

2 May 2016

To: Members of the United Nations Committee on Economic, Social and Cultural Rights

Dear Committee members,

Subject: Situation of defenders of economic, social and cultural rights

The undersigned [#] civil society organisations, from all regions, would like to draw the Committee's attention to the deteriorating situation of those people and organisations who work to promote and protect economic, social and cultural (ESC) rights. We call on the Committee to address this concerning situation, including by **making a public statement on ESC rights defenders.**

The recent murder of Ms Berta Cáceres is emblematic of the risks these human rights defenders face. Ms Cáceres was a well known and respected Honduran campaigner on indigenous and environmental rights who was killed because she spoke out against the negative human rights impact of dams, plantations and illegal logging. Sadly, there are many more examples from around the world in relation to the full range of ESC rights. We believe the Committee can help to ameliorate the situation by recognising the important work of ESC rights defenders for the realisation of rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR), and calling on States to protect them and the space for them to do their work.

Who are 'defenders of economic, social and cultural rights'?

Defenders of ESC rights are those who are working to promote and protect these rights, whether or not they work for an NGO or are doing the work in their professional or personal capacity, and whether or not they self-identify as a 'human rights defender'¹. For instance, they might be: indigenous community leaders demanding clean water for their community; trade unionists; journalists or NGOs exposing land grabbing; participants of housing associations campaigning for improvements to informal settlements; health workers calling for access to vital medicines for all; lawyers prosecuting forced labour cases; or women farmers protesting their lack of legal rights to land and productive resources.

In addition, defenders of ESC rights are those people, communities and organisations who engage regularly with the Committee as part of its State reporting process, such as those who undertake research, prepare reports and come to Geneva to brief the Committee on the situation of ESC rights in their country.

¹ Declaration on Human Rights Defenders

ESC 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; in-putting into policy formulation and service design and delivery; identifying rights violations; and holding authorities accountable for the consequences of their actions. Civil society contributions are also a key source of information about the domestic implementation of the Covenant for the purpose of the Committee's State reporting process and for General Comment elaboration and communications under the Optional Protocol.

In these ways, ESC rights defenders are key allies in the promotion and protection of ICESCR rights and, without them, the effective realisation of those rights would be seriously undermined.

The risks faced by ESC rights defenders

Defenders of ESC rights are increasingly facing heightened threats and risks to their health and life as a consequence of their work on ESC rights. They 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 ICESCR. A more recent trend has been the proliferation of domestic laws that restrict and seek to silence NGOs working on human rights issues.²

This trend has been well documented by NGOs and UN human rights experts.³ In 2007, the former **Special Rapporteur on Human Rights Defenders** (HRDs), Ms Hina Jilani, noted that there was a global trend of targeting ESC rights advocates, particularly in the Asian and Latin American regions. She found that labour rights activists suffered the highest number of attacks, harassment, arbitrary detention and disappearances and those working on land and natural resources issues or campaigning against forced evictions were the second most harassed group seen by her mandate.⁴ In August 2013, the former Special Rapporteur on Human Rights Defenders, Ms Margaret Sekaggya, reported that the situation of HRDs working on land rights, natural resources and environmental issues had worsened since 2007.⁵

In 2015, the current Special Rapporteur on HRDs identified those working on ESC rights and minority rights, environmental defenders, and defenders who work in the area of business and

² 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.

³ Eg: 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; 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-defend-ers/14326-land-and-environmental-rights-defenders-in-danger-a-compilation-of-recent

⁴ A/HRC/4/37, especially paragraphs 49 (labor rights) and paras 39-47 and 61-66 (land natural resources & forced evictions)

⁵ A/68/262 paragraphs 17 and 18

human rights, as three of the five most at risk groups of defenders, recommending that States pay particular attention to them.⁶

In 2015 the UN **Working Group on Enforced Disappearances** confirmed the greater risk of enforced disappearance for 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.'*⁷

The report further noted that, because enforced disappearances are a tool to intimidate and prevent others from claiming their ESC rights, they have a collective impact: *'this deterrence leads to violations of the rights of the disappeared, others engaged in related activities and the larger community, because of the chilling effect of enforced disappearances.'*⁸

Similar trends have been noted by the former Special Rapporteur on Extreme Poverty⁹ and the UN Working Group on the issue of human rights and transnational corporations and other business enterprises.¹⁰

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.¹¹ Two reports by the Commission this year have underlined the prevalence of criminalization and intimidation against defenders working on ESC rights in the continent.¹²

In March this year, the **Human Rights Council** has expressed its concern, with a specific resolution on ESC rights defenders¹³ which states:

*'Expressing grave concern at the serious nature of risks faced by human rights defenders, ... including threats, attacks and acts of intimidation and reprisal against them in different parts of the world, and gravely concerned about the resulting negative impact on the realization of economic, social and cultural rights, including violations and abuses in this regard,'*¹⁴

*'reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development,'*¹⁵

⁶ A/68/262

⁷ A/HRC/30/38/Add.5, paragraph 33.

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ibid. para 75

⁹ A/68/262

¹⁰ Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/23/32, para 13

¹¹ Segundo Informe sobre la Situación de las Defensoras y Defensores de Derechos Humanos en las Américas (2012), Comisión Interamericana de Derechos Humanos.

¹² Criminalización de defensores y defensoras de derechos humanos (2016) and Indigenous People Communities of African Descent Extractive Industries (2016), Inter-American Human Rights Commission.

¹³ A/HRC/31/L.28

¹⁴ *ibid.* PP 21

¹⁵ OP 1

'Recognizes the important and legitimate role of individuals, groups and organs of society that are defending human rights in identifying and raising awareness of human rights impacts, the benefits and risks of development projects and business operations, including in relation to workplace health, safety and rights, and natural resource exploitation, environmental, land and development issues, by expressing their views, concerns, support, criticism or dissent regarding government policy or action or business activities, and underlines the need for Governments to take the measures necessary to safeguard space for such public dialogue and its participants'.¹⁶

Implications for the work of the Committee

The Committee itself benefits from the work of ESC rights defenders in monitoring implementation of the Covenant. Reports from civil society are important for the State review process and NGOs often 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 Concluding Observations.

If ESC rights defenders face threats, attacks or legal restrictions for exposing the situation of ESC rights in their country, then they and other advocates may choose to discontinue 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. The impacts also go beyond the particular defenders targeted, as they have a chilling effect on others working on similar issues.

As explained by the Working Group on Enforced Disappearances:

When an individual becomes a victim of enforced disappearance as a result of exercising or promoting economic, social and cultural rights, the enjoyment of those rights is also violated. For instance, the disappearance of a teacher who promoted cultural rights also interferes with the right to cultural life as well as the exercise of students' right to education.¹⁷

For ICESCR rights to be realised in practice, States must ensure a safe and enabling environment for ESC rights 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.

How can the Committee address this issue?

We believe that as the UN's top independent body on ESC rights, the Committee can help tackle this issue by adding its voice to the growing consensus of concern in regards to this situation.

¹⁶ OP 14

¹⁷ A/HRC/30/38/Add.5. para 36

The Committee, through its Concluding Observations¹⁸ and its General Comments¹⁹, has reiterated on many occasions 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 defenders of ESC rights.

We encourage the Committee to continue this work, including by **making a public statement**:

- Explicitly underlining the inherent legitimacy of peaceful protest and advocacy activities for the promotion and protection of ESC rights;
- Condemning the rising harassment, threats, attacks and intimidation of ESC rights defenders;
- Advising States to take concrete measures to recognise, consult and protect ESC rights defenders and investigate attacks against them;
- Stating 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;
- Highlighting that non-State actors, and business in particular, have a responsibility to contribute to a safe and enabling environment for the promotion and protection of ESC rights; and
- Reiterating the Committee's commitment to combat intimidation and reprisals against those who provide information, or seek to contribute to, the Committee's work to promote and protect ESC rights.

Yours sincerely,

(INSERT NGOs)

¹⁸ Eg: 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).

¹⁹ Including General Comments 15 (Water), 19 (Social Security), 12 (Food) and 18 (Work).