

UNSR Thematic Report on Natural Resource Exploitation and the rights to freedom of peaceful assembly and of associations

Questionnaire

1. What are the particular challenges to exercising assembly and association rights in the context of natural resource exploitation in your country or region? For example, are all stakeholders affected by projects consulted, with their rights and concerns taken into account? Are peaceful assemblies facilitated or viewed as a nuisance? Are companies cooperative and understanding of the need to preserve individuals peaceful assembly and association rights?

There are several particular challenges to exercising assembly and association rights in the context of natural resource exploitation that will be described in the different parts of this document.

As outlined in the 2014 Annual Report of the Observatory for the Protection of Human Rights Defenders, a joint FIDH-OMCT programme¹, in many resource-related investment projects, the lack of meaningful consultation prior to – and during – the implementation of the projects remain a major challenge to exercising such rights. Affected rights-holders are very often excluded from decision-making processes related to the projects and human rights considerations too often disregarded. As highlighted by the growing attacks on human rights defenders mobilised in the context of business activities, those trying to express concerns are subjected to a variety of obstacles and abuses, from judicial harassment to arbitrary detention, from defamation to illegal surveillance, from threats to killings.

In turn, when consultations are foreseen in law, they are often disregarded or conducted in a way impeding meaningful participation of affected rights-holders. For instance, in the *Philippines*, the *Indigenous Peoples' Rights Act* requires the respect of the right to free, prior and informed consent of indigenous peoples including before exploration, development and use of natural resources. Despite these clear requirements, the State and companies have routinely failed to uphold their obligations and responsibilities with regard to consultation requirements².

FIDH has documented various cases highlighting the inadequacy of consultations conducted in investment projects linked with the exploitation of natural resources. Numerous reports have highlighted the absence (or collusion) of State authorities in consultation processes, while highlighting the inadequacy of consultations directly conducted by companies, disregarding, e.g., traditional indigenous decision-making processes³.

2. To what extent do these challenges stem from:

a) Gaps/inadequacies in the domestic or international legal framework (e.g., laws on FOAA rights themselves, environmental laws, labour laws, trade agreements)

The legal context is a key factor. In some cases, domestic laws fail to incorporate the requirements of the international human rights instruments that countries adhered to, and maintain a

¹ See Observatory for the Protection of Human Rights Defenders, *We are not afraid*, 2 December 2014, p. 35, available at https://www.fidh.org/IMG/pdf/obs_2014-uk-web.pdf

² Idem

³ For examples, please see FIDH, report *Cambodia - Land cleared for rubber, rights bulldozed*, october 2011, available at https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf and FIDH report *Large-scale mining in Ecuador and human rights abuses*, January 2011, available at https://www.fidh.org/IMG/pdf/Exec_Summary_Large-scale_Mining_Human_Rights_Ecuador-LD.pdf

hostile climate towards social protests. Legislation then becomes a tool of repression and criminalisation. In some cases legislation has been enacted in order to specifically criminalise activities related to the defence of human rights, such as collective mobilisations and social protests. For instance, in **Guatemala**, the “*Túmulos*” Law (Decree 8-2014, *Ley para la circulación por carreteras libre de cualquier tipo de obstáculos*), supposed to guarantee the circulation of vehicles without obstacles, prohibits all social protests that would hinder public roads. Besides, the Guatemalan parliament is currently debating a legal proposal to prevent commercial and industrial terrorism and espionage (*Iniciativa de Ley para Prevenir el Terrorismo y Espionaje Comercial e Industrial*), that could result in affecting to the exercise of freedom of assembly and of association⁴. This kind of restrictive law on FOAA rights was also passed in **Ecuador**, where on December 4, 2013, the Pachamama Foundation (*Fundación Pachamama*), an NGO dedicated to the defence of indigenous peoples and environmental rights which opposed petroleum projects in the southern part of the Amazonian forest, was dissolved by the Ministry of Environment of Ecuador. This decision was taken on the basis of article 26 of the Presidential Decree 16 adopted on June 20, 2013 with the aim of controlling all forms of social organisation and prohibiting “political activities reserved to political parties and movements (...) that interfere with public policies and undermine national or external security of the State or compromise public peace”. As of August 2014, the Pachamama Foundation was still suspended⁵. Moreover, the judicial context in **Burma** is another relevant example illustrating criminalising laws. The article 18 of the *Peaceful Gathering and Demonstration Law* is used against human rights defenders peacefully protesting to denounce human rights abuses, on the grounds that they have not been granted prior permission from the authorities. On April 2013, Mr. **Thaw Zin** was charged on the basis of this article for organising protests against the expansion of the Letpadaung copper mine without a prior permission. Following a sentence dropped under a December 2013 presidential amnesty, he was re-arrested under article 505(b) of the Criminal Code for disturbing public tranquility and for violating article 447 of the Criminal Code related to criminal trespass, for his support to villagers protests against lands seizures related to the Letpadaung mine. He was sentenced to 15-month imprisonment, but benefited from an early release on September 26, 2014⁶.

In many countries where international human rights provisions related to the protection of freedom of association and freedom of assembly have been incorporated in domestic legal systems, there remain serious obstacles to ensure their effective implementation. Factors impeding the respect of these provisions include: poor governance, lack of political will, legal strategies to restrict the activities of civil society organisations, human rights defenders and individuals involved in social protests through the use of laws such as anti-terrorism legislation, access to funding, common offences such as disruption of public works, etc. Human rights defenders are particularly at risk of criminalisation. In **Mexico**, the Spokesman for the Peoples' Front in Defense of Water and the Land of Morelos, Puebla and Tlaxcala, Mr. **Juan Carlos Flores Solis**, was arbitrarily arrested in April 2014, accused of “riot”, “plunder”, “attacks to hydraulic work” and “extortion” for events that allegedly occurred during a protest in April 2012 against the construction of the pipeline *Morelos* led by Spanish and Italian companies. Sometimes, the charges explicitly aim to restrict the exercise of freedom of opinion inseparable from the rights to freedom of peaceful assembly and of association, such as offences for insulting the State, slandering, damaging reputation, etc. In some cases, rights defenders are charged with “terrorism”. In **Chile**, for instance, the Anti-terrorist Act was applied against the Mapuche for organising social protests to defend their land rights. In an emblematic ruling of July 29, 2014, the Inter-American Court of Human Rights condemned the Chilean State for having used its anti-terrorist legislation against Mapuche leaders and community

⁴ See Observatory for the Protection of Human Rights Defenders, *We are not afraid*, 2 December 2014, p. 74, available at https://www.fidh.org/IMG/pdf/obs_2014-uk-web.pdf

⁵ See Observatory for the Protection of Human Rights Defenders, *We are not afraid*, 2 December 2014, p. 76, available at https://www.fidh.org/IMG/pdf/obs_2014-uk-web.pdf

⁶ See Observatory for the Protection of Human Rights Defenders, *We are not afraid*, 2 December 2014, p. 74, available at https://www.fidh.org/IMG/pdf/obs_2014-uk-web.pdf

members peacefully working in the defence of their ancestral lands⁷.

Many cases of judicial harassment against human rights defenders or individuals involved in social protests are related to the organisation of - or participation in - demonstrations, sit-ins, rallies or other peaceful assembly activities⁸.

b) Government institutions (e.g., ineffective enforcement, lack of independence, lack of capacity, corruption, lack of political will, independence of the judiciary)?

The deprivation of the rights to freedom of peaceful assembly and of association can stem, tacitly or not, from State officials. There is often a lack of coordination and an opacity within governments. There is also often a lack of political will, where so-called development objectives take primacy over human rights considerations.

In many cases, victims fail to obtain justice, as a result of States' failure to investigate and hold perpetrators to account and to provide remedies. Cases of collusion between the authorities and private actors have been documented.

In many countries, there is a deep-rooted lack of independence of judicial systems from the Government and the local authorities. Cases about major projects related to the local economy may be deemed as too sensitive for courts to accept. For instance, in **Cambodia**, justice is highly dependent on the executive. In April 2012, Mr. **Chut Wutty**, the founder of the National Resources Protection Group and one of the most prominent national anti-logging defenders, was shot during a heated stand-off with security forces and representatives of the logging company Timber Green in the Koh Kong Province. Following a chaotic investigation, the Provincial Court declared on October 4, 2012 that the investigation was closed after concluding that Mr. Wutty was killed by a police officer who was in turn accidentally shot by a security guard finally released despite his two-year sentence⁹. The lack of independence of the judiciary can be observed in many of other countries.

Moreover, the challenges to exercising assembly and association rights in the context of natural resources exploitation may stem from an environment of conflicts of interests and endemic corruption. In many cases, government officials, local authorities and public security forces are suspected of having interests and financial stakes in private projects or allowing themselves to be corrupted by private companies. In these cases, public and private actors cooperate against opponents to logging and other resource-related businesses. In August 2013, in **Indonesia**, farmers who were demonstrating against the *Bubur Gadung* Dam in Indramayu were intimidated and beaten by henchmen. Police officers were present on the site but did not intervene until some demonstrators reacted to the violence by burning an excavator¹⁰. Ironically, two human rights defenders pertaining to the Indramayu Peasant Union (STI), Messrs. **Abdul Rojak** and **Khamsyah Fansuri**, were accused without any evidence of being responsible for the burning, and sentenced in appeal by the High Court of Bandung to one and half year in jail under Article 160 of the Criminal

⁷ See FIDH, *The Inter-American Court of Human Rights condemns the State of Chile for having used its antiterrorist legislation against members of the Mapuche people*, 30 July 2014, available at <https://www.fidh.org/International-Federation-for-Human-Rights/americas/chile/15844-the-inter-american-court-of-human-rights-condemns-the-state-of-chile-for>

⁸ See for instance FIDH report *Bagua – Bloodshed in the context of Amazon protest – Urgent need for good faith dialogue*, October 2009, available at <https://www.fidh.org/IMG/pdf/rapperou529ang.pdf> and FIDH report *Honduras : human rights violations in Bajo Aguan*, September 2011, available at <https://www.fidh.org/IMG/pdf/honduras573ang.pdf>

⁹ See Observatory for the Protection of Human Rights Defenders, *We are not afraid*, 2 December 2014, pp. 86-87, available at https://www.fidh.org/IMG/pdf/obs_2014-uk-web.pdf

¹⁰ See FIDH and Kontras, *Indonesia : No Development without Rights*, June 2014, p. 18, available at <https://www.fidh.org/IMG/pdf/indonesie637a2014.pdf>

Code for “provoking” destruction of property on January 21, 2014.

c) The broader business environment (e.g., lack of voluntary guidelines or industry standards, deregulation/pro-business attitude by governments and the “race to the bottom”, unequal bargaining power for affected communities)

The broader business environment undoubtedly plays a role in ensuring respect of assembly and association rights. International actors, such as regional financial institutions including World Bank Group, have been criticised for promoting national policies that facilitate access to natural resource exploitation by cutting down administrative and legal requirements in the name of development.

Moreover, investment agreements do not sufficiently ensure human rights protection and thus need to be deeply revised in order not to contribute to human rights violations. Such agreements provide considerable protection for investors without corresponding duties and responsibilities towards affected communities. These agreements reduce the ability of States to adopt protective measures and policies benefiting the rights of local and users. The obligations of investors are under-regulated in the current framework of international investment law.

Finally, many of the natural resource exploitation projects take place within the framework of States' long-term development strategies and policies which very often disregard human rights and the impact such policies may generate on impacted communities. For example, in **Indonesia**, the Masterplan for Acceleration and Expansion of Indonesia's Economic Development (MP3EI) was launched in 2011. The objective was to turn Indonesia into a developed country by 2025, by facilitating the exploitation of natural resources and encouraging large-scale investments. Under the motto of “Not Business As usual”, MP3EI involves both government and businesses. The private sector is given a role in the investment sector, while the government acts as a regulator to facilitate investment by private entrepreneurs. The implementation of such strategy has already led to several human rights violations¹¹. Similarly, **Ecuador** is promoting large-scale investment, especially in metal mining sector, since the 1990s. Mining companies' obligations towards the State were gradually reduced. The implementation of policies designed to attract foreign investment, combined with a lack of state oversight of these projects, has given rise to a situation of social conflict and human rights violations on the ground. During and after several social protests against large-scale mining, numerous cases of repression, judicial harassment and criminalisation targeting both social leaders and the broader population have been reported¹².

d) Businesses themselves (e.g., focus on profits over rights, lack of interest in consulting local communities, willingness to leverage government corruption)

Companies very rarely implement a sustainable business model which integrate right-based concerns. The stakeholders' voices are under-estimated, even unrecognised, so that stakeholders are not integrated into business plans and other related processes. As outlined above, there is a particular lack of interest in consulting local communities, either perceived as non relevant actors or as obstacles to an unbridled development. Nevertheless, a few companies are progressively disclosing information about their investments projects, such as investment contracts and impact assessments.

The challenges also stem from businesses because of the willingness to leverage government

¹¹ See FIDH and Kontras, *Indonesia : No Development without Rights*, June 2014, pp. 7-8, available at <https://www.fidh.org/IMG/pdf/indonesie637a2014.pdf>

¹² See FIDH report *Large-scale mining in Ecuador and human rights abuses*, January 2011, available at https://www.fidh.org/IMG/pdf/Exec_Summary_Large-scale_Mining_Human_Rights_Ecuador-LD.pdf

corruption amid a lack of independence from public actors. The *Cambodia* case mentioned earlier is emblematic.

e) Any other factors

As natural resource exploitation happens mostly in the periphery or in rural areas the violations to the right to freedom of assembly are less visible and further contributes to the vulnerability of the victims of those violations. These may also facilitate the collusion between, for example, the police and or the judiciary and the companies leading the exploitation.

3. What type of action should be taken to mitigate these challenges?

cf. Infra question 5.

- 4. Please provide any specific case studies illustrating natural resource exploitation activities which you believe had a positive or negative impact upon FOAA rights, for example: (1) suppression or facilitation of lawful/peaceful protests regarding a project; (2) harassment or facilitation of civil society or grassroots groups involved in opposing a project; (3) outcomes when consulting – or failing to consult – with affected communities; (4) harassment/violation/sexual abuse committed particularly against women; (5) involvement of private security companies; (6) role of the trade unions in these contexts. We would especially appreciate examples that demonstrate how government or business action helped or hurt the protection and promotion of FOAA rights.**

For specific information on these issues, please refer to the 2014 Annual Report of the Observatory for the Protection of Human Rights Defenders, *We are not afraid*, which outlines 74 case studies in 29 countries throughout the world¹³.

5. What measures/actions would you recommend that States, businesses and individuals take to enhance the promotion and protection of freedom of peaceful assembly and of association in their policies, projects, goals and other engagements with civil society?

To States

The States are encouraged to respect and protect those who express their concerns and defend human rights, create an enabling environment for their work, give full and visible recognition to the legitimate role they play and grant particular attention to their situation of vulnerability, notably by:

- Reviewing existing laws and policies in close consultation with human rights defenders to ensure full compliance with human rights standards in order to create an enabling environment that allows those trying to express concerns to be able to work effectively and without threat of attack or judicial harassment by State or non-State actors; legislation that restricts their work, including in particular legislation that unnecessarily and disproportionately restrict the exercise of the rights to freedoms of association, expression and peaceful assembly should be ended, amended and/or repealed.
- Ending any criminalisation of social protest and ensuring that those peacefully protesting against

¹³ See Observatory for the Protection of Human Rights Defenders, *We are not afraid*, 2 December 2014, available at https://www.fidh.org/IMG/pdf/obs_2014-uk-web.pdf

rights violations are effectively protected from violations, notably by ensuring that law enforcement officials are properly equipped, trained and subject to effective civilian oversight and effective human rights and anti-discrimination policies.

– In consultation with civil society, establishing or upgrading national mechanisms or programmes dedicated to the protection of those mobilised against projects linked to the exploitation of natural resources.

– Paying due attention to the specific protection needs of vulnerable groups such as women as well as indigenous and more generally rural community leaders.

– Combating impunity for violations of the rights to freedom of peaceful assembly and of association committed both by State and non-State actors, including by undertaking effective, independent and transparent investigations in order to identify those responsible, bring to justice and ensure adequate compensation and reparation.

– Ensuring that private actors, including corporations, are fully respecting human rights and enabling prosecutions against corporations based in their countries, including prosecution for the abuses committed through their operations abroad or complicity therein.

– Applying legislative and other measures to ensure that business enterprises domiciled within their territory and/or jurisdiction are bound to carry out human rights impact assessments for investment projects and monitoring and enforcing their human rights due diligence on an ongoing basis with the meaningful participation of the affected populations and communities.

– Ensuring the availability and accessibility of both judicial and non-judicial recourse mechanisms, including ombudspersons or administrative bodies, that are effective, equitable, transparent, rights-compatible, impartial and sufficiently equipped. If necessary, their mandates should be revised to allow them to receive and adjudicate complaints from rights-holders including defenders acting outside of their territorial jurisdiction, and to provide precautionary measures of protection.

– Cooperating fully with international and regional human rights mechanisms, including UN Special Procedures of the Human Rights Council and UN Treaty Bodies, among others by implementing the relevant decisions, recommendations and interim or protective measures of such mechanisms and by extending an open invitation to all UN Special Procedures and regional mechanisms to visit their country.

– Legitimising land rights defenders in government speeches and public addresses, integrating them into dialogues and consultations, and speaking out unambiguously, showing support in case defenders are threatened or attacked.

– Ensuring that core security functions are not outsourced to private and security providers, and ensuring that any private security operator is adequately equipped and trained to fully respect human rights of rural communities, and is held fully accountable for eventual abuses.

– Strengthening the protection of the right to participation, in particular by incorporating the obligation of prior consultation of those affected (or likely to be) in policies and legal frameworks governing land management.

– Ensuring that States are not contributing to human rights violations through their development policies by enshrining a human rights-based approach to development in relevant legislation and administrative regulations, which ensures the meaningful participation, protection and access to

information of those affected (or likely to be) and those defending their rights.

– Ensuring the respect, in law and practice, of indigenous peoples' right to free, prior and informed consent.

To businesses

- Adopting a public human rights policy that is endorsed by the top management and which explicitly recognises the need to ensure meaningful participation of rights-holders potentially affected.

– Taking measures to identify, prevent, mitigate and account for adverse human rights impacts and ensuring that their activities, including through their business relationships, do not cause or contribute to human rights violations. Such due diligence processes should be based on meaningful and direct participation of potentially affected rights-holders.

– Carrying out engagement processes which should fully involve rights-holders, especially affected populations and communities and those defending their rights, in all stages of large-scale resource-related investment projects. Engagement with such rights-holders should be conducted in good faith and in a meaningful way to seek their meaningful participation, protection and access to information.

– Being attentive to displays of concern and discontent that take place outside the processes facilitated by the company, for example public assemblies, and refraining from stigmatising those expressing themselves in such a way.

– Ensuring that they, as well as contracted security companies and other subcontractors, respect the rights of affected communities and do not cause or contribute to any type of harassment or violent acts against them.

– Pro-actively disclosing information about the investment projects they support, including key documents such as the investment contracts and impact assessments, with a view to ensure conflict prevention.

– Establishing grievance mechanisms, including project or company-level grievance mechanisms, that are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on dialogue and engagement. Such mechanisms should, whenever possible, ensure the participation of an independent third party. They should ensure – through their direct participation – that views of defenders are duly taken into account and should also have specific procedures in place to ensure they can effectively address adverse human rights impacts on rights-holders.

To private, institutional and State donors and investors

- Fully integrating a human rights-based approach in their policies for allocating funds to large-scale investment projects and ensuring that funded projects do not contribute to or exacerbate human rights violations. Ensuring that blending grants and loans for development cooperation fully apply a human rights based approach.

- Making the conduct of thorough and independent human rights impact assessments with the meaningful participation of the affected populations and communities, a requirement for obtaining funding, and ensuring the inclusion of proper safeguards mechanisms to effectively address,

mitigate and/or remediate to adverse human rights impacts caused by a project.

– Paying close attention to protection measures taken to ensure the protection of those affected by an investment projects as well as those mobilised to ensure the project respects human rights.

- Supporting the essential role of human rights organisations, community organisations, social movements by providing them with specific technical and financial support and by publicly acknowledging their legitimacy.

– Allocating funds to capacity-building for those affected by investment projects and those defending their rights.

– Pro-actively disclosing information about investment projects, including key documents such as investment contracts and impact assessments, with a view to ensure conflict prevention.

– Establishing independent grievance mechanisms for the projects financed and ensuring that such mechanisms respect standards for confidentiality, have an early warning system in case of threats or other violations against those who have filed or are considering filing a petition.

- Exerting leverage on those responsible for investment projects, when needed and appropriate, to ensure compliance with international human rights standards.

– Supporting initiatives for greater networking with human rights organisations and global support networks supporting policy dialogues to increase protection of defenders and to support them in using domestic and international protection mechanisms.

To international and regional intergovernmental bodies

- Providing specific technical and financial support to those defending their rights.

- Mainstreaming and integrating the protection of those trying to express their concerns their rights into their work.

- Ensuring that policies and instruments defined and implemented under their mandate do not contribute to land human rights violations.

Please find below links to access relevant FIDH publications that could be useful to the Special Rapporteur in the context of his work on this thematic.

2014 Annual Report of the Observatory for the Protection of Human Rights Defenders, *We are not afraid*: https://www.fidh.org/IMG/pdf/obs_2014-uk-web.pdf

FIDH, *Bolivia: informe de verificación de la consulta realizada en el territorio indígena parque nacional isiboro-sécure*, May 2013, available at <https://www.fidh.org/IMG/pdf/bolivia609esp2013.pdf> (in Spanish)

FIDH, *Honduras : human rights violations in Bajo Aguan*, September 2011, available at <https://www.fidh.org/IMG/pdf/honduras573ang.pdf>

FIDH, *Large-scale mining in Ecuador and human rights abuses*, January 2011, available at https://www.fidh.org/IMG/pdf/Exec_Summary_Large-scale_Mining_Human_Rights_Ecuador-LD.pdf

FIDH, *Bagua – Bloodshed in the context of Amazon protest – Urgent need for good faith dialogue*, October 2009, available at <https://www.fidh.org/IMG/pdf/rapperou529ang.pdf>

FIDH and Kontras, *Indonesia : No Development without Rights*, June 2014, available at <https://www.fidh.org/IMG/pdf/indonesie637a2014.pdf>

FIDH, *Cambodia - Land cleared for rubber, rights bulldozed*, October 2011, available at https://www.fidh.org/IMG/pdf/report_cambodia_socfin-kcd_low_def.pdf