



ESC Rights Action

# METHODS TO CLAIM YOUR RIGHTS

Sample cases on housing,  
land and food rights



METHODOLOGICAL GUIDE

**“Methods to claim your rights  
Sample cases on housing, land and food rights”**

**Published by Terre des Hommes France**

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<http://www.escriights-action.org>

or

<http://www.agirpourlesdesc.org/?lang=en>

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## List of abbreviations

ATCA	Alien Tort Claims Act
CEACR	Committee of Experts on the Application of Conventions and Recommendations
DESAMA	Didipio Earth Savers Multi-purpose Association
ESC Rights	Economic Social and Cultural rights
CSO	Civil Society Organisation
FASE	Federação de Órgãos para Assistência Social e Educacional
FSC	Forest Stewardship Council
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDB	Inter-American Development Bank
ILO	International Labour Organization
IRDS	Integrated Rural Development Society
NCP	National Contact Point
NGO	Non Governmental Organisation
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
PHILRIGHTS	Philippine Human Rights Information Center
PPT	Permanent Peoples' Tribunal
RNHC	Réseau National pour les Habitants du Cameroun
UN	United Nations
SIPCOT	State Industries Promotion Corporation Of Tamil Nadu

## Foreword

This guide focuses on **violations of housing, land and food rights by both the private and public sector in rural and urban areas**. These rights are often violated as a result of the failure to implement an adequate consultation and negotiation procedure and to compensate victims. As a consequence of human rights indivisibility and interrelatedness, the negation of these rights, regardless of whether they happen in rural or urban areas, brings about a series of dramatic consequences as well as multiple other human rights violations, be they civil or political (abuses, intimidations) or economic, social and cultural<sup>1</sup> (related to food, health, education, employment, etc).

When faced with human rights violation, people are often tempted to react immediately and hastily. And yet, acting for the recognition of a human rights violation and demanding redress or compensation, like any other claim, implies following methods and taking precautions to use one's energy and means in the most efficient way as possible. The purpose of this guide is to **provide civil society organisations (CSOs) tools to enable them to assert and claim their rights**. The methods discussed were taken from sample cases on housing, land and food rights but they may be applied to address violations of other rights.

This guide was completed within the framework of the Programme "ESC rights Action" for the exchange of experiences on economic, social and cultural rights enforceability approaches<sup>2</sup> coordinated by Terre des Hommes France. **It is based on stakeholders' experiences with various practices, cultures and backgrounds** such as the *Philippine Human Rights Information Center* (PhilRights) in the Philippines, the *Integrated Rural Development Society* (IRDS) in India, *Federação of Órgãos para*

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<sup>1</sup> The division of human rights into two categories dates back to the adoption of two covenants in 1966 – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which both entered into force in 1976.

<sup>2</sup> For further information on this programme, please refer to the website: [www.escriights-action.org](http://www.escriights-action.org)

*Assistência Social e Educacional (FASE) in Brazil, the Réseau National des Habitants du Cameroun (RNHC, National Network of People Living in Cameroon), Juristes-Solidarités in France, Foundation for Educational Innovations in Asia (Fedina) in India and members of the Malian and Senegalese ESC rights platforms. As a supplement to field experiences, this guide also used contributions of Survival, Amnesty international, CCFD-Terre Solidaire, as well as some tools such as the Sherpa worksheets on transnational corporations and their societal responsibility<sup>3</sup>, United Nations (UN) websites or documents, etc.*

This Guide is intended for civil society stakeholders who implement actions to defend people's rights. It should be considered as a set of rights justiciability and enforceability methods that may be followed by civil society stakeholders, but not as a comprehensive compilation of rights advocacy methods.

We very heartedly thank all those who contributed to the drafting of this guide.

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<sup>3</sup> CAILLET Marie-Caroline, NGOM Gora (SHERPA). *Les entreprises transnationales et leur responsabilité sociétale, memento*, 82 pages:

[\[http://asso-sherpa.org/sherpa-content/docs/programmes/GDH/publications/2%20-%20Fiche%20OIF%202010.pdf\]](http://asso-sherpa.org/sherpa-content/docs/programmes/GDH/publications/2%20-%20Fiche%20OIF%202010.pdf)

## Introduction

**The introduction will first shortly present the main violation cases referred to throughout the guide and then define key words.**

### 1) Presentation of case studies

We shall present, here, only background elements about the cases of our partners that will be studied throughout this guide.<sup>4</sup>

**In South India**, the government of Tamil Nadu created the SIPCOT (*State Industries Promotion Corporation of Tamil Nadu*) in 1971, which was supposed to be an accelerator and a catalyst in the development of industrial parks on the state's territory. Against a background of widespread economic liberalisation in the late 90s, the SIPCOT's mission extended and its volume of activity increased. Within 30 years, the SIPCOT developed 19 industrial parks on a 16,975 acre surface area and facilitated the establishment of 1,882 Indian and foreign production units. The industrial development-oriented dynamics of expropriations and land redistribution soared in the last four years with the implementation of government decisions on the creation of Special Economic Zones. In 4 years, the government of Tamil Nadu signed 25 commercial agreements with transnational corporations, out of which 18 have had or will have the establishment of their factory facilitated by the SIPCOT. **Since March 2007, commercial agreement have been executed on part of the territory of the village of Thervoy Kandigai, 40 km away from Chennai, for the establishment of several industrial production units** on a 1,205-acre surface area. A significant part of those lands that were purchased by the SIPCOT were covered by a forest, which enabled the 1,500 mostly *Dalit* families to secure an agricultural economy (food crops, cattle breeding), and which guaranteed total food safety at village level. The announcement of the acquisition of the forest by the SIPCOT triggered an unprecedented mobilisation of villagers, first in the form of non-violent protests that were followed by legal actions against the SIPCOT and by the use of international mechanisms.

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<sup>4</sup> A complete overview of cases is available at [www.escrights-action.org](http://www.escrights-action.org)

The **second Indian case** relates to the violation of the right to land of *Dongria Kondh* communities living in Orissa state's Niyamgiri hills. Vedanta Resources is a British mining company that produces various metals such as iron, zinc, aluminium, copper, etc., from mining resources that are essentially extracted in India and less extensively in Australia and Zambia. In 2002, the Indian Ministry of Environment granted an environmental license to Sterlignite (Vedanta's Indian subsidiary) for the installation of a refinery in the state of Orissa. **Vedanta (through Sterlignite) is currently determined to exploit the rich abundant fields of bauxite** (aluminium mineral) located in the **Sacred Mountain worshiped by the *Dongria Kondh*<sup>5</sup>** indigenous tribe<sup>6</sup>, at short distance from the refinery, **but for which it still has no exploitation license**. The Niyamgiri hills are populated by more than 8,000 *Dongria Kondh* people, whose way of life and religion contributed to preserve the region's forests and exceptionally rich wildlife. The granting of a license to Vedanta Resources for the exploitation of the Niyamgiri hills bauxite, in addition to dramatically damaging the *Dongria Kondh* tribe's way of life, would destroy an entire ecosystem.

**In Mexico, the Parota hydro-electric dam project<sup>7</sup>** was contemplated from 1976 onwards in the Federal Water Commission's research. In 2003, without any authorisation from municipalities, this commission, in agreement with the federal government and the Guerrero regional government, started implementing the project. It tried to act forcefully without caring about local communities' opinion and the negative impacts

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5 From the Survival's website (Survival is an NGO dedicated to indigenous people protection) : <http://www.survivalinternational.org/tribes/dongria>

6 Tribes – as referred to in the Constitution of India, also called indigenous people of India – are identified as such within the population of India. For more information, see the article, *Les peuples autochtones en Inde, les revendications des groupes tribaux*, (Indigenous People of India and Claims of Tribal Groups) , *La Nouvelle Question Indigène*, FRITZ Jean-Claude et de DEROUCHE Frédéric, FRITZ Gérard, PORTEILLA Raphaël (CERPO), éditions L'Harmattan, 2005: <http://www.gitpa.org/Autochtone%20GITPA%20300/gitpa300-16-44indeTEXTREFritz.pdf>

7 RICHARD Yves, *La lutte des paysans mexicains contre le projet de barrage de La Parota*, 2008. Extensive information on the Parota case is available at: <http://www.acme-eau.org/>

(floods<sup>8</sup>, evictions ...) that the project could create. It managed to illegally obtain expropriation permits, by intimidating people and using police force. This case illustrates the lack of public participation and access to information.

**In Cameroon**, it is referred to housing right violations in the sense of the destruction of shelters without any resettlement of concerned communities. Nevertheless, the violation of this right happens even before evictions, as said shelters are squalid ones, which is contrary to the right to decent housing conditions. **In 2007 and 2008, various forced eviction (“déguepissement”<sup>9</sup>) operations took place in Yaoundé and Douala**. Those responsible for these violations are the Urban Communities of Yaoundé and Douala, hence **publics** stakeholders. Forced evictions result in thousands of people being thrown out onto street without formal notice and with no compensation for title deed holders.

**In the Philippines**, Kasibu town in Nueva Vizcaya Province of Luzon Island, is divided into three areas: about 89.86% forest, 8.52% agricultural lands and 0.59% residential area, roads and infrastructures<sup>10</sup>. As of 2000, the population is comprised of 28,300 individuals scattered over 30 “*barangays*” (the Philippines' smallest political unit). Reportedly, only 5% of the population are non-indigenous or not members of any tribe. Kasibu is rich in mineral deposits such as gold, copper, and chromite. In 2005, within the framework of the 1995 Mining Act<sup>11</sup>, the government wanted to move up from traditional to large-scale mining, with more advanced techniques detrimental to the environment. Several barangays (villages) in Kasibu such as **Pao and Didipio are both victims of the mining projects of Royalco Resources Limited and Oceana Gold**,

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8 “According to the *Tlachinollán Mountain Human, Rights Center*, the project was to directly displace 25,000 people whose houses were going to be flooded.” Extract from Yves RICHARD's article. *op.cit.*

9 This word is explained hereafter in the Section on Definitions.

10 ANDAG Ramil et ICAYAN Joy. *A Human Rights Situational Analysis of Large Scale Mining in Select Barangays in Kasibu, Nueva Vizcaya*, PhilRights, 2009 p.3, 2009.

11 **The 1995 Mining Act** was enacted by the Filipino Congress to promote large-scale mining. It totally liberalised mining industry in the Philippines by authorising 100% foreign-owned mining projects.

both **Australian mining companies with local subsidiaries in the Philippines.**

Although the Philippines has not ratified the Convention No 169 of the International Labour Organization on indigenous and tribal peoples, the 1995 mining act and the Indigenous Peoples' Rights Act mandate the implementation of consultation procedures (a requirement that was not adequately fulfilled in Pao) and, if the project is accepted, the compensation of population (not fulfilled in Didipio either).

**The Brazilian case** has a much longer history. **The multinational company Aracruz Celulose** (with Norwegian and Brazilian capital) **was established in 1967 in Espirito Santo state's rural area** through the subsidies and advantages granted by the military regime, in the harshest period of the military dictatorship in Brazil. **Various traditional and indigenous** (Tupiniquim and Guarani) **populations as well as Quilombola communities** (African-American descendants of runaway slaves) **live in this area.** Most of the Mata Atlântica forest (154,000 hectares of lands) was cut down and replaced by a eucalyptus monoculture. **The transformation of the environment has had devastating consequences on communities,** who have been living on surrounding resources. It makes it impossible to live and fish there, to collect wood to build houses and to grow a diversity of crops for their food self-sufficiency. This creates a situation that can be qualified as food insecurity. The expropriation of these communities, which was based on obsolete cadastral documents (setting out a territory's land property distribution), may thus be considered as illegal.

**In Senegal, three rural communities** (Bassaki, Kognagui and Djalonke communities) **from the Kedougou region are currently engaged in a land dispute. 80,000 hectares have been allocated to a Spanish private investor, Raoul Barosso, for a touristic economic project.** A study conducted by the civil society showed procedural irregularities<sup>12</sup> in the allocation of the land and, above all, threats of forced eviction towards

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<sup>12</sup> There was complicity of two presidents of rural councils, who had given their agreements without prior consultation with advisors and the people they represented.

members of the three rural communities. This touristic development project is going to dramatically reduce cultivable areas, to accentuate rural exodus and to cause a huge loss with regard to investments carried out by local producers. The resettlement of people more than 30 kilometres away is also going to have many negative consequences: according to Zakaria Sambakhe from IFSN/ActionAid Senegal, forced evictions “*are definitely going to disturb children's schooling cycle, health centers where first aid is carried out may be rebuilt with much delay, not to talk about many other urgent needs that are not going to be met and public facilities belonging to local communities (collective fields, wells, playing grounds) that are going to be affected.*” The question is why 80,000 hectares should be allocated to a private business whereas hundreds of requests for lands lodged by women in the region were ignored although women produce food for more than 60% of Senegalese households. Why should that much land be assigned when the goal of achieving food self sufficiency within the framework of the Great Agricultural Offensive for Food and Abundance (GOANA) is far from being met?

**In Mali, a thousand families living on small scale farming were evicted from their lands in 2008 and 2009 due to the establishment of the Libyan Malibya company.** These evictions were based on the Agreement on Investments in the Agricultural Field signed between Mali and Libya in 2007. This agreement gives Libya the right to cultivate 100,000 hectares of lands *without any individual or collective impediment* in the Office of Niger in Mali for the next fifty years.

The specificity of this agreement is that it opposes common law to substantive law. The communities that are victims thereof cannot claim any title and are not recognised as indigenous communities, even though they have been living in the area for decades. The objective of the mobilisation is thus not to stay on these lands but to have affected communities compensated in order to, as explained by Mohamed El Moctar Mahamar, referent of the Malian ESC rights platform, “*repair any breach to common law*”

All cases are presented individually at [www.escrights-action.org](http://www.escrights-action.org) in section “How to enforce ESC rights” and subsection “Acting towards international companies.”



## 2) Definitions

A few words and expressions widely used in this guide are defined here.

**The right to housing and the right to food** are recognised in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR): “*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions*”<sup>13</sup>. Under the ICESCR, states are obliged to respect (i.e. refrain from preventing the exercise of), protect (i.e. make sure no one prevents the exercise of) and implement (i.e. adopt adequate measures to guarantee the full exercise of) human rights<sup>14</sup>.

The UN Special Rapporteur on adequate housing, Mr. Miloon Kothari, who was in office from 2000 to 2008<sup>15</sup>, defined **the right to housing** as follows: “*The fundamental right of a human being to adequate housing is the right of every man, woman, youth and child to obtain and maintain a secure place to live, within a community, in peace and dignity*”<sup>16</sup>. The right to housing is a universally recognised right laid down in more than a dozen national Constitutions.

Housing is considered as “adequate” when the following is guaranteed: the occupation’s legal safety, the availability of utilities, materials, equipment and infrastructures, the occupants’ ability to pay for their housing, housing’s habitability, accessibility and location, and the respect

<sup>13</sup> See the text of the International Covenant on Economic, Social and Cultural Rights: <http://www2.ohchr.org/english/law/cescr.htm>

<sup>14</sup> Office of the United Nations High Commissioner for Human Rights. *Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet n°33*, [p. 14], December 2008, 53p: <http://www.ohchr.org/Documents/Publications/FactSheet33fr.pdf>

<sup>15</sup> Since 2008, the office of Special Rapporteur on adequate housing has been occupied by Raquel Rolnik, of Brazilian nationality.

<sup>16</sup> United Nations High Commissioner for Human Rights’ website: <http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>

of the cultural background.<sup>17</sup>

Miloon Kothari explains that the main causes of violations of the right to housing are land and property speculation, expropriations and evictions<sup>18</sup>. According to his Guidelines on development-based evictions and displacements<sup>19</sup>, “*the right to housing is for example violated when a government evicts peasant families from their lands or forcefully displaces people without making sure that affected families are properly consulted, that they can access available recourses and are resettled in equivalent conditions or obtain fair compensation.*”<sup>20</sup>

The United Nations Committee on Economic, Social and Cultural Rights (referred to as the Committee on ESC Rights), in its General Comment 7, defines **forced evictions** “*as the permanent or temporary removal, against their will, of individuals, families and communities*”<sup>21</sup>. The right not to be evicted from one’s housing against one’s will is supplemented by the principle that “*no one shall be subjected to arbitrary or unlawful interference with his privacy, family (or) home*” guaranteed by the Article 17 (1) of the International Covenant on Civil and Political Rights<sup>22</sup>.

<sup>17</sup> MORKA Felix. *The Right to Adequate Housing, Circle of Rights - ESC rights activism: a training resource*, module 13, Human Rights Resource Center, University of Minnesota:

[http://www1.umn.edu/humanrts/edumat/IHRIP/frenchcircle/M-13.htm#\\_ednref6](http://www1.umn.edu/humanrts/edumat/IHRIP/frenchcircle/M-13.htm#_ednref6)

<sup>18</sup> Extract from the presentation of the CETIM leaflet. GOLAY Christophe, ÖZDEN Melik. *The right to Housing - A fundamental human right affirmed by the United Nations and recognized in regional treaties and numerous national constitutions*, Part of a series of the Human Rights Programme of the Europe-Third World Centre, 2007, [p. 3-48].

[http://www.cetim.ch/en/publications\\_logement.php?currentyear=&pid=](http://www.cetim.ch/en/publications_logement.php?currentyear=&pid=)

<sup>19</sup> Human Rights Council, *Guidelines on development-based evictions and displacements* presented in Appendix 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, 5<sup>th</sup> of February 2007, A/HRC/4/18:

[http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_fr.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_fr.pdf)

<sup>20</sup> GOLAY Christophe, CETIM. *Le Droit des Paysans*, Cahier Critique No 5, Series on the Right to Food, September 2009, p. 11:

[http://cetim.ch/en/publications\\_cahiers.php?currentyear=&pid=#peasants](http://cetim.ch/en/publications_cahiers.php?currentyear=&pid=#peasants);

<sup>21</sup> Office of the United Nations High Commissioner for Human Rights. *The right to adequate housing* (Art.11.1): forced evictions, 1997, E/1998/22, annex IV

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1997.SR.19.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1997.SR.19.En?Opendocument)

<sup>22</sup> See the International Covenant on Economic, Social and Cultural Rights:

<http://www2.ohchr.org/english/law/cescr.htm>

The notion of “**déguerpissement**” used in the Cameroonian and Senegalese case is very close to that of “*forced eviction*”. “*The Chadian law defines déguerpissement as ‘the operation by which, on the grounds of public interest, the obligation is imposed to people deemed to occupy a land in good faith still not covered by any recognised custom in relation to a land belonging to public authority to evacuate said land even if they have cultivated it and built a house on it’ (Article 16 of the law No 25 of 22 July 1967)*”<sup>23</sup>.

As for the **right to food**, international bodies now refer to “*the right to adequate food*”. In 2002, the Special Rapporteur Jean Ziegler, defined it as having “*regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear*”<sup>24</sup>. The Committee on ESC Rights defines this right in its General Comment 12<sup>25</sup>.

The **right to land**, albeit not explicitly quoted in the ICESCR, inevitably follows from Article 11 that recognises the right to an adequate standard of living. Access to land is all the more crucial for farmers since it encompasses everything that relates to water, trees, wildlife, and to all the things needed by farmers to grow food crops to make a living and to survive. “*For billions of peasants and for many indigenous people, land safety should be considered as a prerequisite to the implementation of other human rights*”<sup>26</sup>.

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23 Definition developed in the “*Étude de définition des modalités de limitation des impacts sociaux négatifs des opérations de déguerpissements dans les villes du Cameroun*” (Study on ways to limit the negative social impacts of eviction operations in the cities of Cameroon) drafted by the Groupe Plaidoyer pour l’Habitat et le Logement Social au Cameroun, in partnership with the RNHC, August 2009.

24 FAO, Right to food, Guiding Principles:  
[http://www.fao.org/righttofood/principles\\_en.htm](http://www.fao.org/righttofood/principles_en.htm)

25 High Commissioner for Human Rights, Committee on Economic, Social and Cultural Rights: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>

26 PLANT Roger. *Le droit à la terre considéré sous l’angle des droits de l’Homme et du développement*, published in 1994. Only available in French:

The definition proposed by the UNESCO on **Indigenous Populations** is as follows: “*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems*”<sup>27</sup>.

At last, before getting to the heart of the matter, it is important to define what we call “civil society” as well as the notions of justiciability and enforceability, since means developed in this guide pertain to both strategies.

A number of renowned research centres elaborated a definition of **civil society** for the World Bank: “*the term civil society refers to the wide range of non-governmental and non-profit organisations that animate public life and defend the interests and values of their members and others based on ethical, cultural, political, scientific, religious or philanthropic considerations. The term civil society organisations (CSOs) thus refers to a wide range of organisations: community-based and non-governmental organisations (NGOs), trade unions, indigenous peoples, charity and faith-based organisations, professional associations and private foundations.*”<sup>28</sup>

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<http://base.d-p-h.info/fr/fiches/premierdph/fiche-premierdph-1719.html>.

27 International Meeting of Experts on Intangible Cultural Heritage. *Establishment of a Glossary*, proposed by a group of Dutch experts convened by the bureau of the Netherlands National Commission for UNESCO, UNESCO Headquarters, Paris, TER/CH/2002/WD/4, 10-12 June 2002: [www.unesco.org/culture/ich/doc/src/00272-EN.doc](http://www.unesco.org/culture/ich/doc/src/00272-EN.doc)

28 World’s Bank website. Civil Society definition:

<http://web.worldbank.org/WBSITE/EXTERNAL/ACCUEILEXTN/EXTTOPICSFRENCH/EXTCSOFRENCH/0,,contentMDK:20614159~menuPK:1615310~pagePK:220503~piPK:220476~theSitePK:1153825,00.html>

- **justiciability** is the possibility to resort to legal schemes and institutions to ensure the protection of human rights;
- **enforceability** is a strategy consisting in exerting pressure on policy officers to have them ensure effective implementation of human rights through public intervention <sup>29</sup>.

### 3) Presentation of the guide

This guide comprises four sections. Section 1 deals with the phase that should precede any right advocacy action: informing and mobilising people. Any organisation or social movement may only be legitimate in its action if it is representative of the interests of the people that it is meant to defend in accordance with the popular say “*if you act for me, do not act without me*”. Section 1 sets out the successive steps of people’s information and mobilisation, from the most basic to the most strategic one. This phase is about informing people on their rights to make them aware that they are victims of violations and about accompanying them in their actions to claim for the enforcement of their rights. The following sections describe actions that may derive from mobilising people, in an independent, concomitant or gradual manner. The various types of actions are presented in details: political actions (Section 2), which may take the form of enforceability or legal (justiciability) actions at national or international level (Section 3), which may be specific when the violator is private (Section 4).

<sup>29</sup> Programme « ESC Rights Action». Alternative/Shadow report on economic, social and cultural rights: methodological guide, p.8, May 2009:  
[http://www.agirpourlesdesc.org/IMG/pdf\\_guide\\_ENG\\_site.pdf](http://www.agirpourlesdesc.org/IMG/pdf_guide_ENG_site.pdf)

## Section I

### Peoples’ mobilisation and resistance

#### A – Ensuring maximum involvement of communities

Involving communities firstly implies informing them and raising their awareness on the long run. Before figuring out how a community or a village is going to mobilise to withstand a project that goes against their interests, their right to information needs to be guaranteed.

The right to information is supposed to be ensured by public authorities (Part 1), but we shall see that a genuine information transmission and “*popularisation*” work needs to be carried out to really guarantee this right (Part 2). We will then address the obligation of the government to consult indigenous populations (Part 3) and, finally, ways to sustain people’s mobilisation (Part 4).

#### 1) People’s rights to information

For communities to knowingly take action and mobilize, they first need to access information and to know their rights.

The right to information is enshrined in the legislation of many countries and obliges public administrations to deliver any information on simple request, except for information being subject to a national defense security classification. In India, for example, any public officer who refuses to provide the requested information may be subject to prosecution and sanction,

And yet, laws providing for the right to access information in various countries are not necessarily implemented, out of administration staff’s ignorance of the right concerned or of their unwillingness to transmit the information. Administrations, which are supposed to inform people, are sometimes not knowledgeable of this obligation or retain information.

Therefore, it is important to maintain good relations with members of local governments, as this may prove useful to access information that is not transmitted under normal procedures.

As shown by **the Filipino case** indeed, “allies” from the local government can be very efficient when they obtain information relating to the plans of the questioned mining project in the short and long run.

This type of information is supposed to be available to the public but red tape makes it very difficult to obtain or sometimes the mining company tries hard to prevent it from being made public.

When information is available, communities are often not really knowledgeable of it and have a hard time understanding it without the support of civil society organisations.

## 2) Guaranteeing access to information

Despite being directly concerned by legal matters, citizens, although they should be the first beneficiaries of legal remedies, are often unable to access them. They do not know how to deal with these too difficult, too technical and too abstract matters that they see as too far from their daily concerns.

This is why associations have been developing solutions to make law more democratic and more accessible to all.

This is why, organisations have been setting up **mechanisms to ensure their access to their rights, and have been training “para-lawyers”** (in Africa) also referred to as “human rights access promoters” (in Latin America) or “barefoot lawyers” (in Asia), in order to raise the so-called “forgotten rights-holders” awareness of their rights.

Para-lawyers are defined as “any non-professional citizen who himself was taught a few essential legal notions and who makes access to law easier by helping people at no cost”<sup>30</sup>. Human rights access promoters’ activities can take on many forms. Whatever their form, **their purpose**

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30 UMOJA Programme, La résolution alternative des conflits par la formation de formateurs de para-juriste, Actes des rencontres de Kinshasa, 2009.

<http://www.agirledroit.org/spip.php?article494>

**is to introduce law into communities – make people aware of their rights, help them resolve conflicts, ensure an ongoing legal counsel...**<sup>31</sup>

Guaranteeing the right to access information is obviously not a punctual measure against violations of this right. It needs to be **acted upon in the long run** for a swifter and more informed collective mobilisation. Poor technology and communications often makes it a **big challenge**.

In **Brazil’s** Espirito Santo state, Quilombola and indigenous communities have no fixed communication lines, and wireless communications do not work, which makes it difficult to exchange information and experiences, in particular between Quilombola communities because of long distances. To make up for this gap, FASE has been supporting the development of **information media** (newspapers, local radio stations, small videos) and, most importantly, the holding of **monthly meetings** between women groups, primary school teachers and the youth, that enable them to exchange the information **communicated in these monthly meetings**. **This information material is distributed during these meetings**. “*Cine-Quilombo*” (broadcasting of a documentary film every month) is also considered as an excellent communication means by FASE as it creates a space where people come together and exchange.

In the indigenous communities, the weekly meetings of “*caciques*” have been instrumental in circulating information, collecting feedback, defining strategies, consolidating identities, etc.

**In the case of Senegal**, participating NGOs organised **round tables, radio broadcasts and consultation rounds** with people on the threats represented by foreign implementation projects for the right to food and housing.

Such **alternative information is crucial** as newspapers and television channels often monopolise communications in local regions and convey biased information. Information may also be circulated in traditional arenas (e.g. schools, places of worship), during community celebrations, or by public speakers who play a crucial role in mobilising communities

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31 For further information, see Annexe I.

that often communicate mainly orally.

For proper transmission of information, **it has to be ensured that awareness raising materials are adapted to local dialects**, including those that are spoken by a very small minority. As explained by Kabyr Ndiaye of RADI, who is also the ESC rights Platform's coordinator, mobilisation methods to bar the way of genetically modified organisms (GMOs) in Koungeul **Senegal**, included translating materials, synchronising movies and recording radio programmes in Wolof. This effort allowed reaching the most secluded and least informed populations and warning them on dangers of local introduction of GMOs.

**In the Cameroonian case**, the right to information on the right to housing was ensured by the government through the **delivery of a synthetic manual on how to obtain land deeds**. To guarantee information ownership by concerned local communities, the *Réseau National des Habitants du Cameroun* (**National Network of People Living in Cameroon RNHC**); circulated a **newsletter to popularise this manual**. To ensure a genuine collaboration of the concerned communities in promoting relevant bills, the RNHC has been organising **exchange workshops for victim communities** in collaboration with grassroots organisations.

In more or less the same form, **in the case of Mali**, associations have been organising “**multiplayer contact spaces**”. It consists in bringing together, in a forum, political and administrative authorities and, where possible, a private company's representative. This direct meeting between the three types of stakeholders with diverging interests allows for **awareness raising and a better dialogue** in a both comprehensive and heuristic approach. It should be noted that, in the case of Mali, the private contractor never participated in contact spaces; this is why meetings with the latter are organised upstream in order to integrate its point of view into the multiplayer contact space.

All techniques referred to here (para-lawyers, projection of movies, radio programmes, newsletters, exchange/conversation workshops) are essential to mobilise people. Yet their **effectiveness very often depends on their regularity**. Ensuring the permanency of the alternative

information structure described here above would allow for the required vigilance and monitoring by people whose situation is in danger.

### 3) Obligation to consult Indigenous populations

This section addresses **indigenous population's right to information**, which becomes **an obligation** in any project affecting local communities, by virtue of the prior free and informed consultation principle laid down in the Convention No. 169 of the International Labour Organization<sup>32</sup>. Respecting the right to information and, most importantly, the existence of alternative information, is very important for indigenous communities, as private or public actors have to obtain communities' consent before initiating any project. Such consent should be *free, prior and informed*, as provided in both:

- The United Nations Declaration on the Rights of Indigenous Peoples<sup>33</sup> adopted on the 13<sup>th</sup> of September 2007: “*Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place **without the free, prior and informed consent of the indigenous peoples concerned** and after agreement on just and fair compensation and, where possible, with the option of return*” (Art.10)
- **The Convention No 169 of the ILO**<sup>34</sup>. Consultation and participation requirement is the corner stone of the Convention 169.

Free, prior and informed consent may be defined as follows:

- Free: free of constraint, intimidation or manipulation.
- Prior: consent should be solicited early enough not to delay any authorisation or project activities, while respecting consultation time frames required to reach a consensus within indigenous communities.
- Informed: indigenous populations should avail of information on the project's location, duration, nature, pace and objectives and on

32 Adopted 27 June 1989 and entered into force Sept. 5, 1991

33 *United Nations Declaration on the Rights of Indigenous Peoples*, 13<sup>th</sup> of September, 2007: <http://www.un.org/esa/socdev/unpfi/en/drip.html>

34 Adopted on the 27<sup>th</sup> of June, 1989, and entered into force on the 5<sup>th</sup> of September, 1991: <http://www.ilo.org/ilolex/cgi-lex/single.pl?query=011989169@ref&chspec=01>

stakeholders involved.

### 3.1 Who should conduct the consultation process?

The Convention sets forth that **governments have the duty to make sure that adequate consultations are conducted** in the following cases:

- whenever consideration is being given to legislative or administrative measures (Art.6.1)
- before the exploration or exploitation of sub-surface resources (Article 15.2)
- whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community (Article 17.2)

### 3.2 How should inadequate consultation be acted upon?

Any breach of people's right to free, prior and informed consent in relation to any project is in itself a valid ground for a **legal action against a government**, since for countries that have ratified the Convention n°169, the latter prevails on national legislation. As for countries that have not ratified it, the Convention 169 is so influential that it can be taken into consideration in any ruling. *“Its provisions have influenced numerous policy documents, debates and legal decisions at regional and international levels, as well as national legislation and policies”*<sup>35</sup>.

**Many international mechanisms can also be activated based on the consultation principle.**

The case of the Parota dam in **Mexico** clearly illustrates the non-respect of free, prior and informed consent and, precisely, international bodies have ruled upon such default.

In May 2006, in its review of the situation in Mexico, the United Nations **Committee on ESC Rights** voiced its concern with regard to the lack of consultation of indigenous communities: *“The Committee is concerned*

<sup>35</sup> ILO website. Section on the Convention 169:  
<http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

*about reports that members of indigenous and local communities opposing the construction of the Parota hydroelectric dam or other projects under the Plan Puebla-Panama are not properly consulted and are sometimes forcefully prevented from participating in local assemblies concerning the implementation of these projects”*<sup>36</sup>.

*“In early March, the representative of the United Nations High Commissioner for Human Rights in Mexico, Amerigo Incalcaterra, visited the Parota territory to meet the Garrapatas and Tasajeras communities that are likely to be affected. He noted the lack of transparent information and consultation within the framework of this project”*<sup>37</sup>.

### 3.3 What should be done in countries that have not signed the Convention 169?

Prior to the Convention 169, the Convention n° 107 relating to aboriginal and tribal populations was promulgated in 1957<sup>38</sup>. The latter is not open for ratification any more but remains valid for states that have not yet ratified the Convention n°169<sup>39</sup>.

The right to information set forth in international treaties by virtue of the consultation principle is only occasionally effective (at the launch of a project) but needs to be ensured on a permanent basis. The role of civil society stakeholders is to claim respect and implementation of this right by public authorities. They can also help people access and understand

<sup>36</sup> United Nations, Economic and Social Council. *Concluding observations of the Committee on Economic, Social and Cultural Rights-Mexico*, Consideration of reports submitted by states parties under articles 16 and 17 of the covenant, Thirty-sixth session, E/C.12/MEX/CO/4, June 2006, 7p:  
<http://www2.ohchr.org/english/bodies/cescr/cescrs36.htm>

<sup>37</sup> Committee for Human Rights in Latin America. Campaign : *Étude de cas - La Parota*, december 2009. <http://cdhal.org/cas/la-parota>

<sup>38</sup> ILO. *Indigenous and Tribal Populations Convention*, n°107. 1957:  
<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C107>:

<sup>39</sup> ILO. *List of Ratifications of International Labour Conventions*, Indigenous and Tribal Populations Convention, 1957 (No. 107):  
<http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byconv.cfm?conv=C107&lang=>

information as shown by Brazilian and Cameroonian cases <sup>40</sup>.

Political conscience and vigilance implies being well informed and clear sighted. But in the face of a slowly evolving balance of power, the strength of communities is often inclined to dwindle.

#### 4) How to sustain people's mobilization?

Mobilised communities are often tempted to give up the fight when they see no promising result.

Based on the experience of Juristes-Solidarités, we may assert that **interim results must be defined** to get strong and lasting mobilisation. Dwindling mobilisation can be avoided by showing that some targets, even minimum ones, have been reached.

**In Mali** for example, the objectives of mobilisation are spread over time. The first step was to carry out an environmental impact assessment (now completed); the census of people eligible for compensation by administrative authorities will then have to be taken; at last, as a final objective, the compensation of victims will have to be obtained.

In **India**, in the village of Thervoy Kandigai, in Tamil Nadu, following people's protests with no tangible results, local communities created a villagers association that was declared in 2009, with the support of a local NGO, the Integrated Rural Development Society (IRDS). The latter has been involved for more than 20 years in the defence of the *Dalit* communities' right to land, and mobilised to try to answer the needs of local communities in terms of technical and legal means to cope with the situation. The support of the IRDS to the villagers association enabled the latter to structure itself and to fine-tune its actions to the unfolding of events; villagers have been meeting on a bimonthly basis to take stock of

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<sup>40</sup> See the section on the access to information of Part 3 of the Proceedings of the Bangalore Conference on ESC rights enforceability approaches:  
[http://www.agirpourlesdesc.org/IMG/pdf\\_Proceedings\\_of\\_Bangalore\\_International\\_Conference\\_-June\\_2009-2.pdf](http://www.agirpourlesdesc.org/IMG/pdf_Proceedings_of_Bangalore_International_Conference_-June_2009-2.pdf)

the situation as well as on a monthly basis with the IRDS.

In **Cameroon**, local associations that accompany the victims of forced evictions (*déguerpissements*) regularly visit communities. As a result of such **regular** presence, the victims feel that they are not abandoned and are not tempted to give up. The **visibility of the supporting organisation within the community**, therefore, is important.

A more mundane but crucial element to **ensure lasting involvement is sufficient food availability**.

The **Filipino** experience shows that many protest actions were not sustained due to lack of food and livelihood of resisting communities because of the disruption in their agricultural activities. In the course of the struggle against the mining that essentially consisted in setting up barricades, Pao and Didipio communities received food aid and seeds for cultivation from support organisations to enable them to keep on fighting. In a period of political action, **external food support may thus prove very useful**. Moreover, support to the improvement of communication structures (roads, bridges, etc.) was appreciated because it allowed transporting food, including from neighbouring villages. The latter aspect goes along with **the necessity to reinvent new forms of solidarity** between villages themselves.

This idea of new forms of solidarity also applies to the **Cameroonian experience** as, indeed, grassroots organisations and the RNHC initiated the dynamics of membership organisations and cooperatives for housing in a response to urgent needs, which in the end proved quite promising. Buildings and social equipments are collectively administered. This initiative has been consolidated and extended and now relies on an adequate legal framework. Housing membership organisations and cooperatives represent alternative solutions for the administration of social housing. Importantly, the RNHC **does not seek to get communities to resist but to create alternatives**. It is a very positive approach conducive to long-lasting involvement. As such, the Cooperative in Yaoundé needs to be strengthened and efforts to set up a membership organisation for poorly housed communities should be pursued.

Mobilising communities over a long-lasting period is **easier when structures are already in place** like *Ecola Quilombola de Educação Política* (Quilombola School for Political Education) in Brazil. This school was created in 2004. Once a month, over a week-end, 70 youth, adult and elderly from a dozen neighbouring communities gather in that school **to give value and transmit traditional knowledge and to strengthen social organisation and political action.**

**After raising the awareness of a community and informing and mobilising its members, alliances need to be created**, since resistance at a strictly local level is as often as not insufficient.

## **B – Networking is important to gather and unite communities**

Given how hard it is to mobilise people in an isolated manner, alliances must be built – but political takeover must also be avoided. Hence the need to **network with** stakeholders from various sectors – support organisations, experts (academes, journalists, lawyers...), unions, political parties (while making sure it is not prejudicial to the autonomy of reflection and action).

Properly **managing alliance work**, **being ready for concessions**, **sticking to established principles**, seeing beyond one's own interests and **banning duplication of efforts** are essential action mottos. Social mobilisations should thus rely on a limited number of spokespersons.<sup>41</sup>

<sup>41</sup> See also previous publications of the Programme « ESC Rights actions »

- *ESC rights enforceability approaches, Bamako International Conference*, [p. 11-17], 2008. [http://www.agirpourlesdesc.org/IMG/pdf\\_Actes\\_site.pdf](http://www.agirpourlesdesc.org/IMG/pdf_Actes_site.pdf)
- *ESC rights enforceability approaches, Bangalore International Conference*, [p.6-12], 2009. [http://www.agirpourlesdesc.org/IMG/pdf\\_Proceedings\\_of\\_Bangalore\\_International\\_Conference\\_-\\_June\\_2009-2.pdf](http://www.agirpourlesdesc.org/IMG/pdf_Proceedings_of_Bangalore_International_Conference_-_June_2009-2.pdf)
- *Alternative/Shadow report on economic, social and cultural rights, Methodological guide* [p 19-28], 2009. [http://www.agirpourlesdesc.org/IMG/pdf\\_guide\\_ENG\\_site.pdf](http://www.agirpourlesdesc.org/IMG/pdf_guide_ENG_site.pdf)

Networking is a crucial element in any legislation change. **In Brazil's Espirito Santo state**, parliamentarians do not pay much attention to indigenous people because of their small weight in elections (as they represent less than 5% of the population). Therefore, legislation change implies the various rural movements (peasants, landless rural workers, indigenous people) and suburban communities getting together. The more numerous, the better they will be listened to.

Networks are both a **space to exchange experiences** and a very powerful **instrument to exert pressure** (boycott, political lobbying...). The larger a network, the bigger its magnitude.

### **1) Building a network of supports as wide as possible**

Networks may have a **local, regional, national or international** dimension.

Relations between local, national and international organisations allow:

- conferring visibility to the action by mobilising media networks and by ensuring farther reaching information of authorities, institutions, CSOs, UN bodies, etc.
- contemplating the struggle within a broader and more strategic framework: other communities may be confronted to the same issues, national or international NGOs may facilitate networking, wage campaigns or directly exert pressure on the concerned company's headquarters.
- mutualising and/or empowering organisations with better expertise, legal support, etc.

And so, **in the Philippines**, PhilRights trained communities affected by mining projects to gather evidence, and provided them with tape recorders, digital and video cameras. In this way, as soon as a human right violation gets identified (like illegal destruction of a house), communities provide photos and videos to the local associations, which in their turn send them to PhilRights through the internet. PhilRights is thus able to very quickly



alert various networks of media, organisations or institutions such as the Commission on Human Rights of the Philippines (CHRP). PhilRights has been working with other organisations such as Task Force Detainees of the Philippines (TFDP) and networks such as the Philippine Alliance of Human Rights Advocates (PAHRA), and the Philippine NGO-PO Network for Economic, Social and Cultural Rights, in generalising and strengthening the national human rights framework.

The *Réseau National des Habitants du Cameroun* (RNHC) is a very efficient CSO network composed of four national committees and of at least a hundred local associations and organisations. According to Achille Ndaimai, secretary of the Cameroonian ESC Rights Platform, the performance of this network is due to the **priority given to transparency** and to the effective and important role played by each organisation, whatever its size. On the one hand, the RNHC helps the base of its network by supporting the setting up of local committees, the drafting of local action plans, by organising training workshops for groups of local associations (e.g. workshops to train communities to participative budget), by systematically conveying information so that knowledge and experiences can be shared. The RNHC also draws its strength from a significant grassroots organisation base and from local monitoring bodies that enable it to draft exhaustive and well-documented reports<sup>42</sup> based on field data and people's testimonies.

Nicholas Chinnappan, Director of the IRDS, also insists on the importance of networks in **India**: *“While we mostly work with Dalits, we always maintain relations with other social movements/NGOs that focus more on inter-community approaches. More than ever before, there is a need of coalition and solidarity between marginalised sections of the population. Only a strong alliance of these groups and their representatives may curb the social violence brought about by a number of public policies”*.

As an example, in the run-up to the visit of the Special Rapporteur on the right to food co-organised in March 2010 in Chennai by the *Dalit*

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42 This issue will be examined in details in the Section II, A, 2) of this guide, “Maintain relations with public authorities”.

Land Right Federation (the IRDS plus a wide meshing of Tamil Nadu community organisations), the Tamil Nadu Women's Forum and other local networks, the Thervoy villagers association sent an accurate communication<sup>43</sup> to the UN representative, with the support of the IRDS. It enabled villagers' representatives to publicly testify of the jeopardising of the village economy and to have him promise that he would send a letter to the Indian government about the community's problems. We will see in the Section on Special Rapporteurs that the time table of any Rapporteur's visit, once planned, may not be modified, hence the importance of proper coordination between local actors in their advocacy.

*“We also belong to the anti ‘Special Economic Zone’ movement in Tamil Nadu composed of several associations representing marginalised communities. Beyond this protest movement, we have been maintaining close relations with academics, journalists, lawyers and other social transformation key stakeholders,”* says Nicholas Chinnappan of the IRDS.

**In the Brazilian case, thanks to the many supports that were gathered, large-scale campaigns<sup>44</sup>** could be waged in the country of the parent company and in other countries the corporation is related to (where providers and investors are based, where products are sold...). Indeed, in collaboration with Norwegian, Finnish, German and British NGOs, calls for the boycott of corporate clients of the responsible company (*Aracruz Celulose*) and for advocacy actions were launched against investors. Thanks to the support of international organisations and of political officers, FASE was able to participate in big international debates in which the case of indigenous and Quilombola communities was addressed.

**In Senegal, the common message was elaborated even before turning to other stakeholders.** Indeed, after gathering all information, civil society stakeholders of the city of Kedougou first organised a series of meetings and consultation rounds with local communities to thoroughly review the

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43 Available in annexe, this communication must be made on the basis of a pre-established

44 These campaigns are presented in details in Part 2 of this guide.

questions that had been raised. A **press conference** was also held on the 14<sup>th</sup> of June, 2008, **in order to come up with a common stance**. This meeting was **followed by a declaration to expose the encroachment** of 80,000 hectares of fertile lands from Bandafassi Tomboroncoto and Saraya rural communities for the benefit of a Spanish investor. CSOs in Kedougou received the support of several other stakeholders and partners such as the Collective of Kedougou Nationals in Dakar and the Kedougou Diaspora in their efforts to initiate advocacy in view of the cancellation of this decision. Building such alliance was useful to **reach a critical mass of stakeholders able to influence decisions**.

## 2) Limiting the intervention of supporting NGOs

Local NGOs, trade unions and associations, thanks to their experience, **can help populations to organise in associations, networks, community membership organisations or cooperatives, to create spaces for dialogue** and for social mediation between all stakeholders, and **to structure their communication** (elaborate messages and establish contacts with the media).

In **Cameroon**, in the case of forced evictions, victims were encouraged to organise collectively to analyse their concerns in order to voice their claims, if needed, and to make propositions to the government. As Achille Ndaimai puts it, *“we helped them formulate grievances that we conveyed to the Urban Community of Yaoundé.”*

*“NGOs with a political vision of social issues have **an important role to play as gatherers and interfaces** (between victims and public authorities in particular). They help populations claim their social rights and **offer them their expertise and tools**, but mobilisation is not initiated by them”*<sup>45</sup>.

**Note to supporting NGOs:** Marcelo Calazans coordinator of FASE

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<sup>45</sup> Extract from the Proceedings of the Bangalore Conference, Programme « ESC Rights Action ». *Economic, Social and Cultural Rights Enforceability Approaches, Proceedings of Bangalore International Conference*, p.4, June 2009: [http://www.agirpourlesdesc.org/IMG/pdf\\_Proceedings\\_of\\_Bangalore\\_International\\_Conference\\_-June\\_2009-2.pdf](http://www.agirpourlesdesc.org/IMG/pdf_Proceedings_of_Bangalore_International_Conference_-June_2009-2.pdf)

regional programme in the State of Espirito Santo, (Brazil) and Bernardo D. Larin coordinator of the ESC rights programme (Philippines) insist on the need for supporting NGOs to be vigilant about their involvement in the struggle. They should play **a supporting role but never substitute themselves to the central player in this process, i.e. the community affected by human rights violations**. They should explain the national and overall background of the case, present propositions and help organise big mobilisation events and accompany the definition of strategies. This is crucial to avoid making communities dependent upon them. Empowerment and maturation of victim communities will require supporting NGOs regularly stepping back and repositioning themselves.

## 3) Establishing contacts with a trade union

Reaching the parent corporation of the company brought into question and taking joint actions, etc., may be facilitated by contacts with a trade union of the country of the said company.

Besides, only a trade union may take actions towards or lodge claims with the ILO.<sup>46</sup> Therefore, either the movement creates a trade union out of whole cloth (each country has specific administrative procedures for that), or the movement **forms an alliance with an existing union that will advocate for its cause**.

But one should be aware that trade unions may have a contradictory attitude. In the **Brazilian case**, for example, the trade union specifically provided its support for work-related matters (payment of compensation to mutilated workers, for overtime, subcontracted work, etc.), but the majority of workers did not support indigenous or Quilombola communities for issues in relation to land or cultural rights violations.

As a rule, punctual alliances with trade unions for overlapping claims are easier than lasting alliances. Indeed, trade unions generally defend their members' interests in terms of working rights, which do not necessarily coincide with non members' interests.

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<sup>46</sup> Actions detailed in Part 3.

#### 4) The role of religious institutions

It also may be appropriate to rely on local religious institutions that can play a non-negligible role when they are favourable to the mobilisation movement.

**In the Philippines**, the Catholic Church, a much venerated institution in this country can be a very influential ally of resisting communities and human rights advocates. In cases of conflict, like in our case, between anti-mining communities and the mining companies in Kasibu, the Church has been intervening and putting pressure on government agencies such as the Department of Environment and Natural Resources. In several instances, violence between the two opposing camps was avoided thanks to the intervention of the Church.

#### *In short*

- **Access to information is a right.**
- **There can be no mobilisation of people without informing them.**
- **CSOs have a facilitation role to play to guarantee people's access to information (translations, popularisation, implementation of proper communication methods, etc.). Information needs to be guaranteed over time in order to maintain people's mobilisation.**
- **Free, prior and informed consultation with indigenous people is particularly protected.**
- **The role of CSOs is to accompany people's mobilisation and to facilitate it, not to make decisions for the victims.**
- **The more stakeholders get mobilised, the more impact the action is likely to have. It is therefore important to network and to mobilize also other institutions (trade unions, religious authorities, etc.).**

When a people's movement takes place within a network from which it draws its strength, it is advisable to plan its strategy to avoid a loss of energy and to maximise the impacts of the movement's actions. Once the concerned people have been conscientised and mobilised and networks have been involved, the approaches to be followed by the movement has to be defined. The following sections propose political and legal methodologies at both national and international levels. The different types of actions may be undertaken individually or integrated into an overall strategy. They should be defined by the mobilised communities and accompanied by CSOs.

## Section II

### Communication, lobbying and advocacy (at national and international levels)

This section, far from proposing advocacy and lobbying actions as such, provides advice for any NGO that would like to engage into this kind of actions. It is a supplement to previous publications on ESCR - related actions (including the Proceedings of the Bamako and Bangalore International Conference on ESC rights enforceability approaches)<sup>47</sup>, which represent a general framework for advocacy and lobbying actions. This document draws additional action lines that stakeholders of political mobilisation may use to make their actions more relevant. The list of proposed actions draws on the experiences of the organisations that contributed to this guide and is therefore not comprehensive.

#### A- Planning the strategy

Strategy needs to be planned before starting any action to advance political claims in order not to lose momentum and to anticipate the various steps as well as short, medium and long term objectives. Planning includes deciding whether a given action will have to take on a legal dimension, assessing its feasibility based on available (financial, material and human) means, and advising on the action plan elaboration phase – which is not about proposing a one fits all strategy.

It is crucial to be tactical and to elaborate strategies according to targets. It is important to analyse to what extent the various stakeholders could be interested in defending (or not) our claims and to put them forward.

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<sup>47</sup> These publications can be downloaded from:  
<http://www.agirpourlesdesc.org/english/resources/publications/?lang=en>

### 1) Taking the local and national political background into account

Elections are often a key opportunity to advance a claim. Potential candidates, in their search of support, may hear, consider and even integrate the claims of the movement to their programmes. At worst, it can also result in toughening of public authorities' position.

**In the Philippines**, local and national elections were simultaneously held in May 2007 and in early 2010. PhilRights advised mobilised NGOs and associations to accentuate the actions of awareness-raising towards the population ahead of the elections so that voters take the mining issue into consideration in casting their ballot. PhilRights normally advises communities to **maximise political events** to call the attention of the public and the authorities on human rights-related issues such as large-scale mining, which is an important debate in the Philippines.

In other periods, it is also important to **form alliances with parliamentarians likely to support our claims, which can be legitimately expected from them as representatives of the people**. Those who are in favour, those who are against and the indecisive ones need to be identified to determine those towards whom the action should be directed. No time should be lost trying to convince those who totally oppose our claims, whereas we can try to **rally the indecisive ones to the cause and to minimise opponents' impact** (their arguments should be analysed and counter-argued). Opposition may be very active – it should be properly figured out who their allies are and what actions we can conduct together.

### 2) Maintain relations with public authorities

There are several spaces for **relations with public authorities** and ways to conceive these relations. In Brazil indeed, institutional participation mechanisms (such as councils) are supposed to be made available; some African countries have formal discussion spaces, whereas in India, it seems that negotiation may only take the form of fighting and resisting.

In spite of such differences in contemplating relations with authorities, we shall see which means may be available.

*If the project's initiator is a public player :*

Even if the concerned community and public authorities have opposite stances, it is preferable to try to negotiate before initiating any movement or taking any legal action. **Negotiations should be conducted in a strategic, cautious and proactive manner.** If they prove to be vain, other forms of actions like a legal action need to be contemplated.

*If the project's initiator is a private player:*

The situation is not much different as public authorities often act in connivance with the private sector. To obtain a legal permit, the company that wishes to establish may offer to develop social, educational and cultural structures (e.g. school, sport centre), that public authorities may claim as the fruit of their mandate.

The strategy to follow remains the same: give priority to negotiations, accompany them with mobilisation movements to influence potential decisions and, as a last resort, bring the case to justice if no compromise can be found.

Some interesting local experiences include:

- Joint commission

In India, in another movement, in early 2009, a vast national peasant organisations network, Ekta Parishad, organised its three-week Janadesh march with 25,000 acutely economically and socially deprived villagers. Following the march of this movement of marginalised rural workers, *“other measures were taken such as **the creation of a joint commission – with public authorities’ and civil society’s representatives – to conduct and supervise the attribution of lands to poor families.** This commission was tasked to work on specific issues such as compensation in case of requisitions of lands for industrial or urban planning purposes.”*<sup>48</sup>

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48 BARI Dominique. *Un an après, les acquis de la marche des paysans indiens*, interview with DARDAUD Jean-Pierre, from the NGO Frères des hommes, January 2009, le journal l'Humanité.:

<http://www.fdh.org/L-HUMA-Un-an-apres-les-acquis-de.html>

- Dual Right Councils

**In some countries, lands are attributed by councils (such as rural councils in Botswana) that rely on both custom and written law.** Their attribution competencies may cover both the settlement of disputes, the imposition of limitations to the use of lands, the cancellation of any type of right to property, the implementation of policies and rural development programmes, etc.

- Clean and respectful facilities

When the installation of facilities is at stake, the challenge may also be to determine, together, under which criteria the installation is acceptable by all rather than categorically refusing it. When properly negotiated, the installation may have virtuous economic effects for the region. Of course, the choice of the option to negotiate a clean and respectful installation will be to the discretion of the population, based on land use contemplated by the company.

**In Cameroon**, Achille Ndaimai, secretary of the Cameroonian ESC rights platform said that the RNHC has been maintaining “*knowledge confrontation relations*” or “*expert relations*” with public authorities. Its action is about advancing human rights by elaborating propositions and alternatives. For example, in May 2008, it proposed **two bills and the creation of a Social Housing Support Office** to the Ministry of Urban Planning and Shelter. The Ministry answered favourably while making a number of remarks and initiated a study on eligibility to social housing. To strengthen its request, the RNHC initiated a parallel study to be published at the same time as the government’s study. It also completed a **strategic plan on the funding of social housing** between June 2009 and January 2010, by compiling various serious studies on social housing. This strategic plan was intended for the Ministry of Rural Development. The Ministry appreciated the quality of this study, that he has been using as a baseline, and has been working on it jointly with the Ministry of Urban Planning and of Social Housing. As a shorter-term solution, the RNHC started an advocacy work through negotiations and meetings with ministries for the opening of resettlement (*recasement*) sites for evicted (*déguerpies*) populations.

**In Mali**, in the case of the establishment of the Libyan company based on the Agreement on Investments in the Agricultural Field, **even before undertaking negotiations with political authorities (elected officials) and administrative authorities**, the latter had to be informed and conscientised on what this Agreement was about, as some of them did not know about it. In a second phase, once authorities' awareness had been raised and associations had been made knowledgeable of the Agreement to back up their defence, associations turned to the company to demand the carrying out of an environmental impact assessment. Since it achieved this objective, the civil society movement has been focusing on results, the totality of which it has been trying to obtain to start the future advocacy action.

**In India**, the Ragigudda slum is located in South Bangalore. Migrant labour had settled down on this marshy tank bed which belonged to the government, over 35 years ago.

In the mid 80's, the Development Authority of Bangalore decided to built in this area, housing sites of large dimensions allotted to the well-to-do. The migrant labour who were living in the slum, were quickly considered by the « *well to do* » as bunch of thieves, a danger to decent people and a disease spreading menace. « Decent » resident went to the court seeking eviction of these illegal residents. In 2007, the court ruled in favour of the well-to-do and ordered the eviction of these slum residents numbering at least 1,500 families.

**The slum residents resisted when the police and the authorities came to evict them. Dalit organisations and associations of the slum took the lead to organise people's resistance against this unjust eviction.**

Several meetings were held in the slum. Fedina <sup>49</sup> actively participated in the process of organising the people. A rally of 5,000 people marched to the office of the Chief Minister to demand for justice, but marchers were stopped by the police who resorted to brutal baton charging (lathi-charge).

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<sup>49</sup> FEDINA (Foundation for Educational Innovations in Asia), a secular non-governmental, non-profit organisation, was established in the year 1983 with its headquarters in Bangalore. FEDINA works towards the empowerment of the marginalized groups of our society: tribals, *Dalits*, poor women, small farmers, landless labourers and informal sector workers and slum-dwellers in the South Indian states Karnataka, Tamil Nadu, Kerala, Andhra Pradesh and Pondicherry.

Several people were injured. **Counter suits were filed by activists groups and regular meetings were held in the slum** to strengthen the demand for non eviction. As a result, **a proposal was made by the government to rehabilitate the residents** in multi-storeyed apartments on half the land if the other half was given over for “development” of shopping complexes etc. Now construction has started in stages and Organisations of the slums are monitoring the progress.

### **3) Deliver as many supporting evidences as possible**

When lodging a complaint or a claim or seeking media coverage for a cause, it is important to gather as much accurate, reliable and verifiable information on the case as possible in the form of testimonies, photos, videos, reports, etc. It is also necessary to provide background-related information to allow for a better understanding of what happened, in what way, and to show that a right recognised by international law was violated or is jeopardised.

**In the Philippines**, PhilRights **has thus trained communities in collecting evidences** to support the denunciation of human rights violations and gave them the necessary equipment such as cameras and camcorders.

**In Senegal**, in the case of the establishment of a private company, a partner of Monsanto, in violation of the right to food, **samples** were among evidences collected to corroborate claims. Indeed, this allowed exposing the way the quality of the earth declined due to the products that were sold by the company (fertilisers, pesticides).

**In Mali**, in the case of the establishment of the Libyan company Malibya in the Office of Niger, the accumulation of evidence seems to be the mobilisation's main challenge. The company, under the Agreement on Investments in the Agricultural Field, has the right to cultivate the land “*with no individual or collective impediment*”. Therefore, a number of elements proving that coveted lands are not only grazing lands but indeed cultivated lands need to be collected. The associations that have been defending victims chose the method of **collective interviews** to collect a high number of testimonies. They gather several victims, listen to them and compile their most convincing and reliable testimonies.

A questionnaire as attached hereto may be used as a guide to document these violations. But it is only an example and its questions should be adapted to each case's specificities. Also, the **kind of information that needs to be collected largely depends on the strategy that affected communities will choose to advocate their rights**. Therefore, if the mobilisation and advocacy strategy essentially relates to the local and regional levels, the information will differ from the information required to build a strategy to exert pressure at national and international levels.

**In Brazil**, affected communities – both indigenous and Quilombola communities – **drafted several reports on human rights violations**. After participating in workshops on human rights, community members went around the whole territory, interviewed witnesses and victims and reported their own situation.

#### 4) Avoid violating the law

A struggle often starts with pacific and legal actions (pacific marches, hunger strikes, petitions). As Achille Ndaimai from Cameroon, puts it, *“we advocate peace in every action to advance our rights.”*

Nevertheless, when faced with sometimes offensive and aggressive initiatives of authorities, people can be brought to take civil disobedience actions that are often legitimate but illegal. This can be prejudicial to the movement – therefore, it is advisable to wage resistance in a legal manner. And there are a numerous stratagems for this.

**In the Philippines**, in 2007, in their opposition to mining exploration, communities blocked the road leading to the mining site. As they risked being accused of any criminal offence, they **transferred their barricades to the private land** of one of the protesters<sup>50</sup>.

If it is impossible to find a method to fight without violating the law, it is highly advisable not to commit any criminal offence, as they will generally have a negative impact on the movement. In this case, the only advisable way is to accord more magnitude to pacific action.

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50 ANDAG Ramil et ICAYAN Joy. *op.cit.*

**In India**, for example, the three-week march led by the wide Ekta Parishad movement resulted in the amendment of a law. *“This pacific march was the triggering element of a law adopted to specifically provide for tribal populations' rights. Their ancestral rights were laid down in Indian legislation, which now officially recognises their right to live there”*<sup>51</sup>. The march gave rise to a public debate on this issue and created a social and political balance of power that triggered a positive political decision.

**Again in India**, the residents of the village of Thervoy also resorted to many pacific means. The 2<sup>nd</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> of January 2009, in the face of the authorities' indifference of, the protesting villagers resumed their **hunger strikes, blocked the traffic and announced a “bandh”**<sup>52</sup>. In response to the arrest of some of the protesters, they organised a long pacific march and obtained their release.

**In Cameroon**, the RNHC empowered populations by teaching them negotiation and mediation techniques to avoid going against applicable regulations.

**In Brazil**, when the company settled down in 1967, the Guarani and Tupinikim communities went to Brasília to denounce the invasion of their lands to the Service of protection of Indians. Then, in 1979, as only 40 hectares of lands had been left to them, they occupied an additional 250 hectares. In response to this conflict, the National Indian Foundation (*Fundação Nacional do Índio* - FUNAI), visited the site to find a solution and decided to conduct a study on the lands, following which it decided to give a part thereof to communities.

Again, in 2006, about 200 members of Guarani and Tupinikim communities peacefully occupied the harbour of the Aracruz Celulose company. Their goal was to exert pressure so that the Brazilian government fulfils its constitutional duty and, once for all, defines the boundaries of traditional

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51 BARI Dominique. *op.cit.*,

52 Form of political protest typically used in India or Nepal. During a “bandh”, a community or a political party calls a general strike: people stay home, stores close, transportations stop running. It can last between two hours and two full days. The Indian Supreme Court tried to forbid these *bandhs* but political parties have kept organising them..

lands, which had been occupied by the company.

### 5) The role of community leaders

Their role should be *limited, used or strengthened*. Community leaders are often vectors of communication between public authorities and/or companies on the one hand and populations on the other hand. **In Cameroon**, during forced evictions, community leaders played the role of victims representatives in forums where political negotiations were held and claims defended.

The leaders' role is crucial in that they are able to galvanise crowds, which makes them the targets of private companies or of public authorities that try to rally them. **In the Philippines for example**, in the municipality of Kasibu, a company offered leaders to support their children's school expenses and bribed them, in which case the coopted leaders should be identified and their influence circumvented.

**In Brazil**, as soon as the conflict started, the company endeavoured to get the cooperation of community chiefs and caciques, to offer advantages to some communities at the detriment of others, to create internal divisions by assigning some chiefs the role of spoke-people and, in this way, by making them more legitimate than other chiefs, by offering money, work, etc. The best strategy to **avoid leaders' segmentation** was to have them recognise their "counterparts", i.e. the leaders of other communities, and to create many meeting opportunities between leaders. The long-standing opposition of Quilombola communities has virtually eliminated the risks of leaders being politically hijacked by companies or of any arrangement with the Espirito Santo state's authorities. While there may have been negative influences in the beginning, the conflict of interest is now clear enough for communities not to be deluded again and to break their commitment to fight to obtain individual advantages.

It may be deducted that **the more recent the conflict the likelier the hijacking of leaders** or possible arrangements. Therefore, **vigilance should be at its peak in early stages of a conflict**.

The **Filipino case** shows how difficult it is to avoid segmentation between

leaders, precisely because of corruption attempts from developers. Efforts thus should also be made to obtain the participation of the "*oscillating leaders*", i.e. those who do not clearly know what position they should adopt, in community meetings, in order to counter external stakeholders' influence, as they might radicalise their position against communities if they are excluded of the movement.

Two important lessons may be learnt from **the Filipino experience**:

- First, the way leaders address media and deal with them deserves some attention as leaders are often media's focal points within communities.
- Secondly it should be ensured that leaders consider the network as useful and that their purpose is to promote the fight, not their own position.

#### - SUMMARY OF LEADERS' ROLE -

Leaders' role	Risks	Advice
- Represent victims	- Bribing leaders	- Avoid segmentation of leaders (be
- Galvanise crowds	- Dividing communities	twice as vigilant at the beginning
- Communicate with authorities	- Using the cause for personal ambitions	of conflicts)
- Maintain the link between communities and media		- Be vigilant of how leaders address media and deal with them
		- Involve hesitating leaders into the movement

### 6) Highlight human rights violations during official visits

During a visit / investigation / review of any public authority or international body (committee of the ILO, Special Rapporteur, etc.), national and international NGOs may have an active role to play by:

- providing evidences (testimonies, photos, videos);
- providing experts in charge of visits with valuable information on existing problems and human rights violations, on sites to visit or people to meet;
- meeting with experts in the field during their missions;
- informing the national media, parliamentarians as well as NGO and



association officers of the conduct and results of their visits.

**In India**, the *Dalit Land Rights Federation's* (DLRF) lawyers accompanied and supported the delegation of the villager association's representatives in its various interventions in the Delhi Supreme Court and in the Chennai High Court (Madras) as well as during the visit of the Special Rapporteur on the right to food. The technical and rhetorical support provided by the lawyers enabled communities to voice their arguments with even more strength, accuracy and determination in proceedings.

To give a movement more magnitude and reach a more favourable balance of power, it is advisable to communicate as much as possible on the actions of communities and on the violations that are committed against them. A few approaches and manoeuvres to be followed at both national and international levels for an efficient communication will be presented later on.

## B- Communication and visibility

Exposing violations of rights to land, housing, food, etc., by the private or public sector does not necessarily lead to criminal penalties. This is why the role of NGOs is crucial in exposing the violations of these rights: they allow bringing a **moral response by affecting the popularity and the image of those responsible for the project whose implementation gives rise to such violations**. This social mobilisation and denunciation work, in the end, is one of the most efficient weapons against violations of these rights.

### 1) Efficient communication means

#### 1.1 Video

It is a very much advocated media to raise both national and international public opinion's awareness as it allows rapid comprehension as well as, nowadays, wide diffusion through the internet. It also has a more striking effect than print documents.

In the case of *Dongria Kondh* communities **in India**, Survival and Amnesty International, two international NGOs, each carried out their own video report. Survival broadcasted its video on its own website to raise the general public's awareness. According to Sophie Baillon, communication officer at Survival, the broadcasting of this video had a strong impact on the public, which sent more massive numbers of letters to the Indian government.

**In the other Indian case**, that of the village of Thervoy, a short documentary was carried out by two Indian journalists who have been working for In-Media (New Delhi). Their video was broadcasted in France during the Summer University for International Solidarity in July 2010.

Video impact is even stronger and more **efficient when their authors are themselves victims of the exposed situation**. This is why, as previously stated, it is highly recommended to properly train community to addressing the media.

**In the Philippines**, as seen in Section 1, camcorders and cameras were distributed to communities to capture images and then forward them to their network, which would take care of their diffusion through the media.

As for the broadcasting of videos, beyond their posting on the internet, there should be no hesitation in sending them to major national television channels that may have farther reaching impact on people and the government. It is also advisable to send them to smaller television channels, even though the number of viewers will be smaller– they might be less demanding on the quality of videos or of their editing. At last, the handing in of a video along with one's request to a judiciary or an extra-judiciary body may be very relevant to get the attention of the said body, enabling it to visualise the situation.

**In the Philippines**, PhilRights sent the communities' videos recorded during the attempted destruction of their houses and barricades to the CHRP. Likewise, CSOs can send information in various formats, including video, to the Committee on ESC Rights.

In **Brazil**, with the participation of communities, FASE made several videos that were all translated into several languages, to expose the situation of human rights violations in several national and international spaces. They were also shown in bigger forums such as fairs, festivals and movie theatres.

## 1.2 Press releases

Like videos, the purpose of press releases is to raise the general public's awareness and to quickly and massively mobilise people. According to Eric Lembembe, journalist and communication officer of the Cameroonian ESC Rights Platform, press releases should be written in an "*inverted pyramid journalistic*" style, i.e. **start with precise facts and end with more general information**. They first have to answer the five basic WH-questions (Who? What? Where? When? Why?). Accessory and background-related elements should be specified at the end of the press release only. This is to make sure that the journalist who uses a press release to write his/her article reports on the most important facts. Press releases should not have more than one page (i.e. 1,500 characters), they should be simply stated, easily readable, etc. Of course they should bear the header of the organisation and, as the case may be, the signature of the organisation's officer.

**Multiple recipients** should be carefully selected for press releases or an impact as strong as possible. **The message and type of information should be adapted to each target (local or national authorities, parliamentarians, the private sector, etc.)**. It is possible to broadcast press releases on national and international NGOs, networks, websites, etc. They also need to be broadcasted in the country where the company responsible for the violation of human rights has its headquarters.

## 1.3 Reports <sup>53</sup>

Reports are crucial for the legitimacy and the credibility of any violation

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<sup>53</sup> See previous publications of the Programme « ESC Rights actions »

- *ESC rights enforceability approaches, Bamako International Conference*, [p. 11-17], 2008. [http://www.agirpourlesdesc.org/IMG/pdf\\_Actes\\_site.pdf](http://www.agirpourlesdesc.org/IMG/pdf_Actes_site.pdf)
- *Alternative/Shadow report on economic, social and cultural rights, Methodological guide*, 2009. [http://www.agirpourlesdesc.org/IMG/pdf\\_guide\\_ENG\\_site.pdf](http://www.agirpourlesdesc.org/IMG/pdf_guide_ENG_site.pdf)

exposure. They should be based on reliable and verifiable information, which will allow **developing a well-founded and credible resistance rationale**.

**In Cameroon**, the drafting of reports lies at the heart of the RNHC's strategy. And so when the government initiated a study on the eligibility to social housing, the RNHC immediately engaged into an alternative study, using figures and indications as accurate as possible. Such strategy amounts to using the same weapons as the "enemy" to better voice one's concerns.

To the greatest possible extent, these reports should be elaborated with victim communities and with a diversified team of researchers (geographers, sociologists, agronomists, economists, lawyers), in order to **address issues from various scientific perspectives**.

Such **Alternative scientific reports** can replace and give sense again to concepts and values debated by the local and national media. **In the Brazilian case for example**, the concept of "forests" was again made meaningful by scientific studies. FASE's study, which was conducted in collaboration with a team of geographers, buffeted the idea upheld by academes in their study commissioned by industrial groups that "forests" can be seen as areas for "*fast growing monoculture*." FASE addresses the concept from a cultural perspective, emphasizing activities that depend thereon (cooking, crafts, medicine, etc.) and materialising them through the existing examples of the Amazonia and *Mata Atlantica* forests.

However, drafting a report takes much more time than coming up with a press release or recording a video. A scientific report that is to support the claims of a movement implies that choices be made and challenges anticipated. Drafting one's own report requires great deal of scientific rigour and a lot of time.

**Challenges to be anticipated in the drafting of a participative report include** <sup>54</sup>:

- Absence of recent statistical data;
- Scattering and lack of organisation of the targeted population;
- Strong reluctance of concerned communities, which are afraid of testifying and absolutely refuse to have names quoted;
- Centralisation of information by public authorities;
- Red tape and unavailability of some officers.

**In Cameroon, the RNHC** conducted a study on forced evictions in order to take stock of the situation and to propose alternatives to policy-makers. The RNHC involved the hundred local associations that it is comprised of in the report drafting to ensure a genuine participation of victims and the use of field data. The network's central body was tasked to collect, match, double-check and summarise this data.

If a movement does not have the capacity to draft a report, it can solicit the assistance of an independent body. It should be cautious, however, about several aspects.

Challenges to be anticipated in the drafting of an *independent* report include:

- Its financial cost;
- Proper selection of the body to be assigned with the drafting of the report - it shouldn't bypass the institutions funded by the economic investors if the movement opposes a private player, to avoid possible connivances (e.g. centre of research and universities funded by industrial groups);
- Negotiation of time frames for the submission of reports - sufficient time needs to be negotiated for an in-depth research, but to support the movement's strategy, the study should not be published too late.

**In India**, the IRDS and the CCFD-Terre Solidaire commissioned an environmental and social impact assessment of the Thervoy village project from the MIDS (Madras Institute of Development Studies). The purpose of this ongoing evaluation is to counterbalance the assessment

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54 Groupe Plaidoyer Pour l'Habitat et le Logement Social au Cameroun, p.6. *op cit.* .

of the Tamil Nadu Pollution Control Board, a government office that is supposed to evaluate development projects' environmental impact, to deliver licenses and to assist negotiations between communities and other stakeholders.

As for press releases and videos, the report's recipients need to be defined with the aim of optimising its impact.

The purpose of reports is not to raise the general public's awareness but to influence decisions. Therefore, **recipients should rather be decision-makers**: ministries, parliamentarians, project managers, financial investors, etc. At the same time, these reports can be sent to the media, scientific magazines, NGOs that specialise in the field concerned, etc.

**In Brazil**, in 2002 and 2004, two reports on the potential impact of the activities of the Aracruz multinational corporation's project on economic, social, cultural and environmental rights in the region were completed. They were translated into English and French and circulated in several countries like Norway, the country of Mr. Lorentzen (founder, Aracruz Celulose's president and main shareholder), submitted to the Espirito Santo state's Parliament, to Brazil's Federal Parliament, to a few international NGOs, to UN agencies and to the Inter-American Commission on Human Rights.

The elaboration of communication material (video, press release, report) is sometimes time-consuming and tedious, but it is an efficient way of communicating on human rights violations situations. It should go hand in hand with punctual and high-profile actions to make the movement visible.

## 2) Making punctual actions visible

The purpose of this kind of communication is to mobilise public opinion in the broadest possible sense. This may take various forms.

### 2.1 Taking advantage of media events

The Survival NGO tried to get media spotlights **on the case of the Dongria Kondh communities in India**<sup>55</sup> by addressing James Cameron, the director of the Avatar movie, on the sad resemblance of this case with his scenario.

### 2.2 Ensuring the visibility of specific action

**In India**, the *Dongria Kondh* communities for the first time allowed journalists to attend their Sacred Mountain worship celebration in February 2008. This traditional worship and cultural celebration, with the presence of the media, turned into a genuine protest of people trying to defend the richness of their culture and their rights.

Journalists also gave media coverage to the massive protests organised by the *Dongria Kondh* communities such as human chains and the blockade of a road across their forest to the area of the mining project by part of the tribe.

When a human right violation occurs, **information needs to be quickly conveyed by local associations to national organisations** so that large-scale organisations quickly circulate them to appropriate media and governmental bodies.

**In the Philippines**, in October 2009, a demolition operation was attempted against a Didipio community member which became very violent. Luckily, residents were able to take pictures and videotape the incident. They immediately sent the evidences to NGOs that had been supporting them, which, in turn, handed them in to the CHRP. Based on such videos and images, the CHRP conducted a fact-finding mission

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<sup>55</sup> Appeal echoed by the magazine Variety on February 8<sup>th</sup>, 2010.

and convened a meeting with the various stakeholders (police, company, residents, ministries, local authorities).

### 2.3 Symbolic withdrawal of award

The Vedanta Resources company, which was responsible for the violation of the *Dongria Kondh* communities' human rights in the Indian state of Orissa, had its *Golden Peacock Environment Management Award* withdrawn in June 2009<sup>56</sup>. This reward is sponsored and granted by the World Environment Foundation and the British Institute of Corporate Managers. Its withdrawal, although symbolic and with little impact, is an additional element in an overall exposure campaign affecting the corporate image.

In the Brazilian case, Aracruz Celulose had its international Forest Stewardship Council (FSC) label withdrawn. Today, the FSC is the green label with the most widespread recognition in the world, with a presence in more than 75 countries and in all continents. In 1999, Aracruz Celulose tried to obtain this label for its eucalyptus plantations in Brazil. But strong mobilisation of organisations, communities, civil society movements and individual citizens prevented it from obtaining it. Aracruz Celulose obtained it by acquiring Riocell, a new company located in the South that already had the label. Yet as a result of ongoing denunciations of the violations of indigenous and Quilombola communities and of environmental crimes, like in the International People's Tribunal in 2006 in Vienna (Austria), in parallel with the visit, the same year, of two Tupinikim and Guarani representatives at the International Secretariat of the FSC, the latter committed to inquire into this case. The positive result was the loss of the label by *Aracruz Celulose*, in spite of the fact that the civil society announced that the request of the non-renewal of the FSC label was its initiative<sup>57</sup>.

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<sup>56</sup> HUMATERRA. *Vedanta Resources et Anil Agarwal. Humiliés par l'annulation de leur prix environnemental*, June 2009.

<http://www.humaterra.info/?VEDANTA-RESOURCES-et-ANIL-AGARWAL>

<sup>57</sup> This point will be detailed below in Part C. 4) corresponding to the Permanent Peoples' Tribunal

All these actions strategically added or integrated to a broader and more in-depth campaign will have even more impact.

## C – National and international advocacy

As claimed by Marcelo Calazans, senior coordinator of FASE's Espirito Santo regional programme in Brazil, *“from a strategic point of view, resistances in the South need to be echoed in Western countries.”* Beyond Western countries, the idea here is to reach those where economic projects implemented in the South are initiated.

### 1) Participation in global campaigns

FASE has been focusing its international campaign on **wide-ranging debates** (over-consumption, environment protection, fight against monoculture) in order to advocate its case towards multiple forums and hence audiences.

#### FASE's international campaign

- Participation of FASE in a seminary-debate in Helsinki with NGOs, the Finnish Green Party and the World Rainforest Movement;
- Interventions in debates on over-consumption with the intent to encourage environmental education, upon the invitation of many Norwegian participants with whom relations had been established;
- Implementation of a campaign for the reduction of the use of paper in schools with the German NGO *Urgewald*; Participation in the *“International Campaign Against Monoculture Eucalyptus Plantations”* by providing information to the World Rainforest Movement.
- Visit of two Tupiquiniquim and Guarani communities' members to Norwegian Parliament members in Oslo;
- Meeting with senior managers of the Procter & Gamble company (the biggest purchaser of the cellulose produced by Aracruz) in Neuss, Germany.

This example relates to an international campaign encompassing the targeted Norwegian parent company's country to increase the impact of the exposure. Let us now see examples of more specifically focused campaigns.

### 2) Lobbying towards investors and customers

Lobbying towards private investors is crucial as it can spell a substantial economic prejudice if investors withdraw their financial support. In addition, if the decision to withdraw support is echoed by the media, it may impact public opinion and affect the corporate image. **Previous investigations seem to be necessary to identify key investors in the project at stake.**

It may also be relevant to **raise small investors' awareness to try to have input at the general assembly of shareholders.** We shall see, as shown in the Filipino case, that it is even possible to become a company shareholder in order to sit at its general assembly.

**In the Brazilian case,** FASE and members of indigenous communities paid many visits to NGOs in Norway (where *Aracruz Celulose* has its headquarters) to get their support and undertook several lobbying actions with them and other European NGOs towards investors, providers and clients of the company.

#### Lobbying actions undertaken by FASE, indigenous and Quilombola communities against Aracruz Celulose:

- **Boycott and protest** against the *“Tempo”* disposable handkerchiefs with the Robin Wood NGO in Germany and Great Britain;
- Collaboration between FASE and the Finnish NGO *Souemmen Puu* for the drafting of an *“Export Credit agency”* report on the *Aracruz Celulose's* third factory construction in the state of Espirito Santo.
- FASE wrote a **public letter to the European Investment Bank** in collaboration with the *World Rainforest Movement* and the German environmental NGO *Urgewald* to ask it to withdraw its investments in the third factory of *Aracruz Celulose*.

- With the support of *Norwatch*<sup>58</sup>, FASE organised a meeting with the Nordic Invest Bank<sup>59</sup> for ending investments in the third factory of *Aracruz Celulose*.
- With the Norwegian Church AID, an inquiry was conducted into connections between *Aracruz* and the market, churches mobilised and a national campaign was launched for the boycott of *Aracruz* products.
- The Future in Our Hands divulged information on the company and the connection with Norway, and meetings between indigenous chiefs and Norwegian authorities were held.

#### **Results of these actions:**

- Some investment banks **adopted more drastic funding ethical criteria**.
- Some import companies **reviewed their purchase criteria**.
- Some of the US Kimberly and Clark company's corporate clients (such as Kleenex or Huggies) **withdrew their investments**.

**Once investors have been made aware of an ongoing violation situation, pressure must be maintained on them via telephone calls to provoke a reaction.**

**The case of the *Dongria Kondh* communities in India** had the support of international NGOs such as Amnesty International, ActionAid and Survival. The latter did extensive lobbying towards Northern investors by calling them on the phone and meeting them physically to inform them of the devastating consequences of the project. For example, the NGO organised a meeting with the Church of England's representatives and even helped them visit the *Dongria Kondh* communities in the Niyamgiri hills. Survival informed the other investors such as the Rowntree Charity on the *Dongria Kondh* communities' situation, the mining project and its impacts by sending them letters.

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<sup>58</sup> Link to the Norwatch website: <http://www.norwatch.no/about-norwatch.html>

<sup>59</sup> International private financial institution of Northern European countries (Finland, Denmark, Norway, Island, Sweden): <http://www.nib.int/home/>

As a result of this lobbying action:

- The Norwegian and British states withdrew from the project in October 2009.
- The Church of England (that had invested 6 million US dollars) withdrew in February 2010 as advised by its ethical investment council that found that Vedanta Resources had not properly respected human rights.
- The *Joseph Rowntree Charity Trust*<sup>60</sup> withdrew in February 2010 on the ground that the company had not met its expectations in terms of human rights.
- Two other shareholders, the *Marlborough Ethical Fund* and the *Millfield House Foundation* sold out their shares.

There is a **Filipino anti-mining network in Australia** called Mining Advocacy Philippines-Australia. Some of its members purchased very small shares of the Australian investor just to become shareholders of the mining company and to sit in its general assemblies. The role of the network's members is to organise lobbying actions, e.g. by inviting communities' representatives to the company's general assemblies to expose the human rights violations caused by the company. The shareholder just has to advise the assembly at the beginning of the meeting that he/she is going to relinquish his/her speaking time to his/her guest. These anti-mining activist shareholders also report the violations committed by the company to the general public and to potential investors in public forums and photo exhibitions highlighting the negligent behaviour of the parent company in the Philippines.

**In the Cameroonian case**, the RNHC's lobbying activities have been targeting a public player – the Urban Community of Yaoundé. The RNHC has not been trying to prevent the Urban Community's action but to direct it onto a better political path respectful of people's rights while seeking alternatives to thwart land and housing rights violations.

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<sup>60</sup> Independent British organisation that has been fighting for a fairer world by funding individual or collective projects based on a social and progressive vision.

### 3) Advocacy towards governments and ministries

It is generally advisable to deal with several ministries, the government and the Parliament, i.e. not only the authority that is directly responsible for the project brought to question. Several advocacy approaches may be used: direct meetings, petitions and mailings.

#### 3.1 Meetings with authorities

**In India**, the IRDS/DLRF representatives met in the name of the villagers association with the Ministers of Rural Development, Social Justice, Environment, Forests and Agriculture, and with the President of the National Commission of Scheduled Tribes <sup>61</sup>, to ask them to swiftly intervene to protect the village of Thervoy. All contacted ministries sent a memorandum to the central government calling for immediate action, with hardly any result so far.

**In Senegal**, CSOs organised meetings with multiple contacts from various hierarchical levels: local authorities, the Kedougou prefect, the Tambacounda governor, Parliament members and ministers.

#### 3.2 On-line petition

**In the case of the *Dongria Kondh* communities in India**, Amnesty International and ActionAid <sup>62</sup> organised on-line petitions in order to attract the attention of the Indian Ministry of the Environment and of Forests, of the Prime Minister and of the Head of the National Congress on the violations of these communities' rights. The human rights NGOs demanded them to act.

Amnesty International also handed over a petition to the General Assembly of Vedanta Resources in July 2010 <sup>63</sup>.

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<sup>61</sup> Nicholas Chinnapan of IRDS explains that this Commission specific to India is an institutional body that conveys *Dalits'* claims on a regular basis to both federal and national states. This commission may also interfere with government's policies when they are against *Dalits'* interests.

<sup>62</sup> Link to Action Aid's petition on the website '[www.petitiononline.com](http://www.petitiononline.com)': <http://www.petitiononline.com/niyam/petition.html>

<sup>63</sup> Link to the petition: [http://www.amnesty.org.uk/news\\_details.asp?NewsID=18914](http://www.amnesty.org.uk/news_details.asp?NewsID=18914)

The petition website [www.petitiononline.com](http://www.petitiononline.com) is for organisations to post their on-line petitions.

#### 3.3 Massive mailing

Survival and Amnesty International called on their militants to write to the **Indian government** to ask it to stop the mining project affecting the *Dongria Kondh* communities and to enforce the legislation to act against the pollution from the Lanjigarh refinery.

**In Cameroon**, however, hierarchy between ministries seems very important. The sending of a report or a petition to several ministries at the same time is considered as inappropriate. Contact should first be established with the Ministry that has primary responsibility. It is then up to the latter to advise other ministries, as the case may be, of the matter of concern.

In addition to rather common communication, pressure, lobbying and advocacy actions, a less widespread approach is to lodge one's complaint with the Permanent Peoples' Tribunal. The latter legally supports and advises upon the claims of victim or oppressed populations.

### 4) The Permanent Peoples' Tribunal

#### 4.1 What is the Permanent Peoples' Tribunal?

The **Permanent Peoples' Tribunal** is an opinion tribunal, i.e. an assembly in which recognised personalities legally expose behaviours that they consider as reprehensible with respect to international law. Movements and voluntary witnesses submit advisory opinions to the jury that conducts the "proceedings" and promotes them through the media. Such rulings have no binding character but have a real legal basis. They are then submitted to authorities. The first international opinion tribunal

was the Russel tribunal <sup>64</sup> on the war crimes committed by the United States in Vietnam.

The PPT was created by Lelio Basso under the aegis of his foundation based in Rome in 1979. From 1986 onwards, the PPT focused on impunity in Latin America. It widely contributed, with other associations, to the acknowledgement of this notion in international law. The tribunal also explored the legal base of the International Monetary Fund's (IMF) and of the World Bank's programmes as well as of the high-profile case of the explosion at the Bhopal chemical plant of Union Carbide (now Dow Chemical).

In recent years, the PPT showed growing **interest in the action of multinational corporations over the world**. Along with the International League for the Rights and Liberation of Peoples (ILRLP) to which it is associated, its meetings mainly focused on such issues over the last six years and on **opportunities provided by international law to force transnational corporations to change their behaviour**.

Since the end of the six-year bi-regional (Latin America-Caribbean/Europe) cycle on transnational corporations and free trade treaties that ended in April 2010, other issues such as Palestine, Burma and more broadly the environment have been under study. However, as explained by Gustave Massiah, member of the PPT's jury and of the International Council of the World Social Forum, any actual violation, provided that the representative character of the association presenting the case is ensured, are generally looked into, even if the case does not pertain to the selected topics. **If the PPT decides not to devote an entire session to a single case, it may however provide assistance in relation thereto in terms of documentation and legal base definition**. Therefore, any movement that is victim of an actual human right violation may refer its case to the PPT.

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64 Tribunal founded in 1966 par J.P. Sartre and Bertrand Russel.

## 4.2 How does the PPT operate?

- **Submission of a case by a social movement** (no other eligibility criteria but the movement's representativeness and the veracity of facts). A data sheet that was elaborated during the 2006 session in Lima on transnational corporations is joined herewith.
- **Phase of investigation** by the PPT (volunteer experts, testimonies, investigation in relation with communities). Its average duration is one year. The tribunal decides with the plaintiffs upon the venue and the duration of the proceedings.
- **Summoning of the accused**. Permanent members have been reflecting on a system of official appointment of a lawyer for the accused party as only one representative of the latter has accepted to appear so far.
- Setting up of a jury of 8 to 12 members, half of which are lawyers. They are selected from the list of judges of the Permanent Peoples' Tribunal's secretariat (sixty members of thirty-one nationalities)
- **Case review**: the tribunal advises upon the facts referred to it or upon those highlighted by its investigations. It applies international law's general and conventional rules, including the generally accepted principles as well as human right and people self-determination related international practices.
- **Public meeting** during which judgements are delivered.
- **Circulation of judgements among international bodies**. **The tribunal publicises its judgements within the UN** through the agency of the ILRLP. As a Lelio Basso Foundation's associate, the PPT has consultative status with the UN Economic and Social Council (ECOSOC).
- **Case take-over at national level**: at this stage, it is up to citizens' associationstotakeholdofthejudgementdeliveredtoadvancetheirrights.

## 4.3 How can the PPT serve communities victims of human rights violations?

Gustave Massiah stresses that the PPT's judgements do not translate into any punishment of the accused nor do they into compensation of victims. They just support the communities' claims by strengthening the legitimacy of their struggle and alerting international public opinion.



The PPT may not do more than accusing perpetrators. What matters is the **demonstration of the accusation's legal base**. Its endeavours are instrumental in the action of world civil society and publicised towards public opinion and media. Its judgements give visibility to tragic situations for which multinational corporations and sometimes states are responsible.

#### 4.4 What is the impact of judgements?

The impact of PPT's judgements on international institutions or on accused corporations is hard to measure. However, for example, a community reached an understanding with the *Pescador* Company in consideration of not presenting a human rights violation case to the PPT. Another of the PPT's judgements (against *Union Carbide*) was also instrumental in a campaign waged by Greenpeace. To Gustave Massiah, the PPT is like a "small stream" feeding large-scale media campaigns.

The initiative of setting up an Asian People's Tribunal is ongoing but is still in its infancy.

In the **Brazilian case**, FASE was tasked to present the Brazilian part of allegations against *Aracruz Celulose* to the Permanent People's Tribunal in 2006, in Vienna, Austria. There were two lines of allegations: the illegal occupation of lands for the eucalyptus plantation and violent actions (evictions and forced displacements) organised by the company against traditional, indigenous and Quilombola populations. In this second line, it was clearly established that Aracruz Celulose violated the Constitution of Brazil (Article 231 on the property of indigenous lands and Article 68 of transient provisions on Quilombola lands).

A few days before the allegations presentation to the tribunal, several community members met with buyers and suppliers of *Aracruz Celulose* in Europe and were invited to participate in a meeting with executives from Procter & Gamble (the largest purchaser of cellulose produced by Aracruz) in Neuss, Germany. During these visits, the theme of the Permanent Peoples' Tribunal was discussed.

After the session to the PPT, Aracruz Celulose has refrained from applying to renew certification of the FSC label, arguing that if it was the

subject of land claims by traditional communities, it would cease to use the label. The FSC announced on its website that Aracruz Celulose lost the certification because of the reports of illegal occupation of lands and numerous complaints from buyers. Then, sources of FSC reported they asked Aracruz Celulose to waive the certification so they do not have to suffer the embarrassment of the squeeze.

The PPT can be contacted through the Lelio Basso International Foundation:

Fondazione Internazionale Lelio Basso  
Via della Dogana Vecchia, 5 - 00186 Roma Italia  
Tél. (+39) 066877774 - Fax (+39) 066877774  
E-mail : [filb@iol.it](mailto:filb@iol.it)  
<http://www.internazionaleleliobasso.it/>

#### *In Short:*

- **Planning one's strategy of action by taking into account local backgrounds and stakeholders (community leaders, political powers...)**
- **Insisting on the reliability of data used**
- **Ensuring the visibility of actions**
- **Exerting pressure on stakeholders who play a significant role vis-à-vis the targeted private company (government, investors, clients,...), by various means (campaigns, Permanent People's Tribunal, medias..)**

## Section III.

### Legal and institutional mechanisms

Judicial systems being specific to each country, the idea here is not to review legal proceedings for the cases studied in this Guide. The purpose of this section is to summarise both national and international mechanisms that proved useful or even compelling and to deliver a few relevant advices based on partners' experience.

In the first place, we will insist on the lengthy character of any legal proceedings, which requires patience and courage. Extra-judicial mechanisms like national commissions should also be solicited.

#### A- Some advice on the implementation of legal proceedings

##### 1) Selecting the most appropriate body for a claim

**In the Philippines**, Pao and Didipio communities are both being affected by the establishment of a foreign company but the process has been the same in both cases. In the first case, the company settled down even before the holding of any free consultation process, albeit compulsory in the Philippines, about indigenous populations' ancestral lands, whereas in the second case, the company was legally established but without any compensation for communities albeit provided by the Environmental Compliance Certificate that the company has signed.

**Pao and Didipio communities thus presented their case to the National Commission for Indigenous People** (the proceedings are explained in the Section on extra-judicial proceedings) **and to the regional trial court based in Bayombong respectively**. In the first instance, through the channel of the *Didipio Earth Savers Multi-Purpose Association* (DESAMA), the Didipio community lodged a few individual complaints with the tribunal invoking the absence of compensation. The tribunal

ordered to stop the project for three days at first and then for 17 days, until the case is ruled upon. In the meantime, inhabitants mounted barricades to prevent any further attempt from the company to demolish their houses.

**The drawback of individual complaints is that compensation is also individual. They may thus not bring about a reversal of the situation. Nevertheless, communities took advantage of the postponement of the project to strengthen their action.**

**In Brazil**, at a national level, FASE lodged **claims with various criminal courts** about intimidations by Aracruz Celulose (houses burnt, armed abuses, discrimination), its illegal encroachment of lands and before a civil Court, about the acquisition of lands by the company with fake deeds for lands that had not been registered in the cadastre and environmental damage.

##### 2) Fine-tuning the initial claim according to the proceedings progress

**In India**, judicial proceedings of the Thervoy village highlight the need for **ongoing monitoring** of the developments of the case with regard to the local political and judicial context.

Non-violent collective action having proved ineffective, the Thervoy local communities and the IRDS/DLRF decided to pursue their fight in national Courts.

In February 2009, an initial petition was lodged in the Chennai High Court by the villagers association's lawyers. The High Court delivered its first ruling only 3 months later on May 12<sup>th</sup>, 2009, ordering the suspension of the project for 6 months. In the meantime, the SIPCOT employees had already cut down half the forest under police protection, with no legal permit.

May 25<sup>th</sup>, 2009: the ruling was cancelled by two judges of the Court of Chennai who authorized the continuation of the project without cutting

trees. Noting this discreet reversal, the association's lawyers lodged an appeal with the Supreme Court of India for the annulment of the above mentioned ruling. The Supreme Court rejected the proceedings on grounds of its own incompetence to rule over the petition and referred the association's lawyers to the Chennai High Court.

After two weeks, on September 16<sup>th</sup>, 2009, the Chennai High Court delivered its ruling. Compensation (in terms of new land distribution and replacement of houses) had to be granted to 16 families displaced by the industrial zone development process.

After the *Dalit* Land Rights Federation's lawyers informed the Chennai High Court that SIPCOT violated its ruling of May 12<sup>th</sup>, 2009, by cutting trees without its authorisation, the Court and the Department of Forests' officials carried out field investigations along with the lawyers in order to come up with pictures and other evidence to corroborate complaints and charges.

January 17<sup>th</sup>, 2010: following a commercial agreement between SIPCOT and a foreign corporation that was made public and under which 291 acres of land were sold to the latter for the development of an industrial unit that was going to harm Thervoy's agricultural economy, the lawyers lodged an appeal with the Supreme Court of India, but to no avail. To date, the Chennai High Court's ruling has not been enforced. The construction of the industrial unit is being carried on, although the Chennai High Court ordered the suspension of works until the directly impacted families are resettled and land is allocated to villagers as compensation.

The Thervoy communities and their lawyers, with the support of the IRDS/DLRF, the anti-Economic Special Zone movement as well as other organisations have been working on identifying future actions...

Some advice was delivered to try to make the legal proceeding as effective and fast as possible. The **activation of extra-judicial mechanisms**, through the channel of national human rights commissions or commissions for indigenous people **may also have a positive impact.**

## B- Lodging claims with national commissions

### 1) National human rights commissions

**In the Filipino case**, following the shooting of a Didipio community member, the movement decided **to lodge a claim with the National Commission on Human Rights**, which is supposed to review civil and political rights violations cases only. The first complaint was lodged in May 2008 (along with a documentary evidences) and the second report was submitted in October 2009 regarding the violent eviction attempt resulting in an inquiry by the Commission and in a roundtable between the project's various stakeholders. The Commission reports its findings and recommendations on January 17, 2011.

#### It emphasized that:

- 1) *Oceana Gold* violated the rights of the residents of Didipio including the right to security, housing, property, freedom of movement, among others.
- 2) The Philippines National Police violated its own operational procedures during the October 2, 2009 incident by high-powered firearms and using unnecessary force.

#### It took the following resolutions:

- 1) Recommend the Government to consider the possible withdrawal of the mining permit of the company.
- 2) Require concerned government agencies to submit reports on actions taken to protect the rights of affected residents within thirty (30) days upon receipt of this resolution.
- 3) Request the same agencies to continue monitoring the human rights situation in Didipio.
- 4) Advise *Oceana Gold* to consider the findings above and conduct a policy-reorientation on the conduct of mining operation<sup>65</sup>.

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65 To consult the results: Commission on Human Rights of the Philippines, *Statement on the Human Rights Situation in Brgy. Didipio, Kasibu, Nueva Vizcaya*, 17 Janvier 2011. [http://www.chr.gov.ph/MAIN%20PAGES/news/PS\\_17Jan2011\\_didipio.htm](http://www.chr.gov.ph/MAIN%20PAGES/news/PS_17Jan2011_didipio.htm)

According to Bernardo D. Larin, the Commission resolution was a landmark decision since the said body just started to tackle the human rights implications of large-scale mining activities only in 2008. This opened the door to other mining-affected communities to also go to the Commission to seek protection and redress if their rights were also violated.

However, the challenge, even for the National Commission on Human Rights itself, is how to effectively implement this resolution and make the other agencies and the Office of the President to comply or respond to the recommendations set forth in the said resolution since it has no legally binding force. But its recommendations are still useful to legitimise the movement's demands and support the advocacy work.

**In India**, in the case of *Dongria Kondh* communities, a claim was lodged by the international NGO Survival with the National Commission on Human Rights (NHRC). Following this, the NHRC wrote to the Orissa state's government to demand an exhaustive report on its partnership with the British company Vedanta Resources in the mining project.

The NHRC *“has the power to investigate complaints about human rights violations or violation complicity, either in its own right or following complaints lodged by victims or by people acting in their names (...) The Commission seems capable of influencing political decisions by constantly reminding public authorities of their obligation to enforce constitutional guidelines on various issues, especially economic, social and cultural rights (...) Since its creation in 1993, the Indian Commission introduced a dynamic approach in the field of economic, social and cultural rights”*<sup>66</sup>.

These examples are in Asia, but many countries have similar bodies. **Cameroon**, albeit very much criticised, has a National Commission for Human Rights and Liberties (CNDHL, *Commission Nationale des Droits de l'Homme et des Libertés*), **France**, a National Advisory Commission

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66 GOMEZ Mario. National Human Rights Commissions and ESC rights, Circle of Rights - ESC rights activism : a training resource, module 23, Human Rights Resource Center, University of Minnesota:  
<http://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module23.htm>

for Human Rights (CNCDH, *Commission nationale Consultative des droits de l'Homme*). **Mexico, Mali, Togo** also have national human rights commissions, Brazil has a Council for the Defense of People's Rights, etc.

## 2) The National Commission on Indigenous People

**In the Philippines**, as stated earlier, Pao district's communities have lodged their first claim with the **National Commission on Indigenous People (NCIP)** in June 2005, arguing that the company had started mining before implementing a consultation process by virtue of the *“right to self-determination”* as well as the *“right of Filipinos and indigenous communities to freely dispose of their natural wealth and resources”* and to *“freely pursue their economic, social and cultural development”*<sup>67</sup>. The NCIP is in charge of **enforcing these peoples' rights and of facilitating the Free, Prior and Informed Consent (FPIC) process** required to obtain a license. On July 12<sup>th</sup>, 2005, the NCIP thus ordered the company to stop all works for a period of 20 days. Following the second claim in February 2007, the NCIP ordered the project's permanent cessation until the company shows its intention of funding a consultation process.

Indeed, whereas the Commission leads consultations, it is up to the company to provide necessary funds.

Eventually, the consultations with Pao residents were conducted but it seems that they were not properly conducted. Leaders denounced fraudulent methods: signatures on attendance sheets were considered as signatures to approve the project; false information was given on the size and the impacts of the project; alcoholic drinks were distributed during consultations; etc. Yet, a certificate of compliance was granted by the NCIP. This legal remedy is relatively ineffective as the NCIP's current composition and orientation is not favourable to the indigenous cause.

The example that is given here is in the Philippines but there are institutions with more or less similar functions in many countries such as

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67 PhilRights, *Alternative Mining Act or House Bill 6342*, published on December, 3<sup>rd</sup>, 2009 on: <http://www.agirpourlesdesc.org/english/how-to-enforce-esc-rights/creating-and-amending-esc-rights/article/alternative-mining-act-or-house?lang=en>

the Joint Commission on Indigenous People's Right to Land in Guatemala "charged with the task of carrying out studies on, as well as drafting and proposing adequate measures to address the issue of indigenous peoples' land"<sup>68</sup>.

### 3) Other Commissions

The intervention of other commissions may be instrumental in fighting against human rights violations. **In the Philippines**, in 1999, four years after the enactment of the 1995 Mining Act, DESAMA initiated a petition to the Commission on Elections (COMELEC)<sup>69</sup>, whose principal role is to enforce all laws and regulations relative to the conduct of elections, initiatives, referendums. The purpose of this petition was to obtain the right to carry out a referendum on large-scale mining in Brgy. Didipio, Kasibu, which was accepted four years later – the referendum was held on September 11<sup>th</sup>, 2003<sup>70</sup>.

A proceeding with regional bodies may be contemplated only once national legal procedures have been exhausted.

## C- Regional bodies protecting human rights

Africa, Europe and America have a regional operational and functional judicial system. Asia, through the Association of South East Asian Nations (ASEAN), adopted a Regional Charter, on the 13<sup>th</sup> of November 2007, in which human rights are "mentioned". Even though there is still no specific human rights covenant and the Charter is not legally binding, it is a first step towards an Asian regional human rights system. An Asian human rights inter-governmental body has been constituted in 2009<sup>71</sup>.

<sup>68</sup> ILO, *Indigenous and Tribal Peoples' Rights in Practice*, 2009, p.75.

<sup>69</sup> The COMELEC is one of the three constitutional commissions of the Philippines.

<sup>70</sup> ANDAG Ramil et ICAYAN Joy, *op.cit.* p.18.

<sup>71</sup> ASEAN Intergovernmental Commission on Human Rights (AICHR):

As for the Arabic human rights protection system, although a "specific human rights Charter"<sup>72</sup> was adopted, it may be considered as still being in its infancy.

### 1) The African human rights protection system

The African Charter on Human and Peoples' Rights (ACHPR) adopted in 1981, which is sometimes blamed for its extroversion because of the significant contribution it gets from the UN and from Western lawyers, did incorporate traditional African community and family values. Such consideration for community traditions goes hand in hand with the consecration of the indivisibility of civil, political, economic, social and cultural rights and the focus on collective rights. **It is one of the most protective international treaties in the field of economic, social and cultural rights.**

#### 1.1 The African Commission on Human and Peoples' Rights

Created in 1987, its role is to promote and to protect human and peoples' rights enshrined in the African Charter over the African continent.<sup>73</sup>

Several stakeholders may hand in communications<sup>74</sup> about human rights violations to the Commission:

- A State considering that another State has violated one or more provisions of the Charter (Articles 48-49);
- Individuals or organisations considering that a State Party has violated one or more provisions of the Charter (Article 55).

Upon declaring a communication as eligible, the Commission remains available for parties to facilitate amicable settlement.

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<http://www.aseansec.org/22769.htm>

<sup>72</sup> Text of the Arab Charter on Human Rights on Association Internet pour la Promotion des Droits de l'Homme's website:

[http://www.aidh.org/Biblio/Txt\\_Arabe/inst\\_l-chart94.htm](http://www.aidh.org/Biblio/Txt_Arabe/inst_l-chart94.htm)

<sup>73</sup> African Commission on Human and Peoples' Rights :

[http://www.achpr.org/english/\\_info/news\\_en.html](http://www.achpr.org/english/_info/news_en.html)

<sup>74</sup> Website of the African Commission on Human and Peoples' Rights, Section "Communication", Subsection "Procedure":

[http://www.achpr.org/francais/\\_info/communications\\_procedure\\_fr.html](http://www.achpr.org/francais/_info/communications_procedure_fr.html)

Throughout the case review, both the originator of the “complaint” and the State brought into question may provide supplementary elements to the Commission.

After carefully reviewing facts and both parties’ arguments, the Commission may decide whether the purported violations of the Charter’s provisions are in existence or not. If it rules that they are, it makes recommendations to the State Party brought into question.

**In Nigeria**, in 1996, the *Social and Economic Rights Action Center-SERAC*<sup>75</sup> lodged a petition with the African Commission, focussing on the violation of the right to health, to housing and to food. “*The communication argues that the Nigerian military government is directly involved in oil drilling through the channel of the National Petroleum Company, which is a majority shareholder in a consortium with Shell Petroleum Development Corporation; and that consortium’s activities have seriously damaged the environment and caused health problems with the Ogoni people due to environment contamination*”<sup>76</sup>.

**The Commission ruled in 2002 that the Nigerian State was responsible.**

It issued recommendations about actions to take for communities to recover their rights. Jacques Viers, head of the Company Commission in Amnesty International France, considers the African Commission’s ruling saying that the State has violated indigenous people’s rights and their right to environment as exemplary. The Commission ordered the State to carry out an Environment Impact Assessment of the project and to clean up the environment. **No major action has followed this decision because of country’s chronic instability. However, in the United States, the complainants received compensation based on the Alien Tort Claims Act, ATCA (see Section IV, C.1)).**

**Limitations and advice on the Commission’s role:** there is no mechanism to oblige States to abide by these recommendations, it is

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<sup>75</sup> Social and Economic Rights Action Center organisation: [www.serac.org](http://www.serac.org)

<sup>76</sup> African Commission on Human and People’s Rights, *Decisions on communications presented to the African Commission*, 30<sup>th</sup> Ordinary Session, Banjul, October 2001, p.1 [http://www.achpr.org/francais/\\_doc\\_target/documentation.html?../decisions/30thsession.pdf](http://www.achpr.org/francais/_doc_target/documentation.html?../decisions/30thsession.pdf)

essentially a matter of good faith. Therefore, it is useful to accompany the Commission’s decision with a high-profile media campaign to influence the concerned State’s behaviour.

## 1.2 African Court of Justice and Human Rights

The protocol on the statute of the African Court of Justice and Human Rights<sup>77</sup> was adopted by Member States of the African Union in 2008. This court, under creation, merges the Court of Justice of the African Union and the African Court on Human and Peoples’ Rights. It will consist of two sections: one on General Affairs and one on Human Rights<sup>78</sup>.

There are other procedures at sub-regional level such as the Court of Justice of the Economic Community of West African States (ECOWAS), the Court of Justice of the East African Community (EAC), the Tribunal of the Southern African Development Community (SADC), the Court of Justice of the Economic and Monetary Community of Central Africa (CEMAC), the Expert Working Group that followed resolutions on the rights of indigenous populations and communities in Africa, etc.

## 2) The Inter-American Human Rights Protection System

The **Inter-American Commission on Human Rights** and the **Inter-American Court on Human Rights** that have respectively been in place since 1959 and 1979 offer many legal remedies. They are the two pillars of the Organization of American States’ (OAS) human rights and individual liberties protection and promotion system. Economic, social and cultural rights are incorporated to a set of reference treaties of the OAS through the Protocol of San Salvador of 1988<sup>79</sup>.

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<sup>77</sup> Link to the protocol: <http://www.africa-union.org/root/au/documents/treaties/text/Protocol%20on%20the%20Merged%20Court%20-%20EN.pdf>

<sup>78</sup> Link to the African Court of Justice and Human Rights: <http://www.au.int/fr/organs/cj>

<sup>79</sup> Extract from the website of the Human Rights Education Associates (HREA), a non-governmental organisation dedicated to human rights: <http://www.hrea.org/fr/education/guides/OEA.html#bodies>

## 2.1 The Inter-American Commission on Human Rights

It is the main institution that was created by the OAS Charter for human rights protection and promotion. It has its headquarters in Washington, D.C. (United States) and is assisted by an Executive Secretary. It is composed of seven elected independent experts. The Commission's main duty is to review and supervise the petitions lodged against OAS member countries alleged to have committed human rights abuses<sup>80</sup>.

Who may lodge a petition? “*Any person or group of people or non-governmental entity legally recognised in one or several OAS Member States may lodge petitions with the Commission in their own name or on behalf of a third party* (Article 23 of the Rules)”.

The Commission:

- May demand protection measures from the State for the time of the petition review (Art.25);
- May conduct field enquiries (Art. 39) called *in loco* investigations;
- Will try to reach an amicable settlement (Art. 40), if the concerned country has ratified the *American Convention on Human Rights* of 1969<sup>81</sup>.
- May forward the case to the Court if the state has not respected the recommendations of the report and if it has recognised the competence of the Court.

In addition to its capacity to investigate on specific cases, the Commission **may, in its own initiative, investigate and report on the situation of human rights in any OAS Member Country**. The Commission relies on reports from NGOs and individuals for its independent studies.

**Limitation:** a substantial limitation of the legal remedy represented by the Inter-American Commission is that the petition **must not be pending in another international proceeding**, e.g. within a UN Committee.

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<sup>80</sup> Rules of the Inter-American Commission on Human Rights detailing petition eligibility criteria, timeframes, etc, available on the Commission website at:

<http://www.cidh.oas.org/Basicos/French/u.reglement.cidh.htm>

<sup>81</sup> Link to the *American Convention on Human Rights*, adopted in San Jose, Costa Rica, November 1969 : <http://www.cidh.org/basicos/french/c.convention.htm>

**In Brazil, in the case of Aracruz Celulose, FASE**, with the support of the *Centro Para la Justicia y el Derecho Internacional* <sup>82</sup> -CEJIL- (Center for International Justice and Law), filed a claim (or “*petition*”) twice to the Inter-American Commission for its granting of an injunction (a protection status for communities living in the Espirito Santo State) against abuses committed by the local police and corporate agents. Both claims were rejected as local police was able to prove that it was ensuring such protection against the company's threats. As a matter of fact, the local police was bribed by the company, but the facts could not be proven.

However, following to the first claim in 2001, the Inter-American Commission carried out a field visit in 2002 to assess violations. In 2002, a report on the human rights situation in Espirito Santo was presented in the hearing in Washington. Following this hearing, the Inter-American Commission conducted a field visit to observe these violations. It held a public hearing with indigenous communities, the company, trade unions, the police, local authorities, etc. It then presented recommendations to the state of Espirito Santo and to Aracruz Celulose. As the situation remained unchanged, in 2006 FASE requested a second hearing from the Commission to denounce abuses and violations of the Quilombola communities' right to land and to demand the respect thereof. A little later, the Commission's experts took advantage of a visit for the assessment of conditions prevailing in Brazil's prisons to go to the State of Espirito Santo to follow upon the evolution of the situation. Following this second visit, a second series of recommendations was conveyed to the company and the state.

It is difficult to measure the impact of the recommendations since they have no binding effect. But the two visits of the Inter-American Commission, together with lobbying campaigns conducted in the country of the parent company, had the effect of bringing Aracruz Celulose to declare themselves “*ready to negotiate*”. From this point, a long period of 3-4 years of negotiations began.

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<sup>82</sup> CEJIL is an organisation dedicated to the defense and promotion of human rights on the American continent and to the settlement of disputes presented to the Commission and the OEA Inter-American Court: <http://cejil.org/>

To lodge a petition on line:

[https://www.cidh.oas.org/cidh\\_apps/login.asp](https://www.cidh.oas.org/cidh_apps/login.asp)

The Commission has offices in various countries, in addition to its headquarter in Washington. Their contact details are available on the Commission's website:

[http://www.oas.org/fr/a\\_about/offices\\_siege.asp?sCode](http://www.oas.org/fr/a_about/offices_siege.asp?sCode)

## 2.2 The Inter-American Court on Human Rights

It was established in 1978 with the coming into force of the American Convention on Human Rights. The Court has permanent headquarters in San José (Costa Rica). It holds ordinary and extraordinary sessions. It may also take temporary measures when one or more victims are in danger. Cases may be referred to the Court by the Inter-American Commission on Human Rights or by a state party. Individuals who wish to lodge a complaint with the Court will first have to present it to the Commission, which will rule on its eligibility before forwarding it to the Court.

The main role of the Inter-American Court of Human Rights is to have the Inter-American Convention on Human Rights enforced and to interpret it. Matters of Convention interpretations or violations may thus be referred to it. Judges who sit in the Court are elected by member states of the Organization of American States in their own name, and not as their states' representatives. It is thus a legal and not a political body.

**The Court may render decisions, judgments or opinions legally binding** the states that expressly recognised its competency. Its rulings generally have to do with financial compensation measures to be paid to victims by states or with protection and conservation measures to prevent any future violation. The Inter-American Court of Human Rights' case law, statutes and rules (on the presentation of complaints and petitions) may be consulted on its web portal at <http://www.corteidh.or.cr> (the website is in Spanish and French, and most documents are also available in French).

To date, the following states have recognised the Court: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela).

## 3) The European human rights protection system

The European system is based on two reference texts – **the European Convention on Human Rights**<sup>83</sup> (ECHR – formerly the European Convention for the Protection of Human Rights and Fundamental Freedoms –, for the protection of civil and political rights) and **the European Social Charter**<sup>84</sup> (for the protection of economic, social and cultural rights).

The **European Court**<sup>85</sup> is the judicial body for the ECHR's enforcement. It has lately been involved in the promotion of human rights indivisibility through its interpretations and has been trying to extend its jurisdiction especially by using the Article 14 that aims at banning discrimination. Its decisions are legally binding for the states parties. Any state or individual directly affected by a human right violation may lodge a complaint with the Court, provided that it has exhausted or has tried to exhaust domestic recourses. The European Court on Human Rights' procedures are described in details on its web portal at: <http://www.echr.coe.int>  
The European Social Charter, which was introduced in 1961, specifically guarantees ESC rights such as the right to housing, to health, to education, to employment, to social protection, to free movement and to be free from discrimination. The **European Committee of Social Rights**<sup>86</sup> is

83 Available in 31 languages on the website of the Council of Europe:  
<http://www.echr.coe.int/ECHR/FR/Header/Basic+Texts/The+Convention+and+additional+protocols/The+European+Convention+on+Human+Rights/>

84 See the website of the Council of Europe on the European Social Charter:  
[http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/presentationindex\\_EN.asp?](http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/presentationindex_EN.asp?)

85 To find out more about the functioning of the European Court, see the manual of the Front Line Foundation: [http://www.frontlinedefenders.org/manual/en/echr\\_m.htm](http://www.frontlinedefenders.org/manual/en/echr_m.htm)

86 See the website of the Council of Europe, the European Committee of Social Rights:



responsible for its enforcement. **The Committee is not a judiciary body** as its responsibility is to review the periodic reports that must be drafted by States Parties to the European Social Charter on their enforcement thereof. It is also entitled to receive complaints but may not render binding legal decisions.

*“The European Committee of Social Rights is composed of independent experts serving six-year terms that are renewable for one term. States must submit annual reports of how they have followed Charter standards. The Committee reviews these reports and then publishes decisions known as ‘Conclusions.’ If a state ignores Conclusions relating to a violation, the Committee of Ministers (of the Council of Europe) addresses the state, asking it to rectify the problem, either by changing a law or a practice (or both).*

*An Additional Protocol to the European Social Charter entered into force in 1998 providing an opportunity for workers’ groups and NGOs to lodge collective complaints. The Committee examines collective complaints considered as admissible. These must include:*

- 1. details of the organisation and individual submitting the complaint;*
- 2. the state against which the complaint has been made;*
- 3. the aspect of the Charter that has allegedly been violated;*
- 4. the actual violation.*

*Following this, there is a written exchange between countries, and in some cases, a public hearing. The Committee then decides on the case and forwards it to both parties; it is published four months later. Finally, the Committee adopts a resolution regarding the issue and may publish recommendations<sup>87</sup> ”.*

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[http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault\\_EN.asp?](http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault_EN.asp?)

87 Website of HREA: [http://www.hrea.org/index.php?doc\\_id=366#intro](http://www.hrea.org/index.php?doc_id=366#intro)

**Whereas regional systems may be resorted once internal legal remedies have been exhausted, it is not generally an obligation for international legal remedies.** Indeed, as Nicholas Chinnapan of IRDS explains, *“while working on pacifically mobilising communities, especially by resorting to legal remedies, we sent a communication to the Special Rapporteur (on the right to food), Olivier of Schutter”*.

## **D- International mechanisms**

International mechanisms do not allow taking any civil or criminal sanction against human rights violators. They are ruled by states themselves, which have so far not accepted the existence of a supranational body that would have the competency to judge and sanction them in the field of economic, social and cultural rights. **The decisions and recommendations that are rendered have more of a political and diplomatic value – they make human rights violations by states visible on the international stage.** Such bad publicity may have significant consequences on diplomatic or economic relations between states. In this chapter, we shall deal with the international mechanisms that seem the most relevant to us for the denunciation of ESC rights violations: UN mechanisms and ILO procedures. As for UN mechanisms, they are numerous and complex<sup>88</sup> - we shall here only refer to the Universal Periodic Review, Special Rapporteurs and the Committee on ESC Rights.

### **1) The Human Rights Council and the Universal Periodic Review**

The Human Rights Council <sup>89</sup> is a recent UN body – it was created in 2006 <sup>90</sup> to replace the Commission on Human Rights. It is composed of representatives of member states and not of independent experts as are treaties and conventions based committees. As such, it is a political, not a legal body.

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88 View schema: [http://www.un.org/aboutun/chart\\_en.pdf](http://www.un.org/aboutun/chart_en.pdf)

89 Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/index.htm>

90 Resolution adopted by the General Assembly, Human Rights Council: [http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf)

The Human Rights Council's core mandate is the **Universal Periodic Review**, i.e. the review, every four years, of the achievements of the 192 Member States of the United States in the field of human rights<sup>91</sup>. NGOs may also submit alternative reports, but expectations on results should not be too high: decisions are not legally binding and rarely make up for violations as the main concern is to preserve diplomatic relations between states (again, the Human Rights Council is a political body). The Universal Periodic Review also takes communications to the High Commissioner and Special Rapporteurs' reports into account.

## 2) Special Rapporteurs

Since 1979, the United Nations have been setting up **special mechanisms to examine the situation of specific countries or specific issues** (housing, indigenous people, food, etc.) **under a human rights perspective**: Special Rapporteurs, independent experts, Secretary General's representatives, working groups, committees, etc.<sup>92</sup> We are here going to explore the mandate of Special Rapporteurs.

Special Rapporteurs' duties include:

- Reviewing individual complaints and communications;
- Carrying out visits in the concerned country to assess the situation of the right which he/she is responsible for to monitor;
- Communicating with states and other stakeholders about alleged violation(s);
- Participating in seminars, conferences and meetings of experts;
- Presenting yearly reports to the UN Human Rights Council and General Assembly on activities and studies he/she has completed in exercising his/her mandate<sup>93</sup>.

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91 Human Rights Bodies, Universal Periodic Review :

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

92 The list and links to these various methods are available on the High-Commissioner website: <http://www.ohchr.org/en/Issues/Pages/ListOfIssues.aspx>

93 For further information, please visit the page of the Special Rapporteur on the right to food of the High-Commissioner website:

<http://www2.ohchr.org/english/issues/food/index.htm>

### 2.1 The most relevant Special Rapporteurs for our case study

The list below, which is far from being exhaustive, is that of Special Rapporteurs that are the most frequently called upon in case of violations of the right to land, to food or to housing.

- Special Rapporteur on the right to food
- Special Rapporteur on the right to adequate housing as part of the right to an adequate standard of living

**In Brazil**, FASE got in touch with the Special Rapporteur on the right to housing (Mr Miloon Kothari, who stayed in office between 2000 and 2008)<sup>94</sup>. The latter recommended FASE to forward their communication to the Special Rapporteur on the right to food, whose approach about the right to housing in Brazil had focused on urban issues. Many communications were forwarded to the Rapporteur on the right to food. (Jean Ziegler has held position from 2000 to 2008)<sup>95</sup>.

- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. Contact: [indigenous@ohchr.org](mailto:indigenous@ohchr.org);
- Special Rapporteur on the contemporaneous forms of racism, racial discrimination, xenophobia and related intolerance. It is very often relevant to resort to this Rapporteur if the discrimination is well justified in a complementary manner vis-à-vis another Rapporteur;
- Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights;
- Special Rapporteur on the right of every individual to enjoy the best attainable *state of physical and mental health*

The Rapporteurs specific to each country<sup>96</sup> and the High Commissioner for Human Rights' representatives should also be advised.

This was done in the **Mexican case**: "*Amerigo Incalcaterra, the United*

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94 The current Special Rapporteur on the right to adequate housing is Raquel Rolnik, from Brazil.

95 List of special rapporteurs and contacts available on the site (tab «mandates»):

<http://www2.ohchr.org/english/bodies/chr/special/themes.htm>

96 The list of rapporteurs specific to each country:

<http://www2.ohchr.org/english/bodies/chr/special/countries.htm>

*Nations High Commissioner for Human Rights' representative in Mexico visited the Parota territory and noticed the lack of information and of transparent consultation within the framework of this project.”<sup>97</sup>*

## 2.2 Submit a matter to a Special Rapporteur

The populations that are victims of a violation of their rights can appeal to the Special Rapporteurs through “communications”<sup>98</sup>. It, as a minimum, should contain the following information<sup>99</sup>:

- the name of the person(s) or organisation(s) who file(s) the complaint (full name of alleged victims, age, sex and place of residence or of origin);
- as detailed indications as possible in case of a group or a community (name, age, sex and place of residence or of origin);
- the date and place of the incident (approximate date if exact date is not known);
- a detailed description of the circumstances of the incident in which the alleged violation was committed;
- the name, if possible, and/or title/position of the alleged author(s) and alleged grounds for the violation;
- as the case may be, measures that were taken at national level (whether other national authorities were seized as well as, if any, the government’s position);
- as the case may be, measures that were taken at international level (e.g. if other international mechanisms were resorted to).

## 2.3 Advice and tricks about sending communications

Communications can be about individual cases, cases of groups of people or of communities.

Given **how difficult it is to assess the credibility of allegations**, great

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<sup>97</sup> Extract from the Committee for Human Rights in Latin America’s website:

<http://cdhal.org/cas/la-parota>

<sup>98</sup> A specimen filled by the Indian NGO IRDS is attached in Annexe. .

<sup>99</sup> The necessary information for communications are listed on the UN High Commissioner on Human Rights’ website:.

<http://www2.ohchr.org/english/bodies/chr/special/communications.htm>

care must be taken in coming up with a communication. Communications should **include any available documentation and evidence**. Where victims of presumed violations are communities or members of specific communities (tribes, families, etc.), an exhaustive information should include the social and cultural background, references to public policies and to specific circumstances in which the assumed violation occurred, as well as the group’s characteristics and, as the case may be, the nature of the fault and the concerned people’s claims for relief.

Where a case falls within several mandates, the concerned Special Rapporteurs may send joint calls or letters. In this manner, **it is useful to address several Special Rapporteurs at a time** as it seems logic that a letter signed by several Rapporteurs will have more impact on the concerned government than a letter or a request from a single Rapporteur.

## 2.4 What is the next step to send a communication?

The Special Rapporteur has several options:

- “**Urgent calls for action**” where individuals or entire communities are under an imminent threat of violation of their rights. “*They are used to communicate information about **an ongoing violation or a violation that is about to happen**. The goal is to make sure competent authorities are informed of the situation as soon as possible in order to be able to intervene to end or prevent a human right violation.*”<sup>100</sup>
- He/she may also hand in “**allegation letters**” to governments in the least urgent cases. “*The letters containing allegations are used to communicate information about **violations that have already been committed** and whose impact on the presumed victim may not be changed any more.*”<sup>101</sup>
- He/she may make a “declaration to the press.”
- **A communication may lead to Special Rapporteur visiting the premises** of the exposed violation.

**Special Rapporteurs conduct missions in various countries all year long.** Every detail of the programme is negotiated with the authorities

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<sup>100</sup> Website *Claiming human rights*:

[http://www.claiminghumanrights.org/sr\\_right\\_to\\_health.html?L=0](http://www.claiminghumanrights.org/sr_right_to_health.html?L=0)

<sup>101</sup> *Ibid*

of the visited state. The negotiation is sometimes arduous. At this stage, national and international NGOs can play an essential role by providing the concerned Rapporteur with useful and recent information on issues to address, sites to visit and people to meet with the aim to make the visit as effective as possible. There is no room for contingencies and the Rapporteur will be unable to change his/her programme. NGOs **should thus play their organising role upstream from the Rapporteur's visit.**

In both types of letters (urgent call for action and letter of allegations), the Special Rapporteur urges the concerned government **to take any appropriate action in order to investigate on alleged violations, to make up for them and to communicate his/her intervention's outcomes.** According to the response received, he/she may decide to pursue his/her investigation or to formulate recommendations.

For plaintiffs' safety, it is important to note that, as a rule, **urgent calls for action and letters of allegation remain confidential** until they are published in the Special Rapporteur's yearly report to the Human Rights Council and to the UN General Assembly.<sup>102</sup>

## 2.5 Advantages and limitations

*« Nowadays, NGOs largely participate in the various special procedures. Special Rapporteurs tend to broadly construe the terms and conditions of their mandates with a positive use of the information conveyed by NGOs. The reports to the Human Rights Council extensively use the information provided by NGOs. »<sup>103</sup>*

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<sup>102</sup> Annual reports and other documents such as the proceedings of fact-finding missions, letters addressed to governments and the latter's responses, once they have been made public, may be accessed on the page of the High Commissioner for Human Rights' website dedicated to Special Rapporteurs. For example, for the Special Rapporteur on the right to food:

[http://ap.ohchr.org/documents/dpage\\_f.aspx?m=101](http://ap.ohchr.org/documents/dpage_f.aspx?m=101)

<sup>103</sup> Organisation de la Francophonie. DIENG Adama, *Société civile et culture démocratique ou du renforcement de la démocratie à travers les droits de l'Homme, Symposium international de Bamako*, June 2000;

<http://democratie.francophonie.org/IMG/pdf/421-2.pdf>

Although their recommendations have no binding character, Special Rapporteurs fulfil a monitoring function through actual follow-up methods. In this regard, letters are sent periodically to the concerned governments to remind them of the recommendations contained in their visit report and demand them to take action for their implementation.

## 3) The Committee on ESC Rights

The Committee on ESC Rights was created by the Economic and Social Council (ECOSOC) in 1985. It gathers twice a year in three-week sessions normally held in May and November for the purpose of **verifying the enforcement of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by the States that have ratified it.** It is composed of 18 independent experts elected by the ECOSOC, based on the principle of geographic representativeness, for a four-year mandate.

**Civil society organisations may at any time hand over information to the Committee** in one of its working languages – English, French, Spanish, Russian; but a document in English will reach a wider audience. This information may be provided in **various forms**: press clips, video or audio recordings, NGO newsletters, reports, academic publications, studies, communiqués, etc. They are compiled in a country file by the secretary. This file is made up of data from various sources (UN bodies, specialised agencies, media, regional institutions, academic publications, CSOs, etc.).

**In Brazil**, in the case of *Aracruz Celulose* and of traditional and indigenous communities, FASE sent two spontaneous reports on the situation in the country, including a specific section on the Espírito Santo state's exact situation in 2000 and in 2004. In response thereto, the Committee on ESC Rights made recommendations to the federated State. The response deadline, only six months, proved relatively short.

During the investigation on a country's human rights situation, the

Committee encourages civil society to draft their report, the so-called “alternative/shadow report”<sup>104</sup>, which accurately refers to the information provided by the State’s official report. It **encourages collaboration**, coordination and cooperation between NGOs of the same country for the drafting of **a single report, based on concise, reliable and verifiable information**<sup>105</sup>. Therefore, if the date of the examination session is near, it may be relevant to participate in the dynamics of the drafting of an alternative report or, failing that, to submit a succinct written document on human rights violation cases to the Committee. This information will allow the Committee to ask the State’s representatives questions during the review session, and if responses are not considered as sufficient, to include these points in their concluding observations.

**In Mexico**, an alternative report was presented to the Committee on ESC Rights during its 36<sup>th</sup> session in 2006 where the Parota case was presented: the report sets forth that the Mexican State has been violating “*the national and international standard in terms of the right to information and to participation and has been tampering on the affected people’s right to life, integrity and safety*”<sup>106</sup>. The Committee on ESC Rights, in its 10<sup>th</sup> concluding observation, expressed its concern about the lack of consultation of affected populations and recommended in its observation 28 “*that the indigenous and local communities affected by the La Parota hydroelectric dam project or other large-scale projects on the lands and territories which they own or traditionally occupy or use are duly consulted, and that their prior*

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104 To find out more about the drafting and the presentation of an alternative/shadow report to the Committee on ESC Rights, please download the methodological guide worked out based on various partners’ experience:

[http://www.agirpourlesdesc.org/IMG/pdf\\_guide\\_ENG\\_site.pdf](http://www.agirpourlesdesc.org/IMG/pdf_guide_ENG_site.pdf)

105 United Nations, ECOSOC, NGO participation in the activities of the Committee on Economic, Social and Cultural Rights, 3 July 2000, E/C.12/2000/6:

[http://www.unhchr.ch/tbs/doc.nsf/0/79b3595b0ab945afc125693d0047a504/\\$FILE/G0043093.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/79b3595b0ab945afc125693d0047a504/$FILE/G0043093.pdf)

106 *Informe de organizaciones de la sociedad civil sobre la situación de los derechos económicos, sociales, culturales y ambientales en México (1997-2006), Informe alternativo al IV informe periódico del Estado mexicano sobre la aplicación del PIDESC*. Septiembre 2007, p.39.

[http://www.agirpourlesdesc.org/IMG/pdf\\_informe\\_alternativo\\_Mexico\\_1997-2006.pdf](http://www.agirpourlesdesc.org/IMG/pdf_informe_alternativo_Mexico_1997-2006.pdf)

*informed consent is sought, in any decision-making processes related to these projects affecting their rights and interests under the Covenant*<sup>107</sup>”.

On September 24<sup>th</sup>, 2009, **the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was opened for signature and ratification by states**. The Protocol is a breakthrough in terms of concrete implementation of ESC rights since it will allow for the filing of individual and collective communications on violations of these rights<sup>108</sup>. This Protocol will come into force after being ratified by at least 10 states<sup>109</sup>.

These various procedures for the exposure of human rights violations also exist for other Committees related to human rights treaties or covenants<sup>110</sup>:

- The Human Rights Committee;
- The Committee on the Elimination of Racial Discrimination (CERD);
- The Committee on Ending Discrimination against Women (CEDAW);
- The Committee Against Torture (CAT);
- The Committee on the Rights of the Child (CRC);
- The Committee on Migrants Workers (CMW);
- The Committee on the Rights of Persons with Disabilities (CRPD).

The work should thus not be focused on the Committee on ESC Rights only. All other Committees concerned by human rights violations should also be solicited.

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107 United Nations Economic and Social Council, *Review of State Party Reports under Article 16 and Article 17 of the Covenant*, Concluding Observations of the Committee on Economic, Social and Cultural Rights, Mexico, 36th Session, Geneva, 1-19 May 2006 : [http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.MEX.CO.4\\_fr.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.MEX.CO.4_fr.pdf)

108 See the text of the Optional Protocol:

[http://www2.ohchr.org/english/law/docs/A.RES.63.117\\_en.pdf](http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf) as well as related sections: <http://www.agirpourlesdesc.org/english/how-to-enforce-esc-rights/promoting-the-implementation-of/?lang=en>

109 List of states that have signed and ratified the available Protocol:

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en&clang=\\_en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en&clang=_en)

110 For more information on each Committee, go to the High Commissioner on Human Rights’ website, section about human rights treaty bodies:

<http://www.ohchr.org/en/HRBodies/Pages/HumanRightsBodies.aspx>

## 4) International Labour Organization's procedures

The International Labour Organization is the United Nations' tripartite agency that brings together governments, employers and workers to promote decent working conditions worldwide.

Its basic principle is **three-party ruling**: governments, employers and workers (ILO's mandators) are represented in the organisation and participate on an equal footing in its activities.

Various mechanisms may be used in human rights violation cases but they are only open to workers and employers organisations. It is thus advisable for NGOs and trade unions to form networks and alliances to access them as we saw in Part 2.

### 4.1. Forwarding of information to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)

The CEACR<sup>111</sup> is composed of 20 independent experts. It is involved in a permanent dialogue process with governments on the enforcement of the conventions they have ratified. This regular monitoring may be very effective to identify implementation and information gaps and to suggest mechanisms to improve it. The CEACR gathers in Geneva on a yearly basis to review the enforcement of ILO conventions by signatory states (as for the Convention No. 169 mentioned earlier). **On this occasion, workers and employers organisations may submit information and comments about the enforcement of any Convention in their country.**

### 4.2 Filing a petition with the International Labour Office

This claiming procedure is based on Articles 24 and 25 of the ILO Constitution<sup>112</sup> according to which workers and employers organisations may lodge claims with the International Labour Office (i.e. the ILO Secretariat) about the failure of any Member State to implement ILO

111 ILO's website, section dedicated to the CEACR:

<http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm>

112 Text of the ILO Constitution: <http://www.ilo.org/ilolex/english/constq.htm>

Conventions. If **individuals** wish to lodge a complaint, they will need to do so **through the channel of a trade union**: "*Individuals may not lodge a claim directly with the International Labour Office but they may forward the relevant information to their workers or employers organisation.*"<sup>113</sup>

The claim should obey procedural rules.<sup>114</sup> If it is addressed to the International Labour Office, its General Manager shall acknowledge receipt thereof and inform the government brought into question.

### Follow-up of a claim:

If deemed eligible, the board of directors shall appoint a tripartite committee (e.g. a government's representative, an employers' representative and a trade union's representative) to review the claim. **This committee shall draft a report with its conclusions and recommendations**, that it shall submit to the board of directors. The Commission of experts may then take these recommendations into consideration in its periodic monitoring activities.

### Analysis and limitations:

Although the impact of such a procedure may be rather limited, the setting up of a tripartite committee and the publication of the latter's conclusions is clearly a **significant way of putting pressure on the international community**, to be exerted again during the Commission of experts' monitoring work.

It should be noted that the existence of pending judicial or administrative procedures at national level will not prevent the lodging of a claim, nor will it prevent its consideration by a tripartite committee.

All mechanisms addressed in this Part may be used for violations committed by the public sector, which is often represented by facilitators or promoters of economic projects (as in the Indian case of the Thervoy

113 ILO Website, section on claims:

[http://www.ilo.org/global/What\\_we\\_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Representations/lang--fr/index.htm](http://www.ilo.org/global/What_we_do/InternationalLabourStandards/ApplyingandpromotingInternationalLabourStandards/Representations/lang--fr/index.htm)

114 To find out about the procedure's details, see the Rules relating to the procedure to follow up in the review of claims under Article 24 and Article 25 of the ILO Constitution:

[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/meetingdocument/wcm\\_041899.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/meetingdocument/wcm_041899.pdf)

village and in the Cameroonian case).

### *In short:*

- **Legal proceedings are time-consuming.**
- **National and regional bodies: only law courts and tribunals may take sanctions. The role of commissions is to expose cases, which may lead to legal proceedings (review of the eligibility of the petition, referral to the Court), a financial decision, a political action...**
- **To be able to resort to a regional body, all domestic remedies must have been exhausted. Complaints may never be anonymous.**
- **International bodies may not take legally binding sanctions, but they make it possible to expose a situation of violation at international level, a bad publicity that may give rise to diplomatic sanctions.**

Let us remind that some of these mechanisms are to be activated one after the other (at national and then regional levels), while others may be cumulated (extra-judicial commission, international mechanisms). To maximise the effect of legal remedies, it is important to carefully examine these institutions' mandate and even their agenda. The exposed issue should be presented under various aspects according to this information.

**In addition to all this, there are specific international institutional mechanisms for private actors that may all be triggered in parallel with national judicial mechanisms.**

## Section IV.

### **Legal and institutional mechanisms specific to the private sector**

This fourth and last part is about the usefulness of negotiation or sanction methods, with examples selected for the unusual way legal texts were used. These mechanisms can only be activated if the human rights violations are caused by private companies.

#### **A- The OECD National Contact Points**

The Organisation of Economic Cooperation and Development (OECD) was created in 1961. Its mission is to strengthen its Member Countries' economies by promoting economic liberalism and by developing a framework for governments to compare their experiences in terms of economic policies. It also seeks to answer common problems, to identify good practices and to facilitate the coordination of national and international policies<sup>115</sup>.

##### **1) Guidelines**

OECD countries adopted "*ethical guidelines for Multinational Enterprises*"<sup>116</sup> in 1976. They are **non-binding recommendations about how to apply responsible behaviour rules that complement and strengthen private initiatives**. They were changed in 2000 in order to

<sup>115</sup> In March 2011, 34 countries are members: Australia, Austria, Belgium, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Island, Italy, Japan, Luxembourg, Malta, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Slovenia, South Korea, Spain, Sweden, Turkey, the United Kingdom and the United States:

[http://www.oecd.org/countrieslist/0,3351,fr\\_33873108\\_33844430\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/countrieslist/0,3351,fr_33873108_33844430_1_1_1_1_1,00.html)

<sup>116</sup> The guidelines are available on the OECD website and were translated into several languages:

[http://www.oecd.org/document/18/0,3746,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,3746,en_2649_34889_2397532_1_1_1_1,00.html)

extend “their scope to providers and subcontractors and to strengthen implementation procedures.”<sup>117</sup>

## 2) the National Contacts Points (NCPs)

Various mechanisms make up the OECD guidelines institutional enforcement scheme: the **National Contacts Points (NCPs)**, the Committee on International Investment and Multinational Enterprises (CIME), the Consultative Economic and Industrial Committee, the Trade Union Advisory Committee (TUAC), etc. They may be activated when the headquarters or subsidiaries of concerned companies are based in an OECD Member Country and/or when the country in which the company is based is an OECD Member Country.

NCPs are a new mechanism that was introduced in the years 2000 and that enable civil society to submit their “complaints”<sup>118</sup> or so-called “*specific circumstances*” in relation with corporate activities. These NCPs are government services in charge of promoting the OECD guidelines and of carrying out national enquiries when problems are encountered; they play a **mediation role**.

### Procedure is as follows :

1. Examination of the petition’s eligibility by NCP;
2. Proposition of mediation called “*good offices*”;
3. Enquiry by the NCP and publication of recommendations;
4. Examination of recommendations follow-up entrusted to both parties brought into question: the company on the one hand and CSOs on the other hand;
5. NCP’s final report.

In the **Indian case of Dongria Kondh communities**, in December 2008, the British contact point was seized with a “specific circumstance” by

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117 CAILLET Marie-Caroline, NGOM Gora (SHERPA). *Les entreprises transnationales et leur responsabilité sociétale*, op.cit.p.35

118 It is important to note that the word “complaint” is not very appropriate, since the OECD implementation mechanism is not a legal remedy.

Survival International against the *Vedanta Resources* company (of British nationality)<sup>119</sup>.

This gave rise to a 9-month enquiry (January through September 2009) on the mining project. The NCP concluded that a change in the company’s behaviour was essential and issued several recommendations. The examination of recommendations follow-up (Step 4) was entrusted to Survival on the one hand and to the company brought into question on the other hand. Vedanta Resources vehemently asserted that it did not accept the NCP conclusions and that these critics were inaccurate and inappropriate<sup>120</sup>. Survival underlined that the enquiry on the recommendations follow-up was difficult to conduct and that the collected information showed no change in Vedanta’s behaviour<sup>121</sup>. The final draft<sup>122</sup> of NCP conclusions (Step 5) was published in March 2010 based on Survival and Vedanta reports on the follow-up of recommendations issued in September 2009.

Other example: on the 26<sup>th</sup> of November, 2004, the French NCP was seized by a group of NGOs, among which the Amis de la Terre-France, against the French Electricité de France (EDF) company. The consortium of NGOs presumed that EDF violated the OECD guidelines through its activities in Laos within the framework of a hydroelectric dam construction and operation project, called “*Nam Theun 2*”. “*The NCP came to the conclusion that available information did not allow blaming EDF for the violation of these principles and that EDF had even taken farther reaching commitments,*

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119 The Vedanta Resources Company was created in the United Kingdom. It is thus ruled by British law and has to observe British guidelines on corporate responsibility. United Kingdom is a member of the OECD. It is thus committed to encouraging multinational companies that fall within the scope of its national law to observe the ethical guidelines set forth by the OECD.

120 Vedanta Resources claimed that the accusations by Survival and the NCP were not valid since the actual responsibility lied with the joint venture that was created (agreement between two economic partners originating from different countries), the ownership and management of which is mainly Indian.

121 SURVIVAL, *Vedanta snubs British government again*, 12 March 2010:

<http://www.survivalinternational.org/news/5632>

122 BASS Rowland, DIO Dal, MORENO Sergio, *Follow up to Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises*, 12/03/2010, URN 10/778: <http://www.berr.gov.uk/assets/biscore/business-sectors/docs/10-778-survival-international-against-vedanta-resources.pdf>



but it encouraged the various parties to engage into a permanent dialogue, which indeed took place and led the company to change some aspects of its programme by integrating NGOs' recommendations<sup>123</sup>".

### 3) Analysis

According to Caroline Giffon-Wee, coordinator for economic stakeholders within the Action Pole of the French section of Amnesty International, "the national contact points could be interesting if they were strengthened – in any case the ongoing review of guidelines must clarify the role of NCPs and go beyond the NCP process. Indeed, NCPs are mediation bodies whose decisions are not legally binding. States need to take adequate actions against the multinational companies that do not respect NCP decisions".

NCPs are a legal remedy that lacks **transparency**. The person who acts as a contact point is from the country brought into question, and yet he/she has full authority in deciding whether a case should be taken over or not. Marie-Caroline Caillet and Gora Ngom of Sherpa consider that "many NGOs regret that the vast majority of NCPs are incorporated to government structures. This anomaly can give rise to conflicts of interests<sup>124</sup>". Moreover, the observance of guidelines is **voluntary and has no binding character**. Therefore, the absence of legal sanction undermines chances of redress for prejudices sustained in case of principle infringement.

From the French government's point of view, the NCP "responsible for the follow-up of the implementation of the OECD Guidelines for Multinational Enterprises is a very active three-party body (i.e. composed of state, employer organisations and trade unions representatives). It successfully conducted several negotiations following complaints that trade unions and NGOs had filed against companies suspected of not

123 DOUCIN Michel. *La Responsabilité sociale des entreprises : l'engagement de la France*, April 2009, [p.20], 28p.: [http://www.diplomatie.gouv.fr/fr/actions-france\\_830/droits-homme\\_1048/droits-economiques-sociaux-culturels\\_4720/responsabilite-sociale-entreprises-engagement-france\\_17059.html](http://www.diplomatie.gouv.fr/fr/actions-france_830/droits-homme_1048/droits-economiques-sociaux-culturels_4720/responsabilite-sociale-entreprises-engagement-france_17059.html)

124 Marie Caroline Caillet and Gora Ngom, *op.cit.* p. 40

observing these principles<sup>125</sup>".

Therefore, while a genuine right to assistance in the settlement of conflicts between stakeholders has emerged from the NCP procedure, it needs to be stressed that respect of human rights and the environment by these actors will remain a problem until concrete incitements for multinational enterprises are introduced.

## B - Global Compact

Global Compact was created in 2000. It is based on ten principles<sup>126</sup> relating to human rights, corruption and the environment. Its goal is to encourage companies "to embrace, support and enact, within their sphere of influence, a set of core values" deriving from the three elements mentioned here below.

The notion of transnational corporations' sphere of influence was introduced with Global Compact. It encompasses all businesses that more or less directly work with the parent company<sup>127</sup>. Global Compact is neither compulsory, nor binding, nor an instrument to evaluate companies. However, it may be used as a guide for signatory companies. The latter must integrate the ten principles into their internal and external operations.

Global Compact creates no obligation for businesses but a focal point for civil society. Indeed, since its creation, Global Compact has considered the High Commissioner for Human Rights as a guardian of this covenant, and hence the creation of the mandate of Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises<sup>128</sup>.

125 Extract from the Ministry of Economy, Industry and Employment's website, in the section "Multinational Enterprises and OCDE Guidelines: National Contact Points: [http://www.minefi.gouv.fr/directions\\_services/dgtpe/pcn/pcn.php](http://www.minefi.gouv.fr/directions_services/dgtpe/pcn/pcn.php)

126 Global Compact website: <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

127 For a more complete definition, read the Sherpa worksheets n°2, *op.cit.*

128 <http://www2.ohchr.org/english/bodies/chr/special/themes.htm>

## C. Exacting the accountability of an American transnational corporation

### 1) What is the Alien Tort Claims Act (ATCA)?

This American law dating back to 1789 was updated. “*The ATCA allows foreign nationals to lodge complaints with American civil tribunals for damage sustained as a consequence of a violation of the law of nations<sup>129</sup> or treaties to which the United States are a party<sup>130</sup>*”. Therefore, **citizens, whether American or not, who are victims of a violation of the “Law of Nations”, may lodge a complaint against an American company with an American tribunal, even if the said violation took place outside US territory.**

Judges ruled that a company could be held responsible not only for its personal actions but also for the actions of its partners, joint ventures<sup>131</sup> and subsidiaries, and even for those of foreign governments.

It should be underlined that the **ATCA may only rely on civil causes of action**: the plaintiff may obtain a financial compensation and is not liable to criminal sanction.

### 2) Example

In the case *Aguinda c. Texaco*<sup>132</sup> in 1993, plaintiffs blamed Texaco, an American company, on dumping waste derived from oil drilling into the Amazon forest rivers. In 1999, the American Court claimed that it was not competent and decided to forward the case to

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129 The « law of nations » is interpreted as referring to universally accepted international law standards. It is generally understood as *jus cogens* (crimes against humanity, cruel treatments, slavery, etc.) but its scope may be extended according to judges’ interpretation. Marie Caroline Caillet and Gora Ngom (SHERPA), *op.cit.*, p.66.

130 *Ibid.*

131 Enterprise whose creation or joint acquisition derives from an agreement between two partners from different countries.

132 Caillet Marie-Caroline, Ngom (SHERPA), *op. cit.*, p. 64 et 65

Ecuador’s tribunals. A trial was thus initiated in 2002 in Ecuador.

Several other American corporations were brought to trial based on ATCA’s cause of action: Coca-Cola, Del Monte, Union Carbide, Chevron, Nike, Ford, Crédit Suisse, etc<sup>133</sup>.

The ATCA was invoked in the trial of the American multinational petroleum company UNOCAL (based in California and operating in 14 countries worldwide). This company was exposed for serious human rights abuses during the construction of a gas pipeline in Burma. It was accused of complicity with the Burmese government in bonded labour, rapes and tortures that were reportedly committed by law enforcement authorities in their watching over the construction of the Yadana gas pipeline in the 1990s.<sup>134</sup>

“*The ATCA was also relied upon in the trial of Ken Saro-Wiwa, a Nigerian poet, writer and leader of a minority ethnic group, who was hanged by the Nigerian government. His involvement in the non-violent action against the destruction of the environment that the Shell multinational petroleum company and the Nigerian government would have caused made him and his cause famous. Ken Saro-Wiwa was extremely mistrustful towards Shell, which he believed was working hand in hand with the army. Shell was accused of complicity with the Nigerian government by an American tribunal.*”<sup>135</sup>

**Multinational enterprises should take ATCA very seriously when they operate in developing countries.** In the name of ATCA, companies maintaining relations with China are aware that they could be brought to justice if they support China in its political rights abuses.<sup>136</sup>

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133 *Ibid.*

134 Council of the Bars and Law Societies of Europe-CSR. *Corporate social responsibility and the role of the legal profession, a guide for European lawyers advising on corporate social responsibility issues, update N°1: April 2005, [p.8]. 29p.:*

<http://www.ccbe.eu/index.php?id=12&L=0>

135 *Ibid.*

136 *Ibid.*

### 3) Critical analysis

*“The ATCA is an example of universal jurisdiction with all related legal and political problems. Yet, it remains the most complete tool for victims to seek to engage the responsibility of transnational corporations (TNCs) that do not respect international law”.*<sup>137</sup>

Marie-Caroline Caillet of the Sherpa association stresses that many cases led to arrangements between parties, which ended the legal proceeding and hence prevented the judge from ruling upon these cases and creating jurisprudence. However, such arrangements may be interesting for the victim party. It is always possible to try to submit cases that question economic, social and cultural rights to a judge, but the latter will have to decide whether the rights being questioned may be considered as falling within the scope of the “law of nations”. American justice has determined what could be understood as falling within the scope of this law, but the list can grow if judges accept to construe specific rights as falling within their competence. The problem is what seems to be a very restrictive interpretation of ESC rights by judges, which makes Marie-Caroline Caillet sceptical about the chances for ESC rights to be interpreted as falling within the scope of the “law of nations” in the near future.

### D- Making transnational corporations accountable based on their codes of conduct and ethical charters

In spite of stringent monitoring, civil society stakeholders need to be imaginative to use rules to their own advantage, whatever their approach.

Nowadays, as has been the case for almost 30 years, thanks to the pressure exerted by NGOs and trade unions, big enterprises have their own codes of conduct or statements of principle. Obviously, these principles’ non-binding and often quite vague character makes it impossible to invoke their non-observance to bring enterprises to justice. However, in the case below, an enterprise was sued on charges of misleading advertising.

<sup>137</sup> Marie Caroline Caillet and Gora Ngom (SHERPA), *op. cit.* p. 69.

The Case Kasky vs. Nike, 27 Cal 4<sup>th</sup> (No S087859, 2 May 2002) is a good example of an original but legitimate use of a law.

*“In 1998, an American citizen instituted prosecution against the Nike company over working conditions in its subcontractors’ factories, on charges of misleading advertising. The first two tribunals ruled that Nike’s representations about its human rights observance policy was not to be assimilated to publicity. Mark Kasky thus turned to California’s Supreme Court that in contrast ruled that the company’s public statements might indeed be considered as advertisement communication and thus as likely to incite consumers to buy Nike’s products. Nike filed an application with the Supreme Court of the United States for judicial review of a decision that it said was against corporate freedom of expression. The Supreme Court declared itself incompetent in July 2003. Yet, by qualifying the way Nike had used its freedom of expression as abusive, it is very likely that Nike would have been condemned to pay damages.*

*Three months later, the case was settled. Both parties agreed that ‘it is more useful to strengthen mechanisms for monitoring and improving working conditions at subcontractors’ facilities than to lose time and money in legal proceedings.’ Nike thus committed to pay 1.5 million dollars to set up audit programmes and fund education programmes (...)’<sup>138</sup>”.*

### E- Bank Inspection Panels

#### 1) The World Bank inspection panel <sup>139</sup>

The World Bank Inspection Panel was created in response to the many critics about the impact of the Bank’s activities in developing countries<sup>140</sup>.

<sup>138</sup> Idem p. 50 and p.51

<sup>139</sup> World Bank Web site : <http://web.worldbank.org/WBSITE/EXTERNAL/EXTIN/SPECTIONPANEL/0,,menuPK:64132057~pagePK:64130364~piPK:64132056~theSitePK:380794,00.html>

<sup>140</sup> Analysis of this mechanism based on an article by Roland ADJOVI, *Le panel d’inspection de la Banque Mondiale, Développements récents* (World Bank Inspection

Its purpose is to make the institution accountable for its actions and to enhance its programmes' credibility and transparency.

In short, the Panel is a court responsible for the **enforcement, by the World Bank, of its own policies and procedures in the implementation of the projects funded by it.**

### Who may file a petition?

*“Any group of people that considers that the Bank infringed its policies or operational procedures in the overall implementation of a project (from design to completion), and that is able to substantiate past, present or future damages, may bring the dispute to the Panel.*

*The group requirement is no constraint since a group starts with two individuals and does not necessarily have to have a legal status <sup>141</sup>”.*

### Critical analysis

*“The originality of the World Bank Inspection Panel lies in its quasi-judicial character and in the novelty that it represents in public international law and international organisation law in particular, insofar as it institutes a remedy at law for individuals and inter-governmental institution's accountability that nevertheless remains implicit <sup>142</sup>”.*

Three elements, however, greatly limit the Panel's effectiveness:

- The decision on how it should be followed upon complaints lies exclusively with its directors – i.e. Member States. States are thus both judge and judged, which greatly undermines the impartiality of any judgement;
- The Panel applies its own internal law – external standards such as human rights are not taken into account;
- It should also be possible to lodge complaints with the Panel about

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Panel, Recent Developments),2001. Available on the Réseau Internet pour le Droit International's website: <http://www.ridi.org/adi/200102a1.htm>

141 Idem [p.2]

142 Idem [p.1]

structural adjustment programmes and sector-based loans, which is currently not the case.

In spite of the many limitations set out above, responses by the Panel sometimes allow supporting exposure campaigns like in the example below.

The Nigerian NGO Social and Economic Rights Action Center (SERAC) **filed an application for enquiry with the World Bank Inspection Panel.** This application was filed following the July 1996 announcement by the Lagos State's government of its intention to demolish about 15 shanty towns, within the framework of a project funded by the World Bank, without contemplating any resettlement and compensation of local communities. *“During the project LDSP (Lagos Drainage and Sanitation Project), more than 2,000 people were evicted from their homes and enterprises and sent to Ijora Badiya and Oloye shanty towns in the centre of Lagos .*

*The SERAC's allegations specifically dealt with gross infringement of the World Bank directives in relation with the concerned community residents' human rights. **The residents were indeed not consulted during the planning phase of the project; they were neither resettled after demolitions nor compensated for the loss of their personal and real estate property.***

*After a visit to stricken communities, the Inspection Panel declared that it was “not satisfied that project managers (...) had resettled or compensated none of the affected people<sup>143</sup>”.*

**As many decisions with non-judicial mechanisms, this decision has no binding character. It nevertheless may exert strong influence with sufficient media coverage and wide dissemination, and if it is used in advocacy campaigns.** It legitimates the concerned communities' claims and mobilisation to the same extent as decisions rendered by national commissions, by the Permanent Peoples' Tribunal, etc.

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143 MORKA Felix. *The Right to Adequate Housing, Circle of Rights - ESC rights activism: a training resource, module 13*, Human Rights Resource Center, University of Minnesota:

[http://www.umn.edu/humanrts/edumat/IHRIP/frenchcircle/M-13.htm#\\_ednref6](http://www.umn.edu/humanrts/edumat/IHRIP/frenchcircle/M-13.htm#_ednref6)

## 2) Regional banks inspection panels

### 2.1) Independent Review Mechanism of the African Development Bank Group

*“The Independent Review Mechanism (IRM) was created in 2004. Its goal is to provide people adversely affected by a project financed by the Bank Group with an independent mechanism through which they can request the African Development Bank Group to comply with its own policies and procedures [...] The mechanism comprises Compliance Review and Mediation (problem solving) for Public and Private Sector projects. For Public Sector, the mechanism can review compliance with all Bank Group operational policies and procedures. For the Private Sector compliance reviews shall only be undertaken for social and environment policies<sup>144</sup>”.*

To fulfil this task, the IRM is backed up by the **Compliance Review and Mediation Unit** and by a **Roster of Experts**.

The Compliance Review and Mediation Unit is responsible for relations with NGOs and CSOs.

- **How to request a compliance review and/or mediation and who can request it?**

Virtually any group (i.e. two people at least) from a country where a project funded by the Bank Group is located may request a compliance review and / or mediation. However, many documents must be provided to that effect and an extensive drafting work needs to be accomplished (in French or English only), before the submission of any request, in order to explain to what extent an action or failure to act of the Bank Group has caused or threatens to cause serious prejudice for affected parties, and to describe the project. Many pieces of evidence such as a map or a graphic of the place where the affected party or the zone affected by the project is located need to be provided <sup>145</sup>.

<sup>144</sup> Website of the African Development Bank Group: <http://www.afdb.org/fr/about-us/structure/independent-review-mechanism/> .

<sup>145</sup> The scope of the compliance review, all required documents, the various steps

### 2.2) The Independent Consultation and Investigation Mechanism of the Inter-American Development Bank (IDB)

This bank considers CSOs and citizens as “*stakeholders in the development of countries of the region*”. Its policy is to have them analyse propositions in relation to credit strategies and practices and provide their feedback. It considers that “*they should express their views and be able to influence its actions at country, regional and international level*”<sup>146</sup>.

To maintain such relationship, the IDB created several contact spaces: the Consultative Council for Civil Society, the Annual Meeting and the Sub-Regional Meeting.

The logistics of these meetings are taken care of by the IDB. Registration is required.

Any community affected by a project funded by the IDB may lodge a request for an enquiry with the **Independent Consultation and Investigation Mechanism (ICIM)**. This mechanism conducts enquiries to determine if IDB projects are properly implemented and comply with environmental policies.

It is an independent mechanism of the IDB, which is responsible for the execution of projects. ICIM proceedings are public and sent to the IDB’s executive director, who supervises the bank’s operations.

- **How should a violation be reported and an investigation requested?**

Any group of individuals may lodge a request. There is no specific form, although it is highly advisable to back up one’s claim with supporting documents and to identify a focal point<sup>147</sup>.

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of the request registration, etc., are described in the “Compliance request” section of the official website of the Bank Group at: <http://www.afdb.org/fr/about-us/structure/independent-review-mechanism/compliance-reviewmediation-request/>

<sup>146</sup> the Inter-American Development Bank and the civil society:

<http://www.iadb.org/fr/societe-civile/bid-et-la-societe-civile.6160.html>

<sup>147</sup> To find out more about conditions and contacts:

<http://www.iadb.org/en/mici/how-to-submit-a-complaint-to-the-mici.1758.html>:

### *In short:*

- **Remedies against violations of economic, social and cultural rights by the international private sector are limited. Most of the existing bodies can take non-legally binding sanctions.**
- **International mechanisms (OECD, Global Compact) may only render recommendations and opinions. Yet they may be used to make bad publicity for a company.**
- **Bank inspection panels monitor compliance with their own rules, within the framework of projects that are funded by them. Their scope is thus limited, but it can have some impact in more far-reaching exposure campaigns.**
- **Still, national laws such as the Alien Tort Claim Act in the United States, in spite of its limited competency, are the most effective remedies.**
- **Reminder: the states signatory to the International Covenant on Economic, Social and Cultural Rights are required to prevent violations of these rights on their territories to be committed by public or private actors such as international companies.**

As a **conclusion**, it should be reminded that:

- any mobilisation should juggle with the four strategic axis presented here, since using only one is obviously not sufficient;
- negotiations should be preferred before resorting to any legal remedy;
- continuous monitoring is necessary when a case is brought to justice in order to react to any reversal of sentence or decisions;
- objectives need to be determined in advance but actions need to be fine tuned based on gradual outcomes;
- the information required for local and international mobilisation is different;
- any mobilisation effort requires human, material and financial means that need to be planned.

**What are the latest developments on human rights violation cases studied in this publication?**

**In India**, the situation has not yet been definitely settled for *Dalit* communities of the Thervoy village. Consultations between the government agency, the company that plans to establish itself and local communities are still ongoing.

Still in India, in the case of Orissa State's *Dongria Kondh* communities, the tug-of-war between the mining company and development project opponents was at its peak until the Indian Ministry of the Environment decided to "freeze" the project on August 24<sup>th</sup>, 2010.<sup>148</sup> Although the word "freeze" may leave doubts about the perennial character of such a decision, the latter is considered by civil society as a real victory for *Dongria Kondh* communities.

**In Mexico**, unfortunately, the economic crisis seems to have adversely impacted the situation, since the Mexican government, on the 28<sup>th</sup> of April, 2010, decided to resume the Parota hydroelectric dam construction.

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<sup>148</sup> Survival, *David versus Goliath – the Astonishing Victory of a Tribe against a Giant Mining Corporation*, 24 August 2010: <http://www.survivalinternational.org/news/6385>

Faced with this threat, the Mexican League for the Defence of Human Rights called upon civil society to reactivate the network and support the Parota communities' fight. The state of alert has to be maintained for swift mobilisation if needed.

**In Cameroon**, forced evictions were stopped for six months between June 2007 and March 2008. They then resumed but residents are now officially warned before any destruction and people with land deeds are compensated. The RNHC is now trying to obtain that people with no land deed also get compensated and has been helping them secure deeds.

In Senegal, people's mobilisation firstly made it possible to set up in the Kédougou region, a monitoring committee composed of members of the three rural communities, village chiefs, NGOs and trade union representatives and, secondly, to stop the company's works in 2009. Youth upheavals reflect a resurgence of a political consciousness that is essential to stay alert.

**In Mali**, mobilisation reached its first objective which was to have an impact assessment carried out. The idea is now to obtain the totality of the results of this assessment, to review them and to start an adequate mobilisation, with the final objective to obtain compensation for as many victims as possible.

**In Brazil**, the mobilisation of local communities and their accompanying associations as well as three years of negotiations (2004-2007) have led to the exposed company "returning"<sup>149</sup> a large plot of land (5,000 hectares) to the concerned population.

**In the Philippines**, the recommendations of the National Commission on Human Rights legitimize the claims of people and ask the authorities to protect the rights of residents and consider the possible removal of the mining permit of the company. This opened the door to other mining-affected communities to seek protection and redress if their rights were also violated.

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149 This word has been extensively debated during negotiations: did these 5,000 hectares have to be considered as "returned" or "surrendered" land?

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## Annexe 1

### Paralegal mechanisms as a human rights entry point to local communities

By Anne-Laure Fages-Plantier, programme coordinator of Juristes-Solidarités

Many testimonies of citizens who were affected by the establishment of multinationals on their territories, by land grabbing or by massive exploitation of natural resources have been collected. But it is sometimes difficult to involve these citizens into the fight for the observance of the human rights that are violated by states, private individuals or legal entities.

This is why, **in order to fight against the lack of information available to people, grassroots organisations have been setting up mechanisms to ensure their access to their rights, and have been training “para-lawyers”** (in Africa) also referred to as “human rights access promoters” (in Latin America) or “barefoot lawyers” (in Asia), in order to raise the so-called “forgotten rights-holders” awareness of their rights.

How could people take action when law is enforced, in their own country, in a language that they do not understand? How could they be aware of their rights when they cannot read? What should they do when courts are several walking days away and when they cannot leave their family or crops behind to claim for their rights in a court? How should a situation be settled when financial resources required to hire a legal counsel are not available?

Despite being directly concerned by legal matters, citizens, although they should be the first beneficiaries of legal remedies, are often unable to access them. They do not know how to deal with these too difficult, too technical and too abstract matters that they see as too far from their daily concerns.

This is why associations have been developing solutions to make law more democratic and more accessible to all. As vehicles for information, for access to justice and for conflict settlement, grassroots organisations have been consistently training para-lawyers, so that people are not helpless when they are confronted to human rights violations.

#### Who are para-lawyers?

Central African associations involved in the UMOJA<sup>150</sup> programme have defined para-lawyers as “*any non-professional citizen who him/herself was taught a few essential legal notions that makes access to law easier by helping people at no cost*”.<sup>151</sup>

Para-lawyers are citizens **who care about enabling their community (neighbourhood, hill, village...) to access their right(s)**. Although some para-lawyers are professionals who are employed by structures, they are mostly people who act as para-lawyers during their free time, on a voluntary basis, in parallel with their professional activity. These people are not requested to follow a legal academic path, but should possess a number of abilities before starting any paralegal training.

Para-lawyers enable people who do not understand or hardly understand official languages in which law is enforced to overcome such obstacle. Therefore, only people who can read and write their country’s official language and their community’s vernacular languages can become para-lawyers.

To be able to carry out their activities and to bring people together and to have their voice heard, para-lawyers need to be seen as legitimate by their community.

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<sup>150</sup> UMOJA is a programme for law and development in Central Africa, which aims at supporting associations providing legal advice to civilians. Five countries are concerned by this programme: Burundi, Cameroon, the Republic of Congo (Congo), the Democratic Republic of Congo (DRC) and Rwanda.

<http://www.agirledroit.org/rubrique62.html>

<sup>151</sup> UMOJA Programme, *La résolution alternative des conflits par la formation de formateurs de para-juriste*, Actes des rencontres de Kinshasa, 2009.

<http://www.agirledroit.org/spip.php?article494>



## What is the role of grassroots organisations?

Grassroots organisations work directly with local communities **to improve their access to human rights (right to water, health, justice...) and to train and to supervise para-lawyers who are related to them.** After identifying para-lawyers and making sure that they fulfil indispensable criteria to carry out their activities, para-lawyers undergo an initial training course. Its content is developed according to the concerned community's needs (election methods, family law...).

There is a common base for most para-lawyer trainings, with modules including:

- organisation and jurisdiction;
- criminal and civil processes;
- land and property law;
- family law.

These modules were developed by legal professionals and taught by trainers who use andragogy<sup>152</sup> to facilitate future exchanges between people and para-lawyers.

Para-lawyers, after completing their training, stay with the grassroots structure, which ensures the continuation of knowledge; the structure organises para-lawyer retraining sessions according to para-lawyers' and target groups' expectations. In these sessions, trainers assess field challenges, address new legal issues or update para-lawyers' knowledge according to how legislation and law cases have developed.

## What kind of activities do para-lawyers carry out?

Human rights access promoters' activities can take on many forms. Whatever their form, their purpose is **to introduce law into communities – make people aware of their rights, help them resolve conflicts, ensure an ongoing legal counsel...**

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152 Andragogy includes all teaching techniques for adults.

## *Make people aware of their rights*

Para-lawyers carry out **awareness-raising and information actions for local communities with adapted training tools.**

For instance, the ASSODIV, a Beninese association, implemented activities within the framework of the Juristes-Solidarités RENFORTS programme between 2000 and 2003 to raise rural communities' awareness of human rights. ASSODIV para-lawyers arouse communities' curiosity when they come with generating sets to their village, where there is no electricity, to show films. Attracted by the fuss and newcomers, children come and observe what para-lawyers are doing. Looking for their children, mothers join them and also start observing para-lawyers; men wonder in their turn why their wives are not home and join them. Para-lawyers can then start their awareness-raising action, with films in the local language, which allow trying to initiate a debate on issues related to human rights addressed in the films<sup>153</sup>.

**Plays or role plays** also enable local communities to become aware of their rights and of the impact of human rights violations.

In the Republic of Congo-Brazzaville, the “*Saka-Saka*” theatre company, which is composed of young human rights defenders who were trained by the Congolese Human Rights Observatory, performed plays to highlight human rights violations and their impact. Their purpose is to enable people to relate the play to their experiences and to look at the observance of their human rights.

## *Carrying out legal consultations*

In their training of local communities, para-lawyers **provide advice on how to deal with legal issues.** These free consultations are conducted in the field or in offices specialised in helping people access their rights, in legal information centres or in human rights desks or clinics. Para-lawyers' role is to advise people to enable them to settle conflicts. Depending on locations and customs, para-lawyers refer to substantive law<sup>154</sup> or to community's customary law.

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153 The film «Agir le droit» made by Juristes-Solidarités presents paralegal activities; it is available at the following address: <http://www.agirledroit.org/rubrique120.html>

154 Substantive law is constituted by all the legal rules in force in a formal state.

**The example of the Legal Information Centre set up by the African Integrated Development Network (Réseau Africain pour le Développement Intégré, RADI) in Senegal.**

*“Following its independence, Senegal, faced with the necessity to develop and to step into the modern world, set up many structures at social, cultural, legal and economic levels. New administrative structures that were created as part of a decentralisation process were supposed to fully involve the whole population, especially rural people, into the country’s existence. However, while rural grassroots people do play an unquestionable economic role, in the legal field, they totally ignore the most basic rules.*

*For entire categories of people, claiming their human rights does not mean much. They are not aware of their rights-holder status. Indeed, the majority of people are illiterate and laws, which are drafted in French, are hardly popularised. Considering all this, the RADI created two legal information centres in Dakar and in Kaolack.*

*The Legal Information Centre’s objectives are to help people become aware of their rights and duties and, in this way, to facilitate their access to justice in view of defending their human rights.*

*The centre’s target groups are the youth, women and inmates.*

*Its activities include:*

- *conversations in Wolof or French on specific issues;*
- *individual or collective legal consultations;*
- *publication of brochures in a simplified language;*
- *preparation of contracts;*
- *legal assistance to inmates who are victims of long-term pre-trial detentions;*
- *organisation of seminars or one-day discussions”*.<sup>155</sup>

Some grassroots organisations specifically train para-lawyers to make up for gaps in the local judiciary system.

Partnerships are set up between bars and local associations for the

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155 Juristes-Solidarités website: <http://www.agirledroit.org/?lang=en>

provision of a legal assistance to destitute people (assistance to the filing of petitions, identification of the best conflict settlement methods). It is for example the case of Congo Brazzaville, where various associations (Comptoir Juridique Junior, Association of Women Lawyers of Congo...) have been working in partnership with local bars.

In Burundi, para-lawyers of the Ligue Iteka have been conducting enquiries in detention places on the observance of procedural rules and of police custody duration limits. Any gross violation of the rules has to be notified to the legal assistance programme, which will reactivate the case and take legal action.

*Participating in the settlement of conflicts*

Anyone who does not agree with the decision of a court or who does not wish to initiate a litigation process may call for the intervention of para-lawyers. Their role is not to settle the conflict by identifying the solution they consider as the most appropriate, but to **enable protagonists to settle the conflict themselves**. Para-lawyers play a **mediation role**, they interview parties, encourage them to discuss to find a solution to their dispute themselves.

**Example of an intervention of para-lawyers of the DEME SO Legal Clinic in Mali:**

*“DEME SO often remembers a successful case of mediation in two neighbouring villages: Nanguila and Gueleba. The Nanguila village had lent a strip of land to the Gueleba village. The strip of land was particularly fertile and was becoming prosperous. The Nanguila village wanted it back. As both villages could not reach a settlement, the conflict was brought to justice, up to the Supreme Court, which rendered a decision. Its decision, yet, was not accepted and was never enforced. The losing party considered the decision as unfair because it did not respect customary law, i.e. the law that relates to everyday life.*

*Customary law provides that any property that was lent must be returned. According to national law, the Nanguila village did no longer retain the property of its land. The village refused the solution identified by tribunals and called for several police interventions that lead to no solution.*

*The legal and judiciary action office proposed the intervention of a para-lawyer who had been maintaining relations with one of the two villages. This para-lawyer intervened as a land mediator. He first got in touch with opinion leaders – an uncle of both villages as well as a general villager assembly. He took stock of the situation with them. These opinion leaders then asked villagers to end the confrontation and to try to understand each other by reminding them that they belonged to the same community. Thanks to the legal and judiciary action office’s intervention, the mediation was able to settle a conflict that a court decision failed to settle by first trying to achieve social peace”.*<sup>156</sup>

Therefore, para-lawyers’ action has multiple purposes: it allows reintroducing law where it has been forgotten about, raising people’s awareness and claiming for citizens’ rights.

Para-lawyers are much more than a back-up solution in case of conflict – they guarantee a lasting social peace within communities.

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<sup>156</sup> Juristes-Solidarités website: <http://www.agirdroit.org/?lang=en> and Juristes-Solidarités, *Participation: comment les populations deviennent actrices de droits ?*, 2010 : <http://base.d-p-h.info/es/dossiers/dossier-2153.html>

## Annexe 2

### Questionnaire for documenting incidents or cases of ESC rights law violation

This questionnaire is based on two documents designed to collect data on cases of violations of law committed by transnational:

- MONSALVE SUÀREZ Sofia (FIAN), EMMANUELLI Maria-Silvia (HIC-AL). *Monocultivos y Derechos Humanos, Guía para documentar violaciones al derecho a la alimentación y a la vivienda adecuadas, al agua, a la tierra y el territorio relacionadas con los monocultivos para la producción agrícola industrial*, 44 p.

Available at the following address:

[http://www.comda.org.mx/files/documentos/Guia\\_monocultivos\\_web090526.pdf](http://www.comda.org.mx/files/documentos/Guia_monocultivos_web090526.pdf)

- Technical index of the Permanent Peoples’ Tribunal (Madrid, 2010), available in Spanish, English and Italian on : <http://www.enlazandoalternativas.org/spip.php?article571>

The aim of this questionnaire is to help provide information necessary for the documentation of a case. One must consider that **the type of information depends largely on the policy that the affected community will choose to defend their rights and the level of action: local, national, regional or international.**

## QUESTIONNAIRE

### 1. Information relative to the private/public project contractor

- Name of the (public/private) contractors' responsible and if this is relevant to its subsidiary
- What strategy did the contractor adopt to legitimize or impose its activities? (for instance advertising campaign, law enforcement and use of force, social leaders co-optation, and if it is a firm, the social responsibility programme, etc.)
- Country of origin of the firm:
- Ownership of the company's capital (shareholders; owners, etc.)

### 2. Legal framework and instruments

- Has the project been promoted by the international institutions (World Trade Organization, World Bank, International Monetary Fund, regional banks) to be put into motion? Through which instruments (structural adjustment plan, loans, etc)?
- What was the role of the local government in the situation? Did it adopt any legislative changes in order to facilitate the project's achievement?
- What are the States' obligations involved (protect, enforce, implement)?
- If it is a private actor, what is the position of the firm country of origin government's? Did it make easier for the firm to establish in the country in which it is denounced?
- What instruments or international declarations were/are violated by the project? (Universal Declaration on Human Rights, United Nations Charter International Covenant on Economic, Social and Cultural rights, International Covenant on Civil and Political rights, Constitutions and national legislations, ILO Convention n°169, etc)
- Has the contractor (private/ public) brought the case to a national or international instance? If yes, in front of which ones and where is the appeal standing?

### 3. Description of Human rights violation

- What are the fundamental impacts of the project? (name for instance human rights violations, environmental impact, public goods plunder, loss of food sovereignty, public services privatization, public health, political corruption, money laundering et use of tax havens)
- Precise description of the violation's sequence of events:
- Exact dates and places where occurred the denounced events (zone name, region, country)
- Number of women, men and children affected? How have they been affected?
- Do the affected persons belong to a traditional community or a specific group of the population?
- Main activity of the affected persons:
- Level of urgency of the situation:
- Name and contact (address, phone, mail) of the organisations that help the victims:
- What were the strategies of resistance of the social organisations and the affected populations? (name between others the media diffusion, local communities training, articulation with other social movements and trade union, pressure campaign and advocacy, etc.)

### 4. In case of enforced expulsions

- What elements brought on the enforced expulsion? Under what form(s) did it occur, was it violent?
- Who put into motion the enforced expulsion process?
- Where, at present, are the displaced persons?
- In what extent has their lifestyle changed since the expulsion?

Indicate the names and contacts of referees and remember to add the case's pertinent documents such as the photos, maps, appeal proofs, legal claims etc.

## Annexe 3

### Information sheet send to the Special Rapporteur on the right to food with the support of IRDS

State Government of Tamil nadu grabbing 1205 acres of grazing land for an industrial park / a case study on right to food & access on land.

#### Title of the Case

Acquisition of 1205 acres of grazing land by state government for an industrial park.

#### Country-Region/District

Inde / State of Tamil Nadu / district of Thiruvallur / Gummidipundi Taluk (subdistrict) / Thervoy Kandigai, *Panchayat* village

#### Summary of the Case

A vast land around 1200 acres that covers grazing land and forest land been acquired by the state to establish Special Economy Zone for commercial purpose. The local people are loosing their livelihood resources as they use the land for crazing their cattle, fuel, fodder, fruits and herbal collection. The onset project will destroy the forest cover with thousands of trees, surface storage system with numerous ponds and lakes. Moreover, the establishment of industries also will affect the local agriculture belonging to 11 villages.

This is a case of loss of livelihood, environment and threat to rare flora (herbal)

#### Key words

- Protection of land users
- Impact of Scheme on livelihoods
- Commercial pressure on land

### What land Issues are implicated? How is the Right to Food Affected by this Situation?

This case relates to Right to life and livelihood of the villagers of Thervoy Kandigai and surrounding village of Karadiputhur and Palavakkam.

Forest produce such as medicinal herbs, wild fruit and plants are consumed by the villagers. Such produce are necessary during droughts as the area is dependent on ainwater and does not have any other water source. The villagers also use these *meikkal poromboke* lands as grazing lands for their cattle. There is no other grazing land in the vicinity. The *meikkal poromboke* lands are also water catchment areas. Rain water collected in the catchment areas flows into three ponds and other smaller water bodies, helping cultivation of 5000 acres of wetlands, which has been the basis of the food economy of the area and the food security of the villagers be withdrawn

### Is the Situation Contrary to or Incompatible with principles established in national law (including constitutional right?)

Article 21 of constitution of India ensures the right of Right to food through Right to life.

### What actions have been started by the local community to improve the situation?

- Public meeting and fasting by people and school students
- Petition sent to Scheduled Castes /Scheduled Tribes commission
- “*Pada Yatra*” demanding to release arrested people
- Thervoy village people submitting their ration cards to village administrative officer (VAO)
- Protest against SIPCOT under the leadership of *Bahujan Samajwadi Party* (BSP)
- Filing the court case in Chennai High Court
- Boycotting parliament election by Thervoy people

### Have courts or other independent bodies made specific orders or recommendations to local or national authorities?

Responding to an Order of the Tamilnadu Government to take over 1205 acres of grazing land, serving as a water catchment area, belonging to

Thervoy Kandigai Village Panchayat to establish a SIPCOT Industrial Park, the local community filed a petition at Madras Chennai High Court against the land acquisition.

The final verdict of the Court in 2009 stipulated that

- Government should allocate and create 100 acres fodder land for rearing animals.
- Government should allocate 240 acres for public use.
- Government should provide alternative land to Thervoy Kandigai within 3 years.

There is no evidence that the authorities comply the order. Moreover, the people went for further appeal to repeal the project as they want the present *statu quo* to be maintained. They feel the environment damage will be beyond comprehension as forest and surface water storage system with numerous ponds and lakes will be destroyed that in turn affect agriculture of several villages

#### **Did local communities start a civil action (court case)?**

Based on the case filed by the *Thervoy Village People Development and Welfare Sangam*, on 12th may 2009 Chennai high court have issued stay order for acquiring lands for SIPCOT. On 27th may 2009, court issued modified stay order in which the court asked not to cut the trees but others can be taken out.

On 16th September 2009, Chennai high court issued the final judgment in which the court directed to prepare 100 acres of grazing field for cattle's from the land of Survey number 32/2. The court also directed to allot 240 acres of lands from the survey number 239 for the general use of Thervoy Kandigai village people.

More over the court directed to allot lands with patta and to construct cement sheeted house for 15 families those who are living within the purview of acquired lands of survey number 32/2. Above all court directed that SIPCOT could be set up only after the approval from the central ministries of forest and environment and people's opinion. The case was filed by Mr. Thanraj and handled by Lawyer T. Mohan. (Case Petition No: WP 9319/2009))

#### **Did local communities ask the Office of High Commissioner for Human rights (OHCHR) or any of the special procedures of the Human Rights Council to write to your government about this case?**

No. No one relevant to this case have approached any international body like the Office of High Commissioner for Human rights.

#### **Are there important ongoing actions or expected decisions in 2010?**

In the year of 2010, *Thervoy Village People Development and Welfare Sangam* have planned to take following actions towards protesting against SIPCOT in their village :

Organizing a big protest before the district collector office for condemning the SIPCOT land acquisition of 1025 acres by involving political parties

#### **If applicable, did local or national authorities take any action following these actions and recommendations?**

No evidence

#### **Is this case representative of the land issues in the country/region?**

For commercial project like Special Economy Zone cause over hundred such grievances . Till date the Tamil Nadu State has 139 Special Economy Zone that are notified. An estimated over 25,000 hectares have already acquired.

#### **If a regional consultation is organised in your region by the special rapporteur, who could represent the case?**

Various contacts of local association, NGO support, lawyer, etc..

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### International organisations websites

World Bank :<http://www.worldbank.org/>

Office of the High Commissioner of Human Rights:  
<http://www.ohchr.org>

\*Committee on Economic, Social and Cultural Rights:  
<http://www2.ohchr.org/english/bodies/cescr/index.htm>

\*The core international human rights instruments:  
<http://www2.ohchr.org/english/law/index.htm>

Chart of signatures and ratifications of international treaties on human rights:  
[http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en&clang=\\_en](http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en&clang=_en)

Organisation for Economic Co-operation and Development -OECD :  
[http://www.oecd.org/home/0,2987,en\\_2649\\_201185\\_1\\_1\\_1\\_1\\_1\\_00.html](http://www.oecd.org/home/0,2987,en_2649_201185_1_1_1_1_1_00.html)

International Labour Organization -ILO:  
<http://www.ilo.org/global/lang-en/index.htm#3>

Food and Agriculture Organization of the United Nations -FAO  
<http://www.fao.org/>

## Regional Human Rights systems

African Commission on Human and people's rights:

[http://www.achpr.org/english/\\_info/news\\_en.html](http://www.achpr.org/english/_info/news_en.html)

Inter-american Commission on Human Rights: <http://www.cidh.org>

Inter-american Court of Human Rights: <http://www.corteidh.or.cr>

European Court of Human Rights:

[http://www.echr.coe.int/ECHR/homepage\\_en](http://www.echr.coe.int/ECHR/homepage_en)

European Economic and Social Committee:

<http://www.eesc.europa.eu/?i=portal.en.home>

The African Court of Justice: <http://www.au.int/fr/organs/cj>

## Websites of the NGOs listed

### NGO belonging to international training programme on ESC rights enforceability approaches

ESC Rights action:

<http://www.agirpourlesdesc.org/?lang=en>

Federação de Órgãos para Assistência Social e Educacional - FASE

(Brazil): <http://www.fase.org.br/v2/>

Fedina (India) : <http://fedina.org>

Integrated Rural Development Society - IRDS ( India) :

<http://www.irdsindia.org/sabsoft/>

International Food Security Network - (IFSN) (Senegal)

<http://www.actionaid.org/eu/index.aspx?PageID=3681>

Juristes-Solidarités (France) : <http://www.agirledroit.org/>

Philippine Human Rights Information Center - PhilRights (Philippines):

<http://philrights.org>

Réseau africain pour le développement - RADI (Senegal) :

<http://www.radi-afrique.net/>

Réseau National des Habitants du Cameroun - RNHC :

<http://www.rnhc.org/>

Cameronian ESC rights platform: <http://plateformedesccam.org>

Terre des Hommes France: <http://www.terredeshommes.fr>

## Others NGO

Amnesty International : <http://www.amnesty.fr/>

CCFD-Terre Solidaire : <http://ccfd-terresolidaire.org>

Centro por la justicia y el derecho internacional (CEJIL): <http://cejil.org/>

FRONT LINE (Protection of human rights defenders):

<http://www.frontlinedefenders.org/>

Fondation Lelio Basso: <http://www.internazionaleleliobasso.it/>

Human Rights Education Associates : <http://www.hrea.org>

Sherpa : <http://www.asso-sherpa.org>

Social and Economic Rights Action Center : <http://www.serac.org>

Survival France : <http://www.survivalfrance.org/>

## Useful Links

- AIDH only available in french: [www.droitshumains.org](http://www.droitshumains.org)
- Human Rights Education Associates (*HREA*):  
[http://www.hrea.org/index.php?doc\\_id=365](http://www.hrea.org/index.php?doc_id=365)
- Human rights resources center, University of Minnesota:  
<http://www.hrusa.org/>
- International Network for Economic, Social & Cultural Rights - ESCR-Net: <http://www.escr-net.org>
- *Claiming Human Rights, Guide to International Procedures Available in Cases of Human Rights Violations in Africa.*  
<http://www.claiminghumanrights.org>
- International network of NGOs working on OECD guidelines:  
[http://oecdwatch.org/home/view?set\\_language=en](http://oecdwatch.org/home/view?set_language=en)

## Programme:



ESC Rights Action

[www.escriights-action.org](http://www.escriights-action.org)



[www.radi-afrique.net](http://www.radi-afrique.net)



Senegalese ESC Rights Platform

## Organisations which contributed to this publication



[www.fase.org.br/v2/](http://www.fase.org.br/v2/)

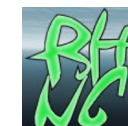


FEDINA  
FOUNDATION FOR EDUCATIONAL INNOVATIONS IN ASIA

<http://fedina.org>



<http://plateformedesccam.org>  
Cameroonian ESC Rights platform



[www.rnhc.org/](http://www.rnhc.org/)



IFSN - Sénégal  
[www.ifsn-actionaid.net](http://www.ifsn-actionaid.net)



[www.irdsindia.org/sabsoft](http://www.irdsindia.org/sabsoft)



Malian ESC Rights platform



[www.terredeshommes.fr](http://www.terredeshommes.fr)

## Other partner organisations of the international programme

ASSOAL (Cameroon)

Asian Human Rights Commission

Association de Lutte contre les Violences faites aux Femmes - ALVF  
(Cameroon)

Aoudaghost network (Benin, Mali, Senegal, Togo)

Dongjen Center for Human Rights Education and Action (China)

Human Development Organization - HDO (Sri Lanka)

Human Rights Forum for Dalit Liberation -Karnataka -HRFDL-K(India)

ESC Rights Platforms in Benin and Togo

Jeeta Vimukthi Karnataka - JEEVIKA (Inde)

People's Education and Economic Development Society - PEEDS (India)

Wuhan University Public Interest and Development Law Institute -PIDLI (China)



[www.agirledroit.org/](http://www.agirledroit.org/)



Philippine Human Rights  
Information Center (PhilRights)  
<http://philrights.org>

Philippine NGO PO network on  
Economic, Social and Cultural Rights



This guide was completed within the framework of the programme for the exchange of experiences on economic, social and cultural rights enforceability approaches coordinated by Terre des Hommes France.

It is based on stakeholders' experiences with various practices, cultures and backgrounds in countries such as the Philippines, India, Brazil, Cameroon, Mexico and Senegal.

It aims to provide tools for civil society organizations to enable them to assert and claim their rights. The methods discussed were taken from sample cases on housing, land and food rights but they may be applied to address violations of other rights.

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