

LAND IN THE STRUGGLE FOR SOCIAL JUSTICE:

Social Movement Strategies
to Secure Human Rights



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Index

Acknowledgments **9**

Introduction **10**

- Methodology _____ 11
- Overview _____ 11
- Some Initial Reflections _____ 13

Chapter 1

Human rights and the struggle for land **16**

- Land within international human rights standards _____ 17
- Human rights issues related to land _____ 20
- The meaning of land for different groups _____ 23
- Challenges _____ 24
- Social movements in the struggle for land and human rights _____ 30
- Final considerations _____ 32

Chapter 2

Experiences struggle for land within the framework of human rights **35**

Case 1

The utilization and appropriation of human rights instruments in the Ogoni struggle for land **36**

Human Rights of Indigenous and Minority Communities in Nigeria **37**

- Origins of the marginalization of the Ogoni people _____ 37
- Oil in Ogoniland _____ 39
- International context _____ 41

The emergence of the Movement for the Survival of the Ogoni People (MOSOP)	42
■ The launch of the Ogoni Bill of Rights	42
■ Backlash and persecution of Ogoni human rights defenders	44
The use of international human rights mechanisms to advance the Ogoni struggle	46
■ The UN Special Rapporteur for Nigeria	46
■ The African Commission on Human and Peoples' Rights	47
■ The UN Committee on Economic, Social and Cultural Rights (CESCR)	48
■ Special Representative of the Secretary-General on the Situation of Human Rights Defenders	49
■ The UN Committee on the Elimination of Racial Discrimination (CERD)	50
■ Other mechanisms	51
Results and lessons learned	53
Case 2	
Human rights as a tool: grassroots organizing in the urban settlements of Kenya	55
Human rights of low-income residents in Kenya	56
■ Life in the informal settlements	57
Early organizing in the grassroots	89
■ The context evolves	60
Articulating human rights with local realities	63
■ Putting human rights into practice	63
Results and lessons learned	66

Case 3

The Plataforma DHESCA and the human rights National Rapporteurs in Brazil 70

Human rights and land access in Brazil 71

- Land concentration in Brazil today _____ 73
- The link between social inequality and land in Brazil _____ 75

Plataforma Dhesca (The Brazilian Platform on Economic, Social, Cultural and Environmental Rights) 77

- The Work of the National Rapporteurs _____ 78

The right of the Maró indigenous people to land and territory in the Brazilian Amazon 80

Results and lessons learned 84

Case 4

The development and adoption of the UN Declaration on the Rights of Indigenous Peoples 86

Human rights and the rights of indigenous peoples 87

A space for indigenous peoples rights on the international agenda 90

How indigenous peoples used the United Nations system 93

- The drafting of a future declaration within the UN Human Rights Council _____ 93
- Political blockages and a perilous refusal to negotiate _____ 94
- Lobbying of states _____ 96
- Revival of a tired process in search of creative solutions _____ 97

Results and lessons learned 100

Acknowledgments

This publication is a collective effort of the International Network for Economic, Social and Cultural Rights (ESCR-Net) and its Social Movement and Grassroots Groups Working Group. ESCR-Net unites over 250 NGOs, social movements and advocates across 70 countries, seeking “to build a global movement to make human rights and social justice a reality for all.”

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- Movement for the Survival of the Ogoni People (MOSOP) Nigeria
- Nairobi People’s Settlement Network (NPSN) Kenya
- Indigenous Peoples’ International Centre for Policy Research and Education (Tebtebba) The Philippines
- Plataforma DhESCA Brasil
- Pakistan Fisherfolk Forum
- Abahlali baseMjondolo, South Africa
- FoodFirst Information and Action Network (FIAN International)

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Introduction

This manual is a project of the Working Group of Social Movements and Grassroots Groups of the International Network for Economic, Social and Cultural Rights (ESCR-Net). The impetus for this project emerged from a series of conversations that identified the need to document and learn from the experiences of diverse social movements that have utilized the human rights framework in their struggles for access to and control over land. Working Group participants identified this project as a useful mutual learning exercise, and suggested that it could also benefit other social movements that are interested in using human rights in their efforts to attain access to and control over land. Drawing on the contributions and critical reviews of multiple leaders and organizations, it has been envisioned as a collective project to strengthen the capacity and efforts of social movements around the world.

Many social movements and human rights organizations possess highly valuable experiences related to the issue of land, and it was a challenge to select the cases that would be featured in the present manual. Those that were selected featured tactics that could potentially be reproduced and applied in different contexts. Geographic diversity was an additional criterion, as well as a diversity of actions taken by social movements at different levels (local, national and international). The cases featured in this manual also bring to light different challenges related to issues of access to and control over land, including: the struggle for land and housing as a necessary component of an adequate standard of living in an urban context, the particular rights of indigenous peoples to their ancestral territories, land in the context of large corporate operations and the advocacy of national networks for a stronger recognition of land rights.

The experiences and lessons that have been documented in this publication represent only a few of the numerous struggles by social movements and human rights organizations to secure access to and control over land and are by no means exhaustive. Many social movements and communities affected by land-grabbing, displacement, landlessness and related challenges have used the human rights framework in their grassroots struggles. The tactics they have employed are diverse and creative and, in many cases, exemplify highly effective means for pursuing far-reaching social change.

■ Methodology

Methodology Building on Working Group discussions, ESCR-Net and Terra de Direitos finalized criteria for case selection and devised a collaborative methodology for constructing case studies and eliciting strategies and lessons. A generic structure for each case was designed and a script was developed in order to guide extensive interviews with representatives of the above-mentioned social movements. Following these interviews, drafts of each case were written and then sent to the respondents for their review. Following the incorporation of their comments, the producers conducted a primary editorial review. Subsequently, a draft was sent to three external readers who reviewed and evaluated it with an eye to sharpening analysis, clarifying lessons, and strengthening relevance for other social movements. Following adjustments to the text based on these comments, a second editorial review was carried out. It was then sent for translation, following which three versions (English, Spanish and Portuguese) were published.

■ Overview

The first chapter introduces human rights – not as a narrowly defined legal concept but as a broad tool that is often useful in ordering and focusing a wide range of creative strategies aimed to realize grassroots demands. In this context, the chapter reviews human rights standards related to access to and control of land. Subsequently, some critical issues relating to the topic of human rights and land are acknowledged, including the difference between land rights and property rights and the similarities and differences between claims for land rights by urban and rural groups. Main challenges that are presented – in both cities and rural areas – that impede the full realization of land rights are discussed and the particular role of social movements in these struggles is emphasized.

The second chapter analyzes the long struggle of the Ogoni people against the conquest of their territory in the Niger Delta, in defense of their rights to their land and against the ravages of oil extraction and resulting pollution. This case discusses the human rights strategies used by the Movement for the Survival of the Ogoni People (MOSOP) to counter discrimination and social exclusion in Nigeria, respond to the violent persecution of human rights defenders, and confront the oil giant Shell. The Ogoni struggle for justice in the face of rampant land grabbing and severe environmental degradation highlights the many interconnections between the environment and human rights, both in terms of issues faced by communities and the mechanisms that were used to address them.

In an innovative application of the human rights framework, MOSOP developed the Ogoni Bill of Rights as one of their principal strategies in the struggle to defend their land against rampant oil pollution. MOSOP also tells of its experiences working with UN special rapporteurs and committees that oversee international human rights treaties, demonstrating the extent to which the usefulness of international mechanisms is conditioned by global politics. Furthermore, the MOSOP case demonstrates that even once the conditions are right for bringing grievances and demands to the international stage, each particular UN mechanism has different strengths, weaknesses and requirements. Ogoni leaders achieved mastery over these mechanisms through years of struggle.

The third chapter focuses on the creative use of human rights by the Nairobi Peoples Settlement Network (NPSN) in order to raise awareness among, organize and mobilize residents of the city's informal settlements. For this social movement, land has been a basis for low-income urban dwellers to claim the right to live in dignity, including the right to adequate housing, access to a range of essential services and protection against forced evictions. This story is largely an account of the appropriation of the international human rights framework by grassroots activists and its utilization for the purposes of organizing and direct advocacy. This case describes the efforts by NPSN leaders to articulate the local realities of their members using international human rights standards and to translate the demands of these fellow residents into specific policy proposals to promote a right to adequate housing and a right to land in the country's informal settlements.

The fourth chapter examines the experience of the Plataforma DhESCA (Platform for Economic, Social, Cultural and Environmental Rights in Brazil) in creating and utilizing National Rapporteurs, a mechanism that is modeled on the United Nations Special Rapporteurs. Through an overview of the work of the National Rapporteur on the Right to Land, Territory and Adequate Food,

this case describes the development and implementation of a mechanism to promote the right to food through addressing disputes relating to access to land. Focusing on a particular collaboration with the Maró indigenous communities who live near Rio Tapajós in the Amazon region, this case offers lessons in the use of the National Rapporteur mechanism to identify trends regarding human rights violations across the country and amplify the voices of communities directly affected by human rights violations. Finally, it sheds light on a critical issue that is central to many disputes related to land, namely stark differences between the model of development promoted by the public and private sectors (and, often, national governments), on the one hand, and local communities, on the other.

The final chapter analyzes the evolution of international norms on indigenous rights and the importance of this international framework for the realization of the right to access to and control of land. The case of the development and adoption of the UN Declaration on the Rights of Indigenous Peoples highlights the long and arduous path that the indigenous rights movement followed to promote – in their own name – an international recognition of their rights, including the right to access, control and own their ancestral territories. It addresses a strategy that has sometimes been pursued when certain groups (indigenous peoples, in this case) have concluded that they need to claim specific human rights. Featuring examples of the political and diplomatic blockages at play when states enter into negotiations about human rights obligations, this case study underscores the critical importance of maintaining a commitment to dialogue, a willingness to compromise and the importance of patience as a social movement engages in such a long and protracted process.

■ Some initial reflections

Each of these cases offer some specific lessons, derived from particular experiences. At the same time, it is possible to identify some preliminary conclusions which resonate across the various cases. First, all of the cases suggest that it is possible for social movements to appropriate the norms and mechanisms of international organizations and government institutions, and leverage them to serve the struggle for social justice. All of these stories indicate the usefulness of the human rights framework in helping social movements advance their strategies beyond broadly demanding rights to identifying the specific obligations of their

governments (and others) and holding them accountable. Second, they all argue that social movements have a key role to play as interlocutors between international (and, sometimes, national) standards and local realities. The cases focus on the ability of social movements to use international mechanisms to promote human rights domestically while working to enforce them and realize them in practice. Third, all of the cases argue that, in the absence of adequate legal guarantees for the full realization of human rights, social movements have a critical role to play in the ongoing evolution and enforcement of human rights, shaping their own histories and advancing social justice for all.

The cases further demonstrate that, through using human rights mechanisms and standards in their struggles for land, social movements are sometimes able to overcome political blockages and open new space to promote real changes in policies and practices that affect peoples' lives. Finally, they provide several clear illustrations of the centrality of land in many social conflicts around the world, and the extent to which the lack of access to (or control over) land results in a range of human rights violations, ranging from racial discrimination to violations of the right to food. They also establish the relevance of the human rights framework in highlighting the significance of land as much more than as a material good or a piece of property.

These reflections are only a few of the many insights offered by the experiences that have been documented in the present publication, which is intended to be a modest contribution to mutual learning and capacity-building by and between social movements and grassroots groups, particularly those who are committed to a struggle for land an integral part of a life of dignity and a better, shared future.

It is very challenging to offer a unifying definition of “land” for the purposes of the present publication. For different groups, land holds different meanings. For many farmers or fishers, land is often understood as the basis for their subsistence and the means by which they feed themselves. For urban dwellers, land often is more closely related to the various dimensions of housing. Notwithstanding this diversity of perspectives, however, the term “land” is used here to refer to a geographic territory, which includes the total environment of the areas which the peoples concerned occupy or use, the spiritual and cultural connections that those people have with their habitat, and the social relationships that are maintained in those spaces, amongst residents and between residents and their governments.¹

1 See the International Labor Organization Covenant 169, Article 13 and the UN Declaration on the Rights of Indigenous Peoples.

It is important to clarify that human rights activists and experts have taken a variety of positions on questions regarding the similarities and differences between land in the rural and urban contexts, land as a collective versus an individual right, whether land is a universal human right or a right of certain groups or the optimal focus of international advocacy. There are also many different perspectives regarding the extent to which individual property rights enshrine access to land as a human right. While these debates are highly relevant to the present topic, this manual does not purport to resolve them. It also does not attempt to distill these stories into a mere index of tactics and practical actions, since the contextual reasoning and analysis specific to each case is highly relevant to the ability of other social movements to learn from these experiences. Rather, this publication calls attention to the way that various social movements have navigated these contentious issues and interpreted them within the context of their struggles.

With the above in mind, this publication offers a description of the ways in which several movements have understood and framed issues of human rights and land, potentially revealing many points of connection. It attempts to render the lessons of several movements applicable in practice, encourage discussion between movements and provide a new tool for strategic and tactical reflection. Beginning with an overview of land within the international human rights framework and the particular challenges faced by social movements involved in struggles for land, the following section attempts to lay the groundwork for a mutual learning exercise that centers on grassroots experiences appropriating the mechanisms and instruments of international law and employing them for their own, respective, struggles for justice.

Chapter 1

Human rights and the struggle for land

Social injustices are not inevitable, yet overcoming them often requires questioning existing political and economic systems and collectively struggling for a more just model of society. To this end, the strategic use of human rights standards and mechanisms presents real opportunities for generating the conditions necessary for a life of dignity and profound societal transformation.

Narrowly defined as legal norms, human rights will not, by themselves, create a new and just model of society because the full realization of rights requires comprehensive enforcement strategies, measures to overcome both formal and de facto exclusionary barriers, and a rebalancing of political and social interests, among others.

The present publication, however, understands human rights to be far more than legal instruments. Human rights reflect and uphold historic and ongoing social struggles to end dispossession, exploitation, and oppression. Human rights advocacy can encompass a diverse range of creative strategies employed by people to claim them and make them real in practice, from the use of legal strategies and the instruments of environmental law to the occupation of space and public actions of civil disobedience. This publication also highlights another important aspect of a human rights based approach that recognizes that the people who are claiming their rights must be at the center of social change strategies, rather than simply conceived of as the beneficiaries of the support and protection of others. In this respect, human rights have increasingly become a powerful, internationally recognized, and evolving framework and set of tools in the struggle for dignity and social transformation. In turn, efforts to promote the development of new norms and standards, combined with the struggle to implement the rights already established, have progressively gained space in popular struggles across the world.

The issue of land highlights the inseparable and indivisible nature of human rights. Land is intricately related to the ability of people to access food as well as adequate housing, connections that are described more in-depth below. Access to (and, in many cases, control over or ownership of) land is also closely connected with the ability of people to realize their right to health and education.² In the end, for the people who rely on land for their livelihoods and their ways of life, land is perhaps most fundamentally an issue of human dignity and the ability of people to provide for their own needs, without relying on the changing priorities of the State or their luck in the neoliberal marketplace.

At the same time, it is also important to recognize that human rights are not a universal panacea that can guarantee the success of all struggles at all times. Social movements, by and large, employ a wide range of strategies and claims. This manual is not intended to suggest that the use of the human rights framework can or should be the only strategy employed in every case: rather, it aims to draw lessons from examples where it has been useful to social movements in particular struggles.

Starting from these assumptions, this section highlights key arguments that underscore the strategic importance of a stronger recognition of the human rights issues related to land in both urban and rural areas. First, it offers a brief overview of the framework of international human rights law as it relates to issues of land and explores the relationship between land and social justice. Subsequently, it reviews the current context whereby people's ability to access land has been systematically denied, while emphasizing the vital role of affected communities and organized social movements in claiming and ultimately securing human rights. Finally, it discusses the strategic importance of promoting recognition that land is a human right at the international level.

■ Land within International human rights standards

International human rights law has not, to date, recognized land as a free-standing human right. At the same time, there exist several international instru-

² See Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria, available at: <http://www.escr-net.org/docs/i/404115> (last accessed 03/06/13).

ments and jurisprudence emerging from national, regional and international systems that have progressively acknowledged and defined many of the key human rights issues that exist with regard to land.

The Universal Declaration of Human Rights (UDHR) has established that “[e]veryone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”³ The UDHR also recalls “the inherent dignity and the equal and inalienable rights of all members of the human family.” The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) both state that “[a]ll peoples may, for their own ends, freely dispose of their land and resources and in no case should a people be deprived of its own means of subsistence.”⁴ The International Covenant on Economic, Social and Cultural Rights also recognizes that “everyone has the right to an adequate standard of living for himself and his family, including food, housing and water, and to the continuous improvement of living conditions.”⁵

International human rights law has established, in both the UDHR and the ICCPR, that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence....”⁶ The International Convention on the Elimination of All Forms of Racial Discrimination also establishes the obligations of states “to eliminate discrimination and to guarantee the right of everyone to own property alone as well as in association with others.”⁷ In that covenant, as well as the UDHR and the ICCPR, women’s equal rights “in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property”⁸ have also been recognized.

3 UN General Assembly, 3rd Session, Universal Declaration of Human Rights, A/RES/217 A (III), 10 December 1948 (Article 17).

4 UN General Assembly, 21st Session, International Covenant on Economic, Social and Cultural Rights, A/RES/2200 (XXI), 16 December 1966 (Article 1) and UN General Assembly, 21st Session, International Covenant on Civil and Political Rights, A/RES/2200 (XXI), 16 December 1966 (Article 1).

5 UN General Assembly, 3rd Session, Universal Declaration of Human Rights, Op. cit. (Article 25) and UN General Assembly, 21st Session, International Covenant on Economic, Social and Cultural Rights, Op. cit. (Article 11.1).

6 UN General Assembly, 21st Session, International Covenant on Civil and Political Rights, Op. cit. (Article 12) and UN General Assembly, 3rd Session, Universal Declaration of Human Rights, Op. cit. (Article 12).

7 UN General Assembly, 21st Session, International Covenant on Economic, Social and Cultural Rights, Op. cit. (Article 5 d. (v)).

8 UN General Assembly, 21st Session, International Covenant on Civil and Political Rights, Op. cit. (Article 3); UN General Assembly, 3rd Session, Universal Declaration of Human Rights, Op. cit. (Article 2) and UN General Assembly, 20th Session, International Convention on the Elimination of All Forms of Racial Discrimination, A/RES/2106 A (XX), 21 December 1965 (Article 16.1 (h)).

The United Nations committees that monitor the compliance of states with their obligations under human rights treaties have further clarified state obligations regarding human rights and land. Key among these are General Comments⁹ and Concluding Observations¹⁰ by the Committee on Economic Social and Cultural Rights, which call attention to the human rights concerns involved in natural resource exploitation, forced evictions and land grabbing, among other issues. The Committee on Elimination of all Forms of Discrimination Against Women has also discussed issues related to women and land, including Article 14 (2) (g), which states that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.” The Human Rights Committee has established that the issue of access to and rights over land has implications for a range of civil and political rights.¹¹ The regional human rights courts and commissions for Europe, Africa and the Americas have also issued a series of decisions related to land and human rights¹², and cases related to land are growing in national courts.¹³

Finally, the International Labor Organization’s Convention #169 recognizes the rights of indigenous peoples to their traditional territories.¹⁴ This has been

9 Committee on Economic Social and Cultural Rights: General Comments No. 4 (the right to adequate housing), No. 7 (forced eviction), No. 12 (the right to adequate food), paragraph 12, No. 14 (the right to the highest standard of health), No. 15 (the right to water), No. 16 (the equal rights of men and women to the enjoyment of all economic, social and cultural rights) and No. 21 (right of everyone to take part in cultural life).

10 Committee on Elimination of all forms of Discrimination Against Women, General Recommendation No. 21 (equality in marriage and family), Review of Israel.

11 See, for example, *Human Rights Committee: Lämsman et al. v. Finland, Communication No. 511/1992 (8 November 1994)*.

12 African Commission for People’s and Human Rights, Centre for Minority Rights in Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Communication No. 276/2003 (4 February 2010); Inter American Court of Human Rights, *The Saramaka People v. Suriname*, (Judgment of 28 November 2007); African Commission, Centre on Housing Rights and Evictions (COHRE) v. Sudan, Communication No. 296/2005 (29 July 2010) and the European Court of Human Rights, *Dogan and others v. Turkey*, Applications nos. 8803-8811/02, 8813/02 and 8815-8819/02 (29 June 2004). See also Golay and Cismas 2010 and <http://www.escri-net.org/caselaw/> for more cases.

13 South Africa: *Bhe v. Magistrate Khayelitsha & Ors*. 2005 (1) BCLR 1 (CC), Constitutional Court of South Africa (15 October 2004), United States: *South Fork Band and others v. United States DOI*, 588 F.3d 718 (9th Cir. 2009), Ninth Circuit Federal Court of Appeals (3 December 2009) and Judgment T-821/07, Constitutional Court of Colombia (5 October 2007) See <http://www.escri-net.org/caselaw/> for additional examples. Many thanks to Bret Thiele for his contributions to this section.

14 International Labor Organization, Covenant #169, Articles 14, 1 and 1,1 (b).

further elaborated with the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, which has established a recognition of “the right to the lands, territories and resources which [indigenous peoples] have traditionally owned, occupied or otherwise used or acquired,” and that they “have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use”¹⁵

■ Human rights issues related to land

Access to and control over land are essential for many people to be able to achieve a life of dignity. When people or groups are denied access to land, social and economic vulnerabilities are accentuated in ways that reinforce social, economic and gender hierarchies and prevent the full realization of human rights in urban and rural contexts.

In addition, it is important to recognize that access to land and related rights are of central importance in the lives of women. Women’s lack of access to land and lack of security of tenure fundamentally undermine women’s rights to non-discrimination and equality and serve to retrench and exacerbate social and economic inequalities. For example, the lack of access to land has been demonstrated to increase women’s vulnerability to violence, HIV-AIDS infections and exploitation.¹⁶ Although the cases highlighted in this text focus foremost on advocacy strategy and lessons as opposed to detailing violations or their related impacts, it is clear that lack of access to land often has disproportionate impacts on women.

Indigenous peoples who are unable to access land often face a greater likelihood of suffering from racial discrimination and the denial of essential services. For poor urban dwellers who do not have land, true political participation often becomes an unattainable goal. The ability to access land is fundamental to secur-

15 UN General Assembly, 61st Session, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 2 October 2007 (Article 26).

16 UN Women/UN Office of the High Commissioner for Human Rights. “Handbook on Effective Strategies to Realize Women’s Rights to Land and Other Productive Resources,” publication forthcoming.

ing livelihoods or subsistence, securing and enjoying adequate housing, and as a basis for cultural identity or spirituality, which explains the central role it plays in diverse social struggles.

Land means different things to different people. The demands of peasants who require access to land in order to realize the right to food and the right to health often differ from urban residents who require a right to land in order to enjoy adequate housing, political participation and access to essential services. There are differences in the significance that land holds for different populations and groups, such as farmers, indigenous people, pastoralists and fishermen, among others. Despite significant differences between groups of people, the lack of access to and control over land generates similar social, cultural and economic vulnerability, a condition which is often exacerbated when combined with other forms of exploitation and discrimination. For all of these reasons, land is clearly a human rights issue.

For many people living in rural areas, land is often understood as a precondition for their ability to realize the right to food. The right to food implies much more than simply people's ability to obtain food. A broader concept that is intimately linked to the notion of self-sufficiency, a right to food for the world's peasants, indigenous peoples and other rural peoples includes their ability to access the land, water and inputs necessary in order to produce their own food, as well as the control to decide what kind of food they produce and how. Food and land are also linked to the right to a healthy environment (in which to produce or gather food), the ability of farmers to control the seeds they plant, and the possibility of accessing food that is free of toxic substances and culturally appropriate.

In urban areas, demands for access to land are often emphasized as a necessary condition for realizing the right to adequate housing and access to essential services. This does not necessarily suggest that each resident should be entitled to own his or her own private property. Such a proposition would often be unsustainable both in terms of spatial planning and environmental impacts. Rather, land – whether as public or affordable housing or as accessible public space – is often demanded by urban residents as a starting point for demanding other rights such as non-discrimination, work, health, political participation and access to essential services, particularly water.

Acquiring a portion of land does not, in itself, guarantee a life of dignity. According to the human rights framework, compliance with human rights obligations requires that a government address the basic needs of its people according

to their social patterns and cultural norms.¹⁷ In this regard, a measure that provides access to land in an area without water and sewer services, street lighting and/or access to electricity, or in a location that is excessively distant from the workplace, cannot be regarded as the fulfillment of the obligations related to the right to housing, even if this area enables people to build themselves a home.

Compliance with the human rights obligations related to land therefore requires more than the simple act of granting a parcel of land surface. It also entails more than just making land available for purchase. This distinction is important, since the ability to buy property is very different from recognition that access to land or housing is a fundamental right. Understood by many social movements as a pre-requisite to enjoy a life of dignity, access to land cannot be limited to a mere legal or administrative possibility of purchasing property. International human rights standards have established that “in no case should a people be deprived of its own means of subsistence,”¹⁸ and “everyone has the right to an adequate standard of living for himself and his family, including food, housing and water, and to the continuous improvement of living conditions.”¹⁹ This right is not restricted by the purchasing power of certain individuals, and the forces of the market should not be presumed to resolve the basic needs of all people by simply following the laws of supply and demand.

Another important dimension to the discussion on land and human rights relates to non-discrimination. History has demonstrated that women’s access to land and other productive resources has consistently improved their standard of living and reduced their vulnerability to physical and psychological violence, HIV-AIDs infection and other violations of their rights. Ownership of land also increases women’s capacity to cope with these and related hardships and bolsters their resilience in the face of challenges to their ability to live in dignity.²⁰ Many women who possess land enjoy an increased degree of power and autonomy within their homes and an increase in social and political status in their commu-

17 The Committee on Economic, Social and Cultural Rights, in its General Comment #4, established that the right to adequate housing also requires security of tenure, availability of essential services, affordability, habitability, accessibility, location and cultural adequacy, as well as the obligations of participation, non-discrimination, a prohibition against retrogression and the prioritization of groups that are particularly marginalized.

18 UN General Assembly, 21st Session, International Covenant on Economic, Social and Cultural Rights, A/RES/2200 (XXI), 16 December 1966 (Article 1) and UN General Assembly, 21st Session, International Covenant on Civil and Political Rights, A/RES/2200 (XXI), 16 December 1966 (Article 1).

19 UN General Assembly, 3rd Session, Universal Declaration of Human Rights, Op. cit. (Article 25) and UN General Assembly, 21st Session, International Covenant on Economic, Social and Cultural Rights, Op. cit. (Article 11.1).

20 UNDP, ‘Voices and Visions: The Asia Pacific Court of Women on HIV, Inheritance and Property Rights,’ 2008.

nities, as well as improved confidence and self-esteem in both realms. In many contexts, *secure land rights have been found to increase women's "bargaining power in their families and participation in public dialogue and local political institutions."*²¹ For indigenous peoples, people of color, Dalits and others who are regularly subject to discrimination, access to (or control over) land likewise awards a degree of respect by others in society that increases protections against discriminatory treatment, and provides tools to combat the poverty in which they live. For people who suffer severe disadvantages in the market-based economy, land access enables them to live with a degree of self-sufficiency unknown to the landless.

■ The meaning of land for different groups

Indigenous peoples, subsistence farmers, fisher-folk and pastoralists all have distinct ways of relating to the land and employ different strategies for claiming land as a right. Women as well are distinctly impacted by lack of access to land. However, these groups share a common vulnerability that results from lack of access to land or dispossession of their lands and the serious threats that this poses to their economic, social and cultural rights.²²

For indigenous peoples, the territories they have traditionally occupied — sites of historic and ongoing cultural, spiritual, social and material importance — are essential to their culture and their very identity. Indigenous peoples do not usually demand access to just any plot of land, even if it possesses some of the physical and biological characteristics that can help them meet their basic needs. For them, their lands and territories are the places where their sacred sites are located, where their traditions are maintained and reproduced, and where they are able to ensure the preservation and ongoing development of their cultures and ways of life.

Peasant communities are recognized as a distinct group, although it is important to note that some groups will identify as both indigenous people and peasants. The affiliation of small farmers and farm workers with the lands they have traditionally used is mainly understood as an economic relationship, as land is essential for

21 ActionAid International, 'Securing Women's Rights to Land and Livelihoods a Key to Ending Hunger and Fighting AIDS,' ActionAid International Briefing Paper, June 2008.

22 Report of the Special Rapporteur on the right to food (A/65/281).

agricultural production and for the ability of farmers to work and provide for their families' subsistence. They thus require access to land that is sufficient to satisfy their socioeconomic needs, which requires the adoption and implementation of agrarian reform policies and other measures aimed at democratizing access to land.²³ Many peasant groups have also emphasized that their access to land is related to their ability to maintain a rural society and way of life, which also explains the significance they attach to land and the passion with which they struggle to claim it.²⁴

Fishing communities and pastoralists often share similar conditions and experiences with small farmers, even though the ways that they articulate their rights to land may vary according to cultural standards, livelihood modes, or nature of threats (i.e. tourist resorts, dams, mining projects, or corporate agriculture). Yet across this diversity, social movements around the world have expressed grave concerns about the ways in which a lack of access to land renders them vulnerable to human rights violations and presents real obstacles to their ability to live a life of dignity.²⁵

Finally, women are distinctly and disproportionately affected by lack of access to land. It is reported that just 1 percent of the world's women actually own land, and many women who do possess land rights face particular threats to being dispossessed. When lands come under competition, women are often the first to lose their claim on productive soil. For many women, access to (or ownership of) land provides real protection against poverty, exploitation, violence and other forms of abuse, and provides a basis for increased social standing and opportunities in public life.²⁶

■ Challenges

Access to land is a major human rights issue in both rural and urban areas. People whose lives are directly affected by a lack of access to (or control over) land

23 Declaration on the Rights of Peasants, Article IV, 1, available at: <http://viacampesina.net/downloads/PDF/EN-3.pdf> (last accessed 7/23/12).

24 Declaration on the Rights of Peasants, Article I, found at: <http://viacampesina.net/downloads/PDF/EN-3.pdf> (last accessed 7/23/12).

25 Report of the Special Rapporteur on the right to food (A/65/281) and "Seeding Hope? Land in the International Human Rights Agenda: Challenges and Prospects, available at: http://www.escr-net.org/resources/resources_show.htm?doc_id=1634767 (last accessed 7/23/12).

26 UN Women/UN Office of the High Commissioner for Human Rights. "Handbook on Effective Strategies to Realize Women's Rights to Land and Other Productive Resources," publication forthcoming.

face substantial challenges in their efforts to secure access to a means of subsistence, adequate housing, essential services, political participation, etc. The lack of secure tenure also threatens children's right to education, the right to participate in cultural life and, specifically, the rights of women in many contexts, while potentially undermining societal cohesiveness and other material and non-material aspects of a peoples' standard of living.

In rural areas, the neoliberal production model, which favors large corporate-run agricultural plantations for export, huge infrastructure projects and the unfettered exploitation of natural resources, has promoted massive waves of land grabbing and forcible displacement and has presented serious obstacles to the ability of people to perpetuate their livelihoods with dignity. The predominant model of economic growth has consistently undervalued the socioeconomic contributions of farmers, indigenous peoples, pastoralists and traditional communities in terms of the sustainable management of natural resources. Often excluded from the formal economy, these groups face significant threats to their well-being, either due to the expropriation of their lands, inadequate public policies regarding access to land and the lack of enforcement of the rights of indigenous peoples to their ancestral territories.

A primary role for many countries in the global South, within the prevailing economic and geopolitical model, is as a source of natural resources and agricultural commodities. As a consequence, the export-oriented model of land-use is intensifying, due in great part to the ever-growing global demand for these commodities and resources. While this has generated economic activity, it has not improved the living conditions of low-income populations. On the contrary, the market-based model of development has consistently resulted in a greater concentration of income, land and power in the hands of a few, as well as the exploitation and degradation of natural resources. This has had severe social and environmental impacts and is resulting in the violation of a range of human rights, which suggests that this form of economic growth should not be confused with real, people-centered development.²⁷

27 Olivier de Schutter presented at the 65th General Assembly of the United Nations [A/65/281], 21 October 2010 "Access to Land and the Right to Food," available at: http://www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf (last accessed 03/06/13) and "Large-Scale Land Acquisitions and Leases: a Set of Core Principles and Measures to Address Human Rights Challenge" (11 June 2009) available at: http://www.srfood.org/images/stories/pdf/otherdocuments/20090611_large-scale-land-acquisitions_en.pdf (last accessed 03/06/13).

The great global demand for crops, minerals, petroleum, hydroelectric power from dams and urban real estate, contributes to serious obstacles for poor people to access and control land, not least of which are the land tenure arrangements that have developed in order to facilitate these activities. For example, indigenous communities, whose territories have been recognized by their governments and whose rights have been guaranteed in national and international laws, often remain vulnerable to invasions of their land by large-scale mining projects. In these situations, governments will regularly invoke the need for economic development for the sake of national interest. Meanwhile, affected communities, particularly poor people or groups vulnerable to discrimination, rarely have access to effective legal mechanisms to stop this type of project. It is regrettable that, today, the ability to generate profit from land represents an economic incentive so powerful that it often trumps human rights as a policy imperative.

The increase in commodity prices on the global market is prompting a growth of interest (and speculation) in arable lands. According to a World Bank study in 2010, competition for arable land has significantly increased since 2008, rendering this truly a global phenomenon. Up until 2008, approximately four million hectares of land were transferred from smallholders to private interests every year, but in 2009, 56 million hectares were sold, 75 percent of which was in Africa, with another 3.6 million hectares in Brazil and Argentina. This trend has been increasingly recognized by human rights advocates and a number of social movements as “land grabbing.”²⁸ This World Bank study also established that the expansion of world agricultural production has focused on only eight commodities: corn, soybeans, sugar cane, palm oil, rice, canola, sunflower and lumber. It is important to note that these agricultural products do not adequately serve household subsistence needs, or, in other words, enable people to realize the right to food. Rather, these crops represent income on the export market, which is carefully controlled by a few large corporations.

Regional integration processes and related infrastructure projects also hinder the ability of people to live on or access land. The Regional Integration Initiative for South America (IIRSA)²⁹ or the Lamu Port Southern Sudan Ethiopia

28 More details on this process of land acquisition may be found on World Bank’s website; specifically, in the document “Rising Global Interest in Farmland: Can it Yield Sustainable and Equitable Benefits” (Washington, D.C: International Bank for Reconstruction and Development, 2010), available at: siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf (last accessed 03/06/13).

29 <http://www.internationalrivers.org/es/campaigns/iirsa>, <http://amazonwatch.org/work/iirsa> and <http://www.bicusa.org/en/Biceca.aspx> (all last accessed 03/06/13).

Transport project (LAPSSET)³⁰ in East Africa, for example, are driven by financial institutions and large corporations with great capacity for investment. Seldom are these initiatives informed by pro-poor public policies. Creating a newfound interest in lands for the purposes of road construction, railway systems and ports, these projects generate additional pressures on communities who have long used and occupied those lands.

The more recent international attention on the so-called “green economy” further contributes to pressures over land, because this logic conceives of air, water and ecosystems as goods and services that have an economic value. With substantial earnings available for those who own and control access to the lands that provide these natural resources, the profit motive often trumps the interests of indigenous people, farmers and other low income groups in policy decisions related to these territories and the resources they contain.³¹

Large-scale tourism projects have also contributed to land grabbing and the displacement of rural communities. Fisherfolk communities are increasingly finding that their traditional access to the coastline is now restricted by large hotel resorts clamoring for prime coastal real estate. Similarly, a number of ethnic minorities in Africa are finding their ancestral lands squeezed by the encroachment of game parks and wildlife preserves. These projects contribute to an ever-growing concentration of land – and income – while dispossessing people who are already marginalized by the global market from their means of subsistence.

The global rush for land, therefore, presents serious threats to farmers, landless farm-workers, indigenous and traditional peoples, and low income urban residents, increasing their vulnerability to human rights violations, particularly their rights to food, health and adequate housing, as well as, at times, their rights to life and physical integrity. This establishes the need to address this challenge at an international level, well beyond its local manifestations.

Traditionally, the issue of land has been considered exclusively an internal matter of sovereign States. However, globalization has changed the context in which issues of land are manifesting and being addressed. Across the world, the

30 See <http://www.savelamu.org/> (last accessed 03/06/13).

31 Final document of the People's Summit at Rio+20, available at: <http://cupuladospovos.org.br/en/2012/07/final-declaration-of-the-peoples-summit-at-rio20/> (last accessed 7/23/12) and Report of the Special Rapporteur on the right to food (A/65/281), p. 8 See also <http://carbonmarketwatch.org/> and <http://www.mabnacional.org.br/> (last accessed 03/06/13).

trend appears to lead toward ever-greater deference to the prerogatives of large corporations and investors over public interest concerns and the sustainability of “the commons.” In the name of “development,” large projects requiring the acquisition of massive amounts of land are supported through financial arrangements, policy incentives and regulatory instruments that enable land to be captured by business interests. This is often justified by governments invoking the concept of “public interest” or “public purpose” on behalf of narrow but powerful private interests, consistent with the way that the doctrine of *eminent domain* has been interpreted in many countries.

In urban areas, approximately 827.6 million people live in poor neighborhoods where infrastructure is highly inadequate and essential services are lacking.³² In cities, low-income people face significant challenges in their efforts to satisfy their basic needs. Access to land or housing is mainly regulated by the market, which often establishes a price for property that is far beyond the reach of people of modest economic means.³³ In addition, in many places zoning, anti-panhandling and vagrancy laws, in addition to surveillance and policing, are utilized to tightly regulate public spaces. Commercial interests put immense pressure on remaining public spaces (and utilities and services), whether pushing for their privatization or working to constrain their use. In cities, access to land is closely related to private ownership and often shaped by major property owners, a situation that often undermines the fulfillment of human rights and makes it very difficult to overcome socio-spatial segregation.³⁴

There exist several factors that prevent the full realization of a right to land in cities. These include the lack of effective public participation in and regulation of land use, so-called urban renewal initiatives and slum upgrading. Residents of the poorest urban neighborhoods have also complained of a systematic lack of attention from public authorities or investment in essential services, public facilities and infrastructure.

Real estate speculation is another significant factor generating and perpetuating socio-spatial segregation in the Global North and the developing world. The process of property acquisition is driven by private actors interested in profit

32 UN Habitat. “The State of the World’s Cities 2010/2011 – Cities for All, Bridging the Urban Divide,” p. 32).

33 CESCR General comment 4., paragraphs 7 and 8.

34 Basic Principles and Guidelines on Development-Based Evictions and Displacement: Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (A/HRC/4/18).

from real estate capital appreciation, rather than public goals like the realization of human rights. Compounding the economic pressure created by speculation, municipal governments will often create reserves of empty spaces and unused or underutilized lands, even as unfettered speculation increases the price of available land. Speculators are often privileged within urban development schemes, protected by policies that are frequently justified as being “pro-poor.” For example, invoking the (real) need to create better living conditions in distressed urban areas, public authorities will often evict low-income people who are occupying up-scale areas or lands whose value has increased over time. The push to allocate urban spaces for the purposes of profit thus contributes to serious violations of the rights to adequate housing, access to essential services, and participation, particularly for the poorest groups living in cities.

Cities sometime demonstrate sophisticated spatial arrangements, new and creative solutions for public and individual transportation, and innovative solutions for water supply and distribution, electricity and garbage collection. Yet they also often concentrate extreme poverty, the lack of access to basic services, and deplorable housing conditions for many residents. In other words, cities are spaces where wealthy individuals, who enjoy broad-based societal privilege, live alongside impoverished communities who face multiple obstacles to the realization of a life of dignity.³⁵ This illustrates the tension between individual ownership of urban land and the role that land might ideally play in the construction of a just society.³⁶

It is also clear that it is not sufficient to obtain legal recognition of a right to land, without a guarantee that this land will fulfill necessary and valued social functions for the people who live on it. If a right to land does not genuinely contribute to the well-being of a community in economic, social and cultural terms, then it is a shallow demand. As social movements have aptly demonstrated time and again, human rights are only real if they are applied and articulated with local realities in ways that are relevant to peoples’ lives.

In sum, the denial of access to (or control/ownership of) land often exacerbates social, economic and gender hierarchies and prevent the full realization of human rights. At the same time, even when people do possess land this does not automat-

35 Franzoni, Julia Ávila. “Política Urbana na Ordem Econômica: Aspectos Distributivos da Função Social da Propriedade: Dissertação de Mestrado.” (Curitiba, Brazil: Universidad Federal do Paraná, 2012).

36 World Charter for the Right to the City, elaborated at the America Social Forum, Quito, July 2004, Article II (2), available at: <http://www.dpi.org/langen/events/details.php?page=124>.

ically lead to a life of dignity. Most people require services, inputs and support measures in order to achieve an adequate standard of living, even when they are legal owners of property. The right to land should also not be confused with the mere right to purchase property, which would reduce the issue to one of property rights that could be neatly resolved according to the supply and demand of a market economy. Further, land rights must be bolstered by the right to non-discrimination and particular attention to groups most vulnerable to such discrimination. This point is enhanced by the realization that land means different things to different people, and that the challenges that they face vary considerably, even while they share some aspects in common. In rural areas, challenges related to land access often center around the neoliberal production model and the growing demand for commodities or services that are produced on the land which, in turn, has prompted increases in commodity prices. These trends are further reinforced by the prevailing paradigm of “development” and the use by many states of the prerogative of eminent domain, which allows the expropriation of lands for the national interest. In urban areas, the pricing of private property holdings, together with regulations and security policies, render lands increasingly inaccessible for the poor of the world’s cities. Commercial interests and real estate speculation that manifest in so-called urban renewal initiatives further compound the threats of forced evictions and abject poverty.

■ Social movements in the struggle for land and human rights

A critical contribution of social movements to realizing human rights has been to apply broad human rights standards to the concrete struggles of their members, while channeling their demands into spaces where norms, policies and standards are defined. As Legborsi Saro Pyagbara, of the Movement for the Survival of the Ogoni People (MOSOP), has said, “We have been trying to bring human rights into our local reality and local understanding – this is what it is all about.” The ways in which social movements advocate for human rights is informed by the realities, identities and perspectives of their members. In an effort to challenge the mainstream status quo, many social movements seek to expand the horizons of existing standards, which allows them to transform the human rights framework into an instrument of true social change.

Grassroots organizations and social movements play a central role in identifying when their rights are threatened and the kind of change that must be achieved. Their capacity to mobilize people and generate political pressure is critical to overcoming political blockages and bureaucratic obstacles to securing the fulfillment of human rights obligations. They often employ a creative range of non-judicial and non-institutional means, even while many have also grown increasingly experienced in the use of courts, regional and international mechanisms and formal political processes to promote their goals.

Whether they are arguing their cases in the courts or in the streets, social movements are often engaged in intense and often protracted power struggles. Their efforts to compel social change are often perceived as serious threats against the interests of those individuals and institutions that benefit from the status quo. As a result, social movements face substantial challenges in their efforts to promote the realization of human rights. They regularly engage in political debate and confrontation with adversaries that possess much greater degrees of power than they do. Their leaders are regularly subjected to threats and attacks and are disproportionately targeted by measures to repress, criminalize or persecute them as a result of their activities to promote human rights. This is, in great part, due to being central actors with the power and legitimacy necessary to counter reactionary forces benefiting from existing inequalities, models of private property and market-based land policies.

Even while social movements face substantial challenges, there exists a growing acceptance in the human rights community that the leadership base for a human rights movement to end poverty and unequal access to vital resources should emerge from those affected by injustice, impoverishment, and dispossession. By infusing creative, inspired and decidedly personal dimensions into daily and local struggles for justice, social movements give form to the principles of accountability and participation on which effective human rights practice depends. According to Suzanne Shende, former leader of the *Comite de Emergencia Garifuna* in Honduras, “social movements provide an essential component of the equation... because without social movements on the ground, pushing, educating, and making these real, there is no implementation of all these rights that are written on papers and filed away in air-conditioned offices in big cities... Not only is it the implementation question, but also the permanence question; because, if the community isn’t there, pushing and moving it along, then the next government can change something – the next international regime can change it. You really need to have communities mobilized and capable of defending and

defining for themselves. Otherwise, it's not permanent, it's not sustainable and it's not implementable."³⁷

Social movements, ranging from indigenous peoples' movements to shack dweller associations, and from labor struggles to people affected by dams or mining, are increasingly being recognized within the human rights community as indispensable forces for social change. In an effort to highlight the substantial knowledge and capacity of social movements related to the promotion and implementation of human rights in practice, this manual will explore some of the key lessons that movements have learned through years of struggle.

■ Final considerations

Land, therefore, is essential to ensure a life of dignity in both urban and rural contexts, yet the challenges faced are enormous. Market-driven policies that award preferential access to land for corporations are increasingly being promoted as the only rational option for countries to pursue economic development. At the same time, there is abundant evidence to suggest that the laws of the market are insufficient, on their own, to guarantee equal opportunity and human rights for all people. The issue of access to land can no longer be treated as just a domestic issue or as a matter which is disconnected from the struggle for human rights, and many social movements, human rights and women's rights advocates are increasingly turning their sights toward the norms and mechanisms of international human rights law.

Several new initiatives have also been pursued in recent years, related to advancing international norms concerning land and human rights. One initiative, spearheaded by the peasant movement La Via Campesina, has a proposed United Nations Declaration on the Rights of Peasants which, at the time of this publication, has entered into the drafting phase under the UN Human Rights Council. This represents an important effort to enshrine a right to land for peasants, defined as: "...a man or

37 Suzanne Shende, in video documentary "Human Rights For and By the People: Securing Economic, Social and Cultural Rights from Below!" available at: http://www.escr-net.org/resources/resources_show.htm?doc_id=1604885 (last accessed 7/30/12).

woman of the land, who has a direct and special relationship with the land and nature through the production of food and/or other agricultural products.”³⁸

The United Nations Food and Agriculture Organization (FAO) has also recently adopted the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security in May 2012. Many human rights organizations and social movements engaged in this process in an effort to ensure that this voluntary instrument reflects a human rights-based approach to land and natural resources.³⁹ While the Voluntary Guidelines do – problematically – encourage the use of market mechanisms as an effective means to guarantee access to land, they have been recognized as an important contribution to advancing an international recognition of a human right to land.⁴⁰

There have also been several important efforts to promote recognition of a right to land in a variety of contexts, particularly within regional and national courts. A decision by the African Commission for Human and People’s Rights in February 2010, in the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, was welcomed by human rights advocates as a major step forward in efforts to achieve recognition that customary communities, who have traditionally used and occupied a specific area of land, have rights to that land. The African Commission found that the Kenyan State was in violation of a number of the articles of the African Convention and determined that Kenya has an obligation to recognize rights of ownership of the Endorois, reconstitute Endorois ancestral land, ensure that the Endorois community has unrestricted access to their traditional territories for religious and cultural rites and for grazing their cattle, and pay compensation and royalties from economic activities on the land, among other measures. Since this decision, several new court cases have emerged in various domestic jurisdictions in Africa, including in Tanzania⁴¹ and South Africa,⁴² in an effort to build upon and further strengthen this precedent.

38 Declaration on the Rights of Peasants, Article I, available at: <http://viacampesina.net/downloads/PDF/EN-3.pdf> (last accessed 7/23/12).

39 “Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,” Preface. Food and Agriculture Organization (FAO), May 2012.

40 Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,” 11.2. Food and Agriculture Organization (FAO), May 2012.

41 “Tanzania: Maasai Pastoralists of Soitsambu Village assert their rights to ancestral lands,” found at: <http://www.minorityvoices.org/news.php/fr/558/tanzania-maasai-pastoralists-of-soitsambu-village-assert-their-rights-to-ancestral-lands> (last accessed 03/06/13).

42 “Transkei fishermen to challenge guilty verdict in High Court,” found at: <http://www.lrc.org.za/press-releases/1944-2012-05-22-press-release-transkei-fishermen-to-challenge-guilty-verdict-in-high-court-> (last accessed 03/06/13).

This publication has been developed with the presumption that human rights, broadly defined, may serve as tools for far-reaching social justice. It suggests that human rights standards and instruments may offer an important resource for many social movements that are struggling for access to land and a right to food, adequate housing, health, education and political participation. A right to land may mean different things for different groups, and the challenges they face in their efforts to realize their rights will vary as well. In some cases, the forces that impede their access to land are driven by a heightened demand for commodities produced on land; in others, they have to do more with the real estate regimes in place in the world's cities. This diversity notwithstanding, the denial of access to or control/ownership of land will often tend to aggravate the social injustice, economic marginalization and inequality that particularly affect women and groups that are vulnerable to discrimination. In response to these threats, a substantial number of social movements have been struggling to claim land as a fundamental human right. Their experiences and lessons will be discussed in greater detail in the sections that follow.

Chapter 2

Experiences struggle for land within the framework of human rights

Case 1



The utilization and appropriation of human rights instruments in the Ogoni struggle for land⁴³

Ogoni people in Nigeria marching to demand their rights and defend their environment

43 This case was developed throughout the course of several interviews with Legborsi Saro Pyagbara of the Movement for the Survival of the Ogoni People (MOSOP), between May and December, 2011.

Human rights of indigenous and minority communities in Nigeria

The Ogoni people of the Niger Delta have longstanding experience with employing creative human rights strategies to challenge incursions onto their lands and defend their environment against a host of threats.

With a population of approximately 850,000 today, the Ogoni have lived in the Niger Delta region for the past 500 years. The Ogoni people profess a strong and deeply-rooted connection with the land and natural resources of their territory. The land, waters and ecosystems in which they live are central to their culture, religion and identity. Many Ogoni traditions revolve around honoring the land, which is considered to be a god according to their system of beliefs.⁴⁴ It is thus not surprising that they have a long history of preserving their environment, which they regard as sacred. They also rely on the land, natural resources and ecosystems for their livelihood, which centers primarily on subsistence cultivation of cassava and yams and fishing from the waters of the delta.⁴⁵

■ Origins of the marginalization of the Ogoni people

After the Berlin Treaty of 1885, the British ruled the territory now known as Nigeria. Ogoniland, however, was an exception; its people resisted the incursion of

44 Unrepresented Nations and Peoples Organization, Ogoni profile available at: <http://www.unpo.org/images/members/ogoni/ogoniprofilesept2009.pdf> (last accessed 3/17/12). See also “Drumming in the Rain: The Ogoni Struggle and the Creativity of the Crowd” available at http://wiredspace.wits.ac.za/bitstream/handle/10539/4508/GeorgeAT_Chapter%206.pdf?sequence=8 (last accessed 1/26/12).

45 “Nigeria Petroleum Pollution in Ogoni Region,” a case study available at the Trade Environment Database of the American University, School for International Service: <http://www1.american.edu/ted/OGONI.HTM> (last accessed 1/26/12).

foreign forces into their area until 1901, when it was one of the last areas to be brought under British colonial rule. The Ogoni were remarkably successful in resisting being drawn into the slave trade, even while kidnapped persons were transported across their lands. The effectiveness of their resistance was both perplexing and embarrassing to the colonial powers, who often explained their inability to seize control of the area with a myth that the people of the area were cannibals. This laid the early groundwork for a social order that would stigmatize and discriminate against the Ogoni people in the years ahead.

Following the long resistance of the Ogoni people to colonial rule, the British found it difficult to establish a strong presence in the Ogoni territory. This resulted in even greater neglect of the area in terms of the provision of services and public administration. Formal schools came late to Ogoniland, which has led to lower educational and literacy levels among Ogoni people, compared to other ethnic groups in the country. This has also enabled scholars from other ethnic groups to be the first to write the history of Ogoni people. The extent to which the Ogoni would come to be authors of their own stories, as a powerful force for change, was not apparent at this early time.

The patterns of social stratification in Nigeria have strong roots in the early colonial period, when some groups were enjoying broad political power and others were extremely marginalized. The British recognized three major ethnic groups: the Hausa-Fulani, the Yoruba and the Igbo, while it disregarded more than 250 smaller groups including the Ogoni. The colonial powers established a pattern that facilitated the taking of Ogoni lands by other ethnic groups, and upon Independence, this pattern was perpetuated.

From the beginning of modern-day Nigeria, the Ogoni were relegated to the lowest status positions in society.⁴⁶ Stereotypes and derogatory attitudes toward the Ogoni have been pervasive since this early period, when they were regularly treated with contempt by members of other ethnic groups. In the decades following Independence, Ogoni children and youth were often taunted with ethnic slurs by both students and teachers. Ogoni civil servants were denied opportunities to be promoted into positions of higher status, which were reserved for members of the larger ethnic groups. Ogoni individuals were not able to access bank loans because of their ethnicity. The Federal Languages Policy established a special status for the languages

46 Unrepresented Nations and Peoples Organization, Ogoni profile available at: <http://www.unpo.org/images/members/ogoni/ogoniprofilesept2009.pdf> (last accessed 3/17/12).

of the three largest ethnic groups while marginalizing other languages.⁴⁷ Ogoni women, many of whom are traditionally agriculturalists, were encouraged to cultivate the least profitable crops and faced great obstacles to attaining their economic independence. They were frequently subjected to derogatory treatment as a result of both their ethnicity and their gender. By the time electrification arrived in Ogoniland, even when the power generating station was located on Ogoni territory, it was directed to provide light for the homes and businesses of non-Ogoni communities, while, “the Ogoni people were left in total darkness for decades.”⁴⁸

■ Oil in Ogoniland

The advent of oil exploitation in Ogoniland was a landmark event that began a new chapter in the Ogoni struggle for their lands and environmental justice. In 1956, Shell Oil Company began to operate in Nigeria, prompting the mass acquisition of lands and their appropriation by oil companies.⁴⁹ In the name of “progress,” Ogoni homes were demolished, and many were forced to leave their lands.

In 1969, the Nigerian government adopted the Petroleum Decree, followed by the Land Use Act in 1978. Both pieces of legislation were highly discriminatory against the residents of the Niger Delta, particularly against the Ogoni, who lived in the areas from which oil was being extracted. They granted full rights of ownership and possession of the land and resources to the central government, and there was no recognition of the rights of the Niger Delta population to participate in decisions that would affect their lands.⁵⁰ Meanwhile, the extremely weak environmental and

47 Movement for the Survival of the Ogoni People (MOSOP). “Shadow Report on Nigeria’s Compliance with the U.N. Convention on the Elimination of All Forms of Racial Discrimination” February/March 2005, available at: http://www.mosop.org/02_MOSOP_Shadow_Report_on_Nigeria_Compliance_with_UN_Convention_Racial_Discrimination_022005.pdf (p. 4-5) (last accessed 3/24/12).

48 Interview with Legborsi Saro Pyagbara: Geneva, Switzerland; September 15, 2011.

49 Unrepresented Nations and Peoples Organization, Ogoni profile available at: <http://www.unpo.org/images/members/ogoni/ogoniprofilesept2009.pdf> (last accessed 3/17/12).

50 Movement for the Survival of the Ogoni People (MOSOP). “Shadow Report on Nigeria’s Compliance with the U.N. Convention on the Elimination of All Forms of Racial Discrimination” February/March 2005, available at: http://www.mosop.org/02_MOSOP_Shadow_Report_on_Nigeria_Compliance_with_UN_Convention_Racial_Discrimination_022005.pdf (p. 8) (last accessed 3/24/12).

social regulations allowed Shell a substantial margin in which to operate. There was no requirement of an environmental impact study before granting oil concessions, and permits for oil-exploration and drilling activities were granted by the government without any consultation with the affected communities.

Oil operations in the Niger Delta have caused widespread environmental devastation. Pollution from spills, flares, waste-dumping and pipeline leakage have severely contaminated the air and destroyed wildlife and biodiversity, and damaged farmlands and waterways. From 1970 to 1982, 1,581 oil spill incidences were recorded in the Niger Delta, many from the over one hundred pumping stations and pipelines that cross Ogoniland. From 1982 to 1992, 1,626,000 gallons were reportedly spilt from Shell's Nigerian operations in 27 distinct incidents. Since that time, gas flares have continued to generate soot that washes onto farmlands when it rains, and periodic oil spills compound existing environmental damages, resulting in serious threats to the right to health, food and education of the Ogoni people living nearby the sites of spills.⁵¹

The communities impacted by oil extraction were excluded from the benefits of the over \$100 billion accrued by the government and Shell Oil, while they bore the devastating impacts on their environment, lands, waters and society.⁵² For more than four decades of oil exploitation on their lands, the Ogoni were left politically marginalized and faced with a poisoned environment.

When the Ogoni began to organize and mobilize against their marginalization and in the defense of their lands and environment, they were met with strong resistance by the government and Shell Oil, who refused to address the issues raised by the Ogoni people. A terrible repression ensued, and MOSOP was targeted in several large-scale military operations. Ogoni communities and houses were razed to the ground. Many were evicted from their homes and forced to seek refuge in the forests and mangrove swamps of the Delta. Those who chose to stay in their communities or townships remained vulnerable to constant harassment, arrests and violence aimed at removing them from lands slated for oil development. The pressure was so great that some 100,000 Ogoni people were displaced, and many were compelled to seek refuge in the neighboring country of Benin.⁵³

51 "Nigeria Petroleum Pollution in Ogoni Region," a case study available at the Trade Environment Database of the American University, School for International Service, available at: <http://www1.american.edu/ted/OGONI.HTM> (last accessed 1/26/12).

52 *ibid.*

53 "The Curse of Oil in Ogoniland," available at: http://www.umich.edu/~snre492/cases_03-04/Ogoni/Ogoni_case_study.htm (last accessed 3/24/12).

■ International context

For the first couple of decades of oil exploitation, the plight of the Ogoni people was fairly invisible on the international agenda, which was consumed with Cold War polarization as well as the continued independence struggles in much of the previously colonized world. The geopolitical dynamic during the height of the Cold War compelled social movements in the African region and elsewhere to position themselves in relation to the opportunities presented by the sparring superpowers, and the Ogoni were no exception. On the one hand, it seemed plausible that the USSR would be eager to support their struggles against Shell Oil, as a symbol of the evils of capitalism. On the other hand, the Western position, quick to condemn civil and political rights abuses by authoritarian regimes, suggested likely sympathy to the demands of the Ogoni.

The Ogoni movement attempted to capture allies, take advantage of (albeit highly conditional) international support and generally utilize the few opportunities presented by the global political environment at that time. However, the fall of the Berlin Wall and the end of the Cold War were a welcome change, in that they enabled the Ogoni movement to conceptualize and frame their struggle more on their own terms.

The emergence of the Movement for the Survival of the Ogoni People (MOSOP)

Organizing in Ogoniland was not easy, especially since it involved bringing together a people who had been marginalized, excluded and discriminated against for generations. Many Ogoni people had come to believe that they were a conquered group, to the great detriment to their sense of dignity and empowerment. In addition, many people lived in remote areas that were then without roads and poorly accessible from outside.

Also, while the Ogoni people speak the same language, they are divided into different dialects, which initially posed obstacles to community organizing. There was also an issue of leadership, as the zero-sum, “winner-takes-all” party politics had generated deep divisions between the Ogoni elites along party lines.

Notwithstanding these formidable obstacles, the organization and mobilization of Ogoni communities into a social movement finally began to coalesce in the 1980s. The development of the Ogoni struggle was in great part inspired and motivated by the commitment and clarity of their leaders, including Ken Saro Wiwa, spokesperson and then President of MOSOP, whose name became internationally known following his tragic execution, along with eight other Ogoni leaders, by the Nigerian government in 1995. The educational and professional achievements of Mr. Saro Wiwa, who served as a role model for Ogoni youth, inspired many to organize and demand accountability in the face of persistent violations of their rights.⁵⁴

■ The launch of the Ogoni Bill of Rights

In 1990, the Ogoni people’s struggle was officially launched with the adoption of the Ogoni Bill of Rights. Following a broadly inclusive process, the Bill of Rights

54 Profile page from The Right Livelihood Award, available at: <http://www.rightlivelihood.org/saro-wiwa.pdf> (last accessed 7/30/12).

was developed in consultation with all of the clans of Ogoni Kingdom, and between three and five representatives from each clan signed on.

The Bill of Rights called for political control of Ogoni affairs by Ogoni people, control and use of Ogoni economic resources for Ogoni development, adequate and direct representation of Ogoni people in Nigerian national institutions and the right to protect the Ogoni environment from further degradation. With emphasis on the right of the Ogoni to self-determination and community control over natural resources, the Bill of Rights represented a direct challenge to the structure of the Nigerian state and the performance of its government. It asserted that “no government can be good if it imposes and operates laws which cheat a section of its peoples; that democracy does not exist where laws do not protect minorities.” The Preamble also underscores the irony that, since oil was discovered in Ogoniland, over \$100 billion worth of the resource had been extracted, while Ogoni continue to suffer from a lack of potable water, electricity, very few roads, poorly equipped hospitals and an almost complete lack of industry.⁵⁵

The launch of the Bill of Rights marked a turning point in efforts by the Ogoni to reverse decades of discrimination and prejudices. Often referred to as “the bible of the Ogoni struggle,” the Nigerian government and oil companies continue to face frequent accusations by Ogoni people that they are not complying with the Ogoni Bill of Rights. It has served as a rallying point for many Ogoni leaders and serves to guide many partnerships and collaborations with different organizations and institutions. Following the adoption of the Bill of Rights, the Ijaw ethnic group, the Akalaka people and several other ethnic groups also announced declarations of their rights. There were approximately twelve such pronouncements in the years following the launch of the Ogoni Bill of Rights. It also contributed to changes in attitudes held by non-Ogoni people, resulting in more respectful treatment and a more favorable public recognition of their demands within Nigerian public opinion.

Ogoni leaders were breaking new ground in their efforts to make the demands of the Ogoni more visible, both within Nigeria and internationally. On behalf of the Ogoni, Ken Saro Wiwa participated in the UN Working Group on Indigenous Peoples (UNWGIP) in 1992, thanks to the support of international NGO allies

55 The Ogoni Bill of Rights, available at: http://www.mosop.org/ogoni_bill_of_rights.html (last accessed 3/24/12).

such as Society for Threatened Peoples and the World Council of Churches. This event marked MOSOP's first engagement with the UN human rights system and paved the way for many more to come.

In 1992, the Ogoni issued a notice to Shell Oil that demanded that they withdraw from their lands. This was followed by a series of non-violent actions which culminated in a general day of action when some 300,000 Ogoni protested on January 4, 1993, in commemoration of the International Year for the World's Indigenous People. This day of mass action was followed by other non-violent actions, such as the holding of vigil nights and candle light processions. They also launched the Ogoni Survival Fund (ONUSUF), to which every Ogoni person was expected to voluntarily indicate their support and loyalty by contributing a symbolic one naira (approximately one half of \$0.01) to the Ogoni struggle.

The Ogoni also brought their demands to the World Conference on Human Rights in Vienna in June 1993. Further undermining Cold War legacies and creating new space for advocacy, the Conference's Vienna Declaration and Programme of Action, in 1993, declared: "All human rights are universal, indivisible and interdependent and interrelated," while recognizing the vital need for attention to environmental issues and sustainable development. The Ogoni were able to mobilize fairly effectively, both within Nigeria and internationally, and bring their concerns to the forefront of the political arena. Their success however, did not come without great cost.

■ Backlash and persecution of Ogoni human rights defenders

In 1993, following the annulment of the June 12 presidential elections, Nigeria was locked in a political crisis. The military government that had annulled the elections was forced to step aside, and an interim government was put in place. Barely three months into the interim government's term, it was ousted by another coup that ushered in the military government of General Abacha. The new military regime targeted the Ogoni movement and other opposition activists with brutal force and extreme violence. Countless Ogoni activists were ha-

rassed, detained, beaten, tortured and sometimes killed, as a result of their activities to protest Shell Oil.

Throughout the 1990s, Shell collaborated with the Nigerian government and its military and civilian leaders to crush popular opposition to their presence and to enable its unfettered access to the resource rich territories of the Niger Delta. Ogoni leaders who spoke out in the face of environmental degradation and the destruction of their farmlands and fishing waters were followed, jailed and sometimes disappeared or executed.⁵⁶ In 1994 several leaders of the Movement for the Survival of the Ogoni People were arrested following a suspicious disturbance, and a military unit, the Internal Security Task Force, was established to “pacify and restore order” in Ogoniland. Among those arrested for this disturbance were the President of MOSOP and the Deputy President of the youth wing of MOSOP. After a lengthy sham trial that was condemned both locally and internationally, on November 10, 1995, Ken Saro-Wiwa, Barinem Kiobel, John Kounien, Baribor Bera, Saturday Dobe, Felix Nwate, Nordu Eawo, Paul Levura, and Daniel Gbookoo were hung in Port Harcourt, by the Nigerian federal government. The case would awaken the international human rights movement and galvanize new sources of international support and solidarity for the Ogoni and their struggle.⁵⁷

56 See, for example, the charges set forth in *Kiobel v. Royal Dutch Petroleum*.

57 See for example Amnesty International: “UA 176/94: Fear of extrajudicial execution / death penalty.” May 4, 1994, available at: <http://www.amnesty.org/en/library/asset/AFR44/002/1994/en/a07a980f-f8c4-11dd-b40d-7b25bb27e189/afr440021994en.pdf>. See also <http://www.swradioafrica.com/pages/SaroWiwa021110.htm> (both last accessed 3/24/12).

The use of international human rights mechanisms to advance the Ogoni struggle

In their early experiences engaging with United Nations human rights mechanisms, the Ogoni became involved in newly created spaces where the rights of indigenous peoples were being discussed, beginning with the UN Working Group on Indigenous Peoples in 1992. At this time, the existence of indigenous groups in Africa was not broadly recognized, but Ogoni leaders concluded that the Ogoni peoples' cultural identity and relationship with their land fit within the emerging UN definition for "indigenous" peoples.

■ The U.N. special rapporteur for Nigeria

Following the hanging of the Ogoni leaders, the UN General Assembly at its 50th Session, in December 1995, condemned the arbitrary execution of Saro Wiwa and the eight other Ogoni leaders. In its resolution, the General Assembly also expressed concern about other gross violations of human rights, calling upon the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions and the Working Group on Arbitrary Detention to investigate the human rights situation in Nigeria and to report their findings to the UN Human Rights Commission at its next session in March 1996. The Secretary-General was mandated to establish a fact-finding team that visited Nigeria, in April 1996.

In 1997, the United Nations Commission on Human Rights established a Special Rapporteur on the state of human rights in Nigeria and appointed Mr. Tiyanjan Maluwa of Malawi. Mr. Maluwa's resigned his appointment on personal grounds on 12 August 1997. Following his resignation, the Chair of the Commission on Human Rights appointed Mr. Soli Jehangir Sorabjee, an Indian attorney.

The Nigerian government refused the Special Rapporteur's request to visit the country, which forced him to base his first report to the 1998 session of the Com-

mission on Human Rights on information gathered from other sources, including engagement with several groups both inside and outside the country.⁵⁸ In his report to the Commission, the Special Rapporteur addressed several of the issues that MOSOP had raised. Among his recommendations were that the Federal Government of Nigeria establish an independent agency in consultation with MOSOP and Shell Petroleum Development Corporation of Nigeria, which would determine all aspects of environmental damage due to Shell's oil exploration and other operations in Ogoniland and make the findings and conclusions of such a study public.⁵⁹

Following the publication of the report by Mr. Sorabjee, MOSOP continued to advocate for the recommendation to be taken up, despite the discouraging inaction encountered in each of the key institutions related to this effort. However, after much perseverance, the study was finally commissioned in 2006, and the United Nations Environment Program (UNEP) began to investigate the impacts of oil exploration on the ecosystems, fishing grounds and farmlands of the Ogoni people. The role of UNEP in establishing an objective assessment of the damages caused by almost 40 years of unfettered oil exploitation in Ogoniland was controversial; and MOSOP denounced, on several occasions, the agency's approach, calling for UNEP to promote compliance with human rights and international environmental standards. However, as discussed below, the report from this study reinforced many of the longstanding claims by the Ogoni people with regards to the environmental damages on their lands and has produced some new opportunities for accountability and restitution.

■ The African Commission on Human and Peoples' Rights

In 1996, a case was brought to the African Commission on Human and Peoples' Rights on behalf of the Movement for the Survival of the Ogoni People, by the Nigeria-based Social and Economic Rights Action Centre (SERAC) and US-based

58 Information from www.serac.org and Human Rights Watch: "The Price of Oil" found at: http://www.waado.org/nigerian_scholars/archive/opinion/oilhrw/hrw11intern.html (last accessed 1/26/12)

59 See E/CN.4/1998/62 and E/CN.4/1999/36.

Centre for Economic and Social Rights (CESR). Among other serious human rights concerns, the complaint “denounced the widespread contamination of soil, water and air; the destruction of homes; the burning of crops and killing of farm animals; and the climate of terror the Ogoni communities had been suffering of, in violation of their rights to health, a healthy environment, housing and food.”⁶⁰ It also alleged complicity with a number of abuses by the Nigerian military as well as the oil companies operating in the area.

The landmark decision of the Commission, which was concluded in 2001, found violations of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter. It determined that the Government of Nigeria has an obligation to protect the health and livelihood of the people in Ogoniland, as well as the natural environment, without discrimination. It appealed to Nigeria to stop attacks on Ogoni communities, investigate human rights violations and prosecute officials of the security forces and officials of the Nigerian National Petroleum Company. It also called on the government to provide adequate compensation to the victims and clean up lands and rivers that had been damaged by the oil operations. The decision of the African Commission recognized that oil activity had impacts on a range of human rights (life, housing, health, food, water, etc.) and that these impacts interacted with each other to produce far-reaching damages to the lands and livelihoods of the Ogoni people.⁶¹

■ The UN Committee on Economic, Social and Cultural Rights (CESCR)

The Ogoni did not, however, confine their advocacy efforts to any one mechanism. During the time when MOSOP was working to ensure that their concerns were reflected in the report of the Special Rapporteur for Nigeria, they also supplied similar information to the U.N. Committee on Economic, Social and Cultural

60 Coomans, Fons “The Ogoni Case before the African Commission on Human and Peoples’ Rights,” in *International and Comparative Law Quarterly*, vol. 52, July 2003, pp. 749-760.

61 Justice C. Nwobike. “The African Commission on Human and Peoples’ Rights and the Demystification of Second and Third Generation Rights under the African Charter: *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria*,” *African Journal of Legal Studies*, 2 (2005) 129-146.

Rights in anticipation of Nigeria's first report to this treaty body. These efforts, similarly, bore fruit, and in May 1998, the Committee "notes with alarm the extent of the devastation that oil exploration has done to the environment and quality of life in the areas such as Ogoniland where oil has been discovered and extracted without due regard to the health and well-being of the people and their environment." The Committee further recommended that the "rights of minority and ethnic communities—including the Ogoni people—should be respected and full redress should be provided for the violations of the rights" established in the International Covenant on Economic, Social and Cultural Rights. Following the report of the Special Rapporteur and the findings of the ESCR Committee, the UN Human Rights Commission subsequently voted, to extend the mandate of the Special Rapporteur on the situation of human rights in Nigeria by another year.⁶²

■ The Special Representative of the Secretary General on the situation of human rights defenders

Under General Sanni Abacha, the situation facing human rights activists and political dissidents in Nigeria was very dire. Hundreds of Ogoni people were exiled, forming a large Ogoni diaspora, mainly in Europe and the United States.

Following the death of General Sanni Abacha in June 1998 and the assumption of office of General Abdusalami Abubakar, far-reaching reforms were introduced including an election timetable for 1999. The initiation of the democratic process, the release of political prisoners and relaxation of repressive activities by the new administration allowed increased space for the Ogoni to continue their activism in pursuit of the full recognition of their rights to their lands and their environment. In recognition of this new development, some of the Ogoni leaders and other pro-democracy activists returned home from exile, and by April 1999, elections had been

62 United Nations Human Rights Commission, Resolution 1998/64. See also Human Rights Watch: "The Price of Oil" available at: http://www.waado.org/nigerian_scholars/archive/opinion/oilhrw/hrw11intern.html (last accessed 3/12/12).

concluded, with a new civilian administration inaugurated on May 29, 1999.

However, by early 2001, the Ogoni movement started having problems with the new civilian administration, since many of the new political leaders had ties with the departing military. In April 2001, in response to an Ogoni protest against a road project that was going to destroy agricultural lands, government security agents raided and burnt the home of the MOSOP President, Mr. Ledum Mitee, who was later arrested by the government and charged in court. In the lead-up to the 2003 general elections, repression of Ogoni leaders intensified further. Mr. Mitee barely escaped an assassination attempt, and MOSOP program officer, Mr. Legborsi Saro Pyagbara, was arrested at the Lagos airport on his way to attend the 59th session of the United Nations Commission on Human Rights.

In the face of this growing animosity against MOSOP activists and other human rights advocates in the country, MOSOP engaged the Special Representative of the U.N. Secretary-General on the situation of Human Rights Defenders. Their meetings were facilitated by the World Council of Churches in Geneva, Switzerland. International human rights organizations, such as Amnesty International and the World Organization Against Torture (OMCT), also began to participate at this time, in order to underscore their concern and urge action. The Special Representative visited Nigeria in 2005, and her report, which focused on the situation of ESCR defenders, was in great part informed by the work of the Ogoni movement.

■ The UN Committee on the Elimination of Racial Discrimination (CERD)

Around this time, MOSOP also began to engage more systematically with the committees established to oversee compliance with human rights treaties, with the help of several international NGOs.⁶³ In a submission to CERD by the Nigerian Civil Liberties Organization, Minority Rights International and the International Federation of Human Rights (FIDH), the Ogoni were able to place several of their

63 See for example, the “micro report” authored by Ogoni leader Legborsi Saro Pyagbara and published by Minority Rights Group International: “The Ogoni of Nigeria: Oil and Exploitation,” 2003, available at: <http://www.unhcr.org/refworld/docid/469cbfce0.html> (last accessed 1/13/12).

key concerns on record in the review of Nigeria before this body.⁶⁴ MOSOP also developed a separate shadow report to tell their story relating the lack of compliance by Nigeria with its obligations under the Convention on the Elimination of Racial Discrimination.⁶⁵

The engagement with CERD resulted in some far-reaching recommendations that were made to the Nigerian government in the Committee's review. They included a call for the government to repeal the controversial 1979 Land Use Act and Petroleum Decree of 1969, to disaggregate census data according to the ethnic composition of the country, and to require that oil companies conduct meaningful consultation with communities where oil is being, or will be, extracted.

■ Other mechanisms

The Ogoni movement has continued to explore creative ways to utilize international advocacy venues to support their demands for human rights and environmental justice. MOSOP has continued to work within the UN human rights system, more recently with the UN Special Rapporteur on Indigenous Peoples. They attended the first Universal Periodic Review (UPR) of Nigeria in 2009, where they advanced lobbying efforts to persuade member States to put forward inquiries into the conduct of the Nigerian government. Given the extensive knowledge gained over the past two decades, MOSOP's leaders have become adept at invoking and working within established procedures in order to ensure that their concerns are registered on record. Ogoni leaders have perceived an important opportunity in the UPR, since no state is exempt from review and scrutiny of its human rights record. At the same time, they acknowledge several notable weaknesses in the process, such as inadequate space for civil society participation and weak follow-up on recommendations.

64 Civil Liberties Organization. "Status of the Implementation of International Convention on the Elimination of All Forms of Racial Discrimination in Nigeria: an Alternative Report" submitted to the 67th Session of the Committee on the Elimination of Racial Discrimination, August 2005 (last accessed 1/13/12).

65 Movement for the Survival of the Ogoni People (MOSOP). "Shadow Report on Nigeria's Compliance with the U.N. Convention on the Elimination of All Forms of Racial Discrimination" February/March 2005, available at: http://www.mosop.org/02_MOSOP_Shadow_Report_on_Nigeria_Compliance_with_UN_Convention_Racial_Discrimination_022005.pdf (last accessed 3/24/12).

The Ogoni people's movement has also been very effective in utilizing frameworks and mechanisms related to international environmental issues, including the Global Environment Facility (GEF) and the Food and Agriculture Organization (FAO), where MOSOP had served as the rapporteur for the African Regional Civil Society Consultations on the process surrounding the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests.

Results and lessons learned

The cumulative result of years of work with the African Commission, UN Special Rapporteurs, treaty bodies and, more recently, the Universal Periodic Review, has generated a basis on which Ogoni leaders have been able to exert new levels of international pressure on the Nigerian government, as well as Shell Oil and the other companies operating on their lands, to comply with their human rights obligations.

Some of the outcomes have the potential to truly advance measures to effectively resolve the grievances of the Ogoni people. The UNEP study, recommended in 1998 by the U.N. Special Rapporteur for Nigeria, was unprecedented in scope, and its conclusions were substantial. Over 14 months, researchers examined more than 200 locations, surveyed over 120 kilometers of pipeline, examined more than 5,000 medical records, and spoke with more than 20,000 people at community meetings.⁶⁶ The report, released in August 2011, validated longstanding claims by the Ogoni regarding the damage caused by oil activity. It established that levels of benzene in water samples were 900 times more than world health standards. It recommended that the government declare the region to be a disaster area and establish an Ogoni restoration fund and an Ogoni environmental authority.⁶⁷ The Ogoni movement has engaged extensively in the process surrounding this study and in efforts to ensure that its recommendations are acted upon.

The Ogoni movement learned several valuable lessons throughout the course of their struggle and their various experiences using a range of international human rights instruments. They learned that their ability to influence domestic affairs using international pressure is contingent on a range of political and economic factors; when these factors align, it may be strategic to engage these international mechanisms. When they do employ them, they learn the necessary protocols, engaging in lobbying activities with governments, and work within strict rules of procedure.

The Ogoni movement has found some of the mechanisms to be quite effective. The UN Special Rapporteurs have proven generally responsive to their appeals and

66 United Nations Environment Program: "Environmental Assessment of Ogoniland," available at: http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf (last accessed 1/26/12).

67 Legborsi Saro Pyagbara: Oral Submission to the United Nations Human Rights Council, 18th Session (12th-30th September, 2011), Geneva, Switzerland. *Agenda Item #5: Interactive Dialogue on the Report of the Special Rapporteur on the Rights of Indigenous Peoples.*

have sent formal communications to the Nigerian government on several occasions, urging respect for the rights of Ogoni human rights defenders. The Special Rapporteur mechanism thus constituted a key tool in the Ogoni movement's use of international pressure to reinforce their demands. Their communications and other statements made at the UN Human Rights Commission contributed to increasing the reputational costs for the Nigerian state associated with its failure to improve its treatment of Ogoni activists. At the same time, MOSOP leaders recognize that the findings of the UN Special Rapporteurs are not, in themselves, legally binding and that many communities lack the capacity to supply information in the required format. They have also found that treaty committees have the potential to be effective compliance mechanisms. However, they are not a fast-acting recourse. They review States every 2-3 years, and the work required to develop shadow reports for their proceedings is extensive.

Beyond the international human rights arena, the critical role of the Ogoni Bill of Rights in organizing and sustaining an Ogoni social movement throughout decades of struggle should be highlighted, as it has provided a common framework and clear set of demands. In addition, the existence of a powerful Ogoni diaspora was a resource and support outside of Nigeria that assisted in effective international action and in building alliances with organizations and advocates around the world.

In conclusion, the Ogoni have demonstrated the potential of a small, historically marginalized group to challenge some of the world's most powerful forces, from military governments to one of the largest multinational companies in history. Because of their years of organizing efforts, their mastery over a series of international human rights instruments and mechanisms, and the just nature of their demands, the Ogoni constitute a powerful force for social justice in the world and a source of inspiration for countless social movements, human rights advocates and environmental defenders.

Case 2



Residents of the people's settlements in Kenya mobilizing for their rights

Meeting of
the Nairobi
Peoples
Settlement
Network

Human Rights as a tool: grassroots organizing in the urban settlements of Kenya⁶⁸

⁶⁸ This case was developed throughout the course of several interviews with Humphrey Otieno Oduor of the Nairobi Peoples Settlement Network (NPSN), between September 2011 and July 2012.

Human rights situation of low income residents in Kenya

In Kenya, access to and control over land has been deeply interconnected with the ability to participate in public affairs since the colonial period. Under the British-held East African Protectorate established in 1895, large tracts of land were occupied by European settlers. Many Kikuyu, a majority ethnic group, and other tribes living in the fertile central highlands were dispossessed of their lands; the Maasai living in the Rift Valley and Kalenjin who lived in the western highlands faced a similar fate. Under British control, the landed settlers were allowed a voice in government, while Africans were denied a right to participate directly in political affairs.⁶⁹

From 1952 to 1959, the “Mau Mau” rebellion challenged British colonial rule, particularly its land policies. This Kikuyu-led insurrection profoundly shook the established status quo, and provoked fierce repression, causing the death of tens of thousands of Kikuyu. During this period, African participation in the political process increased substantially, and, on December 12, 1963, Kenya achieved its independence. The colonial system of land distribution, however, remained in place. Land in Kenya still reflects the classification established by the British; namely crown land, private land and native reserves. After independence, crown land was termed ‘government land’ and native reserves were called ‘trust land.’ More recently, under the 2009 National Land Policy and the 2010 Constitution, the classification of public land, private land and community land continues to reflect the early colonial scheme.⁷⁰

In 1978, then-Vice President Daniel arap Moi assumed power following the death of President Jomo Kenyatta. Under Moi, opposition movements were heavily repressed. In 1982, the constitution was amended, and the country was declared a single-party state. Following significant domestic opposition and international pressure, this amendment was repealed in 1991. Although this created new political space, the country was saddled with economic mismanage-

69 US Department of State: Background Note: Kenya (May 7, 2012), available at: <http://www.state.gov/r/pa/ei/bgn/2962.htm> (last accessed 7/30/12).

70 Paul Syagga. “Public land, historical land injustices and the new Constitution” available at: www.sidint.net/docs/WP9.pdf (last accessed 5/20/12).

ment, corruption and debt by the time Moi stepped down in 2002. Under the next President, Mwai Kibaki, forced evictions of informal settlements intensified, prompted by a heightened demand for urban lands for development projects that resulted from increased foreign aid, as well as increased rural-to-urban migration.

■ Life in the informal settlements

Increased poverty and hardship in the country's rural areas prompted large waves of migration to the cities. Due to lack of social housing programs, many people made their homes in the swelling informal settlements in the country's major cities, towns and urban centers. Most of the lands where these settlements are located are in hazardous areas under high voltage electrical power lines, near railways, on steep slopes or on the banks of rivers. Other settlements are situated on top of sewer lines or in environmentally contaminated areas.

Overall, the informal settlements lack adequate access to essential services, such as electricity, causing many residents to rely on dirtier and more dangerous fuels to power their homes.⁷¹ Only 22% of residents have water supplied to their homes, requiring 75% to purchase water from kiosks that charge higher prices than those charged to middle and high income households.⁷² Only 1% of residents are served by garbage collection systems, and very few have sewage systems, causing mounds of refuse to line the riverbanks while raw sewage runs down the streets and alleyways in many of Nairobi's settlements.⁷³ Unemployment is pervasive, and at 96 per 1000 live births, infant mortality in the settlements is substantially higher than the national average of 77 per 1000 live births.⁷⁴

These areas are also characterized by high levels of insecurity. Mugging, theft, armed robbery, assault and carjacking are common occurrences, and vio-

71 "UN Habitat and the Kenya Slum Upgrading Programme" UN Habitat (2007), at 8.

72 Urban Sector Profile, UN Habitat (2006) at 8-9 available at <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2791> (last accessed 7/12/12).

73 "UN Habitat and the Kenya Slum Upgrading Programme," UN Habitat (2007), at 8.

74 "The Nairobi Informal Settlements: An emerging food security emergency within extreme chronic poverty," Oxfam GB, Concern Worldwide & CARE International (2009) at 21, available at <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1111015> (last accessed 7/12/12).

lence against women is common.⁷⁵ Most residents of informal settlements also live in permanent threat of being evicted from their homes. Forced evictions in the settlements of Kenya's cities have become an increasingly common occurrence since the early 2000's. Evictions are often carried out en-masse, sometimes aided by men wielding machetes or bulldozers. Sometimes they come at night, and rarely is there alternative housing available for the families that are displaced in these processes.

In the face of increasing reports of mass forcible evictions in the late 1990's and early 2000s, community leaders began to mobilize to defend the rights of the residents of the informal settlements. Activists and human rights defenders in Kenya were viewed by the government with suspicion. They were frequently labeled as "agitators" or "hecklers," and they were often targeted in response to their activities to promote human rights. There were widespread complaints of torture and beatings at police stations following protests, and community activists were periodically assassinated. These incidents were often dismissed by the police as common crime or acts of suicide, which created an environment of impunity in the face of human rights abuses against the urban poor.

75 Urban Sector Profile, UN Habitat (2006) at 16, available at <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2791>. (last accessed 7/12/12). See also Gulyani, Sumila. "Inside Informality: Poverty, Jobs, Housing and Services in Nairobi's Slums," World Bank (2006), at 14 available at http://siteresources.worldbank.org/INTKENYA/Resources/Inside_Informality.pdf (last accessed 7/12/12). and Stephen Brown. "Deteriorating human security in Kenya: domestic, regional and global dimensions" in J. Andrew Grant and Fredrik Söderbaum, eds. *The New Regionalism in Africa*. (Ashgate: Surrey, U.K. December 2003). and "Nairobi: Lawlessness grips the Kenyan capital" in *The Economist*, 10 August 2002.

Early organizing in the grassroots

Kenya underwent a substantial political opening after one-party rule was repealed and the country became a multi-party state in 1991. This led to a significant increase in human rights litigation as well as broad-based mobilization among low-income people to increase their participation in the newly created democratic space. At the time, very few community organizations existed in the settlements and their residents were, generally-speaking, only weakly connected. They seldom made reference to the 1969 Constitution that was in effect at this time. With no mention of economic and social rights and very weak provisions for public participation, the Constitution was largely perceived by these communities as irrelevant to their concerns and demands.

Over the course of several years, several youth from a number of informal settlements became familiar with each other's attempts to organize residents and recognized some issues of common concern. In 2003, a network was formed between eight community leaders, who came together in workshops and forums and developed a strategy and tool to respond to forced evictions using mobile phones. On 10 December 2005, during the celebration of International Human Rights Day, the Nairobi Peoples Settlement Network (NPSN) was inaugurated in the settlement of Korogocho.

At this time, there was a very low level of human rights awareness in the settlements, and most of their residents felt unable to confront the injustices that led to their dismal living conditions. Many people who lived in the settlements lost hope that the conditions affecting their lives could be radically transformed, and they felt too disempowered to try. Following a long history of neglect and marginalization, many had internalized a sense of low social status and suffered poor self-esteem. Often compelled to pay bribes in order to access essential services, the residents of the settlements enjoyed few protections against corruption and abuse of power. With little hope for a better future, some parents neglected to send their children to school or vote in local elections.

At this time, the principal strategy employed by the NPSN was “agitation,” which often consisted of organizing public demonstrations and occupations of public space. It often implied taking to the streets, where their members would

issue denunciations, chant and present a long list of grievances and demands. While their ability to occupy public space was recognizably strong, the demands that were expressed during these actions were often vague. They did not reflect deliberate priorities among issues, and the overall message they conveyed was often not clear. While they used rights language in these actions, they were unable to specify which human rights they were claiming or who was responsible for the fulfillment of these rights. In response, the government either ignored their claims or stated assurances that they were, indeed, complying with their duties, which often left the grassroots leaders without an effective response. Since they were inexperienced in policy advocacy, they relied on public interest lawyers and other experts to conduct advocacy on their behalf.

■ The context evolves

In December 2007, elections were held for the presidency, parliament, and local government seats. The presidential election was marred by serious irregularities, including more than 100% voter turnout in some districts, voter intimidation and allegations of fraud in the tabulation of votes. When the incumbent Mwai Kibaki was declared winner of the presidential election, violence broke out across the country between his supporters and supporters of the opposition candidate Raila Odinga and was incited along both political and ethnic lines. In the post-election crisis, an estimated 1,300 Kenyans were killed and some 500,000 displaced.

The political deadlock was resolved, in February 2008, by a power-sharing agreement brokered by Kofi Annan. The agreement also included a commitment to reforms aimed at addressing the root causes of the violence, including widespread poverty, high levels of unemployment, and the need for constitutional and land reform. A process was then begun which led to the drafting of a new political constitution.

In August 2010, following a national referendum, a new constitution was adopted in Kenya.⁷⁶ The 2010 Constitution reflects a substantial step forward in

76 "News Analysis: Kenyans Approve New Constitution." *New York Times*: available at: <http://www.nytimes.com/2010/08/06/world/africa/06kenya.html> (last accessed 5/23/12).

the recognition of human rights in Kenya. Concerning the right to participation, it states that “all sovereign power belongs to the people of Kenya”⁷⁷ and establishes “participation of the people” as central among the national values and principles of governance.⁷⁸ The Constitution also contains a stated commitment to human rights, including economic social and cultural rights in Article 43. It states that the “general rules of international law shall form part of the law of Kenya”⁷⁹ and includes “human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized”⁸⁰ among the values and principles of governance. Of great significance, it explicitly recognizes the right of every person to the highest attainable standard of health, accessible and adequate housing, adequate food of acceptable quality, clean and safe water in adequate quantities, social security and education, while suggesting that the State will take positive measures to increase access to employment.⁸¹

The adoption of the Constitution was a major achievement for Kenyans and, according to many grassroots leaders and democracy activists, a product of peoples’ struggles, as “people had to push and push and push.”⁸² It also served as a catalyst for many organizations, social movements and grassroots groups to domesticate, utilize and apply the human rights principles enshrined in the new Constitution.

For example, in the face of a rash of mass evictions in 2010, the residents of the settlements of Deep Sea, Mukurukwa Njenga, Laini Saba (a village in Kibera) and Kibagare organized themselves and conducted an assessment of eviction-prone areas. This was done in order to provide officials with a sense of the losses that would be caused if the evictions were to go forward. Articulating elements related to an adequate standard of living, residents gathered information about the affected population, the physical structures, the ability of children to go to school, the effect that an eviction would have on poverty levels, and more. They compiled this information, together with reference to international human rights standards, and presented these to the Offices of the President and the Prime Minister of Kenya.

77 The Constitution of Kenya 1 (1).

78 The Constitution of Kenya 10 (2)(a).

79 The Constitution of Kenya 2(5).

80 The Constitution of Kenya 10 2 (b).

81 The Constitution of Kenya 43 (1).

82 Interview with Humphrey Otieno, May 25, 2012.76 “News Analysis: Kenyans Approve New Constitution.” New York Times: disponivel em: <http://www.nytimes.com/2010/08/06/world/africa/06kenya.html> (último acesso em: 23/5/12)

The Nairobi Peoples Settlement Network and other shack dweller networks of Nairobi came together to develop a “*Public Petition to the Chief Justice to Intervene and Stop the Numerous Forceful Evictions in Various Nairobi Settlements*,” which was presented to the Chief Justice and the Prime Minister on 10 May 2010. The petition noted that the Constitution of Kenya (2010), in Article 37, provides that “[e]very person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.” They proceed to note the troubling human rights impacts caused by evictions in the settlements, which, according to the petition: (i) Render the Petitioners homeless and expose them and their property to insecurity & threats on their persons; (ii) Adversely affect the children’s access to education; (iii) Subject the residents to hygiene related diseases; (iv) Subject the children, the elderly, and persons with disabilities to indignity; (v) Generate internally displaced persons and homeless people; (vi) Disintegrate the family unit; and (vii) Distance the Petitioners, the persons they represent and their families from employment and business opportunities.

They subsequently established the various human rights obligations at stake, making reference to articles in the Kenyan Constitution and several international human rights treaties. The petition called on the government to declare forcible evictions illegal; establish a moratorium on evictions until the Evictions Bill was passed; provide compensation for people who lost their homes to illegal demolitions and abide by international human rights standards in the context of evictions and displacement. The petition concludes with the following statement: “Based on the above references, we hereby urge you to act expeditiously to investigate these allegations against the actors concerned. We are convinced this will also help in unraveling all the other social, economic, historical and governance challenges which have continued to stifle meaningful growth in the informal settlements. Finally, we wish to inform you that failure to respond to these demands may elucidate further public outrage and possible political mass action against both the actors and Office of the Chief Justice.”

Following the presentation of the petition, an order was issued to halt the evictions, and a comprehensive resettlement plan began to be developed. This was no small feat, given the generally low level of awareness amongst the Kenyan population regarding human rights. Longstanding lack of inclusion and few avenues for participation have contributed to a passive attitude, held by many people, regarding political affairs. The organizational, educational and leadership challenge that this implied required strong and broad-based leadership capable of creativity, skillful outreach and the mobilization of people who were struggling to meet their daily needs in the face of desperately inadequate living conditions.

Articulating human rights with local realities

New partnerships allowed the leaders of the Nairobi Peoples Settlement Network (NPSN) to expand their toolbox of options. They developed partnerships with several strong Kenyan organizations, including Hakijamii, Kituo Cha Sheria and Pamoja Trust, as well as international human rights organizations, like Dignity International, Shelter Forum and ESCR-Net. Together with the support of these and other important allies, the NPSN began to make accessible and popularize the human rights framework and support community leaders in applying it to their organizing work.

■ Putting human rights into practice

In community meetings, residents of the settlements would come together to talk about issues of common concern. In the early 2000s, the administration of Kibaki declared that all settlements would be demolished, and widespread mass evictions were being reported on a regular basis. The residents identified the lack of security of tenure as a major factor in their vulnerability. They analyzed the relationship that security of tenure has with access to land, and they reviewed the national budget. Once it became clear that the government was not assigning resources to adequately provide for the well-being of people living in informal settlements, residents often emerged indignant and motivated to take action for change. These meetings also crystallized specific demands for land access with regards to the national budget, including for the resettlement of people affected by evictions and so-called “slum upgrading.”

The NPSN worked to translate human rights standards into language that would be accessible to community members. First, their leaders needed to recognize and address the mindset and perspectives of fellow residents, many of whom are extremely poor and operate primarily within a survival mode, in efforts to satisfy their most basic needs. Effort was and is placed on listening to and helping them articulate their observations and concerns. These conversations often come

with emotion, and as an NPSN leader said, “for us to make an impact, we have to feel it.”

It was a great challenge for NPSN to attempt to organize fellow settlement residents living in impoverished conditions, who face a daily struggle to survive. Therefore, it was important for community leaders to learn the critical balance between when it is necessary to push people, and when it is better to allow them time. “To be a leader, there are certain qualities you need to have. Patience is one of them.”⁸³ Other times, passion is required in order to motivate residents to attend activities and join in collective action to confront their common challenges, when they emphasize that “either we act or we are acted upon.”

The NPSN conducts popular education about human rights, using games, role-playing, symposiums, street theater and other exercises. They facilitate group reflection, where they invite participants to articulate that which they associate with the concept of dignity. After noting each participant’s description, they proceed to identify, together with the participants, those conditions that must be in place in order to achieve this vision. This, the organizers emphasize, is intended to counter feelings of hopelessness, passivity and futility that often characterize the mindset of those living in extreme urban poverty and to inspire a sense that positive change is possible.

In another exercise, the NPSN works with residents to clarify the duty-bearers related to their particular demands. In these conversations, the leaders push participants to distinguish between those problems for which individual residents bear responsibility and those issues which imply the obligations of others. For instance, the NPSN would argue that the responsibility to make the time to visit the health clinic, despite the inconvenience this may represent, is clearly the responsibility of the individual who requires health care. But if there is no clinic available, or if it offers only inadequate services or charges for them, then this would be a violation of the right to health.

Building on these exercises, the NPSN then works with residents to connect their issues with international human rights standards, including articles of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, which relate to residents’ claims for adequate housing, protection from forced evictions, and access to water and essential serv-

83 Interview with Humphrey Otieno Oduor, September 25, 2011

ices. They sometimes draw on the interpretive works of the UN Committee on Economic, Social and Cultural Rights, particularly the framework of availability, accessibility, acceptability, quality, and adequacy reflected in the Committee's General Comments. They have also closely articulated the concerns of residents with articles in the Basic Principles and Guidelines for Development-Based Evictions and Displacement, presented by the former UN Special Rapporteur on Adequate Housing.⁸⁴

Within the framework of these international instruments, the residents then work to define, for example, *what it is* about water, or about the living conditions in the slums, that represents a violation of their human rights from the perspective of adequacy, affordability, etc. They work to identify where the obligation of the state to respect, protect and fulfill human rights is not being complied with and then craft carefully tailored demands and formulate them in a memorandum, petition, or submission. Meanwhile, during these grassroots activities with residents in the settlements, leaders also focus on cultivating new and influential allies. These range from government officials to police officers, the staff of UN Habitat (the United Nations agency dedicated to issues of housing) to assistants to members of Parliament, and many more. When the collective submission from the settlements is prepared, they then present it to the relevant ministry, a member of Parliament, or local government officials. They are always sure to copy their allies in these interventions and encourage them to work within their respective institutions to promote the claims that they are bringing forth.

These efforts, together with the new space granted in the 2010 Constitution, have enabled the NPSN to advocate more strategically and effectively for the human rights claims emerging from the settlements.

84 "Basic Principles and Guidelines on Development Based Evictions and Displacement" UN doc A/HRC/4/18, available at: www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf (last accessed 7/30/12).

Results and lessons learned

Efforts to organize residents in the settlements, raise awareness about their human rights, and mobilize them to take action, have led the Nairobi Peoples Settlement Network to adopt a more complex and, arguably, effective approach to their work.

In their early years, community organizers in the settlements were required to generate ad hoc responses to evictions and other threats faced by their members. These responses often lead to energetic demands for human rights, although these demands lacked substantive content in terms of who was responsible for them and the obligations they entailed. Now, the main areas of work for the Nairobi Peoples Settlement Network are information-dissemination, advocacy and lobbying, capacity-building and leadership development in urban settlements, and networking. To pursue these strategies, the NPSN works in the settlements to provide access to information, ranging from government housing policies to international human rights treaties, in order to “give people the tools of knowledge to agitate for their rights.”⁸⁵ They conduct capacity-building and popular education activities in efforts to organize residents and enable them to more effectively claim their human rights. Building on these actions, they mobilize residents of informal settlements to engage in the development of new laws and policies. They also directly engage with the institutions and authorities where these laws and policies are defined, in order to promote their receptiveness to the input and participation of their member communities.

The NPSN has mobilized fellow residents to engage in what they refer to as people-based advocacy: “effective community mobilization and organizing can lead to genuine democracy; representative, fair leadership; and responsible, collective management of community resources. This approach is based on the knowledge ... that ultimately, real development depends on the people and their ability to take responsibility and increase control over the resources and decisions that directly affect their lives.”⁸⁶

85 From the Nairobi Peoples’ Settlement Network’s mission statement, available at: <http://m.irinnews.org/Report/74026/KENYA-Nairobi-Peoples-Settlement-Network-Interview> and at: <http://www.escr-net.org/docs/i/838925> (last accessed 03/06/13).

86 Profile of the Nairobi Peoples Settlements Network, available at: http://www.escr-net.org/members/members_show.htm?doc_id=838925 (last accessed 7/30/12).

The evolution of their approach — from street protests that issued a long litany of grievances to diverse advocacy tactics that promoted carefully calibrated human rights demands — has resulted in an increased receptiveness to their claims on the part of elected officials and others with the power to influence decisions that will affect the settlements. At the same time, this has also positively influenced the attitudes of the residents that participate in their community activities. NPSN facilitators report that participants often express a sense of hope and a commitment to work to improve their situation, following the activities described above. This signals a departure from the chronic sense of insecurity and hopelessness to which many of them had grown accustomed. Many people, particularly young people, have also indicated a greater interest in taking action to achieve their stated goals following their participation in these exercises.

Organizers in the settlements have increasingly emphasized the interconnection between rights, using arguments related to the right to adequate housing to demand the right to water, and vice-versa. Their strengthened analysis of systemic rights issues has also enabled the NPSN and their communities to address more complex and nuanced issues related to urban development, such as disaster risk in hazardous areas, extra-official forced evictions, unequal treatment between slums and wealthy urban areas, and the ways in which living in informal settlements constitute serious obstacles for residents to realize the right to health, the right to water, and basic human rights. Throughout the process, the NSPN has learned to articulate the real life concerns and demands of their members with a specific and focused set of claims. These claims highlight the fundamental content of the rights at stake, with a focus on all of the conditions necessary to realize a life of dignity. They also attempt to pre-empt efforts by authorities to claim that they have complied while people are still struggling to live a life of dignity. Before, in efforts to promote the right to education, they may have demanded a school, now they also demand chairs, books, teachers, a road to access it, and security around the premises. It is more difficult for the government to silence demands when they are framed around the actual content of the right in question. Similarly, whereas before they would issue a demand for houses, now they frame their claim as a clearly articulated right to land and housing.

One of the main lessons learned from this process in the settlements relates to the question of leadership. Good leaders, according to the NPSN, are those who ensure that the processes they are generating within the settlements revolve not around their own importance, but rather focus on organizing others and enabling them to be actors. A strong organizer, according to the NPSN, is about

collecting the interests and perspectives of people in a community and bringing those ideas to life. He or she has done a good job when the members of the community begin to take responsibility for their own situation, take the initiative to organize themselves, and develop new leaders. “You can only support, you can only give advice. But you are not at the center.”⁸⁷ The ability to build and delegate leadership and to organize people so that they depend less on leaders from outside their community is a key quality of leadership that has been stressed throughout the experience of the NPSN.

The struggle for rights to housing and land in Nairobi’s urban settlements requires sustained effort by people who spend an inordinate amount of time just dealing with the basic requirements of daily survival. In order to stimulate their participation and maintain collective action, it is important to build relationships and delegate leadership over time. For this, consistency is a virtue. This requires the regular presence of leaders, who remember the arguments that residents had offered in prior conversations and return to them again on subsequent occasions. Being consistent enables trust to be built, which is critical in any organizing effort that is to be effective and last over time.

Sometimes organizers will facilitate actions toward some easier victories, so-called “quick wins,” in order to provide encouragement and the possibility that collective goals may be achieved. The need for encouragement and hope, therefore, has been recognized as central for grassroots-driven social change to secure human rights. In addition, people will continue to participate in a collective effort if they see that their views are reflected in the common statement that is emerging. If leaders make unilateral decisions about which inputs to include and which to exclude, they run the risk that some of the participants will become disenchanted or withdraw from the process. Decisions regarding a collective process (such as drafting a message to a decision-maker) therefore must be done in a way that is inclusive and transparent and ideally should be reached by consensus. This is the best way to ensure that the outcome is perceived as legitimate and enjoys popular support.

The experiences of the NPSN also caution against working in ways that might foment competition and divisions between community members. A particularly complex issue is funding, and leaders of the NPSN have learned that, when financial resources enter into an organizing process, they will often under-

87 Interview with Humphrey Otieno, May 25, 2012.

mine efforts to create a sense of unity and generate a spirit of common cause. Another risk is the tendency for some social movements to grow excessively dependent on NGOs, to the point where they lose sight of their own agendas. Social movements need NGO allies, but it is important for a movement to maintain its own philosophy, aims and strategies, even within close partnerships with other civil society organizations.

Finally, the organizers working in the informal settlements have learned the great value of networking and linking with other social movements. NPSN leaders emphasize the importance of beginning locally with this outreach. This is not intuitive to all social movements, some of whom are compelled by the experiences of other movements based far away. But, according to the NPSN, generating linkages and ties of solidarity with other organizations and movements based locally is critical to accessing the support required to push a proposal into the realm of reality.

The residents of the informal settlements of Kenya have developed creative ways to use human rights as a tool in their work to organize and mobilize residents to claim a right to land and the related rights of housing, access to water and other essential services, and the conditions that are necessary for their members to be able to live in dignity. In the settlements, a right to land implies a range of rights that an individual or community is entitled to claim. Land represents a space where people have the basis to claim the right to access essential services and protection against forcible displacement and dispossession. In Kenya and elsewhere, the right to participate in public affairs, including having a meaningful voice in decisions impacting one's life, often center on land, and access to land and public space in turn impacts one's ability to participate. As is the case in many situations, land in the settlements is about the ability of people to live in dignity. Finally, the struggle for land is the stage upon which low-income people are progressively coming together to claim human rights and make them real in practice.

Case 3

Area where illegal logging has taken place in the territory of the Maró indigenous people



Training activity in the territory of the Maró

The Plataforma DHESCA and the human rights National Rapporteurs in Brazil

88 This case was developed in close collaboration with Jackeline Danielly Freire Florêncio, executive secretary of The Plataforma DhESCA (Brazilian Platform for Economic, Social, Cultural and Environmental Rights).

Human rights and land access in Brazil

The history of Brazil does not begin in the 16th century, with the Portuguese and Spanish invasion. Before the “discovery” of Latin America by the Europeans, there were nearly five million native people living in the territory that would come to be known as Brazil, a country that would become very rich and characterized by extreme social inequality.

In the 16th century, Portugal divided their South American colony into thirteen large portions of land that were reserved for the Portuguese nobility. These territories were not vacant, but the presence of a large number of indigenous peoples who used and occupied these lands was not recognized by the Crown. As lands were allocated among the privileged few in this early period in order to facilitate the perpetuation of their wealth, the seeds of modern social and economic inequality were sown in Brazil.

During the colonial period (1500-1822), Portuguese land policy promoted the establishment of large haciendas with plantations intended to furnish the Crown with sugar and sugar cane derivatives. Land was also allocated to facilitate logging and the extraction of minerals (silver and gold, primarily), among other natural resources. There were also substantial incentives for decreasing the presence of indigenous peoples on these lands, whose territories began to be invaded by these large productive projects. At that time, indigenous peoples were forced to choose between death or a life of slavery, the situation also faced by the people who had been brought from Africa to work as forced labor.

In 1850, following Brazil’s independence, a new legal regime was adopted. While, between 1500 and 1849, access to land was awarded by the Crown to individuals by means of *capitanias hereditarias*,⁸⁹ following independence, land ownership was only possible by means of its purchase and sale. Prior to 1849, it was

89 *Capitanias hereditárias* were a system of territorial colonization adopted by the king of Portugal, D. João III, in 1534. The system consisted of dividing the Brazilian territory into large land-holdings and granting the right to administer these properties for free to private individuals. Those who received these grants were free to pass them along to their heirs, who had the obligation to colonize, protect and administer the territories and exploit the natural resources (animals, trees and minerals), or face losing the concession.

only those people who had good contacts among colonial officers who could own land; whereas, after this point, land was reserved for people who had the capacity to pay for it.

The new legal framework of 1850 impeded peasants, freed slaves, indigenous people, poor families and other economically vulnerable groups who rely on land in order to live from becoming formal owners of their lands. It was at this time, following almost 300 years of slavery and extermination of countless indigenous people, that a peasant class emerged in Brazil. The formation of the peasantry, together with the growing possibility of the abolition of slavery, were the main reasons behind the adoption of the Land Law of 1850. This new legal framework continued to allow the appropriation of lands by large landowners and exclude all other people from the formal land tenure system in the countryside.

It was only after the adoption of the Federal Constitution of 1934 that a right to land (for people other than the elites) was legally recognized in Brazil. In that Constitution, indigenous people were guaranteed a right to land, although the framework had assimilationist characteristics that sought to compel them to integrate into a Western civilizational and cultural model. While recognizing indigenous land rights, the Constitution failed to address their prior experience of being expelled from their ancestral territories and the centrality of their lands to their physical and cultural reproduction. During the first half of the 20th century, the laws in Brazil made it almost impossible for peasants to have access to the formal recognition of ownership over their land.

The first mention of agrarian reform and the need to counteract the increasing concentration of lands only appears in the Brazilian legal framework in 1964, when a military junta took power following a *coup d'état* and promulgated the Land Statute. This move is widely understood as a strategy to calm the growing agitation of social movements who denounced the continued preferences given to the country's largest landowners and demanded a right to land for the rest of the society. These demands had achieved a robust degree of political expression. However, the elimination of large landholdings through far-reaching agrarian reform was not implemented, and the concentration of land – at the expense of indigenous peoples peasants and *quilombolas*⁹⁰ – was perpetuated.

90 Quilombolas are an ethnic/racial group that descend from black ancestors and have their own history, specific relationships with their traditional lands and a long experience of oppression by the wider society.

In was only in 1988, following the end of the military dictatorship (1964-1985), that a new Federal Constitution was adopted that expressly recognized the right of indigenous peoples and *quilombolas* (people of African descendants) to control their traditional lands, and agrarian reform was adopted as a policy of the State. Yet, notwithstanding the official commitment to this end, the lived experiences of rural peoples continue to demonstrate a serious gap in implementation, in terms of access to land in Brazil for peasants, indigenous peoples, quilombolas and other vulnerable groups

■ Land concentration in Brazil today

At present, Brazil is the sixth largest economy in the world with a GDP of \$2.4 trillion in 2011. At the same time, approximately 17 million people, 11.17% of the population, live below the poverty line. In 2006, 1% of landowners held about 45% of total arable land, while 37% of landowners own only 1% of arable land in the country. According to the Agricultural Census of 2006, Brazil ranks second in land concentration globally, surpassed only by Paraguay. In 2006, the degree of land concentration was similar to indicators from 1985 (0.857) and 1995 (0.856), which demonstrates the serious lack of progress in democratizing land access and the persistence of an unacceptable concentration of land ownership in Brazil.⁹¹

Access to land is necessary to ensure social justice, eradicate extreme poverty and reduce social inequalities. This has been the goal of agrarian social movements in Brazil, who have advanced the land reform process. In 1985, there were 67 land reform settlements underway, with 117,000 families being settled on a total of 9.8 million hectares of land. By the beginning of 2012, there were 8,792 such initiatives, with 85 million hectares of land being allocated to 921,000 families. In the period following the passage of the 1988 Constitution, federal conservation areas that today contain 75,458,800 hectares of land were created, as well as 50,945,700 hectares of state conservation areas. A total of 109,741,229

91 CIT Agricultural Census, available at: http://www.ibge.gov.br/home/estatistica/economia/agropecuaria/censoagro/agri_familiar_2006/familia_censoagro2006.pdf (last accessed 7/27/12).

hectares of indigenous territories and 987,935 hectares of *quilombolo* territories have also been titled and registered. Yet not withstanding this notable progress, land concentration in Brazil has persisted.⁹²

The predominant model of agricultural production in Brazil, which is driven by agribusinesses and large export-oriented production, generates a concentration of wealth and land that contributes to increased social inequality. An alternative would be to promote the development of family farming, including land-access policies. However, the Brazilian government has persisted in promoting a type of development that revolves around large corporate enterprises.

While the Brazilian government has given lip-service to the notion of land reform, in practice the State has not accepted that the democratization of land access must be secured in the interest of reducing social inequalities. Preferring to avoid confrontations with either the old agrarian elite or the transnational corporations that operate across the national territory, the actions of the government have usually tended to facilitate their enrichment, even while this has come at the expense of the majority of the rural population. Therefore, even while Brazilian legislation recognizes rights of land access for indigenous, *quilombola*, peasant and other rural groups and declares the need for land reform, the economic interests of the largest property owners limit the possibility that the rights of these groups may be fully realized in practice.

The Brazilian state has consistently allocated insufficient resources and political will to realize real agrarian reform and the titling of the ancestral lands of indigenous and other rural peoples. The government agencies that are responsible for implementing the policies are in a situation of deterioration and lack the objective conditions necessary to implement the rights of people living in the countryside. Many public resources (ranging from fiscal incentives to international negotiations) are assigned to support the production by large landowners and ensure access to markets for the commodities produced at a large scale, as opposed to promoting the production of smallholders or undertaking measures aimed at transcending social, economic and cultural inequalities within the country.

92 Census data from 2006 indicates that family farming represents 84% farms, but occupies only 24.03% of cultivated areas in Brazil. These small farms operate with approximately 10 times less income than the 16% of large-scale farms. Yet, family farming produces about 60% of the food consumed in the Brazilian domestic market and generates more jobs per hectare than do agribusinesses.

■ The link between social inequality and land in Brazil

Social movements have historically played a crucial historical role in promoting and sustaining a political agenda that recognizes access to land as a human right. Their struggles to prevent further land concentration and deepening social inequality have taken place in a scenario in which the State is invested in perpetuating the existing structure of unfair access to land. But the social movements of Brazil are not alone in their emphasis on land as the means to promote greater equality and social justice.

Internationally, the UN Food and Agricultural Organization (FAO) adopted, in 2011, voluntary guidelines with the objective of promoting land governance and the democratization of land access as a necessary route to overcome serious social inequalities. According to the FAO,

“The eradication of hunger and poverty, and the sustainable use of the environment, depend in large measure on how people, communities and others gain access to land, fisheries and forests. The livelihoods of many, particularly the rural poor, are based on secure and equitable access to and control over these resources. They are the source of food and shelter; the basis for social, cultural and religious practices; and a central factor in economic growth.”⁹³

In addition, in 2010, the UN Special Rapporteur on the right to food, Olivier de Schutter, also explicitly recognized that to reduce inequality people require access to land. He stated: “Access to land and security of tenure are essential to ensure the enjoyment of not only the right to food, but also other human rights, including the right to work (for landless peasants) and the right to housing. This fact led the former Special Rapporteur on the right to adequate housing to conclude that the Human Rights Council should ‘ensure the recognition in international human rights law of land as a human right.’ The present report confirms that conclusion, while taking the right to food as its departure point. It describes the increasing pressures on land. It then discusses the right of land users to be protected in terms of their existing access to natural resources, particularly land. It also argues in favor of ensuring more equitable access to land.”⁹⁴

93 FAO. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, iv, PREFACE

94 Report of the Special Rapporteur on the right to food, A/65/281, p. 4

These statements indicate something that social movements in Brazil have maintained for years: the corporate model of agricultural production in Brazil generates the concentration of wealth and land and contributes to increasing levels of social inequality. Alternative development approaches, such as support for family farming and diverse forms of traditional land-use should be seriously explored and should benefit from supportive public policies.

It is in this context that the Plataforma DhESCA (Brazilian Platform for Economic, Social, Cultural and Environmental Rights) became an important actor in the struggle to overcome social inequalities and promote the economic, social, cultural, and environmental rights of people who rely on land for their livelihoods. In the sections that follow, the work of the Platform is detailed, particularly their role in creating and advancing National Rapporteurs on Human Rights, in an effort to identify the way that this mechanism has been utilized to advance human rights and the struggles for access to land in Brazil.

Plataforma Dhesca (The Brazilian Platform on Economic, Social, Cultural and Environmental Rights)

In order to appreciate the strategic contribution of the Plataforma and its human rights mechanisms in Brazil, the discussion above must be complemented by a description of the way that the Plataforma works.

The Plataforma DhESCA is a national network composed of 34 human rights organizations, including social movements and other civil society organizations, that work to further the promotion, protection and fulfillment of economic, social, cultural and environmental rights. Its main objective is to build and strengthen a culture of human rights through the development of strategies that promote the enforceability and justiciability of human rights through constitutional reform and the participatory implementation of social policies. To achieve these objectives, the Platform pursues three main areas of work: monitoring human rights in Brazil, regional integration and National Rapporteurs on Human Rights.

One of the main responsibilities of the Rapporteurs is to investigate and make public instances of human rights violations and to recommend measures that could effectively address them. This work is intended to contribute to the search for a solution to local problems while, at the same time, generating new actions to support the resolution of similar problems in other localities in the country. The National Rapporteurs call attention to the struggles of social movements, but they also bring a human rights perspective to their claims and promote a recognition that the struggles for land access in Brazil are, effectively, struggles for the realization of a range of human rights.

Based upon complaints sent by local organizations, associations and social movements, the Rapporteurs, who focus on different thematic areas, visit places where human rights violations have been committed, investigate the complaints received, publish reports with recommendations to governments and the private sector, and monitor compliance with their recommendations.

It is important to underscore that the Rapporteurs are not intended to be responsible for resolving the specific problems of each community or Brazilian social group where missions are carried out. They serve more as a catalyst for technical, theoretical and political actions taken by local governments, in order to empower them to fulfill their human rights obligations. The National Rapporteurs should not be understood as replacing grassroots human rights advocacy – on the contrary – they are intended to build upon their demands while enhancing the capacity of local governments to realize human rights. They often engage in human rights education, while, at the same time, they also learn from the local realities that are brought to their attention.

The Rapporteurs work in the specific themes of education; the environment; sexual and reproductive health; right to the city, and land, territory and food, while taking into account the fundamental, universal and indivisible nature of human rights. They also highlight important issues in the country related to race, class and gender. Inspired by the experience of the UN Special Rapporteurs, the Project of National Rapporteurs on Human Rights was founded in 2002, in recognition that Brazil lacked a sufficiently powerful mechanism for monitoring respect, protection, and fulfillment of human rights.

■ The work of the National Rapporteurs

In order for the work of the National Rapporteurs to be politically accepted, they must establish relations with the public offices of the government that are concerned with the realization of human rights, such as the Federal Public Ministry, as well as international organizations such as the UNDP or UN Women. Their perceived legitimacy is also bolstered by their selection by a council comprising civil society organizations, government offices and international organizations.

The main responsibility of the Rapporteurs is to investigate and make public situations of human rights violations and to recommend measures to effectively address them. They monitor cases and take part in public hearings and meetings with public authorities, and other compliance-related activities. The Rapporteurs also work to develop a systemic analysis of the types of human rights violations related to each topic, with an emphasis on the interdependence and indivisibility of rights. By identifying trends and patterns regarding human rights, they con-

tribute to promoting the necessary remedial interventions, while creating opportunities to shape public actions to address broader trends and challenge the structural causes that lead to violations of human rights.

Each Rapporteur begins their two-year term with a planning workshop where issues and cases are identified. Given the wide range of human rights violations in Brazil, it is not possible to examine each of them in detail, but the Rapporteurs also attempt to carry out some advocacy work on cases that are not part of their missions. Based on the complaints received from local authorities, social movements, organizations and networks, the Rapporteurs evaluate the main types of human rights violations in each region. Specific cases are chosen that contribute to the overall assessment of the situation of human rights violations in each thematic area. The cases selected by the Rapporteurs usually become the key examples in the media and public debate regarding the human rights violations that occur throughout the country.

From the identified priorities for action, the Rapporteurs prepare missions to sites where human rights violations are alleged to have occurred. As part of each mission, a public hearing provides a platform for human rights defenders to address the local issues relevant to them and demand action by public authorities in attendance. Efforts are made to ensure that, by the end of the hearings, agreements are outlined that address the human rights violations that took place.

In close collaboration with grassroots groups and social movements, Rapporteurs develop a descriptive and analytical report of the situations they encounter, which will later be forwarded to the competent public authorities. These reports are considered important instruments for monitoring the compliance of the State *vis-à-vis* the commitments they made to the local communities related to the issue under consideration.

Currently, one of the principal areas of focus for the work of the Rapporteur on Human Rights to Land, Territory and Adequate Food is to expose human rights violations that stem from the imposition of a development model that fails to further social justice. This Rapporteur has repeatedly established that one of the main obstacles to the ability of peasants, indigenous peoples and other rural groups to realize their human rights is related to the model of economic production and land use promoted by the Brazilian State. The case that follows offers an example of the problems faced by many indigenous peoples in the Amazon region, whose efforts to achieve recognition of their land rights has confronted a major challenge in the form of the expanding agribusiness frontier.

The right of the Maró indigenous people to land and territory in the Brazilian Amazon

The National Rapporteur on the Human Right to Land, Territory and Food has played an important role in advancing the human rights of the residents of Gleba Nova Olinda, located in the County of Santarém, State of Pará, in the Brazilian Amazon.

The disputed area is about 87,500 hectares, officially public land belonging to the state of Pará. This area is occupied by fourteen communities living near the banks of the Amazon river, three of which are indigenous communities, whose livelihoods depend mainly on gathering products from the forest, fishing, hunting and family farming. They require an intact forest in order to sustain their traditional way of life, but there exists strong economic pressure from logging, soybean cultivation, expanding livestock operations and mining. This has led to a growing conflict over the territories in question.

It is important to note that the economic activities threatening these communities represent an intense conflict over opposing development models that has spanned the entire Brazilian Amazon, between the traditional life of local populations and a model of “development” that is closely tied to the interests of large corporations and often Brazilian elites. Amazonian communities have long fought for the creation of conservation projects, land reform settlements and the demarcation of indigenous lands as a means to defend their traditional way of life from encroachment by these megaprojects. These strategies have aimed to limit the allocation of land for the extraction of expensive wood, soybean crops, mining and large-scale livestock breeding.

In Gleba Nova Olinda, the local populations have suffered major impacts from so-called development projects, due to the Brazilian State granting many logging concessions. Adequate monitoring of these impacts has seldom been carried out, and the land rights of all of the area’s residents have not been recognized. Many companies have partnered with the government to promote what is referred to as sustainable wood extraction in Gleba Nova Olinda, while communities complain

that logging companies retrieve wood in quantities well beyond permitted amounts and in areas that have not been authorized for logging.⁹⁵ These logging concessions have increased food insecurity among the local population, since logging renders large forested areas off-limits for the traditional activities of food production or procurement, including hunting, gathering and fishing, while causing environmental damage that further hampers the area's productivity. This situation regularly pits members of the communities against loggers, which often leads to violence.

These concessions are frequently awarded without the free, prior and informed consent of indigenous peoples, even though they involve lands that they claim as their own. In addition, notwithstanding the legal requirements that logging be managed sustainably, the profit motive behind these activities often results in far more old-growth wood being extracted than the legal limits permit. The construction of infrastructure for the extraction of wood, accommodations for loggers and the use of heavy machinery also result in serious environmental impacts that constitute obstacles to the ability of local communities to access food. In essence, the development model embodied by the logging concession was imposed in direct contradiction to the traditional forms of land use, natural resource management and livelihood pursued by communities living in the area.

The Rapporteur's intervention began in 2009, after several complaints were forwarded by the Movement in Defense of Life and Culture in Arapiuns River (MDVCA). The complaints stressed that local leaders were suffering severe abuses, including the criminalization of activities intended to defend their lands and way of life. It was also reported that the Brazilian government acted with great delay to establish the territorial limits of the Settlement Project of Vista Alegre and the demarcation of the indigenous lands of the Maró, both located within the area called Gleba Nova Olinda.

Recognizing this as an intense social conflict, emblematic of many of the problems related to the demand for land rights in the Amazon, the Rapporteur decided to intervene directly. The Rapporteur established a closer dialogue with local movements and began collecting information in order to prepare the first mission to the conflict area.

According to information gathered by the Rapporteur, the situation was extremely grave, and tensions were quickly rising. About 25 days before the first

95 Movement in Defense of Life and Culture in Rio Arapiuns.

mission, approximately a thousand people from the affected communities blocked the passage of a raft containing illegally harvested wood from Gleba Nova Olinda. This action was taken, according to spokespeople from the local population, in response to continued inaction by public authorities in response to their demands.

The Rapporteur initiated communication with the local governments in the lead-up to the mission. Together with organizations and social movements in the area, the Rapporteur scheduled meetings with the main public authorities responsible for guaranteeing the rights of the local population. The Rapporteur also invited them to participate in a public hearing.

From November 4-9, 2009, the first mission took place in a tense atmosphere, following the recent obstruction of the raft that was removing wood from Gleba Nova Olinda. The Rapporteur's activities began with a visit to the conflict area, where local authorities were present. This visit helped clarify the main disputes and assisted in the development of a strategy of action for the following day's mission.

During the mission, hearings were held with each agency responsible for carrying out the actions demanded by the affected communities, and the Rapporteur presented recommendations to each of these authorities. Everybody was invited to the public hearing held on the last day of the visit. However, it was clear that the problem faced by local movements would not be overcome only through specific actions by local government agencies. Public authorities lacked the tools to meet their demands, particularly given the lack of political will at the level of the central government.

The mission of the Rapporteur had an important role in raising awareness among the authorities and the wider society and highlighting connections to the international human rights framework. Upon learning these findings, the residents of the area, tired of daily abuses and ongoing impunity, were outraged with the ineffectiveness of the State in defending their rights. In an act of frustration and protest, a group of local people proceeded to set fire to the rafts with the wood taken from Gleba Nova Olinda.

Almost two years after the first mission, the Rapporteur received information that human rights defenders were suffering attacks against their lives and that logging concessions in Gleba Nova Olinda had increased. Faced with these new allegations, the Rapporteur undertook a new mission to monitor the follow-up recommendations previously issued to the public authorities. That mission

was carried out from August 14-17, 2011. On this mission, the Rapporteur deepened the analysis of the interconnected and interdependent nature of human rights; and alleged violations of the right to education and right to health were also evaluated.

During the follow-up mission, it was observed that the State has taken few steps to fulfill the demands of the community or the recommendations from the prior mission. It was clear that most of the local public authorities had an interest in resolving the situation but lacked the means to do so. It was also observed that those public authorities, who indicated a greater interest in contributing to the realization of the rights of local people, were also those who were less affiliated with the political decisions of the current national government, as in the case of federal prosecutors. This reinforced an understanding of the structural nature of the problems faced in the area, and allowed the Rapporteur to argue that the problems experienced by local people represent a systemic pattern and not an isolated reality.⁹⁶

96 Second mission's report, available at: http://www.dhescbrasil.org.br/index.php?option=com_content&view=article&id=500:2011-terra-missao-terra-indigena-maropa&catid=135:relatorios&Itemid=160 (last accessed 03/07/13).

Results and lessons learned

An important contribution of the work of the Rapporteurs was to locate wider political and economic factors driving human rights violations in Gleba Nova Olinda, within the broader context of human rights issues in the Amazon region. In this way, the actions of local groups and the Rapporteur, together with public authorities, assumed a larger public quest for the fulfillment of human rights. The issue was addressed as a conflict, among other things, over the logic of “development” carried out in the area.

This strategy debunked any notion that these problems were just bureaucratic and isolated, which had prevented efforts to position the debate within a wider structural framework. It made visible the fact that the largest economic actors tend to determine the priorities for the State, under the guise of supporting local development. From the information that was collected and analyzed by the Rapporteur, it was possible to demonstrate that the Brazilian government favors a model of “development” for the Amazon that is incompatible with human rights, particularly the right to land, territory and food.

The work of the Rapporteur serves to position the challenges faced by local communities within the context of human rights struggles. It illustrates that the central problem facing affected communities is not necessarily a lack of public policies, but rather the larger “development” model that guides the actions of the State at the expense of local livelihoods and human rights. This is particularly the case in the Amazon region, whose abundance of natural resources has made it a target for megaprojects such as the Belo Monte hydroelectric dam or the large mono-crop plantations that produce soy and other commodities for export. In this respect, the work of the National Rapporteurs in Brazil helps bring challenges like the ones faced by the Maro indigenous community into the larger context of development models and priorities, while establishing clearly the lack of benefits that these market-based mega-projects yield for local populations.

The model of development promoted by the Brazilian State focuses on the generation of income. But this income is extremely concentrated, largely unavailable to local communities, and ultimately worsens the human rights situation of affected communities. The biggest beneficiaries of the logging, soybeans, mining and livestock projects in the Amazon are usually just a few large corporations.

The local population is left to contend with deplorable working conditions and environmental destruction.

The Maró communities have maintained that the region's development should not be tied to the movement of large sums of money and merchandise. The Rapporteur reinforced this claim, as well as the argument by many affected communities that their traditional way of life should be encouraged and guaranteed by the government as the best means to pursue sustainable development in the region.

Although a structural solution to the problems faced in Gleba Nova Olinda – as well as much of the Amazon—is still distant, some progress has occurred.

FUNAI, the organization responsible for registering indigenous lands in Brazil, published (on October 10, 2011) its recommendations that the Maró indigenous land be recognized and demarcated. In addition, following the first mission of the Plataforma DhESCA to the region, police made one of the largest seizures of illegal logging in Brazil's history, about 100,000 cubic meters of hardwood. Finally, the largest logging company, called Rondobel, stopped operating in the region of Gleba Nova Olinda. This also resulted in a significant decrease in the assaults against local human rights defenders who were fighting for the demarcation of indigenous land. The company has since formally withdrawn lawsuits against local leaders, in which the company sought court convictions for public demonstrations against the company.

Through the activities developed by the National Rapporteurs on Human Rights in Brazil, it is possible to build legitimate political space necessary for interventions to promote human rights and the improvement of public policies. Through the Rapporteurs' work, several communities, organizations and social movements were able to recognize the root cause of their problems and identify them as human rights violations.

The Rapporteurs are valuable instruments to address the large number of complaints of human rights violations in Brazil, analyze their systemic nature, and identify possible solutions. Their work represents a significant contribution to the protracted struggle over the most appropriate model(s) of development for Brazil, while advancing the ongoing struggle to overcome deeply entrenched structural inequalities.



Case 4

The development and adoption of the declaration on the rights of indigenous peoples⁹⁷

Kofi Annan and representatives of indigenous peoples commemorating the adoption of the Declaration on the Rights of Indigenous Peoples

⁹⁷ This case was developed throughout the course of several interviews with Joji Cariño of Tebteba, the Indigenous Peoples' International Centre for Policy Research and Education, between November, 2011 and March, 2012.

Human rights and the rights of indigenous peoples

Indigenous peoples have a profound social, cultural and spiritual relationship with the lands and territories that they have traditionally occupied. At the same time, their rights to those lands have often been ignored in decisions that bear serious implications for the people who live there.

The territories of indigenous peoples are often places where natural resources are found, and over time. There have been increasing incursions into the lands of indigenous peoples by mining projects, large dams, logging companies and other activities. “Economic development” has increasingly been promoted by governments who often facilitate the acquisition of indigenous peoples’ lands for large projects. As the demand for energy and other commodities from the Global North, emerging economies and cities everywhere has intensified, the extractive frontier of the global economy has advanced. More and more indigenous communities have been dispossessed of their lands and had their way of life disrupted, while financiers and an increasing number of large transnational corporations have made substantial profits. In the face of powerful economic incentives, it became increasingly clear during the last few decades of the 20th century that indigenous communities lacked adequate protection of their rights and that this should be a concern of the international community.

Transnational corporations were (and still are) involved in many of these projects being carried out on the lands of indigenous peoples. In the face of this pattern, indigenous leaders began to conclude that these transnational forces and their host and home governments “require international standards, not just local solutions.”⁹⁸ It was, in great part, a result of this realization that prompted the emergence of a global movement for the rights of indigenous peoples in the late 1970s and 1980s that aimed to overcome years of discrimination and marginalization and establish the conditions necessary for indigenous peoples to have the ability to promote their own development agenda.⁹⁹

98 Interview with Joji Cariño, October 18, 2012.

99 Presentation by Joji Cariño during the third Solidarity Visit and Human Rights Mutual-Learning Workshop of ESCR-Net’s Social Movements Working Group, Brazil, November, 2010.

The challenges to attaining this vision were not insignificant. Indigenous leaders observed that there were serious gaps in the protection of indigenous peoples' rights, due in great part to a confusing and contradictory legal framework that enabled companies and governments to seize the lands of indigenous peoples and exploit their natural resources without their consent. They noted that indigenous peoples were regularly denied the ability to participate in decisions that would affect their lands and territories, while being excluded from any benefits. Accordingly, they concluded that the international norms and standards relating to the rights of indigenous peoples – particularly as they relate to their lands, territories and natural resources – must be strengthened within the formal system of international law.¹⁰⁰

As this movement was getting underway, the availability of mechanisms to ensure the protection of the rights of indigenous peoples by the United Nations and the international human rights system was almost nonexistent, and protections awarded to indigenous peoples were very weak and ad hoc, at best. Indigenous peoples have traditionally been treated as invisible and voiceless within treaties and in the development of international law, which have consistently disregarded their particular relationship with their lands and territories. In the context of decolonization and the Cold War ideological struggle, the overriding policy emphasis on a liberal (individualist) notion of property rights, as well as the often-invoked principles of sovereignty and territorial integrity, little room remained to address the concerns and claims of indigenous peoples. When their issues were addressed internationally, this was usually by mechanisms established to promote the rights of minorities, workers and other groups, rather than via an instrument for indigenous peoples.¹⁰¹

In 1957, in response to widespread complaints of forced labor and discriminatory practices against indigenous peoples, the United Nations' International Labor Organization adopted Convention #107: "Indigenous and Tribal Peoples Convention." This was an important first step in establishing international recognition of indigenous peoples' rights. At the same time, both the process and the

100 Standard-Setting Activities: Evolution Of Standards Concerning the Rights of Indigenous People: Working Paper by the Chairperson-Rapporteur, Mrs. Erica-Irene A. Dae, on the concept of "indigenous people" (UN Doc. E/CN.4/Sub.2/1986/7 Add. 4).

101 Claire Charters and Rodolfo Stavenhagen, eds. "Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples" (Copenhagen, Denmark: International Work Group for Indigenous - Affairs, 2009).

content of this convention were problematic. First, indigenous peoples were not included in its development or negotiation. Second, ILO #107 has widely been perceived as paternalistic and assimilationist. Its efforts to promote equality between indigenous and non-indigenous people centered on the need for indigenous people to agree to abandon their particular traits and characteristics, which distinguished them as peoples.

Following the adoption of this convention, it became increasingly clear that indigenous peoples needed an instrument that was negotiated by indigenous peoples, themselves, as rights-holders. This instrument would need to respect the distinct characteristics of indigenous peoples and recognize the unique arguments regarding their rights, as well as the obligations of states towards them.¹⁰²

102 Victoria Tauli-Corpuz. "How the UN Declaration on the Rights of Indigenous Peoples Got Adopted," available at: <http://www.tebtebba.org/index.php/all-resources/category/20-un-declaration-on-the-rights-of-indigenous-peoples> (last accessed 7/30/12).

A space for indigenous peoples rights on the international agenda

Throughout the 1960s, organizations of indigenous peoples in the Americas began to call for the human rights system of the United Nations to address the particular issues facing indigenous peoples. Key among their concerns were obstacles to accessing and using the lands that they had traditionally occupied.

In 1971, the Economic and Social Council (ECOSOC) authorized the Subcommittee on Racism, Racial Discrimination, Apartheid and Decolonization to undertake a study on “the problem of discrimination against indigenous populations.” During the height of the Cold War, there was little international space for the indigenous rights agenda. The United Nations Human Rights Commission was only marginally concerned with the rights of minorities, and the issues facing indigenous peoples were mainly subsumed within the “minority rights” framework. At this time, organizations and allies of indigenous peoples began to intensify efforts to establish contact with ambassadors and garner the attention of States to their plight. In September of 1977, the NGO Subcommittee on Racism, Racial Discrimination, Apartheid and Decolonization held an International NGO Conference on Discrimination Against Indigenous Populations. Some 400 people participated, including approximately 100 indigenous representatives (most of whom were from the Americas). In this gathering, the delegates produced a declaration calling for the creation of a UN body to study the issue of the violation of the human rights of indigenous peoples.¹⁰³

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities eventually responded to these demands and mandated a study that was later presented in 1986 by the Special Rapporteur of the Sub-Commission, Jose R. Martinez Cobo. In the landmark “Study on the Problem of Discrimination against Indigenous Populations,” Martinez Cobo underscored the particular relationship that indigenous peoples have with their lands and recommended

103 Victoria Tauli-Corpuz. “How the UN Declaration on the Rights of Indigenous Peoples Got Adopted.” Available at: <http://www.tebtebba.org/index.php/all-resources/category/20-un-declaration-on-the-rights-of-indigenous-peoples> (last accessed 7/30/12).

that the United Nations establish a body to address issues affecting the ability of indigenous peoples to realize their human rights.¹⁰⁴ By means of this study, the indigenous movement was able to open space for their human rights claims to begin to be addressed by the intergovernmental system.

In 1982, the Human Rights Commission established the Working Group on Indigenous Populations (WGIP) composed of independent experts mandated to review developments related to the rights of indigenous peoples and to contribute to the development of international standards. In its earliest stage, the meetings of the WGIP were focused on localized situations of abuse and served mainly as a space for indigenous groups to air their grievances and share their testimonies. This focus continued to evolve, however, pushed in great part by calls from the Indigenous Peoples Caucus in 1985 to engage in the development of international standards. Victoria Tauli-Corpuz, executive director of Tebtebba based in the Philippines, a highly respected indigenous leader from the Kankanaey Igorot, and former Chair of the UN Permanent Forum on Indigenous Affairs, has explained: “The WGIP provided an opportunity for us, indigenous peoples, to come together not just to make statements at the Working Group but to consolidate our own movement at the global level.”¹⁰⁵

In 1989, the International Labor Organization adopted Convention #169 (ILO #169). Considered to be a landmark for efforts to promote indigenous rights, ILO #169 recognized the right of indigenous peoples to be consulted, to participate and “to decide their own priorities for the processes of economic development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use...” This Convention also recognized explicitly the particular relationship between indigenous peoples and their lands and the relevance of this relationship to their ability to survive both economically and culturally.¹⁰⁶ ILO #169 represented a substantial landmark in the recognition of the human rights concerns that were expressed by indigenous peoples. It was also a great improvement upon ILO #107, in that it lacked the assimilationist tone of the earlier instrument. That said, it also had some considerable limitations. First, the instrument had been negotiated by States, businesses and labor

104 The Martinez-Cobo Study, UN Doc E/CN.4/Sub.2/1983/21/Add.4, 50-75.

105 Victoria Tauli-Corpuz. “How the UN Declaration on the Rights of Indigenous Peoples Got Adopted,” p. 2. Available at: <http://www.tebtebba.org/index.php/all-resources/category/20-un-declaration-on-the-rights-of-indigenous-peoples> (last accessed 7/30/12).

106 Art. 6, 1 (a) and (b), and 7 (1), among others.

organizations, not by indigenous peoples.¹⁰⁷ It has also only been ratified by 20 countries – with just two Asian countries and one from Africa, limiting the international scope of this instrument. In the end, while ILO #169 was a step in the right direction, the international indigenous rights movement resolved to continue the struggle to promote a universal declaration on the rights of indigenous peoples.

¹⁰⁷ See here for those organizations and institutions that have consultative status before the ILO: http://www.ilo.org/pardev/civilsociety/ngos/WCMS_201411/lang-en/index.htm (last accessed 03/07/13).

How indigenous peoples used the United Nations System

The first stage in the drafting and development of a Declaration on the Rights of Indigenous Peoples took place between 1985 and 1992, within the Working Group on Indigenous Populations. In its meetings, indigenous representatives gave testimony about the state of human rights in their lands and territories and articulated the need for stronger protections of the human rights of their people. For indigenous people, the aim was to promote the development of new international standards to provide respect, protection and fulfillment of the rights of indigenous peoples, including recognition of their unique relationships with their lands, territories and natural resources. The organizations and individuals who participated in this early stage, “entered into this process with a clear objective”: to be heard and recognized at the international level.¹⁰⁸ This began the arduous process of drafting an instrument on the rights of indigenous peoples.

■ The drafting of a future declaration within the UN human rights council

The process of drafting was initially a broadly participatory exercise, involving hundreds of indigenous peoples’ representatives who eventually agreed to the consensus language that was reflected in the draft Declaration. In 1993, the draft was submitted to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. In 1994, it was adopted and passed onto the Commission on Human Rights, which established the Working Group on the Draft Declaration (WGDD) in 1995.¹⁰⁹ The Working Group was an open-ended, inter-sessional body tasked with elaborating the United Nations Declaration on

108 Presentation by Joji Cariño during the third Solidarity Visit and Human Rights Mutual-Learning Workshop of ESCR-Net’s Social Movements Working Group, Brazil, November, 2010.

109 Commission on Human Rights resolution 1995/32 of 3 March 1995.

the Rights of Indigenous Peoples, based on the draft that had been submitted to the Commission on Human Rights. It also served as the site of intense and protracted negotiations, both between indigenous peoples and states, and within the indigenous caucus, itself.

The first task of the WGDD was to establish rules of procedure. Initially, States refused to allow indigenous peoples to have a voice in negotiations over the text. This was unacceptable to indigenous peoples' representatives, who walked out of the first session. This presented the governments with a difficult decision: either continue to negotiate the Declaration without any indigenous peoples present (and their expressed rejection of the process) or make the unprecedented move to allow them a voice in the process. Eventually the government representatives capitulated, and indigenous peoples were awarded the right to speak about issues related to the draft on an equal basis with States. This was a critically important advance. "In a first for international law, the rights bearers, indigenous peoples, played a pivotal role in the negotiations on its content,"¹¹⁰ and their voices were heard in efforts to define their rights, in accordance with international law.¹¹¹

■ Political blockages and a perilous refusal to negotiate

Following the inclusion of indigenous peoples into the UN debate, the process entered into extended negotiations with governments between 1995 and 2005. Major differences between the governments and advocates for indigenous peoples centered on claims by indigenous peoples to the right of self-determination, land rights and the right of indigenous peoples to free, prior and informed consent. Often, the misgivings expressed by representatives of

110 Claire Charters and Rodolfo Stavenhagen, eds. "Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples" (Copenhagen, Denmark: International Work Group for Indigenous - Affairs, 2009).

111 Victoria Tauli-Corpuz. "How the UN Declaration on the Rights of Indigenous Peoples Got Adopted," p. 2. Available at: <http://www.tebtebba.org/index.php/all-resources/category/20-un-declaration-on-the-rights-of-indigenous-peoples> (last accessed 7/30/12).

States were inflammatory and perceived by indigenous peoples as offensive. On the other hand, some vocal members of the Indigenous Caucus had adopted a position of accepting no changes to the draft, which was perceived in some diplomatic circles as unreasonable.

Some sympathetic governments attempted to avert a stalemate by offering language on territorial integrity in an effort to overcome political blockages. Notwithstanding these efforts, the indigenous rights movement was faced with the substantial challenge of trying to salvage the process both from the desire of States to negotiate changes to the 1993 text and an increasingly entrenched “no change” position held by some members of the Indigenous Caucus. Concerned that these disagreements could threaten to undermine the entire process, leaders within the Caucus began to push for a more reasonable and pragmatic approach that presumed, as a default position, a willingness to negotiate.

These issues were raised before the Indigenous Caucus through a formal consultation regarding whether to allow negotiations about potential changes on the earlier draft. After approaching the regional caucuses one-by-one, it was resolved that the Indigenous Caucus would remain open to revisit and improve upon the draft, while defending against efforts to weaken the standards it contained.

Efforts to retain a balance between the right of each organization to their own positions, while maintaining a common approach for the Indigenous Caucus, was a substantial challenge. In March of 2005, in an abrupt departure from the collective negotiation model pursued until then, the International Indian Treaty Council sent a letter to the President of the Human Rights Commission to request that they adopt the Sub-Commission text or impose a recess. Fearing that this letter could be perceived as representing the Indigenous Caucus, indigenous organizations from many regions mobilized to clarify that this was just one position among many. Letters were sent by indigenous peoples from the other regions to the President of the Commission on Human Rights, urging that the WGDD be allowed to proceed in the course of its work.

In 2006, following intensive lobbying by indigenous peoples with each of the 47 states participating in the Human Rights Council, Resolution 2006/2 was finally passed.¹¹² By this resolution, the Council adopted the draft Declaration

112 Resolution 2006/2. Working group of the Commission on Human Rights to elaborate a draft declaration in accordance with paragraph 5 of the General Assembly resolution 49/214 of 23 December 1994.

on the Rights of Indigenous Peoples and recommended the draft to UN General Assembly.

■ Lobbying of states

The final phase of the process leading up the adoption of the UN Declaration on the Rights of Indigenous Peoples consisted of intensive lobbying of key decision-makers within the inter-governmental process, namely representatives of States, regional groupings and even the facilitators of the negotiations.

At this stage, the main strategy of the indigenous rights movement shifted, and many of the indigenous organizations that had been working at the UN level now re-directed their efforts to lobby their own governments to support the draft Declaration. In some regions, such as Asia, States voted individually on the issue, so indigenous rights advocates returned home to pressure their governments domestically. Overall, the States of Latin America were supportive of the Declaration, which required less overall lobbying attention. The African States had resolved to vote as a group, which implied the need to lobby at different levels.

The African region presented perhaps the greatest challenge at this stage, for several reasons. First, many African governments had not been fully engaged in the process of the draft Declaration at the WGIP and WGDD, because the way “indigenous peoples” had been characterized was perceived as more relevant to the Americas. In Africa, many of them maintained, all peoples are indigenous, and therefore the term “indigenous peoples” as defined in the draft Declaration did not really apply to the region. Second, African States were proud of the African Charter on Human and Peoples’ Rights and were wary of declarations or measures coming from outside Africa with the potential to undermine African standards or limit the exercise of their sovereignty. Thirdly, the refusal by the African States to negotiate directly with indigenous peoples required substantial efforts to work with other States to engage with the African bloc.

In October 2006, Peru co-sponsored and tabled a resolution at the General Assembly to adopt the Declaration. The proposal was met with resistance by the African bloc, which, represented by Namibia, moved to defer the issue. The African states identified five overriding areas of concern. These related to: a) the

definition of indigenous peoples; b) the issue of self-determination; c) the issue of land ownership and the exploitation of resources; d) the establishment of distinct political and economic institutions; and e) the issue of national and territorial integrity.¹¹³ Peru then withdrew the resolution, and on 28 November 2006, the Third Committee of the General Assembly decided (by vote of 82 in favor, 67 against and 25 abstentions) to defer consideration pending further consultations.¹¹⁴

■ Revival of a tired process, in search of creative solutions

This represented a low point for advocates of the rights of indigenous peoples. After so many years of work to promote the Declaration, it appeared that the diplomatic challenges were insurmountable. It was also a period when some differences amongst indigenous rights groups became more pronounced. In one instance, some NGOs who had direct access to the Permanent Missions to the UN approached African governments directly. This breached the agreement to negotiate collectively with states and further antagonized the African bloc, entrenching its opposition to the draft even further.

The solution that was eventually devised was both creative and effective. The leaders of the process within the indigenous caucus concluded that the way to overcome the opposition expressed by the African bloc was to produce an expert opinion from a source that would be seen as highly credible and affirm that the Declaration was not contrary to African standards. The African Commission for Peoples and Human Rights (ACPHR) took up this cause and, in its 41st ordinary session held in May 2007, in Accra, Ghana, produced an Advisory Opinion. That Opinion affirmed that the Declaration does not contravene the African Charter and recommended that the African States promote a common position

113 Detailed in Draft Aide-Memoir: "African Group: Declaration on the Rights of Indigenous Peoples," New York, 9 November, 2006, found at: www.ipacc.org.za/uploads/docs/Africanaidememoire.pdf (last accessed 3/15/12),

114 Seigfried Weissner, "United Nations Declaration on the Rights of Indigenous Peoples," available at: http://untreaty.un.org/cod/avl/ha/ga_61-295/ga_61-295.html (last accessed 3/15/12).

to inform the Declaration with an African perspective. In this way, it voiced its support for the “speedy adoption of the Declaration.”¹¹⁵

Following this Advisory Opinion, the African States proposed a series of amendments to the Declaration in May 2007. While this signaled an openness to continue to negotiate, indigenous rights advocates saw this as a tactic to stall the process and attempt to weaken the language of some key articles in the text. The African Indigenous People’s Caucus then brought experts from the Working Group of the ACPHR on Indigenous Populations and representatives of some indigenous groups to lobby the African States in their permanent missions in New York. African indigenous leaders focused their delegations on efforts to influence their own governments, particularly those governments that supported Namibia’s earlier resolution to defer decision on the Declaration.

They also made efforts to persuade the President of the General Assembly to undertake the passage of the Declaration as a key legacy of her presidency, for which they maintained that she would gain the undying respect of indigenous peoples. The President was receptive and proceeded to appoint Ambassador Hilario Davide of the Philippines as facilitator in efforts to promote a consensus. Indigenous representatives, who by this point had learned a great deal about UN negotiations, then lobbied the facilitator directly.

The facilitator proposed some questions to evaluate whether any amendments would be acceptable. The questions asked whether the amendment: a) represents a genuine effort to address concerns; b) builds on (as opposed to undermining) the efforts and achievements of the Commission on Human Rights and the UN Human Rights Council; c) preserves the general purpose of the Declaration; and d) ensures that Declaration does not fall below existing human rights standards. These questions helped focus States on the most critical proposed amendments, while limiting the risk that the gains achieved so far would be undermined. In this way, the facilitator promoted space within the negotiations for the issues and concerns of the African States to be fully heard and addressed. By demonstrating this spirit of openness and constructive engagement, political will among African governments grew, concurrent with their desire to avoid being perceived as the main obstacles in an increasingly promising process.

115 Advisory Opinion of the African Commission on Human and Peoples’ Rights on the United Nations Declaration on the Rights of Indigenous Peoples, available at: [http://www.achpr.org/mechanisms/indigenous-populations/un-advisory-opinion/\(02/07/13\)](http://www.achpr.org/mechanisms/indigenous-populations/un-advisory-opinion/(02/07/13)).

On April 30, 2007, the lead Mexican negotiator explained to Victoria Tauli-Corpuz, then Chair of the United Nations Permanent Forum on Indigenous Issues, that States involved in negotiations had been unable to reach an agreement on the draft. The Declaration's Preamble contained a phrase that stated: "*Recognizing* that indigenous peoples have a right on an equal basis with others freely to determine their relationships with States in a spirit of coexistence, mutual benefit and full respect." This wording was problematic for the UK, whose representative expressed concern that this language could be interpreted to recognizing the rights of non-indigenous peoples to collective rights of the type outlined in the Declaration. Ms. Tauli-Corpuz was, by now, experienced in the art of negotiation and compromise. She was also confident that the most important human rights claims for indigenous peoples had already been reflected adequately in other parts of the text. She therefore suggested that the phrase "on an equal basis with others" could be struck from the text. This intervention proved to be strategic, and by early afternoon that same day, an agreement was reached.¹¹⁶

116 Victoria Tauli-Corpuz. "How the UN Declaration on the Rights of Indigenous Peoples Got Adopted." Available at: <http://www.tebtebba.org/index.php/all-resources/category/20-un-declaration-on-the-rights-of-indigenous-peoples> (last accessed 7/30/12)

Results and lessons learned

On September 13, 2007, the UN General Assembly voted to adopt the Declaration on the Rights of Indigenous Peoples (DRIP), with 143 states in favor, 4 against and 11 abstentions. This was a landmark achievement for the indigenous rights movement, and a major contribution to the development of international human rights standards related to issues of lands, territories and development processes. It also marked the culmination of a process by which people claiming their human rights were central agents in securing their recognition. “In a first for international law, the rights bearers, indigenous peoples, played a pivotal role in the negotiations on its content.”¹¹⁷

A declaration by the UN General Assembly is recognized as a pledge, rather than a legally binding instrument *per se*. However, the UNDRIP is covered under the Universal Periodic Review process, which entails a restatement of provisions contained in various human rights instruments. It has also been referred to in the work of the UN treaty bodies and special rapporteurs, as well as regional human rights systems. In this sense, the norms defined in the UNDRIP have contributed in several ways to the growing international jurisprudence concerning the rights of indigenous peoples, and many of its provisions, arguably, have become customary international law.

While establishing the right of indigenous peoples to equal rights and protection before the law, without discrimination, the UNDRIP contributed to a recognition of indigenous peoples, that indigenous peoples have both collective and individual rights and that particular rights related to their unique situation are substantively different from the rights of minorities. It recognized the right of indigenous peoples to self-determination regarding their social, cultural and political affairs, as well as the unique relationship that indigenous peoples have with their lands and territories. The UNDRIP also enshrined the right of indigenous peoples to free, prior and informed consent, which has since been underscored by its adoption in regional and national jurisprudence and the policies of key international organizations. Finally, the Declaration recognizes the impor-

117 Claire Charters and Rodolfo Stavenhagen, eds. “Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples” (Copenhagen, Denmark: International Work Group for Indigenous – Affairs, 2009).

tance of land as interdependent and indivisible with other human rights.¹¹⁸

The process pursued by the indigenous rights movement throughout several decades of struggle has generated significant lessons and insights. First is the critical need for a social movement to have clarity regarding their overall goal when entering into a process of this nature. The members of a movement must have a shared understanding of what they were collectively aiming for, and what that implies for their way of working. In this case, the goal was to generate a new normative instrument that is global in scope and would substantively advance the recognition of the particular human rights of indigenous people, namely with regard to their lands, territories, natural resources and a range of related issues.

This experience also highlights the need for a clear and agreed understanding amongst members of a social movement regarding the strategy that will be employed. Entering into negotiations with States is very different from adversarial advocacy or the mobilization of protest activity. In order to effectively promote a Declaration by the UN General Assembly, advocates must first be able to get their issue on the agenda. They must understand the intergovernmental process and the positions of specific States and be willing and able to engage with governments. This approach presumes that States are potential allies and stresses the need to address specific issues with individual States when they emerge. “The whole UN process is about keeping on talking until you reach an agreement.”¹¹⁹ This requires that the default position will be to remain, in good faith, in negotiations. A willingness to be in dialogue, be adaptive and, when possible, compromise is key when entering into a process with member States of the UN.

It is also very important to understand the targets for advocacy, the way they are organized and the manner in which their decisions are made. Engaging with States requires a certain familiarity with their positions and even the personalities of their representatives. In the case of the DRIP, strong regional particularities were pronounced in some stages, and Africa voted as a bloc. This required the indigenous rights movement to adapt their strategies and learn to work within a framework that moved from a focus at the regional level to individual states to the General Assembly, as a whole.

118 See, for example, the Constitution of Bolivia, the Constitution of Ecuador, the ruling on the Enderois case by the African Commission: Enderois case and the UN Voluntary Fund for Indigenous Populations, among others.

119 Interview with Joji Cariño, 10/17/2011.

The great complexity of the process and the fact that the indigenous rights movement faced limitations to their capacities, compared to States, led to the need to rationalize their energies and be selective in the battles they engaged. For example, during the negotiations around the Draft Declaration, the Indigenous Caucus decided not to focus on the most intransigent states such as Canada, Australia, the Russian Federation and New Zealand. Instead, they directed their energies to the African states, recognizing the potential of winning the entire bloc while realizing the likelihood of achieving acceptance by States in the Middle East and Asia.

Intergovernmental negotiations are seldom expeditious, and the effort to develop and achieve the adoption of the UN Declaration on the Rights of Indigenous Peoples required more than twenty years of sustained work. In order to maintain the support of their members for their involvement in the process, participating indigenous organizations generated reports and updates for their members, consulted them periodically and generally ensured that they remained engaged and invested in the outcome. The efforts required in order to sustain the involvement and collaboration of the indigenous movement throughout this process required significant capacity, and many organizations were called upon to contribute resources at critical times. Long-standing partners, such as the International Working Group for Indigenous Affairs (IWGIA), the Spanish NGO *Almáciga*, the Indigenous Peoples' Center for Documentation, Research and Information (DOCIP), the Netherlands Centre for Indigenous Peoples (NCIV) and others provided valuable support with logistics, communications, and meeting facilitation.

Entering into an intergovernmental negotiation requires certain capacities, from drafting experience to diplomatic skills. It necessitates strict compliance with deadlines and the ability to continually advance a process within a reasonable timeframe. It is clear that no human rights issue will be awarded indefinite priority within the UN agenda for an open-ended amount of time, and therefore advocates involved in such a process must be able to progress efficiently toward their goals. It also helped to have allies in influential positions that were able to add their backing to the main arguments of the Indigenous Peoples Caucus. The presence of experts affiliated with relevant institutions, such as James Anaya, the UN Special Rapporteur on the rights of indigenous peoples, and Vicky Tauli-Corpuz, the chair of the UN Permanent Forum on Indigenous Issues, served to further reinforce the importance of the Declaration. These experts managed to lend the weight of their respective offices to these efforts, which further encouraged states to seriously attempt to reach an agreement.

The long road of developing the Declaration on the Rights of Indigenous Peoples, and its eventual adoption, was the first time that people whose human rights were threatened became central actors in the formulation of a new normative instrument for their protection. The process was long and, at times, tedious. It required the indigenous movement to develop new ways of working and employ great creativity in their efforts to overcome the obstacles that emerged along the way. While the outcome was impressive, the process followed offers valuable lessons for social movements around the world struggling to claim rights and promote their recognition on the international stage.



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