



Protect instead of Persecute!

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

FORUM
MENSCHENRECHTE



Contents

Summary	4
Introduction	6
Defenders of ESC rights at peril – case descriptions	8
1. Bahá'í Institute of Higher Education IRAN National Spiritual Council of the Bahá'ís in Germany	9
2. House of Rainbow NIGERIA The Lesbian and Gay Federation in Germany	10
3. Polina Savchenko and Igor Kochetkov, Vychod RUSSIA The Lesbian and Gay Federation in Germany	11
4. Nageen Hyat PAKISTAN Friedrich Naumann Foundation for Freedom	12
5. Emine Arslan TURKEY Friedrich-Ebert-Stiftung (FES)	13
6. Asociación de Servidores Públicos del Ministerio de Educación PANAMA Friedrich-Ebert-Stiftung (FES)	13
7. Gertrude Hambira ZIMBABWE Friedrich-Ebert-Stiftung (FES)	14
8. Silingang Dapit PHILIPPINES Social Service Agency of the Protestant Church of Germany (EKD)/Brot für die Welt	15
9. Central de Pueblos Indígenas de La Paz, Foro Boliviano del Medio Ambiente y Desarrollo, Centro de Estudios Jurídicos e Investigación Social BOLIVIA German Catholic Bishops' Organisation for Development Cooperation Misereor	16
10. Social Policy Ecological Research Institute VIETNAM Social Service Agency of the Protestant Church of Germany (EKD)/Brot für die Welt	16
11. Centro Regional de Derechos Humanos “Bartolomé Carrasco Briseño” MEXICO Peace Brigades International (PBI)	17
12. Human Rights Everywhere PANAMA Friedrich-Ebert-Stiftung (FES)	18

13. Lembaga Penelitian, Pengkajian dan Pengembangan Bantuan Hukum	INDONESIA	
Peace Brigades International (<i>PBI</i>)		20
14. Ana Fabricia Córdoba, William Álvarez, Corporación Jurídica Libertad	COLOMBIA	
German Human Rights Coordination for Colombia		21
15. Association Africaine de Défense de Droits de l'Homme	DR CONGO	
Social Service Agency of the Protestant Church of Germany (<i>EKD</i>)/Brot für die Welt		22
16. Brice Mackosso and Christian Mounzeo, Publish What You Pay Coalition	Rep. CONGO	
German Catholic Bishops' Organisation for Development Cooperation Misereor		23
17. Frente de Resistencia para la Defensa de los Recursos Naturales y Derechos de los Pueblos	GUATEMALA	
European Center for Constitutional and Human Rights (<i>ECCHR</i>)		24
18. Movimento dos Atingidos por Barragem	BRAZIL	
Heinrich-Böll-Stiftung The Green Political Foundation		25
19. Comisión Intereclesial de Justicia y Paz	COLOMBIA	
terre des hommes Germany		25
20. Bindra Institute for Research Study and Action	INDIA	
Social Service Agency of the Protestant Church of Germany (<i>EKD</i>)/Brot für die Welt		27
21. Q'amoló Kí Aj Sanjuaní	GUATEMALA	
Peace Brigades International (<i>PBI</i>)		28
22. Keonjhar Integrated Rural Development and Training Institute	INDIA	
German Catholic Bishops' Organisation for Development Cooperation Misereor		29
23. Comunidad Cacique José Guiñón	CHILE	
Kindernothilfe		30
24. Comunidades Campesinas Yanta und Segunda y Cajas	PERU	
European Center for Constitutional and Human Rights (<i>ECCHR</i>)		31
Recommended actions		
to improve protection of Human Rights Defenders of ESC rights		33
Relevant links		36
Imprint		38
Members of the FORUM MENSCHENRECHTE		39

Summary

A growing number of civil society groups and individuals have enlisted in the effort to establish human rights since the adoption of the Universal Declaration of Human Rights in 1948. But it is only since December 1998, when the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms” was adopted, that such persons have been assigned the term Human Rights Defenders (HRDs). This went hand in hand with an enhancement of the status of civil society human rights work worldwide and growing awareness that HRDs merit special protection by the international community.

HRDs are characterised both by their diversity as well as their wide range of activities. They work for human rights as staff at human rights organisations, for instance, or as lawyers, journalists, trade unionists, social workers and local grass-roots activists. What is crucial is not their professional qualifications or the institutions they belong to, but rather the human rights character of their activities. By exposing, documenting and protesting against violations of human rights, they are frequently in peril themselves, as they bring to light actions by governments warranting criticism, thereby constituting a challenge to established power constellations in state and society. That is why HRDs are frequently persecuted, threatened and put under surveillance. They are subjected to physical abuse and criminal prosecution. Numerous HRDs have paid for their commitment with their lives, while others have been driven into exile or have discontinued their activities out of fear of reprisals.

Defenders of economic, social and cultural rights (for short: ESC rights) work in many countries under the same precarious circumstances as HRDs who fight for civil and political rights. But their commitment is frequently not afforded the same attention or status, as ESC rights are often wrongly considered “second-class human rights”. ESC rights are, however, an integral, equally important element of international human rights covenants and inseparably intertwined with civil and political rights.

In order to make the situation of defenders of ESC rights more visible and illustrate the urgency behind the need to afford them protection, member organisations in the German FORUM MENSCHENRECHTE are sharing the experience their partner organisations have had in situations of acute threat and elaborating specific recommendations for actors in the field of policy-making and civil society. A total of 24 case examples from twenty countries in Africa, Asia, Latin America, the Middle East and Eastern Europe are presented here. In spite of differing local and regional contexts, similar strategies can be perceived in the attempt to stifle HRDs in all of them.

First of all, there is systematic discrimination against HRDs who belong to certain groups: the Bahá'í in Iran, for example, are a religious minority who are denied the right to higher education while their efforts to establish their own system of higher education are being violently suppressed.

Defenders of the rights of lesbians, gays, bisexuals and transsexual or intersexual people (LGBTI) in Nigeria are often denigrated and disparaged in the media in addition to being discriminated against in the labour and housing markets, while the Russian government is attempting to stop public activities and campaigns of LGBTI activists by law. In Pakistan a female artist works for women's rights in spite of having to live under permanent threat. Notwithstanding the prohibition against discrimination, minorities are nevertheless denied fundamental ESC rights again and again.

Trade unionists who work for freedom of assembly and association, the right to collective bargaining and a prohibition against discrimination in work and profession and are hence also defenders of ESC rights are frequently persecuted. This is illustrated by several examples: a female Turkish worker who is fired because of her trade union work; a trade unionist working for public servants in the Panamanian Ministry of Education who is subjected to harassment; a proponent of the rights of rural workers in Zimbabwe who is forced into exile.

A majority of the case examples presented involve violations of ESC rights (and, associated with this, civil and political rights as well) in rural areas, where it is often ethnic minorities or other disadvantaged groups of the respective population which are directly affected (including indigenous peoples). Staff working for a human rights organisation in the Philippines are suspected of subversion, for instance, and subjected to harassment by the military. Collective groups of indigenous inhabitants of lowlands and human rights organisations in Bolivia are vilified as enemies of the government and stooges of imperialism. One organisation working for the rights of ethnic minorities in Vietnam runs the danger of being banned should its criticism of government policy ruffle too many feathers. In Mexico a human rights activist is labelled “guerrilla Father” because he acts as a go-between in local conflicts fuelled by armed actors. Finally, there is a report from Panama about the arrest and expulsion of two foreign activists who were documenting violent attacks groups of the population had to face when protesting against discriminatory laws and the country's economic policy.

When governments cater to the economic interests of both domestic and foreign enterprises, especially in the expansion of infrastructures, in major projects in the area of mining and the agricultural export sector, it often leads to violations of ESC rights: people lose their land or are even violently driven off it, and they suffer from the loss of natural resources, environmental destruction and changes in their traditional way of living. People concerned as well as human rights organisations which fight against such violations of rights and publicise these domestically and abroad are frequently subjected to threats and persecution. Criticising the impact of business projects portends abundant risks for HRDs.

Staff working at a human rights organisation in Indonesia monitoring the deforestation of tropical forests, the use of the land for palm oil plantations and the production of

natural gas are denounced and criminalised. One grassroots activist from Colombia who works for land to be returned to internal refugees has to pay for her commitment with her life, while Congolese human rights activists who expose the activities of multinational mining enterprises and criticise the labour and social policy of their government are driven into exile in the face of constant death threats.

Violent attacks by state security forces, paramilitary organisations or non-governmental actors are the most salient examples of violations of HRDs' rights, and especially for this reason meet with strong international criticism. But this is often not the case with respect to defenders of ESC rights, most frequently grassroots activists, as they are not in the international limelight. The repression of HRDs, however, is also carried out in ways arousing less attention such as, for example, by denouncing them in the media, arbitrarily refusing to provide government benefits and issuing laws and regulations discriminating against HRDs, or by applying existing laws and regulations in a manner detrimental to HRDs. The purposeful criminalisation of HRDs, that is to say deeming their activities to constitute criminal infractions, is a serious problem, as it creates uncertainty, isolates HRDs socially and enhances the risk of threats and physical assault. It furthermore forces HRDs and their organisations to divert a considerable portion of their resources to defending themselves against usually groundless allegations.

Two human rights activists in the Republic of the Congo advocating a more just distribution of revenue from petroleum and decrying corruption in the country are arrested and charged with misappropriating foreign project funds. In Guatemala criminal investigations are opened against numerous organised consumers, who are accused of having links to organised crime as a result of their opposition to the privatisation of the electrical power supply. In Colombia grassroots activists who refuse to leave their land so that it can be used for the commercial export economy are charged with having links to a guerrilla organisation, while in Brazil a consortium of companies even takes legal action against people resisting a dam project.

The case examples presented illustrate a clear connection between defence of the rights of indigenous peoples and repression against HRDs. Raw materials and resources on the land of indigenous peoples are exploited, often leading to violations of ESC rights and environmental destruction. In many instances the land of these peoples is taken from them by means of deceitful promises, or indigenous groups are violently driven off their land or forced to sell it. Thus, the right to self-determination and the principle of free, prior, and informed consent is trampled upon. The latter is also aimed at obligating non-governmental actors, above all multinational enterprises, to refrain from performing operations without the consent of indigenous populations directly affected by their actions. Civil society actors make a valuable contribution to defending the right to self-determination, but impediments are often placed in

their path, as examples from India and Latin America illustrate. A frequently favoured ploy is here again to brand them as criminals.

In the Indian states of Jharkhand and Orissa, land of the indigenous Adivasis is expropriated for mining. Staff of a human rights organisation working for their rights are arrested and charged with suspicion of subversion. Activists of the Maya-Kaqchiquel in Guatemala face arbitrary arrest as well as sexual and other forms of violent harassment at the hands of the police because they are protesting against destruction of the environment and their livelihoods caused by the construction of a cement factory. In southern Chile, Mapuche communities seeking to assert their traditional land rights against the expanding forestry economy are frequent victims of police raids and criminal prosecution under an anti-terror law. In the Peruvian highlands representatives of indigenous peasant-farmer communities resisting mining and environmental destruction are threatened, tortured, murdered and branded as terrorists.

The responsibility of business enterprises for human rights has been part and parcel of the political agenda since the 1990s as a result of the global expansion of the private sector. The United Nations issued Guiding Principles in 2011 on the basis of the "Protect, Respect and Remedy" framework, which first of all establish an obligation on the part of the state to protect its citizens against violations of their rights by third parties, secondly a responsibility on the part of business enterprises to exercise due diligence in respecting internationally recognised human rights, and thirdly an obligation on the part of states and a responsibility on the part of business enterprises to provide access to effective remedies and reparation for individuals and groups who have suffered damage. The Guiding Principles draw the attention of enterprises to human rights risks emanating especially from conflicts over land and resources, and they call upon enterprises to respect the rights of minorities.

The international community of states has assumed the obligation to protect HRDs. In addition to the 1998 declaration on HRDs mentioned at the outset of this paper, special rapporteurs and work units devoted to the protection of HRDs have been assigned both at the UN level as well as in regional human rights systems in Africa and Latin America, while the European Union adopted guidelines to support HRDs through their diplomatic missions abroad in 2004.

The experience of the partners organisations of members of the FORUM MENSCHENRECHTE (German HUMAN RIGHTS FORUM) bears witness to the fact that there is a long way to go before existing principles and standards for the protection of HRDs are effectively put into practice. It is with the case descriptions in mind that the members of FORUM MENSCHENRECHTE are submitting their recommendations for action by the Federal German government and other states, international organisations, business enterprises and transnational civil society with the aim of better protecting defenders of ESC rights.

Introduction

“Each and every individual has the right acting individually or in association with others to promote and foster the protection and realisation of human rights and fundamental freedoms at the national and international levels and to work to this end.”¹

Human Rights Defenders¹ (HRDs) are people who, acting individually or in association with others, work for the protection and promotion of human rights by non-violent means. The UN General Assembly issued a declaration affirming the right and obligation to promote and protect universally recognised human rights upon the occasion of the 50th anniversary of the Universal Declaration of Human Rights (UDHR). This “Declaration on Human Rights Defenders” has led both to greater recognition of this right as well as greater awareness of the situation of HRDs throughout the world. Their work and activities in favour of human rights often expose HRDs to danger themselves – they are denounced, threatened, criminalised and persecuted. This paper shows how acute and widespread threats to defenders of economic, social and cultural human rights (for short: ESC rights) are all over the world. It was to this end that the experiences of numerous organisations have been brought together within FORUM MENSCHENRECHTE and recommendations for political action elaborated to better protect defenders of ESC rights.

Economic, social and cultural rights together with political and civil rights constitute the normative core of the “International Bill of Rights”, which is made up of the Universal Declaration of Human Rights (UDHR) and two International Covenants – on Economic, Social and Cultural Rights (ICESCR) and Civil and Political Rights (ICCPR). The ICESCR is the key human rights treaty aimed at achieving ESC rights, and legally binding for each state party to it. ESC rights have also been taken up in a host of more recent global and regional human rights treaties focusing on problematic areas and specific groups of people. Various ILO conventions, too, concern the protection of individual ESC rights.

Human Rights Defenders work for ESC rights across the entire spectrum: for equal access to the labour market, better working conditions, minimum wages, social security, reasonable health care, land-usage rights and the right to food, decent housing, a blanket supply of potable water and sanitation, rights to education and in education or participation in cultural life. Work on behalf of ESC rights may take on a wide variety of shapes and forms. It ranges from informational and educational measures to monitoring, research and documentation of the human rights situation all the way to public criticism, protests and campaigns against actions which violate or jeopardise ESC rights. Lobbying and advocacy work, i.e. targeted efforts to influence policy decisions affecting ESC rights at the local, national and international levels, is gaining weight as is support for

stakeholders seeking redress and taking legal action against violations of their ESC rights.

In many cases it is the people directly affected themselves who organise and resist violations of rights, often with the support of other civil society groups. HRDs are thus not only activists of “official” human rights organisations – they include, rather, all those individuals and groups in society that advocate and work for their human rights and the rights of others. In the case of ESC rights these may be, for instance, workers and trade unionists fighting for humane working conditions; indigenous and other groups of peasant-farmers defending land-usage rights and the basis for their livelihood; inhabitants of poor districts protecting against forced evictions; chronically ill persons demanding access to the medication they need; lesbian, gay, bisexual, transsexual or intersexual persons (LGBTI) as well as members of other minorities or disadvantaged groups of the population who are discriminated against in education, their profession, health and housing to merely cite a few examples. Critical journalists and lawyers who work for human rights are also HRDs. What ultimately defines defenders of human rights is the human rights character of their work and context.

Not infrequently individuals who deserve to be called HRDs are not perceived or respected as such in the public arena or by the state. This is not least due to the circumstance that ESC rights are not always recognised as “true” human rights, while the relevance of human rights in skewed social situations is often denied. When HRDs of economic, social and cultural rights represent groups which are already marginalised in legal or de facto terms, their work is frequently only possible under extremely precarious conditions. This may be manifested in various ways in actual practice, for example as a result of the difficulty of obtaining financial support, the absence of reporting by the media on violations of the rights of HRDs and a general lack of attention to these violations. In addition to all this, there is the hesitation on the part of HRDs themselves to take legal recourse at the national or international levels. Many defenders of ESC rights report that their activities, even if they are not openly suppressed, do not meet with any positive reaction whatsoever on the part of the respective body which is obligated to uphold ESC rights if only because their work is not viewed as being on behalf of human rights. Instead they often face animosity from elements of society or the state and are denounced as threats to the public morality, order and security, or even as “enemies of the state”, and persecuted.

Even if this Brochure solely addresses defenders of ESC rights, actual practice nevertheless confirms that all human rights are indivisible, interdependent and interrelated, the reason being that people who work for ESC rights generally make use of their civil and political rights. The examples of state and non-state violence perpetrated against HRDs throughout the world show how much the lives and physical integrity of these people fighting for ESC rights are threatened or can be violated and what tremendous disadvantages they suffer as a result of their commitment. HRDs’

¹ Article 1, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Protect and Promote Universally Recognised Human Rights and Fundamental Freedoms, UN General Assembly resolution from 9 December 1998 (A/RES/53/144).

civil and political as well as their economic, social and cultural rights are violated in manifold ways. In many cases even the rights of relatives and friends of HRDs are infringed on. HRDs are particularly at risk in those situations in which the tangible interests of powerful economic, societal, political and military actors are affected. This may be the case, for example, when stakeholders protest exploitative working conditions, arbitrary land-grabbing or major economic and infrastructural projects which give rise to human rights problems, with powerful actors then seeking to suppress such protests. Not infrequently government security forces and/or private militias and security companies secure the interests of powerful actors at the expense of those affected.

Violent assaults and harassment by the police, other security forces or paramilitary groups are often the most visible form of violations of the rights of HRDs in terms of their directly felt effects. But violations of rights may also be committed by completely different social actors and in different ways: by political institutions that issue discriminatory laws, public officials who arbitrarily refuse to grant benefits, or judges who hand down unlawful rulings. Again and again, HRDs are slandered as criminals or law-breakers by means of false allegations and manipulated trials, they are criminalised and subjected to criminal prosecution – on the basis of criminal law as well as security and anti-terror laws and regulations. But the abusive application of other laws and regulations like those relating to the funding of NGOs, the exercise of the right of assembly and association or even property rights can also be misused to hamper and throttle the activities of HRDs.

Targeted criminalisation considerably increases the risk that HRDs and their families and social environment will be subjected to possible threats, intimidation, surveillance and physical abuse, and can lead to psychological stress, uncertainty and social isolation of these activists. Instead of working for human rights, the HRDs and their organisations then also have to cope with slander and accusations which, although unfounded, have to be refuted, and this while possibly having to witness their support eroding in the population and among their supporters at the same time. This is especially the case when HRDs have to defend themselves against media campaigns. Not infrequently the media portrays them as “trouble-makers” and uses discriminating stereotypes to discredit HRDs, for instance defenders of women’s rights or LGBTI rights. Religious groups or traditional authorities may also encourage violence and discrimination when they agitate against HRDs who work for the rights of people of another faith or view on life.

States are obligated in terms of human rights to uphold and protect the work of HRDs, however. To this end it is necessary for states to recognise, protect and guarantee ESC rights both legally and in de facto terms, and to legitimise civil society work for these rights instead of stifling it and persecuting proponents of ESC rights. It is scarcely possible to defend ESC rights without freedom of information, speech, assembly and association and without the right to participation. Public recognition of ESC rights and work

for the protection and implementation of these rights would improve the precarious situation of HRDs, as would the existence of effective possibilities to file complaints and take legal action and an independent judiciary which penalises violators of human rights and not human rights defenders. Instead of this, those state actors who investigate perpetrators of crimes and seek to protect and implement human rights may easily become targets themselves.

Especially when faced by difficult conditions in their respective state, it is important for HRDs to receive attention beyond national borders and be supported by an active international civil society from the Global South and North. Together with their partner organisations on the ground, numerous human rights and development organisations in Germany work for the protection of HRDs. Many of them have been doing so for decades. They publicise the fates of individuals, draw attention to current and structural sources of danger, call for better protection and send out international observers. By the same token, they have also begun to support the work of defenders of social human rights and work to make sure they are protected in a targeted manner.

The international community of states has also assumed the responsibility to protect HRDs: the United Nations adopted a declaration on Human Rights Defenders as far back as 1998; two years later it appointed a UN Special Rapporteur on the situation of HRDs. Following this lead, the African Commission for Human and Peoples’ Rights adopted a resolution on the protection of HRDs in Africa in 2004 and appointed a Special Rapporteur for HRDs in 2005. The Inter-American Commission created a functional unit for HRDs in 2001, which was transformed into a rapporteurship in 2011. For its part the European Union issued guidelines on the protection of Human Rights Defenders in 2004; these were updated in 2008. The OSCE also took up this topic, creating a contact point for HRDs and National Human Rights Institutions (NHRI) at the Office for Democratic Institutions and Human Rights (ODIHR) in 2007. According to the Federal German Government, it has been supporting the protection of Human Rights Defenders for years. It assumed the obligation to continue this support in the “Action Plan for Human Rights of the Federal German Government 2010 to 2012”. Now the task at hand is to implement and reinforce such efforts in everyday policy-making.

This Brochure therefore contains concluding recommendations to the Federal German Government, the international community of states, transnational civil society, business enterprises and the media. These recommendations are aimed at affording better protection and support to defenders of economic, social and cultural human rights.

The demands contained in this Brochure are advocated and supported by the member organisations of FORUM MENSCHENRECHTE within the limits of their respective fields of work, their objectives, their mandate and their fundamental convictions.

Defenders of ESC rights at peril – case descriptions

Specific descriptions are provided in the following on the ways in which individuals and organisations that work for economic, social and cultural (ESC rights) are subjected to a wide range of repression in various cases. It is for this reason that member organisations of FORUM MENSCHENRECHTE have made the case examples presented here available. They show that actions directed against their partners in Asia, Africa, Latin America, the Middle East and Eastern Europe range from threats and surveillance to criminalisation, physical violence and assassination, regardless of what ESC right is being defended and promoted in each case. Both the people directly affected who jointly work for their rights as well as non-governmental organisations (NGOs) that support them in their efforts must be viewed as victims.

New restrictions on NGOs are undermining human rights: Pillay

GENEVA (25 April 2012) – UN High Commissioner for Human Rights Navi Pillay on Wednesday expressed deep concern about current or recent moves in a number of countries to curtail the freedom of non-governmental organizations (NGOs) and other civil society actors to operate independently and effectively. (...)

Pillay noted that freedom of association is under increasing pressure in many countries across the world. »Freedom of association is the lifeblood of NGOs,« she said. »Systemic legal or administrative attempts to curtail their activities can be very damaging.« (...)

»Civil society – including NGOs, trade unions, human rights defenders, academics, journalists, bloggers and others – plays an absolutely crucial role in ensuring that human rights are protected in individual states,« the High Commissioner said. »A dynamic and autonomous civil society, able to operate freely, is one of the fundamental checks and balances necessary for building a healthy society, and one of the key bridges between governments and their people. It is therefore crucial that NGOs are able to function properly in countries in transition, as well as in established democracies.«

»Civil society actors help mobilize people to become involved in decisions that affect their lives. That is why the United Nations sets such store by their contributions, both in policy-making and in field operations,« Pillay said. »If their contribution is weak or restrained, the needs of ordinary people are too easily sidelined, and in particular the needs of the people most discriminated against in any given society.«

Pillay expressed alarm at recent or ongoing attempts in a number of countries to tighten control over NGOs by restricting their sources of funding, and in particular foreign funding on which many very effective civil society organizations rely heavily. (...)

»NGOs must be able to operate free from executive interference,« the UN Human Rights chief said. »They must be consulted and included in policy decisions, particularly when a state is undergoing major transformational or transitional processes. And they must not be penalized for criticizing or questioning state policies and processes. Governments need to understand that collaboration with civil society is not a sign of weakness. It is the way to build a better, more inclusive, society – something all governments should be trying to do, and something they cannot manage on their own.« (...)

»It is normal for there to be occasional tensions in the relationship between civil society organizations and the authorities, but it is unnecessary for these to descend into suspicion, antagonism or – on the part of the authorities – outright repression,« the High Commissioner said. »In the long term, there is nothing gained and a great deal that is lost when states attempt to stifle civil society.«

Extracts from a press release by UN High Commissioner for Human Rights Navi Pillay on 25 April, 2012.

<http://www.ohchr.org/EN/NewsEvents/Pages/Media.aspx?IsMediaPage=true&LangID=E>

The prohibition against discrimination set out in the ICESCR imposes the obligation on states to recognise the rights of all people equally, regardless of their ethnic, linguistic, religious or gender identity and regardless of their social status in society or their political views (Art. 2(2)). Article 8 (1) of the Declaration on HDRs pronounces a ban on discrimination in efforts on behalf of human rights: "Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs."²

The situation of HRDs who work for the ESC rights of marginalized people is nevertheless consistently precarious wherever one looks: For example, LGBTI organisations are frequently denied formal registration and often do not obtain permission by government authorities to campaign publicly. Their work for equal access to basic social services such as *inter alia* care for persons with HIV/Aids is additionally impeded through stigmatisation and taboos in society. In the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity³, issued in 2007, the right to promote and protect human rights is, however, explicitly mentioned (principle 27).⁴

Under the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), women are to be granted the right to actively address societal and political issues in their country in the same way as men through involvement in non-governmental organisations and associations (Article 7(c)).⁵ The work of women HRDs is nevertheless hampered by major difficulties in many countries as a result of women's unfavourable status in society.⁶

The first four case examples from Iran, Nigeria, Russia and Pakistan draw attention to systematic disregard for the prohibition against discrimination: a religious minority is denied the right to education, defenders of LGBTI rights are systematically discriminated against and a women's rights activist and artist is subjected to incessant threats in her patriarchal society.

1. IRAN

Bahá'í Institute of Higher Education (BIHE)

Universal Declaration of Human Rights (UDHR), Article 26 (right to education)

"(1) Everyone has the right to education. (...) Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

Iran is the country where the religious community of the Bahá'í originated, with six million followers scattered all over the world. A monotheistic, revealed religion, it was founded in the middle of the 19th century by Bahá'u'lláh (1817–1892) and has ever since been closely intertwined with Iranian history. The Iranian Bahá'í community is the largest non-Muslim religious minority in the country (300,000 followers). Bahá'í are accused of being apostates, enemies of the state and conspirators both as a result of the religion's claim to being a post-Koran religious foundation and its progressive teachings. They are not viewed as a religious minority, but rather as a "perverse political sect" and branded as a "cult". In the eyes of the Shiite government, the Bahá'í community constitutes a fifth column alternatively orchestrated by Russian, British or American espionage to destabilise the country and its majority religion. Because the centre of the worldwide Bahá'í community is located in Haifa (Israel) today, Bahá'í are above all stamped as "Zionists" and "Israeli spies" in the Iranian media and government communiqués.⁷ Persecution and harassment of the Bahá'í are focused on the area of higher education: according to a secret memorandum from 1991, which was published two years later by the United Nations, "they are to be expelled from universities, either in admissions procedures or during their studies as soon as it becomes known that they are Bahá'í". This document spells out Iranian state doctrine, which is seeking to quietly strangle the Bahá'í community.⁸ Iran's efforts to bar the Bahá'í from access to higher education therefore has to be regarded in the context of all the additional efforts of the government to disband the Bahá'í community. These include prohibitions against Bahá'í in professions, confiscations, surveillance, desecration and destruction of cemeteries and holy sites, but also arbitrary arrest, torture and long prison sentences.

In reaction to discrimination in the field of education, the Iranian Bahá'í community began establishing a distance-learning university for its young members in the 1990s, the Bahá'í Institute of Higher Education (BIHE). It must be considered more of an informal network than a fixed facility, as the government does not allow Bahá'í to establish any institutions in Iran. The community has been banned since 1983. Nevertheless, 900 students enrolled in it as far back as 1998, and the university has 150 academics

2 See <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>

3 Drawing from existing international human rights law, the Yogyakarta Principles are the first systematic global attempt to spell out the human rights of LGBTI. They are of fundamental political and legal importance in that they set clear standards for consistent human rights policy as regards LGBTI at the international and national levels.

4 See <http://www.yogyakartaprinciples.org/>

5 See <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

6 See pursuant hereto the report by the Special Rapporteur for HRDs on the situation of women Human Rights Defenders from 7 March 2011 (A/HRC/16/44/Add.3), http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44-Add3_AEFS.pdf

7 See, for example, the special site of the German Ministry of Foreign Affairs: http://www.auswaertiges-amt.de/DE/Aussenpolitik/Laender/Aktuelle_Artikel/Iran/090219-BahaiIran.html

8 See Society for Threatened Peoples International: »Bahá'í in Iran. Strangulierung einer religiösen Gemeinschaft. Menschenrechtsreport Nr. 54, June 2008. http://www.gfbv.de/show_file.php?type=report&property=download&id=34

and teachers from various scholarly fields who perform their teaching activity free of charge. University classes have for the most part been held through distance learning and instruction in small groups since the beginning. Laboratories and libraries have been set up at numerous sites. The university receives expert and technical support through Bahá'í academics in North America, Europe and Australia.

The Iranian government is nevertheless attempting to bar the Iranian Bahá'í community from granting its young people access to full-fledged university education by violent means. Whole series of raids in rooms at the university were carried out by the government between 1998 and 2002, in which furnishings, equipment and instructional material were seized. In the cities of Shiraz and Mashhad, Revolutionary Guards stormed into several exam centres on the day of admissions exams, videotaped the admissions procedures and confiscated the test forms of incoming students.

In the wake of international outcry over this discrimination, the Bahá'í were officially granted access to higher learning beginning in 2006, but the reality of their situation is different: the vast majority of Bahá'í applicants are rejected for some other reason or removed from student rolls during their studies. The situation of students has thus changed little in de facto terms.

Harassment in the form of raids and similar actions were repeated in May 2011, this time in numerous homes of Bahá'í followers in Teheran, Karaj, Isfahan and Shiraz. Fourteen persons who work at BIHE were arrested. Sentences were handed down in the middle of October that year: a Revolutionary Court in Teheran sentenced seven Bahá'í to four or five years imprisonment. Even before this, on 6 June 2011, the *Iranian Student News Agency* announced that Iran's Ministry of Science, Research and Technology had declared BIHE to be illegal. Nonetheless, BIHE continues to operate.

2. NIGERIA

House of Rainbow, Lagos

UDHR, Article 2 (prohibition against discrimination)

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Lesbians, gays, bisexuals, transsexuals and intersexuals (LGBTI) in Nigeria are systematically discriminated against in the social area as soon as their actual or imputed sexual orientation or gender identification becomes known. In this case, this applies to rights to housing, jobs and access to health care.

House of Rainbow, which is supported by the Hirschfeld-Eddy Foundation, the human rights foundation of the Lesbian and Gay Federation in Germany, is a non-profit organisation which is part of the Metropolitan Church Community in Lagos and supports LGBTI citizens in social and spiritual matters, but also performs information and awareness-raising work and lobbies against laws discrimi-

nating against LGBTIs. The organization also works in Ibadan and Abuja, after Lagos the biggest cities outside the Islamic provinces, where the Sharia applies and national laws and regulations are not consistently recognised. Hundreds of persons have already contacted the House of Rainbow, even if this accounts for a mere fraction of those suffering discrimination. Initially all aid offers were combined under one roof in Lagos, but staff have learned the hard way over the last few years that this arrangement poses security problems. As a result of a media campaign denouncing staff of the organisation, several of them were driven from their rented flats in 2008 and lost their jobs.



*Members of the House of Rainbow during a meeting
(© House of Rainbow 2012)*

Generally speaking LGBTI citizens suffer discrimination and humiliation on the job, in looking for housing and medical care, and they are socially excluded. Recently human rights and other civil society organisations have begun to offer medical care and counselling, as the Nigerian system does not operate in the area of preventative HIV/AIDS care. There is neither sufficient information on the risks to these groups of the populations available nor research or documentation to what degree LGBTI citizens are affected by infection with HIV/AIDS.

Not only does the societal view predominate that homosexuality is not compatible with the traditional culture of the country – it has also been made a criminal offense in national laws and regulations. There is hence no statutory foundation to have one's right to non-discrimination in connection with sexual orientation upheld by a court of law. The persons involved hesitate to appeal to the judiciary, as experience has shown that they will find no justice there. As long as statutory foundations are not changed, the probability is great that LGBTI citizens will remain excluded from the social community.

The enshrinement of unconditional equality before the law and an anti-discrimination law constitute an essential prerequisite for a change in common social practice in Nigeria and for empowerment of the organised LGBTI community.

3. RUSSIA

**Polina Savchenko and Igor Kochetkov,
Vychod, St. Petersburg**

Animosity towards homosexuals is widespread in Russia. The lives of lesbians, gays, bisexuals, transsexuals and intersexual people (LGBTI) in Russia have been marked by exclusion, discrimination, contempt and anti-homosexual violence since time immemorial. The European cultural capital of Saint Petersburg, which has thus far had more of a reputation as liberal and open to the world, has sanctioned the exclusion of LGBTI by law, thereby following in the wake of the three Russian regions of Kostroma, Arkhangelsk and Ryazan. The Saint Petersburg City Parliament adopted a homophobic and transphobic law in the third reading on 29 February 2012 making the “propagation” of homosexuality or transgenderism a criminal penalty. City governor Poltavchenko signed the law on 11 March. It has thus entered into force.⁹ The law fans the flames of homophobia and bias. It encourages and institutionalises intolerance and hate against minorities. The law aims at gagging the ever-stronger LGBTI movement in Russia. Repeated temporary arrests of LGBTI HRDs in St. Petersburg in 2012 underscore this tendency.

Russia is member of the Council of Europe and thus bound by the Convention for the Protection of Human Rights and Fundamental Freedoms. According to case law handed down by the European Court of Justice for Human Rights, placing lesbians and gays at a disadvantage as a result of their sexual identity constitutes a violation of the prohibition against discrimination set out in Article 14 EHRC in connection with Article 8 EHRC (right to respect for private and family life). The same principles apply to bisexuals and transgenders. The law also contradicts Russian law and the Universal Declaration of Human Rights.

Opposition to the law by the Russian LGBTI movement has experienced worldwide solidarity. There have been demonstrations of solidarity before Russian embassies and consulates in many cities, for instance in Berlin and Hamburg. Politicians from Hamburg, Berlin and Cologne have appealed to their Russian colleagues in open letters protesting against the law. Since it entered into force LGBTI organisations in Saint Petersburg have been testing how they can carry forth with their important information and acceptance work and how government authorities will react to it. The law, which is aimed at preventing advocacy of homosexuality and transsexuality in public, provides for fines amounting to 5,000 roubles (EUR 130) for individuals, and depending on their size up to 500,000 roubles (EUR 13,000) for organisations. No sentences have been issued to date.

This year the LGBTI organisation Vychod (coming out) organised a “Week against Homophobia” together with

other organisations. Vychod has been working for the human rights of LGBTI and for more tolerance and acceptance since 2009, performing informational work surrounding the topic of homosexuality and transsexuality, counselling lesbians and gays on how to deal with their homosexuality and strengthening the ability of LGBTI to act. One element of the “Week against Homophobia” this year, during which many events, including a film festival, take place, was a poster campaign. Fifteen commercial advertising spaces were rented and thirty large formats printed with financial support. The posters show the composer Peter Chaikovsky, the dancer Rudolf Nureyev and the poet Marina Tsvetayeva with gagged mouths. Brief texts from personal letters and documents of these Russian cultural icons note their homosexuality.

When Vychod activists held up the posters at a demonstration on 7 April 2012, they were placed under temporary arrest. They face fines. And when several LGBTI activists raised rainbow flags and carried other rainbow symbols at May Day demonstrations in Saint Petersburg, a total of seventeen persons were arrested. They also face fines. The LGBTI HRDs were separated from the crowd, counting four hundred persons, and brought to the nearest police station for “propagating homosexuality”. Among those arraigned there was also the well-known LGBTI human rights defender Igor Kochetkov, who later reported that he was only freed after seven hours. The charge levied at the HRDs was no longer that they were advocating homosexuality, however, but rather resisting police officers. “The police are taking advantage of the propaganda argument in order to prevent campaigns and jail their participants”, according to Polina Savchenko from Vychod. The law accordingly only aims to stifle any and all public LGBTI activity.¹⁰

Vychod and other LGBTI organisations in St. Petersburg are now preparing for a long, costly battle. They want to appeal cases to every court level in Russia in order to then be able to refer the issue to the European Court of Justice for Human Rights. They shall carry on with their work against anti-homosexual attitudes and modes of behaviour, according to the HRDs from Vychod, whose work is supported by the Hirschfeld-Eddy Foundation with donations from Germany.

On 13 July 2012 a large majority of the Russian Duma voted in favour of a controversial law classifying NGOs funded from abroad as “foreign agents” and providing for tight controls on their financial affairs. Human rights and other civil society organisations now also face the threat of criminal charges for slander. President Putin signed the Act in spite of sharp international criticism on 21 July 2012.¹¹ This will probably make the work of organisations like Vychod much more difficult in the future.

¹⁰ See http://www.queer.de/detail.php?article_id=16411

¹¹ Several special rapporteurs had before called upon Russia to withdraw the bill: «Should this draft law come into effect, it will certainly have vast negative consequences for civil society in Russia.» (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12344&LangID=E>, viewed in July 2012)

⁹ See <http://www.comingoutspb.ru/en/en-projects/campaignagainstlaw>

4. PAKISTAN

Nageen Hyat, artist and women's rights activist, Women's Action Forum, Islamabad

UDHR, Article 27 (freedom of cultural life)

"(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."

Nageen Hyat works professionally and voluntarily to improve women's rights in her country. In Pakistan's patriarchal society, it is frowned upon for women to have a job of their own outside the home, as this is not in line with cultural and religious norms. Working at a job makes women more financially independent and strengthens their role in society. To encourage this, Nageen Hyat produced the film series "Shanaakht-mein houn zindagi" ("My identity is life") in cooperation with Amnesty International, portraying working Pakistani women such as, for example, women on the police force or dancers, whose profession is fraught with bias. The films are a means for her to work for the ESC rights of women.

Another focal point of her work is art. She has been using seminars, workshops and exhibitions free of charge in her Nomad Gallery to empower other people for almost thirty years now to take part in Islamabad's cultural life and to actively create art and undergo further education and training. At the same time she attaches special importance to the inclusion and fostering of women, minorities, children and adolescents, i.e. the groups which are the most

excluded in everyday life in Pakistan. The pictures on exhibition address topics such as the role of women, social differences or modernisation processes in cities. Her exhibitions, the film series and rounds of discussions are intended to stimulate people to think critically about Pakistani society. Over the long term the objective is for traditional modes of thought and norms to be critically examined and the rights of Pakistanis strengthened.

The influence of Wahhabi Islamic forces, which move ruthlessly against anyone advocating a change in the societal or religious status quo, has been on the rise for years. This was underscored by the assassinations of Salman Taseer, governor of Punjab Province, and Shahbaz Bhatti, Minister of Minorities, in 2010. Journalists and human rights activists are threatened and killed, too. Fear of mounting violence silences large sections of civil society.

Nageen Hyat, whose professional independence is already objectionable, has come under fire from numerous actors as a result of her activities in Women's Action Forum as well as exhibitions and film presentations on human rights with socially critical content: from the government, Islamicist groups and conservative forces in society. As one co-founder of Women's Action Forum put it: "It is scarier today. Previously we were opposed to the state, but now, the people themselves have become radicalised". Nageen Hyat receives both written and verbal threats and has been given to understand by government officials that excessively strong and direct criticism of the structures of the state – such as was to be found in her report on the everyday working lives of female police officers – will not be tolerated. Thanks to her level-headed approach, no violent attacks have been committed against her to date, however.

The following three cases relate to a traditional problem area within the field of ESC rights: threats against and persecution of trade union activists who fight for the rights of workers. The total of 189 conventions of the International Labour Organisation (ILO) link up to the right of HRDs (such as trade unionists, for example) to work for internationally recognised labour rights. Common worldwide standards on social values in working life are of tremendous importance in view of ongoing globalisation. The core labour norms of the ILO encompass the right to freedom of assembly and association and the effective recognition of the right to engage in collective bargaining, the elimination of all forms of forced or mandatory labour, the effective elimination of child labour and an end to discrimination in work and professions.

Attempts are made throughout the world to hinder trade unionists in their work and to prevent the formation of independent trade unions; in some countries anti-trade union forces do not even shy away from murder. In Turkey, one female trade unionist successfully took court action, even if legal practice in the country does not offer a level of protection for employees which is up to international standards. The example of Panama shows how difficult it is to work for employees rights for public workers, and finally we will learn about the case of a female trade unionist from Zimbabwe who had to leave her country for fear of her life.

5. TURKEY

Emine Arslan, trade unionist, Sefaköy

UDHR, Article 23 (right to work, same wage)

“(2) Everyone, without any discrimination, has the right to equal pay for equal work.”

Emine Arslan worked in Sefaköy, at a company by the name of DESA, which produces leather products for international brand names such as Marks & Spencer and Prada, for eight long years. She was fired in 2008 as a result of her being a member of a trade union and her active participation in a campaign for trade union organisation of the employees. She protested against this with the support of Deri-İş, a trade union in the leather industry founded in 1948, and took legal action against the enterprise. The enterprise for its part repeatedly tried to bribe Emine Arslan to withdraw her complaint and end the protest campaign by the trade union on the plant premises. In the latter attempt, the company management received support from the local police. The trade unionist was also subjected to reprisals against her family; her daughter barely escaped a kidnapping attempt.

After one year of courageous resistance and with the support of several trade unions, Emine Arslan won her fight before court in 2009. Although her employer decided not to continue to employ her, it nevertheless paid her a severance amount, and she has been working since then in another textile factory. DESA was moreover required by a

court ruling to conclude an agreement with Deri-İş, but the enterprise has not complied with this to date, instead carrying on with its practice of firing trade union activists.

It was unfair working conditions on the job which prompted Emine Arslan to join the trade union: excessively long stretches of work without breaks, unpaid overtime and poor pay. This is common practice in Turkey. Estimates made by independent trade unions indicate that only around 6 % of the entire Turkish workforce is organised in trade unions. One major problem faced by trade union work is lack of access to numerous small enterprises – in the informal sector, for instance. The same goes for business enterprises in free-trade zones, where access from outside, and hence for trade unions as well, is subject to especially strict regulations.

Turkish law continues to contain elements from the period of military rule beginning in 1980 significantly restricting the rights of employees, for example the right to freedom of assembly and association, collective bargaining and the right to strike. Although Turkey ratified ILO Convention 87 on the freedom of association and protection of the right to organise as well as Convention 98 on the right to organise and collective bargaining, the government has not made any comprehensive efforts to implement these obligations in national law down to the present day. Because employers are still apparently free to pay a severance amount to employees who are fired as a result of trade union activity or give them their jobs back as they see fit, business enterprises have the option of getting rid of trade unionists legally. The government moreover actively supports the use of agency workers (temporary workers), which on the one hand makes it difficult to monitor things while in addition encouraging companies to continue to disregard the rights of employees.

6. PANAMA

Trade union of public workers in the Ministry of Education (ASPUMED)¹²

UDHR, Article 23 (right to work, same wage)

“(4) Everyone has the right to form and to join trade unions for the protection of his interests.”

Even though trade union rights are enshrined in the national constitution, organisations of public service employees are not officially recognised as trade unions in Panama. Thus it is not possible for them to negotiate with employers or to submit disputes to mediation by means of a dialogue. There are cases of unlawful dismissals of employees, prosecution, discrimination, harassment at the job site, cancellation of wage increases, intimidation and even groundless accusations of criminal acts. The public prosecutor moreover keeps dossiers on persons who take part in protest marches or strikes or who publicly condemn this situation. These actions taken against public service employees violate the stipulations of ILO Conventions

¹² Asociación de Servidores Públicos del Ministerio de Educación de Panamá

87 and 98 as well as the American Convention on Human Rights.

The current government of President Ricardo Martinelli (2009–2014) instituted reforms of several laws governing civil servants retroactively at the beginning of his term of office even though this is prohibited under the Constitution. Thousands of public service employees have been made redundant in this manner. Several individual employees and their organisations, including ASPUMED, have commissioned a review of the constitutionality of this, however.

Managers working in the public service who protest against these or other violations of rights in campaigns are consistently discriminated against in varying ways: they are assigned to a job site at an inconvenient location for them or they are stripped of certain powers. Tens of thousands of jobs are lost every time the government changes (every five years). Trade union leaders know that the Supreme Court will drag its feet in reviewing the complaints they have filed, and that parliamentary deputies do not have the political will to adopt laws and regulations benefitting employees. Political parties seeking to split up or break up their organisations also meddle in these affairs. Many are forced to join the governing party in order to avoid losing their jobs. Their personal and job security is at risk as long as rights of public service employees are not respected in Panama.

7. ZIMBABWE

Gertrude Hambira, General Agricultural Plantation Workers Union of Zimbabwe (GAPWUZ)

The trade unionist Gertrude Hambira works for the rights of rural labourers in Zimbabwe. The case of this country tragically illustrates how land reforms do not automatically benefit the needy, but can sometimes have the opposite effect.

In a land reform programme carried out by violent means by the Mugabe government beginning in 2000, large tracts of farms, mostly owned by white farmers, were parcelled out and handed over to black farmers. Commercial agriculture had previously employed thousands of rural labourers, often providing them accommodation at the same site as well. As a result of the land reform these labourers not only lost their jobs, but their dwellings as well. Many of them became destitute, while others found employment with the new landowners, although at much poorer conditions which were clearly of an exploitative nature and in violation of human rights.

Gertrude Hambira has attempted to document the violations of law triggered by the land reform and publically communicate this domestically and abroad. In her capacity as Secretary General of GAPWUZ, she has encouraged

rural labourers to take action themselves, while demanding that landowners respect the rights of their labourers. She moreover initiated the production of a documentary film on the situation of people concerned, which illustrates the inhuman side of Mugabe's land reform. It also criticises and pillories the ruling elite of Zimbabwe, which has always portrayed its reform as a strategy on the part of the government to combat poverty. In the wake of the documentary film several attempts were made on the life of Gertrude Hambira, forcing her to leave the country. She is currently living in exile.



Gertrude Hambira (© ITUC/Craig Berggold)

Gertrude Hambira was arrested several times in Zimbabwe and legal action was taken against her on the basis of trumped-up accusations to put an end to her trade union commitment. GAPWUZ' offices were searched and its employees subjected to threats. Gertrude Hambira was put under round-the-clock surveillance by security agents, while her family lived in constant fear of attacks, physical violence and even attempts on their lives.

Gertrude Hambira's case is not an isolated one in Zimbabwe: The systematic suppression and persecution of all political opposition is a strategy adopted by those in power to consolidate their position. The human rights situation in the country has drastically deteriorated, particularly since presidential elections in March 2008. It is assumed that people who have disappeared have been killed by security forces. Human Rights Defenders are persecuted, arrested and prosecuted on fabricated criminal charges. For Gertrude Hambira, exile was the only way to escape her life-threatening situation. Her case has been brought to the world's attention, however, through campaigns carried out by the International Confederation of Trade Unions in the hope that other HRDs in Zimbabwe will not have to share the same fate as Gertrude Hambira and can instead carry on with their work. Offering financial aid to GAPWUZ workers in danger constitutes another support measure for the trade union.

The focus now turns to violations of ESC rights in rural areas and the collective rights of indigenous groups. Convention 169 of the International Labour Organisation on Indigenous and Tribal Peoples from 1989 (ILO Convention 169) calls on states to recognise the social, economic and cultural rights of indigenous peoples while respecting their social and cultural identity. Governments also "have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity" (Art. 2.1 and 2.2 (b)). They are moreover obligated to consult with indigenous peoples whenever statutory or administrative measures are to be taken which have a direct impact on them (Art. 6).

In the following five cases stakeholders affected and non-governmental organisations (NGOs) work for the rights of indigenous peoples, with these examples from Asia and Latin America portraying widely differing situations faced by HRDs as a result of the respective political context. In all situations, however, HRDs are perceived as (potential) agents of conflict because of their activities. This boosts the risk of their being subjected to reprisals and, as some of the cases show, denunciation and accusations of being in league with illegal armed actors. In its 2009 Annual Report, the UN's Special Rapporteur for HRDs also noted that human rights activists are being threatened by an increasing number of non-governmental actors.¹³

The first case from the Philippines illustrates, however, that cooperation between a human rights organisation and local political decision-makers and government authorities holds out the potential to achieve better protection for activists harassed by the military. In the example of Bolivia, on the other hand, no such attempts at mediation to defuse such conflicts and offer additional protection to HRDs can be perceived, with stakeholders being in a much more precarious situation there, especially given the fact that violent attacks are sponsored by the highest levels of the government. The fact that international networking has not been established on a scale which would allow it to serve as an additional protective factor here is said to be a negative impact. It is reported from Vietnam, in contrast, that especially those measures which are considered to promote protection, such as increased visibility or national and international networking, can also be counterproductive when they are used without taking political conditions into account. International actors need to keep this in mind. The fourth case from Mexico shows once again how a human rights organisation which is seeking a peaceful resolution of local conflicts and has as a result become a victim of reprisals by political actors is forging ahead in its networking efforts at the international level in order to protect itself. The fifth case from Panama illustrates how international observers may also become a target in reprisals when they document violent activities of state security forces.

13 A/HRC/13/22, 30 December 2009 (section 38, p. 8). The report furthermore states: »In this regard, the Special Rapporteur would particularly like to underline the situation of defenders working on economic, social and cultural rights, who are increasingly vulnerable, since their work is not always recognized as human rights work.« (section 39, p. 8). See <http://www2.ohchr.org/english/issues/defenders/docs/A.HRC.13.22.pdf>

8. PHILIPPINES

Silingang Dapit (SILDAP), Mindanao

UDHR, Article 12 (sphere of freedom of the individual):

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The Philippine non-governmental organisation SILDAP has been working with indigenous peoples in three provinces of Southern Mindanao for almost thirty years. Among other things, the organisation operates local schools for the Dibabawon, Mangguangan and Mdaya peoples in isolated regions in which the government itself is scarcely present. The schools are recognised by the government authority in charge of education, however, as service providers of "Basic Education Assistance in Mindanao" (BEAM). SILDAP works with adapted educational methods and wants children not only to learn to read and write, but also discover how valuable their culture is. The traditional knowledge and know-how of indigenous peoples is to be preserved. SILDAP accordingly performs much more than literacy work. A key objective is also for the younger generation to be raised to become responsible citizens. This includes educational training on the rights of the indigenous population in accordance with the UN Declaration on the Rights of Indigenous Peoples and the Indigenous Peoples Rights Act (IPRA).

The office of SILDAP in Tagum City was visited by heavily armed members of the military in December 2010. The staff of the organisation was interrogated, the offices and posters on the walls were photographed. When SILDAP's Director, Allan Delideli, demanded an explanation for these actions by the military during another surprise visit the following month, staff were told that the interrogation was part of a new security strategy (Oplan Bayanihan) in the fight against rebellion. This strategy replaced the previous, much-criticised plan known as Oplan Banta Laya in January 2011, which numerous critics had held to have triggered an increase in torture, selective assassinations, extra-legal executions and cases of violent disappearances, inter alia of HRDs, that had been documented during the government of President Gloria Macapagal Arroyo. After President Benigno Aquino took up office (July 2010) the new anti-terror plan was adopted in order to suppress violent assaults by communist and other radical political groups in the country. Although the aim of this plan is officially to promote peace and cooperation with the population through development, it has also led to a militarisation of the civil population due to soldiers being quartered in villages and organisations such as SILDAP interrogated by them within the framework of the so-called "Peace and Development Outreach Program" (PDOP).

In the case of SILDAP, the head of the military operation was not able to produce any written approval; at the last interrogation it was clear, however, that the organisation was suspected of supporting the banned New Peoples Army (NPA). In the course of investigations against

SILDAP, even the private residence of a staff member was searched, terrifying her family, particularly her children.

Allegations of this nature can be perilous for the persons they are levied at. SILDAP first turned to the media and social networks in the wake of the series of raids and interrogations in order to publicise the military's actions and protect itself against further harassment. In response, the Director of the Department of the Interior of the Local Government (DILG) went to SILDAP to ask for its version of the incidents. After this she approached the military leadership in the region about the incidents and ordered that, when the military questioned persons or organisations within the framework of the PDOP, such was always be performed in the presence of the respective community chairpersons. The civil servant continued attempting to promote a serious dialogue between SILDAP and the military, resulting in the adoption of a resolution for organisations such as SILDAP to be officially invited by the local authorities of the region in charge in order to carry out their work and take part in the preparation of local development plans. The military is the only actor which has not heeded this call for cooperation to date.

9. BOLIVIA

Central de Pueblos Indígenas de La Paz (CEPILAP), Foro Boliviano del Medio Ambiente y Desarrollo (FOBOMADE) and Centro de Estudios Jurídicos e Investigación Social (CEJIS)

This case involves several Bolivian non-governmental organisations or indigenous interest associations working for the economic, social, cultural and environmental rights of indigenous groups in the lowlands of Bolivia. They offer legal advice and counsel as well as continuing educational training and act as advocates of the interests of indigenous peoples vis à vis government agencies and offices.

When CEPILAP publically protested against the violation of rights of indigenous peoples to prior consultation enshrined in ILO Convention 169, the organisation was accused by the government of being steered by external interests. The government denounced additional NGOs that had connections to the development organisation USAID, including CEJIS, accusing them of political destabilisation and alleging that social protest was being supported with US development funds. The conflict between social movements and the Morales government reached a climax in September 2011, when the police violently broke up a week-long protest march of indigenous peoples from the Amazon region. The aim of this march was to stop construction of a 300-kilometre-long highway through the Indigenous Territory of Isiboro Sécure National Park (TIPNIS), creating a direct linkage between the Amazon Basin and the Pacific. It was especially intended to serve as a conduit for exports of Brazilian goods and probably an expansion of coca cultivation as well. Even if indigenous rights, including the right to free, prior and informed consent, are enshrined in the new Constitution of the country, the gov-

ernment appears to assign higher priority to economic growth and integration of the South American market.

Even though NGOs in Bolivia generally have sufficient latitude for action in order to address matters relating to economic and social development as well as combating poverty, their options have been steadily eroded over the last few years. This especially applies to initiatives which serve to strengthen democracy, transparency of governance or a transparent way of dealing with public funds and respect for human rights, above all those of indigenous peoples.

The government – including the President and his ministers – has reacted to the mounting protest movements by condemning them and attempting to stigmatise them. NGOs and the interest associations of indigenous groups in the lowlands are publically accused of conspiracy and support for oppositional oligarchs, right-wing forces and imperialism, whereby pro-government media also play a key role. In addition, the government appears to be contemplating the creation of a commission of enquiry by the Parliament that is to investigate the activities of NGOs. These fear that this could lead to a criminalisation of defenders of human rights.

CEJIS was a victim of harassment as far back as 2008: the offices of its headquarters in Santa Cruz were searched and threats made against staff members. In response, the Inter-American Commission on Human Rights ordered the Bolivian state to take action to protect CEJIS' staff. In spite of this, the attacks against the organisation have not abated since then. Human rights organisations in Bolivia are usually well networked at the local and regional levels, but they lack international contacts. These could be helpful in making their work and their special situation more visible. Furthermore, the Inter-American human rights system of the OAS is used relatively little by them.

10. VIETNAM

Social Policy Ecological Research Institute (SPERI), Mekong Region

UDHR, Article 20 (freedom of assembly and association):

“(1) Everyone has the right to peaceful assembly and association.”

Vietnam has become one of the economic “boom countries” of Asia since the country initiated economic reforms in the nineties. Many European enterprises have also established a presence along the Mekong. In contrast to the economic opening of the country, however, the notion of a civil society which makes an active contribution to the development of the commonwealth and plays an independent role in the political system and in the promotion of rule of law is still underdeveloped in Vietnam. State-run mass organisations still dominate the scene – such as the Women and Youth Union or the Fatherland Front, which have millions of members. They are funded by tax revenue and are closely aligned with government and party structures.



*Two employees of SPERI analyse the migration patterns of the Hmong with a member of this minority group
(© Brot für die Welt/Jan Papendieck 2011)*

Organisations which work for the right to land or cultural identity, on the other hand, are often considered to be opponents of the government. This distrust at times impedes cooperation and restricts opportunities for NGO work. The current NGO Law is relatively vague and dates back to 1957 (Law on the Right to Establish Associations). Decree 45/2010 “on the organization, operation and management of associations” is somewhat more specific, even though the work of non-profit organisations is addressed largely from a technocratic and administrative perspective. NGOs are currently working jointly with the government to revise these provisions.

It is in this context that SPERI is working on a vision of society in which ethnic minorities such as e.g. the Hmong, Meo or Xinh Mun have the same fundamental rights as the majority population, the Kinh, and particularly an increasingly prosperous urban strata. Recognition of cultural heritage, protection of resources and fair access to the market are only a few areas for which SPERI is working together with indigenous village communities in the Mekong region. SPERI is endeavouring to persuade peasant-farmers and local authorities to work together on a level playing field wherever the assignment of land or forest exploitation rights are concerned. Minorities are supported in exercising their traditional rights and having these recognised. This becomes particularly important when land is claimed by the majority population or large enterprises.

Members of indigenous communities are excluded from society in multifarious ways and are in particular under-represented in development programmes and institutions of higher education. SPERI lends a voice to these groups of the population that are relatively unseen and unheard. This must be done with tremendous sensitivity for the societal and political realities of the country, however: Analysing and publicising deficits in the recognition and granting of economic, social and cultural rights of minorities in a society which is still only organised to a very limited extent along pluralistic lines has to be done discreetly in order not to jeopardise one’s own latitude for action. NGOs which make critical statements in public risk being banned, as several civil society organisations experienced when they drew attention to the environmental impact and incursions on the traditional way of life of ethnic minorities as a result of bauxite mining in the central highlands of Vietnam.

In a climate of political insecurity, many NGOs opt to concentrate on themselves and work quietly instead of

seeking to join networks and working more visibly. As a result of its restrictive attitude, the government of Vietnam is squandering useful potential that NGOs could contribute to the development of society through their efforts on behalf of ESC rights. SPERI seeks to bridge the gap between civil society and the political arena through constructive lobbying work, advocating that government authorities react to the negative experience of the indigenous population and recognise their rights to land without reacting repressively. SPERI sees a major opportunity to implement social human rights through this cooperation with progressive state authorities, intellectuals, well-known personalities and NGOs.

But whoever organises becomes more visible and hence vulnerable as well when performing critical socio-economic analyses. Thus work on behalf of ESC rights of the Hmong, Meo or Xinh Mun remains a diplomatic challenge. The increasing opening of the country, which can scarcely be rolled back, gives rise to hope here.

11. MEXIKO

Centro Regional de Derechos Humanos »Bartolomé Carrasco Briseño« (Barca-DH), State of Oaxaca

UDHR, Article 11 (presumption of innocence)

“(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

The crucial impetus for the founding of the regional Human Rights Centre by the well-known activist Father Wilfrido Mayrén Peláez was a wave of violence against the civilian population in the southern part of the State of Oaxaca, which has been putting up increasing resistance against its socio-economic exclusion. Barca-DH, as the organisation is called in Mexico, has among other things been working for the establishment of ESC and indigenous rights in the region since 1992. It works in the area of human rights education and the non-violent management of local conflicts. It supports indigenous peoples in demanding satisfaction of their rights to their territory, their resources and their environment as well as in their efforts to protect their territory against exploitation of resources without their



*Pater Wilfrido Mayrén Peláez talking at a panel discussion
(© Emma Marshall/Peace Brigades International 2011)*

rights being taken into account in accordance with the principle of free, prior and informed consent. The coordinators of Barca-DH have suffered physical violence, intimidation, death threats and slander campaigns since they began their work.

One of the numerous explosive local conflicts in which Barca-DH is seeking peaceful change is centred in the indigenous Triquí communities in the territory of San Juan Copala. The conflict between three militant political organisations there has been escalating since 2009: on the one side the pro-PRI¹⁴ paramilitary groupings MULT and UBISORT, and on the other side the pro-Zapatista movement MULT-I. The latter is predominantly made up of members of the Triquí people. Two participants in a peace caravan were killed in April 2010, while the Triquí community was surrounded by paramilitary squads for months and put under fire. There were numerous fatalities and injuries.

Neither government authorities nor security forces in the State of Oaxaca have actively intervened in the violent conflict or taken action to protect the civilian population to date, which means that many infractions against defenceless persons have gone unpunished. Barca-DH initiated a round-table dialogue in September 2010 in which representatives of the conflict parties regularly take part. Not least this initiative has placed the staff of the organisation, at the top of the list Father Wilfrido, in an extremely precarious situation: he constantly receives death threats and has been victimised in a media smear-and-slander campaign in which he has been denounced among other things as “guerrilla Father”. He was even alleged by a pro-PRI newspaper to have murdered the leader of the paramilitary organisation UBISORT in 2010. No formal charges were ever filed, however.

This case is merely one of many in Mexico, where not only violations of the rights of the marginalised indigenous population, but also denunciation and criminalisation of human rights defenders are part of deliberately guided state policy. Infractions committed with impunity, an endemic problem in Mexico, encourages the abuse of case law handed down by the courts on the part of regional and federal authorities and violent activities by politically motivated, armed groups. Representatives of small peasant-farmers or indigenous groups who resist state or transnational development or economic projects are sentenced to long prison terms, usually based on groundless allegations, in summary procedures and without any adequate legal protection. It is in this way that social grassroots movements are systematically weakened. Barca-DH has been working since the very beginning of the wave of criminalisation in the State of Oaxaca for the rights of prison inmates, which has increasingly moved the staff of the organisation into the sights of potential aggressors.

Together with another regional human rights organisation, Barca-DH filed a motion for preventive protective measures for the Triquí communities with the Inter-American Commission on Human Rights. This was then ordered for a total of 135 inhabitants of the community of San Juan Copala in October 2010. Although the Mexican govern-

ment has assumed the obligation to implement the recommendations of the Commission through the ratification of the American Convention on Human Rights, ongoing violence committed against the members of the community is an indication of the continued inaction of the authorities. Here it would be advisable for the international community of states to call upon Mexico to meet its obligations within the framework of the OAS.

Father Wilfrido has been building the international contact network of his organisation especially since 1998, when he was shot at for the first time. These linkages perform a key protective function for Barca-DH. The Father and two other compatriots have been afforded protective accompaniment by the organisation Peace Brigades International since October 2010. Until recently there was no statutory foundation for the protection of HRDs in Mexico. Following years of efforts on the part of Mexican human rights organisations and tangible support, including from Germany, a law was finally unanimously adopted protecting HRDs and journalists both by the Senate and the House of Representatives in April and May 2012, respectively.¹⁵

12. PANAMA

Human Rights Everywhere (HREV), Changuinola and Panama City

UDHR, Article 9 (protection against arrest and deportation):

“Nobody shall be subjected to arbitrary arrest, detention or exile.”

Francisco Gómez Nadal and Pilar Chato Carral are journalists and human rights activists from Spain who have systematically documented violations of human rights in Panama for the international NGO Human Rights Everywhere. They were involved, for example, in the compilation of a parallel report for the Universal Periodic Review before the UN Human Rights Council (UPR) and documentation of the protests of indigenous and grassroots organisations against economic projects and statutory reforms of the government violating their rights.

They drafted a report on the so-called Changuinola crisis in July 2010. The crisis was the result of a law which restricted the rights of employees and environmental protection, and a governmental decree curtailing the autonomy of indigenous peoples of Panama. The state reacted to protests by stakeholders against these legal projects in Bocas del Toro with extreme police brutality. More than four hundred persons were injured and four killed. Dozens of demonstrators were blinded. The “Massacre of Bocas del Toro”, as it has been called since then, became internationally known thanks to documentation by Francisco Gómez and Pilar Chato.

The two activists also documented a reform of the Mining Act planned for March 2011, which was to allow strip

¹⁴ Partido Revolucionario Institucional, up until 2000 the dominant political party in Mexico, which placed the President and almost all governors, senators and the overwhelming majority of parliaments at the national, state and community levels for eighty years.

¹⁵ See the press release by the pbi Mexico Project dated 2 May 2012, http://www.pbi-mexico.org/field-projects/pbi-mexico/news/news/?no_cache=1&tx_ttnews%5Btt_news%5D=3459&tx_ttnews%5BbackPid%5D=109&cHash=4ea00e39cbb49026585ad5fe8495f2d2.

mining especially in indigenous territories in contravention of the obligation of prior consultation laid down in ILO Convention 169. Stakeholders also reacted to this project with massive protests, prompting a media smear campaign against the persons in charge of organising the demonstrations, who were denounced for both their activities and their membership in an ethnic group. Foreign observers were also suspected of ill intent.

A major demonstration took place in Panama City on 26 February 2011, which Cómez and Chato also attended upon the request of the demonstrators. When recording the events with a camera, both of them were overpowered by police officers, who also seized their equipment, and driven away in a police car. During their two-day detainment, government authorities carried out a media campaign portraying the two journalists as *agents provocateurs* who were inciting violence and who constituted a threat to the security of Panama. They were expelled from the country on 28

February 2011 – a measure which they agreed to under considerable duress and without sufficient legal counsel being provided during their detention.

Numerous civil and political rights of the two Spanish journalists and, in a much more drastic form, the stakeholder organisations were violated, including the rights to freedom of conscience, thought and expression, peaceful demonstration, legal protection, the right to life and freedom and the prohibition against discrimination. The case also illustrates that such incidents in a country like Panama, which receives little international attention, often go largely unobserved, thereby enhancing the risk of impunity and a lack of legal protection for all citizens. Possible ways of confronting this problematic situation would be first of all the use of information campaigns on human rights at schools and other public institutions, and secondly increased networking of local human rights organisations and trade unions with international human rights NGOs.

The following three case examples from Indonesia, Colombia and the Democratic Republic of the Congo show that civil war situations or similar often increase the risk faced by HRDs in their work as a result of the prevalence of violence. HRDs are frequently brought into association with armed oppositional actors or are denounced as such. This encourages violent action against them by state security or paramilitary forces. Pursuant hereto, the Special Rapporteur for HRDs stated in her 2009 Annual Report to the UN General Assembly: "The growing characterization of human rights defenders as 'terrorists', 'enemies of the State' or 'political opponents' by State authorities and State-owned media is a particularly worrying trend, as it is regularly used to delegitimize the work of defenders and increase their vulnerability. The Special Rapporteur expresses serious concerns in relation to this phenomenon, since it contributes to the perception that defenders are legitimate targets for abuse by State and non-State actors."¹⁶

In a resolution adopted by the UN Human Rights Council on 15 April 2010, states are reminded of their obligation to protect life and the security of civilians in the context of armed conflicts. The same applies to HRDs. The Human Rights Council called upon states "... to fully support the role of human rights defenders in situations of armed conflict and provide them with the protection due to all civilians in such situations".¹⁷

13. INDONESIA

Lembaga Penelitian, Pengkajian dan Pengembangan Bantuan Hukum¹⁸ (LP3BH), Province of West Papua

UDHR, Article 19 (freedom of opinion and expression, freedom of information)

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Since a large portion of Indonesia's forested area in Sumatra and Kalimantan has had to give way to palm oil plantations and the cultivation of agricultural products as well as coal mining, Papua has become one of the last regions of the country with large tracts of tropical forests. Illegal forestry constitutes a serious threat to the environment and the people living there. At 1.8 million hectares per year, the deforestation rate is one of the highest in the world.¹⁹ Increased demand for palm oil has led to a constant expansion in land devoted to its cultivation and hence deforestation. According to information provided by the Indonesian government, up to nine million hectares of forests in

Papua have been transformed into palm oil plantations. Land tenure and property arrangements have often not been explicitly set out here, while stakeholders are not consulted. Nor do they profit from the revenue generated here. Security forces, by contrast, often receive a cut in the million dollar business.

Papua's second key source of raw materials for the world market is natural gas, which is supplied above all to the USA, China and South Korea. The Tanguh Liquid Natural Gas Project, a subsidiary of British Petroleum, has been producing natural gas in Bintuni Bay in West Papua since 2009. It is planned to expand the facility in 2014. Just like on the palm oil plantations, the employees in these large projects are often workers who have migrated from other parts of the country. This fosters social inequality and growing disenchantment among the local population, who feel excluded from these economic undertakings.

The organisation LP3BH is headquartered in the city of Manokwari in the Indonesian province of West Papua. The focal points of the Institute's work are monitoring rule of law, human rights and reform of the security sector, with special attention being devoted to the area of the Bird's Head Peninsula in the western part of the province. By the same token, support of civil society through continuing education and advice as well as legal counsel play a key role. Indigenous communities are offered additional seminars and training on traditional and constitutional land rights as well as peaceful conflict management. The organisation furthermore devotes special attention to the development and impact of major economic projects. Campaigns and public-relations work alert the public to the desultory state of affairs.

Simon Rizyard Banundi, a staff member of the organisation, observed and documented the forced break-up of a celebration in Manokwari in December 2010 and was arrested together with another person and charged with an attempted coup d'état. This arrest is a good example of the threatening situation faced by all LP3BH staff, for which the police, military and secret services are primarily responsible. The reprisals are of a systematic nature: Papuan civil society organisations are frequently stigmatised as leftist by the security apparatus, which can be seen as an attempt to erode the legitimacy of the work performed by these organisations. The banning of the Indonesian Communist Party, the PCI, along with its symbols in 1966 has been maintained down to the present day. The freedoms of Papuan civil society are frequently restricted through application of the Makar Article (prohibition against subversion) in the Indonesian Criminal Code. A 2007 presidential decree also made the use of local cultural symbols such as the morning star flag subject to criminal penalty as a manifestation of separatist intent. The indictment of Simon Rizyard Banundi has in the meantime been dropped due to lack of evidence.

Increased controls by the authorities can also be witnessed. Each time it issues a public statement, LP3BH has to submit it to the press and police for review of its truth and accuracy. Christian Warinussy, Director of the organisation, has received death threats and is subjected to attempts at intimidation on an ongoing basis. A mounting tendency towards criminalisation of HRDs is evident in other regions of Indonesia as well. Indonesian laws and regulations do not provide for any protective mechanisms

16 See A/HRC/13.22 from 30 December 2009 (section 27, p. 6), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-22.pdf>

17 See http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.RES.13.13_AEV.pdf

18 Institut for Research, Investigation and Development of Legal Aid

19 »REDD in Indonesien«, fact sheet by Watch Indonesia, see <http://www.watchindonesia.org/>

for this group of persons. They are dependent on the flow of information from outside the country and from Indonesia to other countries, which is impeded, particularly in West Papua; repressive actions by the state have also been extended to international organisations, however. LP3BH staff received protective accompaniment from voluntary observers of Peace Brigades International until October 2010, when international NGOs were forced to leave the region.

Possibilities for LP3BHs to react to the threats it faces have been seriously hampered especially since then. As a result of the lack of presence on the part of international actors in West Papua, the organisation has strengthened its efforts to network at the local, national and international levels, and its staff regularly take part in training courses on security and documentation strategies, which are inter alia staged by the Indonesian NGO KontraS (Commission for Disappeared Persons and Victims of Violence). LP3BH is moreover in dialogue with local and national authorities on the protection of HRDs and publishes strategies and recommendations relating thereto.

14. COLOMBIA

**Ana Fabricia Córdoba, William Álvarez,
Corporación Jurídica Libertad (CJL),
Medellín, Antioquia Department**

UDHR, Article 3 (right to life and freedom):

“Everyone has the right to life, liberty and security of person.”

For some time now Colombia has been the country with the most negative human rights record in the Western hemisphere. Although some indicators of violence have declined over the last ten years, it should by the same token not be forgotten that means of violence have been used in a more targeted manner since then. The persons who have borne the brunt of this development are especially the ones working for a more just society. The “Somos Defensores” programme counted 239 assaults on HRDs in 2011, with 49 persons having been assassinated.²⁰ The majority of these violent attacks have been staged by right-wing paramilitary forces which have been officially “demobilised”.²¹

A closer look at the statistics indicates that HRDs which work for the return of land to internal refugees and against major mining projects run a particular danger of coming into the line of fire of violent actors.

One victim of a brutal murder is Ana Fabricia Córdoba. The 51-year-old Afro-Colombian fled from her home in Urabá in 2000 when paramilitary forces killed her husband,

becoming a refugee in her own country. After that she worked with community groups and grassroots organisations in Medellín, a sprawling city with several million inhabitants, to fight for the economic and social rights of internally displaced persons. Her 19-year-old son also fell victim to an assassination attempt in July 2010, probably with the involvement of the police. Ana Fabricia Córdoba was aware of the constant mortal danger she was in, but she decided to carry on her fight for justice. She did not shy



Ana Fabricia Córdoba
(© Juan Diego Restrepo/Verdadabierta)

away from actively exposing the collaboration between certain units of the Medellín police with the paramilitary structures of the city responsible for numerous killings of young people in poor districts of the city. Ana Fabricia Córdoba also filed charges against these actors for numerous death threats she received herself. Often she had to change her location every day as a result, living in constant uncertainty, but she refused to accept police bodyguards – the institution which was probably responsible for the death of her son. She was shot to death in a public bus in June 2011.

Civil society organisations have recorded sixteen such cases since August 2010 in which members of organisations of displaced persons and other groups have been killed as a result of their demand for land to be returned to internal refugees. Behind the human toll of four million people violently driven from their homes lurks among other things a calculated strategy of illegal expropriation of land for economic purposes. Almost seven million hectares have been redistributed in this manner, accounting for 13 % of the area of the country devoted to agricultural use.²²

The connection between attacks against HRDs and the pursuit of economic interests can be witnessed not only in the agricultural export economy, but also in mining projects as well. Colombian policy-makers are endeavouring to expand this sector of the economy. The number of mining concessions awarded since the second term of former President Álvaro Uribe Vélez (2006–2010), including to foreign enterprises, has soared. The mining of ores and coal as well as the production of petroleum is taking place in many cases without prior consultation with the stakeholder population. 80,000 hectares of land have been earmarked

20 »Somos Defensores« (»We are HRDs«) is a joint programme of several Colombian human rights NGOs. For the 2011 Annual Report see <http://www.somosdefensores.org/attachments/article/105/REVISTA%20SOMOS%20INGLES.pdf>.

21 More than 34,000 fighters in the so-called »United Self-Defence of Colombia« (AUC) turned themselves in to the authorities and were afforded mitigations of sentence and allowed to participate in integration programmes from the end of 2003 to 2012. Armed structures and their successor organisations are nevertheless still active in most departments of the country. Paramilitary forces are responsible for the majority of crimes against humanity in the Colombian conflict.

22 Report by the »Comisión de Seguimiento a las Políticas Públicas relacionadas con el Desplazamiento Forzado« submitted to the Colombian Constitutional Court, June 2008. http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52

for mining in the eastern part of Antioquia Department. Civil society organisations attribute the extreme levels of violence in this region to this fact. Thus in April 2011, for instance, William Álvarez was abducted by masked men from the village of Cañón de Melcocho and killed. He had complained about constant violent attacks against the local population living in the mining area with *Procuraduría*, the supervisory authority.

The human rights organisation *Corporación Jurídica Libertad (CJL)*, which is headquartered in Medellín and is assisting in the cases involving Ana Fabricia Córdoba and William Álvarez, considers the selective murder, especially of active persons who speak out publically, to constitute an unambiguous attempt to spread fear and anxiety among the population, in this manner preventing them from organising and resisting major economic projects which they believe rob them of their economic and social rights. In its capacity as member of Colombia's civil society human rights network, CJL was involved in the decision to break off the dialogue with the government over a national action plan for human rights in June 2011 as a result of the increasingly dramatic situation facing defenders of ESC rights and the gaping lack of effective protective measures.

15. DR CONGO

Association Africaine de Défense des Droits de l'Homme (ASADHO), Katanga Province

In the Democratic Republic of the Congo (DRC), the lives of NGO staff working for the human rights of their fellow citizens are constantly at risk. They frequently receive death threats and experience arrest, torture, violent assault or even assassination. This situation is faced by all HRDs regardless of whether they work especially for respect of civil and political, economic, social and cultural or environmental rights. State security forces are actively involved in violations of human rights, as the trial over the famous human rights activist Floribert Chebeya, Director of the human rights organisation "La Voix des Sans-Voix" ("The Voice of the Voiceless" – VSV), who was murdered in June 2010, once again illustrates. Only those persons carrying out orders were sentenced, while the masterminds of the crime got off scot-free.²³

The staff of the African Association for the Defense of Human Rights (ASADHO) are in constant peril as a result of their work. Grassroots groups of the organisation, which inform and support people in satisfying their rights, have sprouted up all over the country. Since 2003 ASADHO has increasingly been addressing respect for economic and social rights, which are frequently transgressed especially by multinational enterprises taking advantage of the shaky legal situation and the failure to implement applicable law. The organisation also produces studies on Congolese labour and social policy, for instance on safety standards of jobs, which have prompted widely varying reactions. One positive example is a study on the Chinese building com-



Jean-Claude Katende
(© Brot für die Welt/Brigitte Bohlinger 2012)

pany China Railway Engineering Corporation, which led to ASADHO being invited to the Chinese embassy and a discussion taking place with the management of the company. Shortly thereafter working conditions for the staff of the company improved.

The Chairman of ASADHO, Jean-Claude Katende, had a different type of experience in 2006, when he was heading the regional department of the organisation in Katanga Province. He and his staff members received death threats after they had complained about poor working conditions in the copper and cobalt mines, the use of child labour, environmental destruction, corruption and the failure of mining companies to adhere to international standards in a public statement issued in Katanga's capital Lubumbashi. Jean-Claude Katende was informed by means of anonymous calls that his life was in danger if he continued to attack business enterprises in Katanga. Several days later even provincial representatives of President Joseph Kabila's governing party, the PPRD (Parti du Peuple pour la Reconstruction et la Démocratie), and other politicians sharply denounced Katende's statements. He had to leave the country for a short time as a result of ongoing massive threats. Numerous international organisations intervened, calling upon the Congolese government to end the public denunciation of Katende and guarantee his safety. Katende has been running the national office of ASADHO in Kinshasa since his return, and he has once again been received death threats on a massive scale.

His successor in Katanga, Golden Misabiko, was arrested in July 2009 following the publication of a study on illegal mining of uranium in Sinkolobwe Mine and the role of the military in mining activities. He was released on bail and then fled the Congo, fearing for his life. He now lives in exile.

²³ See http://www.brot-fuer-die-welt.de/weltweit-aktiv/index_10096_DEU_HTML.php

The tendency towards criminalisation of HRDs described in several cases so far is being observed at the international level with increasing concern. Criminalisation means that the behaviour or the activities of individuals are defined as criminal infractions, i. e. they themselves are held to be criminals. In the context of working for human rights, criminalisation must be understood to be an attempt to discredit and prevent the work of HRDs by misusing the legal system and manipulating public opinion. Due to its lawful facade, criminalisation offers state and non-state actors an enormous strategic advantage in the repression of HRDs as violent attacks on these naturally meet with little political acceptance at the international level. This ratchets up the risk to HRDs that they will be subjected to threats, intimidation, surveillance and direct assault.²⁴

Criminalisation appears to frequently be used as a countermeasure when HRDs draw attention to the violation of ESC rights in large economic projects in which multinational enterprises are involved. HRDs have been subjected to criminal prosecution in all nine of the following case examples. "States are increasingly resorting to legal action to violate the human rights of defenders denouncing human rights violations. Defenders are arrested and prosecuted on trumped-up charges. Many others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest", according to observations by the UN Special Rapporteur on the Situation of HRDs in the previously cited 2009 Annual Report. She also noted that the tendency towards criminalisation of HRDs has not abated.²⁵

In the following case from the Republic of the Congo, two human rights activists were charged with misappropriation of foreign project funds. Three additional cases from Latin America are examples of how protests by local communities against violations of their economic and social rights are criminalised.

16. REP. CONGO

Brice Mackosso and Christian Mounzeo, Publish What You Pay Coalition (PWYP)

UDHR, Article 8 (claim to legal protection):

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Brice Mackosso, Head of the Commission Justice et Paix (Commission Justitia et Pax) at Pointe Noire Diocese, and Christian Mounzeo, Director of the NGO Rencontre pour la Paix et les Droits de l'Homme ("Encounter for Peace and

Human Rights" – RPDH), are human rights activists in the Republic of the Congo who have been fighting for the rights of the population affected by the production of petroleum and for more transparency in the area of petroleum earnings, proper accounting of such in the government budget and use of revenue to benefit the poor. The country has been producing petroleum since the end of the 1950s, primarily off the coast. Petroleum has also been produced on land since 2000, and has had a negative impact on the economic and social rights of the affected population, in particular on the right to clean drinking water, health and food.

Both organisations are members of the Congolese coalition "Publish What You Pay" and, acting as its representatives, were intensively involved in negotiations on accession of the Republic of the Congo to EITI (Extractive Industries Transparency Initiative). This took on a certain explosiveness due to the fact that debt-forgiveness negotiations with the World Bank within the framework of the HIPC²⁶ initiative were linked to progress by the Congo in the EITI process. The Congolese coalition PWYP was able to apply considerable pressure to their own government as a result of their commitment and lobbying efforts at the national and international levels and move it to accede to the EITI in 2004. Back then, Brice Mackosso and Christian Mounzeo had good contacts with the World Bank, Transparency International, Global Witness, PWYP International, EITI and the Catholic cooperation agencies Catholic Relief Services, Secours Catholique and Misereor, and they still do.

Gushing oil revenue in the Republic of the Congo is probably almost completely under the control of the current, long-standing head of state, Denis Sassou-Nguesso. Impenetrable bookkeeping in the recording of revenue, but also on the expenditures side, and peculiar interrelationships between private enterprises and state interests have been discovered.

The two activists were arrested in Pointe Noire on 7 April 2006. They were detained for a total of seventeen days, the first five without any charges being filed. The reason for their arrest was most likely a civil law action, probably instigated by the state, but filed by an employee of the organisation of Christian Mounzeo for alleged embezzlement of project funds. The whole trial against the two activists was marked by irregularities right from the outset: first of all a civil law action would not have normally involved the senior public prosecutor of the Republic, let alone lead to an arrest. The Swedish organisation which was funding the RDPH was moreover not able to discover any irregularities in the bookkeeping. The method used in the searches of offices and the confiscation of documents violated Congolese law. The accused and their families were subjected to intimidation.

Thanks to the well-developed network of international contacts, the two accused were able to mobilise rapid support. Congressmen from the USA wrote directly to President Sassou-Nguesso as did Secours Catholique from France and Misereor. Various organisations also pressed their governments to take action. In Germany, the former Minister for Economic Cooperation and Development, Ms

²⁴ On this see the report »Criminalisation of Human Rights Defenders« by Peace Brigades International, UK Section. http://www.peacebrigades.org.uk/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf

²⁵ See A/HRC/13/22 from 30 December 2009, sections 31 and 32, p. 7. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-22.pdf>

²⁶ Heavily Indebted Poor Countries.

Wieczorek-Zeul, intervened on behalf of the two human rights activists, with the Congolese ambassador being summoned to the Federal Foreign Office. The greatest amount of pressure was probably exerted by the World Bank, however, which at that point in time was involved in negotiations with government leaders on debt forgiveness. A World Bank delegation which had travelled to the Congo refused to enter into any talks whatsoever until Brice Mackosso and Christian Mounzeo were freed.

The public prosecutor nevertheless persevered with the charges against the two, sentencing both of them to a fine. This must be understood as a face-saving act on the part of the state apparatus. The two activists have appealed the ruling, however.

17. GUATEMALA

Frente de Resistencia para la Defensa de los Recursos Naturales y Derechos de los Pueblos (FRENA), San Marcos Department

Within the framework of the privatisation of Guatemala's energy supply suggested by the World Bank in 1999, the Spanish energy company Unión Fenosa together with its subsidiaries DEOCSA and DEORSA took over provision of the energy supply in twenty out of the 22 Guatemalan departments, thereby obtaining a monopoly position in the country. This included San Marcos Department in the east of Guatemala as well. After its merger with Gas Natural, the multinational enterprise changed its name to Gas Natural Fenosa.

Electricity prices skyrocketed in the course of the privatisation, making electrical power a luxury good which the poorer strata of the population could no longer afford. At the same time service deteriorated, with sudden black-outs and incorrect bills. In 2004 the Guatemalan Constitutional Court held that the subsidiary DEOCSA had made unfair profits by charging an illegal fee and owed consumers 200 million Euros. They have yet to be repaid.

Opposition began coalescing against the privatisation and the actions of the multinational's subsidiary, with protest reaching a climax in 2009. More than 90,000 complaints against the company were lodged with the National Energy Commission in the first five months of the year alone. The practices of Gas Natural Fenosa in Guatemala were condemned in a letter dated 8 July 2009 signed by thirty civil society organisations, grassroots organisations, trade unions and political parties in Spain. Following a survey in which the majority of the affected population spoke out against the presence of the enterprise in Guatemala, consumers organised a pay strike seeking re-nationalisation of the energy supply. This was followed by a black-out lasting over a week in Malacatán, San Marcos, which finally paralysed the water supply, subjecting the inhabitants to the risk of infections. Hundreds of persons went onto the streets, barricading the highway leading towards Mexico and organising protest marches and information events. It was at this juncture that the governor charged the grassroots movement "Front for the Defense of Natural Resources and Rights of the Peoples"

(FRENA) with criminal connections. These accusations have not been substantiated down to the present, however. Indeed, they are more in line with a pattern of attempts to criminalise critical social organisations. Thus, for instance, more than two hundred warrants for arrest were issued against trade union members as well. Finally, a state of siege was declared on San Marcos Department in December 2009 in which assemblies of more than three persons were prohibited.

Another joint protest letter addressed to the Guatemalan and Spanish governments by fifty organisations as well as criminal charges filed in Guatemala for the murder of FRENA spokesperson Octavio Roblero in February 2010 were not able to prevent three activists being murdered the following month. Octavio Roblero himself had applied for a protective order with the Supreme Court mere weeks before his death. With the assassination of a total of eight prominent activists of the organisation between October 2009 and March 2010, the conflict reached its dreary climax.²⁷ The Inter-American Commission on Human Rights resolutely condemned the killings, demanding that the Guatemalan state completely clear up the murders and bring both the direct culprits as well as the masterminds before court.²⁸ Involvement on the part of the enterprise, state actors or armed actors still illegally active after 1996 has not been either thoroughly investigated or demonstrated to date.

The European Commission and the Spanish government have been monitoring these developments in Guatemala. The latter has called on the Guatemalan Attorney General to institute independent investigations – which in the view of the Commission would not be possible, however, without significant risk due to the situation in Guatemala. At the beginning of 2011 Gas Natural Fenosa finally withdrew from Guatemala and the British enterprise Actis took over its business. Whether this change will have a positive effect on the security situation of the population demanding its rights remains to be seen, however.

Possible measures for protecting the HRDs involved could come both in the form of international legal monitoring of the investigatory and court procedure against the criminalised persons as well as the investigatory procedure in the case involving the murder of Roblero. The EU member states represented in Guatemala could contribute to this within the framework of the EU Guidelines on Human Rights Defenders. Both cases could moreover be referred to the Inter-American Commission on Human Rights if the Guatemalan authorities continue to remain inactive.

27 Martín Cúneo: »Ocho activistas opuestos a Unión Fenosa asesinados en seis meses«. <http://www.diagonalperiodico.net/Ocho-activistas-opuestos-a-Union.html>

28 »IACHR Deplores Murders of Human Rights Defenders in Guatemala«, press release from 25 February 2010, see <http://www.cidh.org/Comunicados/English/2010/21-10eng.htm>

18. BRAZIL

Movimento dos Atingidos por Barragem (MAB), State of Minas Gerais

UDHR, Article 21:

“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”

The movement of people affected by the reservoir (MAB) has been fighting against the execution of the Candonga reservoir project in the community of Santa Cruz do Escalvado in the State of Minas Gerais over the past few years. Santa Cruz do Escalvado lies on the river Rio Doce. The Rio Doce has supplied the population living there with work and food for more than three hundred years. Over 5,000 people were living here up until 2000. Most of them worked in the subsistence economy: they cultivated sugar cane, coffee, beans and maize, bred livestock, worked as gold-panners and lived off fishing.

The construction of the dam for the reservoir was planned and carried out by a consortium made up of the enterprises Vale do Rio Doce (Brazil) and Alcan-Alumínio do Brasil (Canada). Vale do Rio Doce is part of the world's largest company group working in the mining of iron, lead, manganese and ferrous aluminium as well as the metal-processing industry. With annual profits of 25 billion dollars, Alcan-Alumínio is not only the biggest producer of aluminium in the world – it also claims to be a conscientious and responsible enterprise which seeks to ensure that its projects are socially and environmentally compatible. And it has apparently been successful in this endeavour: the United Nations has awarded the Canadian enterprise a prize for the sustainability of its projects.

In the case of Candonga, however, it appears to be in a bad way. One of the basic preconditions for major infrastructural projects to be sustainable is the involvement of the affected population in the planning process. The Vale do Rio Doce/Alcan consortium only invited the inhabitants of Santa Cruz do Escalvado to one single public hearing, however. According to the statements of several participants, it was not communicated to them in a clear manner what the company was specifically planning, let alone what profound consequences the project would have on their lives. The entire project planning and execution was marked by a lack of transparency and an authoritarian style on the part of the two company groups.

Another prerequisite for sustainability is the proper execution of the licensing procedure, as under the Brazilian Environmental Law enterprises are obligated to commission appraisals of the environment impact before they receive a building license. The appraisal commissioned by Alcan and Vale do Rio Doce was insufficient in manifold respects, as the government's environmental protection agency determined in March 2004. It moreover concluded that the economic reactivation of the community was a total failure. The fact that in spite of serious deficiencies and irregularities during the procedure the company nevertheless received the permit is due to the failure of Brazilian administrative institutions. Authorities at various levels of the state – starting with the mayor of Santa Cruz do Escal-

vado and Rio Doce's offices to Minas Gerais Regional Court all the way to government representatives of the State – have infringed on Brazilian laws and international treaties and conventions.

For the persons in charge, it was thus foreseeable as early as the planning phase that the hydroelectric power plant would have profoundly negative effects on the region. When São Sebastião do Soberbo was inundated in July 2000, not only did the people living there lose their homes; a cultural and social heritage ranging back three centuries was also irretrievably lost. On top of all this, the people were to a considerable extent cut off from access to their natural resources – for example drinking water. In the new town built for the resettled inhabitants, Soberbo, numerous houses are derelict: moisture is seeping through the walls, there is no hot water and the facades of houses are moulding. The environmental damage ranges from desertification of the forest all the way to incursions in the reproductive cycle of fish stocks and the loss of 250 hectares of fertile soil. These problems weigh not only on the population of Santa Cruz do Escalvado – they also are having a deleterious impact on the neighbouring community of Santano do Deserto, which numbers approximately 3,000 inhabitants and borders directly on the reservoir. Their situation is particularly precarious because they are not considered to be affected by the reservoir in the view of the regional and the national government.

Considering the lack of transparency and the foreseeable serious incursions in the lives of the inhabitants, it is not surprising that attempts by the consortium to persuade the people remaining in Santa Cruz de Escalvado to sell their homes failed. Instead of accepting the woefully insufficient compensation payments offered to them, the stakeholder began to revolt against the building of the reservoir. They joined together in an association in order to be better able to satisfy their rights. The opposing side did not just idly stand by, however. Several activists received death threats over the ensuing weeks and months. The consortium then took legal action against the organisers of public protests and demonstrations. Government offices supported the companies in their attempt to suppress criticism of the construction project. The secretary of Minas Gerais in charge of public security has called upon the local police to identify the leaders of the MAB association.

19. COLOMBIA

Comisión Intereclesial de Justicia y Paz (CIJP), communities of internally displaced persons from Cacarica, Curbaradó and Jiguamiandó, Chocó Department

UDHR, Article 22 (the right to social security):

“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”

Also frequently referred to “best part of the Americas”, the region of Urabá, located in the extreme northwest of Colombia, is rich in natural resources: water, fertile soil and virgin tropical forest, containing exotic wood and a rich diversity of species. Part of the region was developed in the 1960s and turned into the biggest banana-growing region in the world, while the area located in Chocó Department continued to be inhabited and farmed by local indigenous and Afro-Colombian communities. The economic potential of this region was discovered around twenty years ago, arousing the interest of domestic and foreign investors, the pharmaceutical industry and illegal traders in precious woods. In this country torn by civil war, however, the mil-



Meeting of affected communities in Camelias, Curbaradó
(© Alexandra Huck/kolko e.V. 2012)

itary also inevitably became involved in the region – it was assigned the task of helping to develop it. And, finally, the drug mafia as well.

Towards the end of the 1990s around 3,000 persons in Urabá were violently driven from their villages by the military with the support of paramilitary units, which committed numerous massacres of the population, thus accelerating the process of driving inhabitants off the land. One example of this is to be found in the Afro-Colombian communities lying in the Cacarica river basin, who did not want to accept their fate as internal refugees lying down and, supported by the Colombian Church Commission Justicia y Paz (CIJP), began a process of returning to their homes. This process was supported by Peace Brigades International in order to protect the Cacarica communities against attacks by military and paramilitary units.

Many local communities in the Chocó part of Urabá have experienced a similar fate. Land has been converted into African oil palm plantations in the Curbaradó and Jiguamiandó river basins for several years. Traditional use of the land by its actual inhabitants and preservation of the tropical forests stand in the way of the economic interests of the government as well as various domestic and foreign enterprises.

Ever since the wave of violent displacement in Urabá and the respective efforts of affected communities to satisfy their rights to their land and safe return, hundreds of activists in local communities have been threatened, persecuted, denounced and killed. Another trend which has materialised over the past few years is the criminalisation of these people. As early as 2003 several grassroots activists who refused to leave their land were accused of purported connections with the guerrilla organisation FARC²⁹. Nor have CIJP staff been left unscathed in this.³⁰ Criminal prosecution authorities have usually not adopted a neutral stance in the execution of this strategy in spite of the obviously dubious nature of the charges and they appear to be one-sidedly representing the interests of business enterprises and the government. According to reports, investigatory officials have nevertheless in some cases been able to identify persons involved in trumping up evidence, including members of the military and military secret service, grassroots activists bribed by enterprises and even public prosecutors.

Local communities have communicated their situation at the international level such as, for example, with the Inter-American Commission on Human Rights that affirmed their right to self-determination as well as the obligation of the Colombian state to protect all its citizens. Moreover, protective measures have been ordered for community members and staff of the commission Justicia y Paz. The Human Rights Department of the Attorney General's Office has initiated a procedure against various enterprises and the military as a result of their connections to paramilitary units and land-grabbing from the communities of Cacarica, Curbaradó and Jiguamiandó.³¹ A decision is still pending.

But reprisals against stakeholders as well as criminalisation continue unabated. Communities are attacked by armed actors, who take their scanty food stocks, threaten them and denounce them as sympathisers of the guerrillas. Nor do they shy away from selective assassination. CIJP has concluded that there is a clear connection between the reprisals against it and affected communities and economic projects in the “best part of the Americas”.

29 Fuerzas Armadas Revolucionarias de Colombia, Colombia's biggest guerrilla group still in operation.

30 For new measures of criminal prosecution of the organisation's staff, see »Judicialización contra integrantes de la Comisión de Justicia y Paz«, 23 April 2012. <http://www.justiciaypazcolombia.com/Judicializacion-contra-integrantes>

31 See the statement »Un avance, aunque no cesa la impunidad ni la paraeconomía en bajo Atrato« issued by CIJP, 24 May 2010. <http://www.justiciaypazcolombia.com/Un-avance-aunque-no-cesa-la>

In the remaining five cases the focus is on the collective rights of indigenous peoples and the actions of various actors – government authorities, security forces and business enterprises – seeking access to land to exploit raw materials or to carry out major economic projects. The rights of those directly affected are ridden roughshod over in spite of binding international standards. Article 1 in both the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights confirms the right of all peoples to self-determination: “By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.” The Preamble to the Declaration on HRDs stresses the valuable contribution made by civil society actors to eliminate violations of human rights, including “refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources (...)”.

The consultation obligation on the part of states enshrined in ILO Convention 169 has already been noted. The development of the principle of free, prior and informed consent is also aimed at ensuring that non-state actors, primarily multinational enterprises, are bound by the obligation to refrain from carrying out any major economic projects without the consent of affected indigenous groups. National governments are supposed to incorporate this principle in their laws and legislation so that it has a binding effect on business enterprises as well. Some states have already done this. The principle is not explicitly mentioned in the revised OECD guidelines, however.

20. INDIA

Bindra Institute for Research Study and Action (BIRSA), State of Jharkhand

UDHR, Article 25 (right to well-being):

“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security (...)”

Coal, iron ore, limestone and uranium are mined in the State of Jharkhand, located in the northeast of India and rich in minerals. The population living there, especially the indigenous inhabitants (Adivasis), suffers from lack of education and information, poverty and health impairments as a result of these economic activities. Although India has ratified most international human rights treaties, national economic interests are often assigned priority over the rights of minorities and Adivasis. Laws and regulations only offer a certain protection for landed property, as the Land

Acquisition Act allows the government to expropriate private landed property if this is in the public interest – a formulation which allows a wide latitude of interpretation and eases access to raw materials for Indian and multinational enterprises. If the land is not expropriated in a legal manner to build mines and industrial plants (for instance steel mills), Adivasi communities are persuaded to sell it through false promises or are driven off it by violent means. Lack of education and underdevelopment facilitate the exclusion of the population from participating in the exploitation of their own resources. The police and business enterprises have reacted to resistance against land-grabbing with reprisals and additional violations of human rights.



Transportation of iron ore in an illegal quarry on Adivasi land, Tekoramatu Village, Chaibasa
(© Jörg Böhling/Brot für die Welt)

The opening up of the Indian raw materials market to foreign investors since the 1990s has above all affected the majority indigenous population living in the centre of the country, which is covered by large forests. This part of India is also referred to as the “red corridor”, as the so-called Naxalites, a Maoist guerrilla movement, operate there. The Naxalites are considered to be the biggest problem holding back economic development. Adivasis are often tarred with the same brush as them, even though in actual terms only about one per cent of them are part of the militant movement. In the meantime dozens of laws and regulations against terrorism have been issued throughout India, both at the state and national level which, however, are often wielded against civil society organisations.³² “Salwa Judum”, a type of militant people’s movement against the Naxalites, has been launched in several states in the last few years. In the neighbouring State of Chhattisgarh these kind of anti-terror operations have targeted 644 villages and displaced 300,000 people.³³ More than 1,100 people were killed there. All in all, over 11,000 people have lost their lives through violence since the beginning of the Naxalite rebellion at the end of the 1960s. Regardless of the controversial

³² See http://www.binayaksen.net/wp-content/uploads/indian_repressive_laws.pdf

³³ Telegraph (Calcutta), 14 January 2011, http://www.telegraphindia.com/110114/jsp/jharkhand/story_13437229.jsp. On 5 July 2011 the Supreme Court of India held Salwa Judum operations to be unconstitutional and called upon the government of Chhattisgarh to disarm the militia.

political decisions concerning the legality of anti-terror operations, these also constitute a considerable threat to non-violent protest by civil society in Jharkhand as well. In December 2008 the police in Dumka District opened fire on demonstrators protesting the construction of a coal-burning power plant as well as the arrest of three leaders of their resistance movement. Several persons were arrested, tortured and killed.

The BIRSA organisation, whose staff are almost solely Adivasis, is working in this highly conflictual situation. BIRSA monitors the activities of mining companies and lobbies the Jharkhand government to improve environmental and rehabilitation standards. The organisation also works for a social policy benefitting the poor, as the majority of the population is becoming increasingly impoverished in spite of the abundance of resources available, while being robbed of their fundamental rights such as to health, education, social security and food. Government development projects, particularly in the area of infrastructure, are only implemented where companies set up operations.

Particularly important to BIRSA is the documentation and publication of specific violations of human rights committed by company groups and security forces against individuals and entire Adivasi communities. The organisation furthermore seeks to influence decisions by government bodies and agencies and ensure that the interests of the Adivasis are taken into account in political decisions. Industrial projects which run contrary to the needs of the population are to be delayed or permanently stopped. One example of successful action is the village Chhota Guntia, in the proximity of which a large steel mill was supposed to be built. Staff at the organisation carried out information events and assemblies, wrote petitions, spoke with local politicians and organised major demonstrations. With success: the steel company stopped its project, which would have robbed 10,000 people in sixteen villages of their livelihood. In spite of this, BIRSA's staff are constantly in danger of becoming victims of reprisals themselves.

21. GUATEMALA

Q'amoló Kí Aj Sanjuaní – Unamos Pueblos Sanjuaneros, Guatemala Department

UDHR, Article 7 (equality before the law)

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

The organisation Q'amoló Kí Aj Sanjuaní (United Villages of San Juan) is composed of various local communities in County San Juan Sacatepéquez. These are for the most part inhabited by members of the Maya-Kaqchiquel people, who have closed ranks and joined together to defend their rights to protect their region and its resources.

The Guatemalan company Cementos Progreso S.A., in which the Swiss company Holcim, one of the world's biggest manufacturers of cement, has a twenty per cent stake, has been operating a rock quarry and a cement factory in

San Juan Sacatepéquez since 2006. The local communities settled there live off agriculture and flower cultivation, a livelihood which they view to be threatened by the environmental destruction caused by the enterprise, as many of their agricultural products can no longer be sold or consumed. Water is moreover becoming increasingly scarce and peasant families find themselves prevented from exercising their collective rights as an indigenous population.

To defend their rights, Q'amoló Kí Aj Sanjuaní has carried out protest marches and demonstrations, raised awareness and took part in the activities of other organisations and networks. Weekly gatherings have been held to strengthen the organisation and coordinate further action. On top of this, their representatives have increasingly put feelers out at the national and international levels: they have approached embassies in the capital city and submitted their issues and concerns to the UN Committee for the Elimination of Racial Discrimination. In June 2010 the Special UN Rapporteur for the Rights of Indigenous Peoples, James Anaya, visited the region. Q'amoló Kí Aj Sanjuaní took part in a round-table meeting to resolve the conflict with the authorities in charge along with Cementos Progreso. Work in the rock quarry as well as on the construc-



Women from San Juan Sacatepéquez during a protest march in Guatemala City
(© Peace Brigades International Guatemala Project 2009)

tion of the cement factory were continued during the process of dialogue in spite of all arrangements to the contrary, which is why the stakeholders felt duped and repeatedly broke off the dialogue. Besides this, a citizens survey carried out by Q'amoló Kí Aj Sanjuaní in 2007, in which the majority rejected the economic project, was not recognised by the government of Guatemala even though it has ratified ILO Convention 169. This Convention among other things stipulates that governments are obligated to consult with indigenous peoples in the execution of measures which directly affect them (Article 6).

Since the inhabitants of communities in San Juan Sacatepéquez commenced activities seeking to satisfy their rights, there have been frequent violent attacks for which, according to the organisation, workers at the cement factory are responsible. Death threats have been made against some of the leading members of the organisation. When the government imposed a temporary state of emergency in June 2008 and sent a 1,000-man-strong police force to the area, more than forty persons were arbitrarily arrested within a matter of days and the population's freedom of

movement restricted. Women reported that they were sexually molested by the police. Later Q'amoló Kí Aj Sanjuaní established that the criminal prosecution authorities had furthermore only insufficiently investigated the assaults which had prompted them to file charges. Threats and violence against activists continued over the following years. In February 2011 a group of persons identified as workers from the company Cementos Progreso intruded into the village Pilar I and threatened the inhabitants, brandishing firearms, machetes and clubs. Two persons were severely injured.

The threat to members of the organisation appear to reflect a trend in Guatemala. This is the conclusion drawn by UDEFEGUA³⁴, a Guatemalan NGO which among other things documents the situation of HRDs: during the first four months of 2011 violent attacks were made against 165 persons working for indigenous and environmental rights. This is a majority of all registered cases. It moreover turned out that 93 % of persecuted HRDs work for ESC rights.

To better protect against harassment, the members of Q'amoló Kí Aj Sanjuanís have taken steps towards self defense in addition to putting out feelers at the international level and contacting international actors in Guatemala. Members never travel alone, for example. The organisation has been receiving protective accompaniment since 2009 from Peace Brigades International, whose observers regularly visit the communities and report on the case abroad.

In February 2012 representatives of Q'amoló Kí Aj Sanjuaní visited several European countries, including Switzerland, where they wanted to present the company Holcim a list of demands affirming their rights. Ultimately they did not go to the meeting due to fear of reprisals upon their return to Guatemala, however, as several representatives of Cementos Progreso were present. Their demands were for this reason submitted by Swiss NGOs.³⁵

22. INDIA

Keonjhar Integrated Rural Development and Training Institute (KIRDTI), State of Orissa

UDHR, Article 17 (right to property):

“(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.”

Orissa, one of the poorest states in India, has been devastated by natural disasters such as floods, cyclones and drought over the last several years, and the situation of marginal peasant families living off subsistence agriculture, most of whom are Adivasis, has been marked by hunger and all its ramifications, general desperation and lack of

prospects. Adivasis living in Keonjhar District in the north-east part of the Federal state primarily subsist on forest products. As a result of deforestation, the exploitation of mineral resources and government control over forestry products, the situation of the Adivasis has deteriorated precipitously. Families generally own parcels measuring between 0.2 to 0.4 hectares of land – scarcely enough to subsist on. The difficult situation in agriculture and the lack of irrigation possibilities have led the Adivasis into a vicious circle of impoverishment.

The KIRDTI organisation has taken up the cause of this group. KIRDTI is a non-profit NGO registered under Indian law with experienced, qualified staff and has been working in a very committed manner in various development programmes since 1996. Thanks to the work of KIRDTI, more than one thousand families from 22 villages have been able to satisfy their claims to land under the Forest Land Right Act. They have been joined by five hundred additional families living outside the region in which KIRDTI works. This is the result of the resolute strengthening of self-initiative and individual responsibility of the group of people, who have spontaneously passed on their knowledge regarding land-tenure rights to additional Adivasi communities, hence acting as multipliers themselves. In addition to the issue of land rights, the focus of work is on the organisation process, advocacy, general legal aid, knowledge about sustainable agriculture and other issues in the area of ESC rights, in particular the right to food.

The combination of an improvement in the economic situation of those affected and a strengthening of their political power has generated opposition and persecution at the hands of those actors who have profited from exploitation in the past: mining companies that have seized the land of indigenous peoples with impunity thus far, or logging companies that have illegally cut down the forests of the Adivasis. The district government has assigned the state a special status for the promotion of mining and has awarded concessions, among others to the enterprises Vedanta (Indian) and Posco (South Korean). Because Adivasi land is protected by law and can only be sold to Adivasis, individual tribes are bribed to buy land for these companies. The efforts of the Adivasis to keep their land have been criminalised by accusing them of being infiltrated by Naxalites (Maoist rebels). It was with charges like these that three staff members of KIRDTI were arrested, but then set free once again in October 2010 after sharp protests by organisations in other countries. Criminal investigations were still pending against eighty village leaders against whom unsubstantiated accusations were made back then, however. Death threats are another means of intimidation. KIRDTI was forced to strengthen the area of legal aid and advice and establish early warning systems through local and international networks. These consist of employees of critical media, human rights activists and attorneys who form an informal support group and have protested against the massive threats directed against KIRDTI in various campaigns.

Steps such as early warning systems, intensified regional networking with church partners and NGOs as well as the establishment of links to international human rights organisations (FIAN, Amnesty International) have reduced KIRDTI's security risk. One direct result of these efforts has

³⁴ Unidad de Protección a Defensoras y Defensores de Derechos Humanos de Guatemala. See <http://www.udefegua.org/>

³⁵ »Stakeholders in a Holcim Project are persecuted into Switzerland«, joint press release by the Swiss NGO Multiwatch and Guatemalanetz Bern dated 3 February 2012, see http://multiwatch.ch/cm_data/Medienmitteilung_Holcim_120203.pdf

been the release of the imprisoned staff members. An additional measure to protect project staff has been the organisation's removal to another office, which was funded by Misereor. The headquarters of the organisation were previously located in an area in which Naxalites operate, and there was a great probability that KIRDIT's staff would continue to be implicated and denounced as Naxalites in spite of their acquittal in October 2010 or subjected to criminal prosecution for ostensible collaboration with them..

23. CHILE

Comunidad Cacique José Guiñón, Region of Araucanía

UDHR, Article 10 (right to a fair trial):

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

When Chile returned to democracy in 1990 after many long years of dictatorship, the Mapuche community Cacique José Guiñón possessed one single hectare of land. Its original, significantly larger land holdings and its traditional spiritual and economic livelihood from agriculture and animal husbandry had been taken away from them.

Represented by their highest traditional authority, the Lonko, the community entered into a dialogue with the new democratic government in order to get back part of its original land. This dialogue did not lead to any tangible results, however, and disenchantment in many Mapuche communities began to swell in the middle of the 90s. The situation rapidly came to a head in 2000. Various communities organised in umbrella organisations – in the case of Cacique José Guiñón in “Parlamento Autónomo Mapuche” – and began to occupy areas to which they laid claim. Most of these areas are in the hands of latifundia and large logging companies.

Forestry is a linchpin of the Chilean economy. As a result of neo-liberal policy, approximately 90 % of the forested area of the country is privately owned, which means that usage under state control is scarcely possible. The main type of tree planted is a pine with long fibres along with eucalyptus trees. The rich soils in Mapuche territory in the south of the country offer ideal conditions for large plantations. These have a negative environmental impact first of all because they cause soil erosion and secondly due to the massive use of pesticides and the transformation of natural forests into plantations for commercial purposes, even though the latter is prohibited by law. Chilean logging companies are among the richest and most influential companies in the country, with excellent connections to the political elite.

In reaction to the activities of the Mapuche, the Chilean government began to apply the Anti-Terror Law, which was decreed during the Pinochet regime. Because it is not individual activists, but rather entire village communities which

are prosecuted, the communities involved have been subjected to extreme government reprisals since then. They have been put under a permanent state of siege by the police. The village community Cacique José Guiñón has suffered through eleven police raids since then, which went hand in hand with arbitrary arrests and violence being perpetrated on all the village's inhabitants. People have frequently been injured in these raids. Evictions from the occupied land has also cost the lives of activists. For years now it has been impossible for any of the village inhabitants to lead normal lives.

The Chilean Anti-Terror Law has been sharply criticised by many international human rights organisations, as it does not offer any reasonable legal protection and allows long stretches of time in preventatory detention as well as



*Chilean police raid on Mapuche community
(© Felipe Durán 2011)*

the use of anonymous witnesses. Civilians are placed before military tribunals for alleged attacks against police officers, and complaints about violations of human rights such as, for example, the harassment of Mapuche communities cited above, are usually just filed away and forgotten. Both, Concertación, the party coalition governing the country a good portion of the time since democratisation, as well as the current government, have upheld and maintained the jurisdiction of military courts in these cases in spite of being censured by the Inter-American Court of Human Rights and even though this contravenes the American Human Rights Convention. The former UN Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, also recommended the Chilean government in power at the time review laws and policy towards the demands of the Mapuche.³⁶ Chile has even been applying the Anti-Terror Law in the conflict over land to minors since 2008, such as in the case of Luis Marileo Cariqueo, who comes from Cacique José Guiñón.

Several incarcerated Mapuche activists began a hunger strike in 2010 with the aim of putting an end to the application of the Anti-Terror Law to the protesting Mapuche, the violent siege of the villages and trials before military tribunals. Imprisoned minors – such as Luis Marileo Cariqueo – also joined in the hunger strike, demanding respect

³⁶ See Human Rights Watch: »Chile: Amend Anti Terrorism Law and Military Jurisdiction«, statement dated 27 September 2010, <http://hrw.org/news/2010/09/27/chile-amend-anti-terrorism-law-and-military-jurisdiction>

for children's rights. It was especially on these issues that the hunger strike and its intensive support by non-governmental organisations allowed some improvements to be achieved. Prison conditions were improved, for instance, and an ombudsman office was agreed upon to deal with issues involving children and adolescents.

In spite of the efforts of many human rights groups, the international public, the Inter-American Human Rights Commission and the Inter-American Court of Human Rights, neither the application of the Anti-Terror Law nor the siege of the communities taking part in the protest have been lifted by the Chilean government to date. In January 2012 a special police unit descended upon the community once again, searching homes and using teargas against the inhabitants. No reason was given for these actions and the arrest of one person, according to statements by the people affected.³⁷

The community of Cacique José Guiñón nevertheless disposes of at least 200 hectares of land by now – thanks to the resolute protest by Mapuche organisations and tough negotiations..

24. PERU

Comunidades Campesinas Yanta (Ayabaca Province) and Segunda y Cajas (Huancabamba Province), Piura Department

UDHR, Article 5 (Prohibition against torture):

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

In the area of the peasant-farmer communities Yanta and Segunda y Cajas in the Andes region of Piura in northern Peru, the business enterprise Monterrico Metals Plc. (formerly founded with British, now Chinese capital) received eight concessions for the mining of copper and molybdenum through its Peruvian subsidiary Rio Blanco Copper in 2001. The communities must be considered tribal people in the meaning of ILO Convention 169 and are afforded special legal protection in Peru as so-called “comunidades campesinas” (small peasant-farmer communities).

The peasant-farmers have feared for the preservation of their water sources ever since an environmental compatibility study was carried out and exploration work was commenced. According to their information, the mining project will gobble up vast amounts of water, and huge quantities of poisonous chemicals will also be used. They also fear the destruction of the cloud forest, a sensitive ecological system, through the tons of material being moved and through erosion. The existing ecological system forms the basis for their livelihood through small-scale agriculture and tourism. The expansion of the concession area also poses a threat to their cultural sites. Participation rights of the com-

munities set out in law have been disregarded to date, according to their complaints.

The peasant-farmers are attempting to defend their rights by closing ranks and acting jointly. They have formed a regional coalition made up of local governments, peasant-farmer communities and social organisations and are seeking a dialogue with government offices. They are demanding participative regional planning and are underscoring the negative impact of the project to the authorities in charge. The environmental authority OSINERGMIN imposed a fine on the enterprise for violating environmental requirements in 2008 and ordered it to clean up the effects. The communities are taking legal action against the enterprise for violation of their property rights. Regional, national and international information campaigns are aimed at sensitising the public and mobilising support. Communities are also developing proposals for alternative, sustainable development models which emphasise the preservation of the ecological system and local economic struc-



*Assembly in the Segunda y Cajas community
© José Patiño Angeldonis*

tures. They are furthermore demanding implementation of ILO Convention 169, which has been ratified by Peru, in particular the right of indigenous peoples to prior consultation.

The enterprise also attempted to get public opinion on its side at first by funding grassroots groups and informing the media. Many activists were defamed by the media as violent terrorists, once again triggering violent attacks and the initiation of legal proceedings. There were violent assaults on men and women upon several occasions, both by the police and civil groups with ties to the company. Four community leaders have already died at the hands of the police and private security forces; numerous other people have been severely injured. 28 men and women who were taking part in a peaceful demonstration in August 2005 were arrested, detained and tortured for days on the company premises. A public prosecutor was even present; he failed to initiate any criminal investigations, however. He is currently under investigation. Members of social organisations were spied upon, persecuted and threatened, their telephones tapped and their houses put under surveillance. Criminal investigations have been initiated against at least four hundred members of the peasant-farmer communi-

³⁷ »Ataques policiales a Comunidad Cacique José Guiñón« ANRed, 21 January 2012, <http://www.radioaukan.blogspot.de/2012/01/ataques-policiales-comunidad-cacique.html>

ties, in 35 cases for suspicion of terrorism, and several arrest warrants have been issued. These procedures are usually initiated in response to charges filed by the company or one of its organisations and are then generally suspended, but as long as they are pending they restrict the charged persons' freedom of movement and radius of action.

Claims for damages against Monterrico Metals have been filed with a British court, *inter alia* for torture. The parties reached an out-of-court settlement in July 2011. Criminal proceedings are ongoing in Peru at present

against the alleged perpetrators of the incident in August 2005. In this case the victims, acting as joint plaintiffs, are receiving legal aid from local legal organisations, as are those who are being subjected to criminalisation attempts through groundless accusations. If the procedures in Peru fail, the Inter-American Court of Justice can be appealed to. Protective measures for the peasant-farmers in Piura could also be filed for as well. Thirdly, the new UN Working Group on Business and Human Rights could review the case.



The issue of responsibility of enterprises for human rights has been on the political agenda as a result of the global expansion of the private sector since the 1990s. Following several attempts to draft guidelines and norms for transnational and other enterprises, the former UN Commission on Human Rights decided in 2005 to issue a mandate for a Special Representative of the UN Secretary General. The Special Representative, John Ruggie, then drafted the so-called "Protect, Respect and Remedy" framework, which first of all contains an obligation on the part of the state to protect people against violations of human rights committed by third parties, secondly an obligation on the part of enterprises to respect universally recognised human rights, and thirdly measures to ensure access to remedy and reparation for persons who have suffered injury and damage. On the basis of this framework Ruggie developed guiding principles, which were passed by the Human Rights Council in 2011.³⁸ They contain *inter alia* recommendations on the implementation of the state's obligation to protect and the due diligence obligation of enterprises. The Guiding

Principles do not have any binding effect, however, i. e. they do not create any new basis in international law. Upon the termination of the Special Representative's mandate, the UN Human Rights Council appointed a working group on the issue in July 2011.³⁹ Enterprises may be involved in violations of human rights both by virtue of their own activities as well as through their ties to other actors. The Special Representative on business and human rights emphasized that there is a special risk for enterprises in the context of conflicts over land and resources and he also called upon enterprises to afford special attention to the rights of minorities: "... enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them".⁴⁰ The fact that the hitherto mentioned structural improvements in the area of human rights are far from having been implemented is demonstrated by the numerous case examples presented here.

38 See »Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework« from 21 March 2011, Doc. A/HRC/17/31. <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

39 See Resolution A/HRC/RES/17/4 of the Human Rights Commission from 6 July 2011, <http://www.ohchr.org/EN/Issues/Business/Pages/Resolutions/Decisions.aspx>

40 See »Guiding Principles«, p. 11: »Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself ...« and p. 14.

Recommended actions

to improve protection of Human Rights Defenders of ESC rights

A wealth of recommendations for actions to improve protection of Human Rights Defenders of ESC rights can be derived from the compilation of the case examples presented. Those recommended actions which bear special relevance to the protection of HRDs of ESC rights are listed in the following regardless of what rights HRDs specifically work for or how they do so.

States bear the primary responsibility for the protection of HRDs working for economic, social and cultural rights:

“Each state has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

(Art. 2(1) of the UN Declaration on Human Rights Defenders)

I. Strengthening of public recognition of Human Rights Defenders of ESC rights

People who fight for ESC rights are frequently not granted the same recognition as defenders of civil and political rights, as problematic social grievances in this field are not always conceded relevance to human rights. HRDs who represent groups marginalised legally or de facto experience additional impediments. That is why it is absolutely imperative that

all states

- legally recognise and implement economic, social and cultural rights internationally and nationally;
- legally and publically recognise the legitimacy and importance of work for the promotion and protection of ESC rights;
- protect all HRDs of ESC rights, including those who work for women’s and LGBTI rights or the rights of indigenous or other marginalised groups. Special protective measures are necessary in order to confront the specific dangers and challenges faced by these HRDs. This also includes people directly affected who jointly fight for their own rights.
- take the measures necessary in order to publically disseminate the UN Declaration on the Protection of HRDs and guarantee its complete respect by all government agencies and authorities (in particular the military, police and judiciary)

II. Security and protection for Human Rights Defenders of ESC rights

In order for human rights defenders to be able to work effectively for ESC rights, they need a safe and secure working environment. The prerequisites for this are that

states

- guarantee defenders of ESC rights all political and civil human rights. These include freedom of information, opinion and assembly and association as well as political participation rights and possibilities, the right to life and physical integrity, and equality before the law and presumption of innocence.
- provide access to effective remedies and reparation;
- ensure the independence of the judiciary;
- prosecute violations of the rights of HRDs in order to combat impunity in cases of violent attacks or threats against HRDs – in accordance with Article 9 of the UN Declaration on HRDs;
- create or strengthen independent national human rights institutions (NHRI), as these are important contributors to the defence, protection and promotion of human rights;
- effectively implement protective measures for HRDs ordered by international monitoring mechanisms;
- create consultation mechanisms for HRDs of ESC rights, e.g. contact points in order to inter alia include these in the design and implementation of general and specific protective measures.

III. International support for defenders of ESC rights

Because Human Rights Defenders are frequently confronted with difficult working conditions in their respective home countries, it is important that they be heard beyond national frontiers and receive support from actors of relevance, especially the Federal German government, but also other countries, as well as the international community and transnational civil society.

The Federal German government should

- include the EU Guidelines for HRDs in bilateral and multilateral talks, especially relating to economics, finance and trade;
- implement the OECD guidelines for multinational enterprises more effectively, among other things by strengthening non-judicial complaints and mediation procedures in cases of conflicts with business enterprises before the National Contact Point;
- effectively implement the UN Guiding Principles on Business and Human rights;
- provide people affected with access to effective remedies and reparation when business enterprises based in Germany contribute to human rights violations abroad;
- contribute to a strengthening of National Human Rights Institutions (NHRI) within the framework of development cooperation and Human Rights Dialogues;
- ensure coherence between foreign (economic) policy, development policy and human rights policy, e.g. through early and adequate human rights impact assessments concerning economic projects and bilateral and multilateral action in development cooperation;
- ensure that HRDs at risk are provided a safe haven through simplified visa procedures and access to asylum procedures.

The relevant international actors (Federal German government, third states, the international community and transnational civil society) should

- visibly strengthen public recognition of HRDs of ESC rights through invitations, visits by delegations, human rights prizes, etc., especially when HRDs work in countries or regions or conflict areas which receive less attention;
- condemn assassinations of HRDs at the international level;
- monitor or initiate trials in cases where HRDs are killed;

- support HRDs of ESC rights who are in danger both through immediate measures (short-term stays abroad, flight into exile, removal for security reasons, etc.) and in the implementation of long-term protective programmes;
- further develop and disseminate the European “Shelter Cities” programme;
- strengthen the skills of HRDs of ESC rights, for instance through safety and security training (inter alia risk analyses of their individual situation) and through the development of analytical, documentation and negotiating skills;
- contribute to the creation and expansion of support networks for HRDs of ESC rights, inter alia through the networking of “sympathetic” actors at various levels e.g. between grassroots organisations and non-governmental human rights organisations, through the promotion of contacts and dialogue between HRDs and local authorities, brokerage of international contacts for HRDs in areas receiving less attention, fostering of contacts to important UN committees, special rapporteurs and working groups and the encouragement of South-South exchange;
- contribute to the expansion of international and regional protective instruments for HRDs, especially in Asia, and push the effective implementation of existing mechanisms;
- promote “silent” support measures wherever this appears warranted (as a result of the risk faced by local NGOs), e.g. anonymous reporting at the international level or non-public meetings with foreign/international missions;
- develop unambiguous, appropriate guidelines for consultation processes (above all with indigenous groups) in conformity with the principle of free, prior and informed consent;
- foster and support documentation of connections between economic projects, violations of ESC rights and reprisals against HRDs in the design of economic policies as well as the drafting and dissemination of such documentation;
- monitor the role of the media in defamation campaigns against HRDs and encourage alternative reporting by informing journalists/associations of journalists and media about human rights;
- propagate and use existing monitoring and complaints procedures in international systems;
- publicise and use mediation and complaints procedures involving business enterprises and human rights, e.g. pertinent mandates for NHRIs or National Contact Points within the framework of the OECD guidelines for multinational enterprises.

IV. The criminalisation of Human Rights Defenders of ESC rights

HRDs of ESC rights are frequently slandered as criminal offenders or law-breakers, criminalised and prosecuted or hindered in their work through false accusations and manipulative procedures in their home countries. Support by key international actors is necessary in order to draw greater international attention to the use of criminal prosecution of HRDs, especially by means of

- acting preventively in the case of threats and defamation in order to preclude criminalisation and/or physical attacks, for instance with the aid of early warning systems, and documentation and analysis of trends;
- systematic documentation of the abusive application of existing laws and legislation against HRDs of ESC rights, in particular laws on combating terrorism;
- observing trials in the event of criminal prosecution of HRDs, visits to prisons and visible support of HRDs who have not (yet) been arrested, commissioning foreign legal experts to draft legal expertises and opinions and a follow-up in test cases;
- special vigilance on the part of diplomatic missions of third countries for the criminal prosecution of HRDs who work for ESC rights, including land-use and environmental rights;
- review of the viability of existing instruments in order to develop efficacious protective measures against criminalisation and stronger preventive action.

V. Responsibility of non-state actors for human rights

Even if states bear primary responsibility and the obligation to promote and protect human rights and fundamental freedoms, other societal actors also have responsibility for human rights: *“No one shall participate by act or by failure to act where required, in violating human rights and fundamental freedoms”* (Art. 10, UN Declaration on Human Rights Defenders). Protection and recognition of Human Rights Defenders of ESC rights in particular presupposes that

business enterprises

- respect the rights of HRDs by complying with their due diligence obligations. To this end they should perform risk analyses within the framework of which they investigate, preclude and cushion the actual and potential negative impact they have on human rights as well as provide reparation for negative effects which they have caused. Moreover they should also be accountable for how they generally confront this impact through their decision-making and risk-management systems.
- establish complaints mechanisms at the company level that are available to people affected and HRDs. Such mechanisms should not be administrated by companies alone, but rather developed in cooperation with other relevant stakeholders such as, for example, trade unions or NGOs;
- conduct an effective dialogue with local communities and other actors affected by company activities in conformity with the principle of free, prior and informed consent;
- carry out measures to improve the situation and security of HRDs in host countries in connection with their business activities such as, for instance, public statements, formal and informal discussions or silent diplomacy.

the media

- respect the rights of Defenders of ESC rights, i.e. refrain from initiating defamation campaigns or taking part in such;
- act to counter defamation, stigmatisation or criminalisation of HRDs through government authorities or other societal forces;
- disseminate the content of the UN Declaration on HRDs and report on violations of the rights of Defenders of ESC rights.

Relevant Links

United Nations

- “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (The Declaration on human rights defenders), UN General Assembly Resolution (A/RES/53/144), 9 December 1998.
<http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>
- UN General Assembly: “Report of the Special Rapporteur on the situation of human rights defenders”. (A/66/203), 28 July 2011.
<http://www.un.org/en/ga/third/66/documentslist.shtml>
- UN Human Rights Council: “Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya”. (A/HRC/19/55), 21 December 2011.
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf
- UN Special Rapporteur on the Situation of Human Rights Defenders:
<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>
- UN Special Rapporteur on the Situation of Human Rights Defenders: Commentary to the Declaration on the Rights and the Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. July 2011.
<http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>
- UN Special Rapporteur on the Situation of Human Rights Defenders: Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. Responses to the questionnaire on risks and challenges faced by women human rights defenders and those working on women’s rights and gender issues. (A/HRC/16/44/Add.3), 7 March 2011.
http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44-Add3_AEFS.pdf
- Resolution by the UN Human Rights Council at its 13th meeting on 15 April 2010 (A/HRC/RES/13/13).
http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.RES.13.13_AEV.pdf
- The 2007 Annual Report by the Special Representative of the UN Secretary-General on the situation of human rights defenders, Hina Jilani, to the UN Human Rights Council focused on defenders working in the field of economic, social and cultural rights as well as defenders working for the rights of indigenous peoples and other minorities, women and LGBTI (A/HRC/4/37), 24 January 2007.
http://www2.ohchr.org/english/bodies/chr/special/sp_reportshrc_4th.htm
- International Covenant on Economic, Social and Cultural Rights (1966)
<http://www2.ohchr.org/english/law/cescr.htm>
- Standards of the International Labour Organization (ILO):
<http://www.ilo.org/global/standards/lang--en/index.htm>
- ILO-Declaration on Fundamental Principles and Rights at Work and its follow-up:
<http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>
- Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO-Convention 169), 1989.
http://www.ilo.org/dyn/normlex/en/fp=1000:12100:0::NO::P12100_INSTRUMENT_ID:312314
- “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework.” Report by the UN Special Representative of the Secretary General for Human Rights and Enterprises to the UN General Assembly on 21 March 2011 (A/HRC/17/31).
<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

- “Human rights and transnational corporations and other business enterprises”, Resolution by the UN Human Rights Council from 6 July 2011 (A/HRC/RES/17/4).
<http://www.business-humanrights.org/media/documents/un-human-rights-council-resolution-re-human-rights-transnational-corps-eng-6-jul-2011.pdf>
- Extractive Industries Transparency Initiative (EITI).
<http://eiti.org>

Regional systems

- EU Guidelines on Human Rights Defenders.
http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/l33601_en.htm
- African Commission on Human and Peoples’ Rights (ACHPR): Special Rapporteur on Human Rights Defenders in Africa.
<http://www.achpr.org/mechanisms/human-rights-defenders/>
- Inter-American Commission on Human Rights: “Second Report on the Situation of Human Rights Defenders in the Americas”. December 2011.
<http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>
- Organisation of American States (OAS): Rapporteurship on Human Rights Defenders.
<http://www.oas.org/en/iachr/defenders/default.asp>
- OSCE/ODIHR (Office for Democratic Institutions and Human Rights): Human Rights Defenders in the OSCE Region. Our Collective Conscience. Dezember 2007.
<http://www.osce.org/odihr/29714>

Non-governmental organisations (NGOs)

- Amnesty International.
<http://www.amnesty.org/en/human-rights-defenders/background>
- FrontLine Protection for Human Rights Defenders: Handbook for Human Rights Defenders. What Protection can EU and Norwegian Diplomatic Missions Offer? FrontLine, November 2007.
<http://www.ohchr.org/Documents/Issues/Defenders/Frontlinehandbook.pdf>
- An Activist’s Guide to The Yogyakarta Principles.
http://www.ypinaction.org/files/02/85/Activists_Guide_English_nov_14_2010.pdf
- Observatory for the Protection of Human Rights Defenders (OMCT/FIDH).
<http://www.omct.org/human-rights-defenders/observatory>
- Peace Brigades International (pbi) – German country group.: Bericht der internationalen Konferenz “Bedrohung und Schutz von Menschenrechtsverteidiger/innen im Wandel” on 27 October 2011
http://www.pbideutschland.de/fileadmin/user_files/groups/germany/Dateien/Konferenzbericht_2011.pdf
- Peace Brigades International (pbi) – UK country group: “Criminalisation of Human Rights Defenders”. November 2011
http://www.peacebrigades.org.uk/fileadmin/user_files/groups/uk/files/Publications/Crim_Report.pdf
- Protection International: New Protection Manual for Human Rights Defenders. 2009
<http://www.protectionline.org/IMG/pdf/manualenglish-3rdedition-2.pdf>

Imprint

Issued by Forum Menschenrechte (German Human Rights Forum),
Working Group for Development, Economics and Human Rights

Authors:

Annette Fingscheidt (*Peace Brigades International*)
Dr. Michael Krennerich (*Nuremberg Human Rights Center*)
Jonas Schubert (*terre des hommes Germany*)

The following organisations have provided case descriptions:

- Social Service Agency of the Protestant Church of Germany (EKD)/Brot für die Welt
- German Human Rights Coordination for Colombia
- European Center for Constitutional and Human Rights (ECCHR)
- Friedrich-Ebert-Stiftung (FES)
- Friedrich Naumann Foundation for Freedom
- Heinrich-Böll-Stiftung The Green Political Foundation
- Kindernothilfe
- The Lesbian and Gay Federation in Germany (LSVD)
- Misereor (German Catholic Bishops' Organisation for Development Cooperation)
- The National Spiritual Assembly of the Bahá'ís of Germany
- terre des hommes Germany.

The opinions expressed in the case descriptions are not necessarily shared by the said organisations.

Editor:

Annette Fingscheidt
(*Peace Brigades International*)

in cooperation with members of the
Working Group for Development, Economics and Human Rights

- Hildegard Hagemann (*German Commission Justice and Peace*)
- Ute Hausmann (*FIAN Germany*)
- Cornelia Heydenreich (*Germanwatch*)
- Klaus Jetz (*LSVD*)
- Michael Krennerich (*Nuremberg Human Rights Center*)
- Michael Schirmer (*Brot für die Welt*)
- Jonas Schubert (*terre des hommes Germany*)
- Katharina Spieß (*Amnesty International – German section*)
- Elisabeth Strohscheidt (*Misereor*)
- Britta Utz (*Friedrich-Ebert-Stiftung, FES*).

Translation:

James A. Turner

© Forum Menschenrechte, Berlin september 2012

Cover Picture: Chilean Police raid on Mapuche Community (© Felipe Durán 2011)

Graphic design: Medienwerkstatt Klartext GmbH, Essen

Printed in Germany

With the kind support of:

MISEREOR
IHR HILFSWERK

Brot
für die Welt

**FRIEDRICH
EBERT
STIFTUNG**

Members of the FORUM MENSCHENRECHTE

1. Action by Christians for the Abolition of Torture (ACAT)
2. Action Committee Service for Peace/Peace Brigades International (Germany)
3. Amnesty International – German section
4. International Movement ATD Fourth World
5. BAFF (*German Association of Psychosocial Centres for Refugees and Victims of Torture*)
6. BUMF (*Federal Association for Unaccompanied Minor Refugees*)
7. German Society (for the promotion of political, cultural and social relations in Europe)
8. United Nations Association of Germany (UNA – Germany)
9. The German Commission for Justice and Peace
10. German Commission for UNESCO
11. Deutscher Frauenrat (*German national council of women's associations*)
12. The Federation of German Trade Unions (DGB)
13. Social Service Agency of the Protestant Church of Germany (EKD)/Brot für die Welt
14. European Center for Constitutional and Human Rights (ECCHR)
15. FIAN – Germany
16. Friedrich-Ebert-Stiftung (FES)
17. Friedrich Naumann Foundation for Freedom
18. Gemeinschaft für Menschenrechte im Freistaat Sachsen (*Society for human rights in the Free State of Saxony*)
19. Germanwatch
20. Society for Threatened Peoples
21. Heinrich-Böll-Stiftung, The Green Political Foundation
22. German Civil Liberties Union
23. Human Rights Watch – Berlin office
24. iaf e.V. (association of binational families and partnerships)
25. Women's International League of Peace and Freedom (WILPF)
26. International Society of Human Rights (ISHR)
27. International Physicians for the Prevention of Nuclear War (IPPNW) – Germany
28. ISL e.V. (*German branch of "Disabled Peoples' International – DPI"*)
29. Kindernothilfe
30. KOK (*German nationwide activist coordination group combating trafficking in women and violence against women in the process of migration*)
31. Commission of Human Rights of the Association of Judges and State Attorneys and the Association of Lawyers, Freiburg
32. Konrad-Adenauer-Stiftung
33. The Lesbian and Gay Federation in Germany
34. medica mondiale
35. Misereor (*German Catholic Bishops' Organisation for Development Cooperation*)
36. Missio Aachen (*International Catholic Missionary Society*)
37. Missio Munich
38. Franciscan Center for Development and Mission
39. The National Spiritual Assembly of the Bahá'ís of Germany
40. Nuremberg Human Rights Center
41. German Eucumenical Committee on Church Asylum
42. Pax Christi – Germany
43. PRO ASYL
44. pro familia Federal Association
45. Reporters Without Borders – German section
46. TERRE DES FEMMES
47. terre des hommes – Germany
48. United Evangelical Mission

Guests: The German Red Cross, EKD (*Evangelical Church of Germany*)

Forum Menschenrechte

FORUM MENSCHENRECHTE (German HUMAN RIGHTS FORUM) is a network consisting of 48 German non-governmental organisations (NGOs) working for better, more comprehensive protection of human rights – worldwide, in individual regions of the world and in the Federal Republic of Germany.

FORUM MENSCHENRECHTE was founded in 1994 in the wake of the 1993 Vienna World Conference on Human Rights. Joint work in the FORUM is primarily focused on the following aims and objectives:

- to critically monitor the human rights policy of the Federal German Government and the German Bundestag at the national and international levels,
- to carry out joint projects aimed at improving the protection of human rights throughout the world,
- to create an awareness on issues relating to human rights among the German public while drawing attention to possible violations of human rights in Germany and working to rectify the situation,
- to exchange information between the member organisations on topics and issues bearing relevance to human rights,
- to support local, regional and national NGOs in international aspects of their work and promote the international networking of NGOs.

FORUM MENSCHENRECHTE

Haus der Demokratie und Menschenrechte
Greifswalder Straße 4 – 10405 Berlin

Fon +49 (0)30 | 4202 1771 – Fax +49 (0)30 | 4202 1772
kontakt@forum-menschenrechte.de

www.forum-menschenrechte.de