 15 (Water), 19 (Social Security), 12 (Food) and 18 (Work).

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