



## Advocacy Update on Rights to Housing, Land and Productive Resources and Other Emerging Issues Highlights from January - July 2014

This publication represents the second in our series of updates highlighting important advances in the areas of housing, land and access to productive resources. It is meant to help inform advocates, policy makers, civil society organizations and other stakeholders about recent developments in the field, and draw attention to emerging areas of work. It also includes a special 'IN FOCUS' section on 'privatization and the right to education.' We hope that this publication will be a useful resource for you and that it helps to raise awareness of the many human rights advances that are taking place at international, regional and national levels.

### Recent Developments in Human Rights Associated with Housing and Land

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#### *Security of Tenure: Special Rapporteur's Report*

The then Special Rapporteur on the right to adequate housing, Ms. Raquel Rolnik, finished her second term as Special Rapporteur in April 2014. In March 2014 she presented her final [report](#) to the Human Rights Council addressing the issue of Security of Tenure of the urban poor. The report proposed 10 Guiding Principles, which the Council in its resolution on the mandate<sup>1</sup> 'acknowledged with appreciation' and 'encourages States to take these guidelines into account when planning and implementing measures to improve the security of tenure for the urban poor.' User-friendly resources on these Guiding Principles on Security of Tenure can be found [here](#).

The Human Rights Council resolution ([A/HRC/RES/25/7](#)) also extended the mandate for a further three years. New language in the resolution expressed concern about: the numbers of people living in unserved and unplanned urban poor settlements and their vulnerability to disease, disasters, unemployment and lack of education; the number of foreclosures in recent years and the inadequate protections for tenants in private rental; and the disproportionate impact of the deterioration in the general housing situation on a number of groups.

Further, new language recognized the importance of security of tenure and the need to promote a variety of tenure forms in urban development, land management and land administration. It was positive also to see the post-2015 development agenda received attention for the first time in this resolution which called on States to 'give due consideration' to the right to adequate housing in the elaboration of the post-2015 development agenda.

#### *New Special Rapporteur on the Right to Adequate Housing*

In May 2014 the Council appointed Ms Leilani Farha as the new Special Rapporteur on the right to adequate housing. Ms Farha is a Canadian lawyer and advocate who is the Executive Director of the NGO 'Canada Without Poverty'. She brings to the role 20 years of experience working on economic, social and cultural rights and the right to adequate housing in particular, at both the national and international level. We are thrilled at her appointment and look forward to working with her in this role.

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<sup>1</sup> A/HRC/RES/25/7, Adopted without a vote in March 2014

We will be hosting an informal consultation with the Special Rapporteur in Geneva in the coming months. Watch our website ([www.globalinitiative-escr.org](http://www.globalinitiative-escr.org)) for details.

### ***Housing and Homelessness in national contexts***

In **Canada** in May this year, the Ontario Court of Appeal heard an appeal of the 2013 court decision in *Tanudjaja et. al. v. Attorney General (Canada) et al.* brought by four homeless individuals concerning the right to housing.

The Applicants' claim that the Government of Canada's and the Government of Ontario's failure to implement a national and provincial housing strategy which addresses homelessness, violates their obligations in relation to the right to housing under the Canadian Charter of Rights and Freedoms. The Applicants' position is that government inaction, coupled with legislative changes have created conditions that have led to increased homelessness and a shortage of adequate and affordable housing.

This case is interesting because it asks the Canadian Court to confront the issue of the government's positive obligations with respect to social and economic rights in the Charter. A number of NGOs have intervened in the case in support of the applicants. A decision has not yet been handed down.

In relation to **South Africa**, Stuart Wilson, SERI Executive Director, wrote an excellent article on the continuing fight against evictions in South Africa- see [here](#).

***Criminalization of homelessness*** has received attention in a number of countries recently.

- The **UN Human Rights Committee** in its review of the **US** in March this year responded to civil society submissions (such as that of the NLCHP [here](#)) addressing homelessness in the US and the plethora of State and local policies and laws that penalize homeless people for the use of public space for basic human functions and behaviors that they have no choice but to perform in public, due to a lack of available housing or shelter.

In its Concluding Observations the Committee noted its concern about 'the criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc.' and said this 'raises concerns of discrimination and cruel, inhuman or degrading treatment (arts. 2, 7, 9, 17 and 26)'. The Committee recommended that the State party:

'(a) abolish criminalization of homelessness laws and policies at state and local levels; (b) ensure close cooperation between all relevant stakeholders including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards;...'<sup>2</sup>

- The National Law Centre on Homelessness and Poverty has also completed an interesting six part blog series on criminalization of homelessness in **the US** [here](#).
- On the same topic, Lucy Adams, Principal Lawyer and Manager of Homeless Law in **Australia** published an excellent report called '[In the Public Eye](#)', which assesses the use of enforcement to deal with the presence and activities of people experiencing homelessness in public spaces and presents ten recommendations for addressing the negative impact on these people, of laws regulating public space. The Report draws on the research and interviews with over 60 experts from over 40 organizations in the US, Canada, Europe and Australia.

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<sup>2</sup> CCPR/C/USA/CO/4, [19], April 2014, see [here](#)

## The Human Rights to Water and Sanitation

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### *The Human Rights to Sanitation – an end to open defecation*

The human right to sanitation continues to receive far less attention than other rights and remains a taboo topic in many countries. Perhaps in part as a consequence, the MDG target on sanitation is unlikely to be met by 2015. In June 2014 the UN together with a large number of civil society partners launched a campaign focused on ending open defecation by 2025 (<http://opendefecation.org/>). Open defecation is where people have no choice but to defecate outside on the ground in full view of others. The campaign which notes that one billion people practice open defecation, aims to highlight this global problem and the serious health problems and deaths it causes and combat the taboos around addressing the right to sanitation. In particular the campaign is hoping to ensure that the post-2015 SDGs include a target on ending open defecation.

### *North Africa: New Constitutional protection of the right to water ... but not sanitation*

**Tunisia:** Following the lead of a number of African States in protection of the right to water (e.g.: Uganda, South Africa, Kenya, Ethiopia, Zambia), the new Tunisian Constitution which was adopted on 26 January 2014, contains a guarantee of the right to water in Article 44. The Article reads:

‘The right to water shall be guaranteed. Conservation and the rational use of water shall be a duty of the State and society.’

Unfortunately the Constitution does not extend to specific protection of the human right to sanitation. The Constitution also contains some protective provisions on natural resources (Articles 12 and 13) which affirm that ‘Natural resources are the property of the Tunisian people, and the State exercises sovereignty over them on their behalf’, and requires investment contracts relating to natural resources to be subject to a parliamentary oversight mechanism. It also contains provisions guaranteeing gender equality and calling for local authorities to adopt ‘participatory democracy’ and ‘open governance’ principles in development programs and land management (Article 139).

**Egypt:** The new Egyptian Constitution which was passed on 18 January 2014, also contains protection of the right to water as follows: ‘Each citizen has the right to healthy, sufficient amounts of food and clean water’ (Article 79). It also specifically protects the Nile River from waste and pollution and guarantees the right of all citizens to enjoy the river (Article 44).

These are very positive developments in rights protections in North Africa and the Arab world. However, it is disappointing that both protections omit reference to the substantive content of the right to water under international human rights law and to human rights principles such as availability, acceptability, adaptability, accessibility, non-discrimination and prioritization of the poorest and most marginalized. Of course now we will need to wait to see how the provisions are implemented and hope that these human rights principles will be incorporated in their interpretation and implementation.

### *The right to water in the US: Detroit Water shut-offs*

In the City of Detroit in the US, the Detroit Water and Sewerage Department has been disconnecting water services of households who are in arrears with water bill payments. In early June 2014, disconnections occurred at an increased rate of around 3,000 households per week. Some 30,000 households are expected to be disconnected in the coming months. The disconnections have disproportionately impacted marginalized groups, in particular those living in poverty and African Americans. Corporate entities also in arrears have not faced water disconnections.

The cost of water has been rapidly increasing in the City of Detroit as much of the previous population has left the City, leaving those behind with the costs of supporting the City’s water infrastructure and supply. The high levels of poverty and unemployment in Detroit, together with the high water bills, has meant that a significant proportion of the population have been unable to afford the bills and have gotten into arrears. As a cost saving measure, the Detroit Water and Sewerage Department stopped sending water bills, which resulted in more households getting into arrears and facing unaffordable bills to keep their water supply. Non-individualized findings have been made in the disconnections and large-scale disconnections have occurred without access to

due process or any means to challenge the disconnections. The authorities failed to consider other means for payment, including subsidies for those facing unaffordable water supply, but rather resorted to disconnections in violation of the human rights to water and sanitation.

The UN Special Rapporteurs on the rights to water and sanitation, housing and extreme poverty and human rights, issued a statement expressing concern about the water disconnections. ‘Disconnection of water services because of failure to pay due to lack of means constitutes a violation of the human right to water and other international human rights,’ the experts said. ‘Disconnections due to non-payment are only permissible if it can be shown that the resident is able to pay but is not paying. In other words, when there is genuine inability to pay, human rights simply forbids disconnections, said Catarina de Albuquerque, the Special Rapporteur on water and sanitation. She further noted ‘When I conducted an official country mission to the US in 2011, I encouraged the US Government to adopt a federal minimum standard on affordability for water and sanitation and a standard to provide protection against disconnections for vulnerable groups and people living in poverty. I also urged the Government to ensure due process guarantees in relation to water disconnection’.

## **The Right to Food**

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The Special Rapporteur on the Right to Food, Mr Olivier de Schutter completed his mandate on 30 May 2014. His replacement is Professor Hilal Elver who is a Turkish academic based at the University of California in the US.

In March for his final [report](#) to the Human Rights Council as Special Rapporteur, Mr De Schutter presented his main conclusions on the right to food. His report begins by providing a ‘diagnosis’ of the inability of the current food system to realize the right to food, highlighting: under-nutrition, environmental impacts of the large scale agribusiness model, the increasing impact of climate change, unsustainable consumption patterns (especially meat consumption), market specialization, failure to address distributional inequalities, structural adjustment policies of the 1980s, and the squeezing-out and pauperization of small-scale farmers. He calls for a new paradigm which focuses on well-being, resilience and sustainability, to replace the productivist paradigm.

The new way forward according to the Special Rapporteur is to: rebuild local food systems focusing on small scale farmers (including ensuring access to resources, supporting agroecology and removing discrimination against women); diversify the economy; establish social protection schemes; and the creation of an enabling international environment which rewards the realization of the right to food rather than obstructs it (i.e. address food price volatility, a new framework for trade and investment in agriculture that supports the realization of the right to food and regulate agribusiness).

Mr De Schutter also produced a report on public procurement entitled: [‘The Power of Procurement: Public Purchasing in the Service of Realizing the Right to Food’](#). He said ‘Governments must exploit the full potential of public food purchasing in order to make food systems fairer and more sustainable’ when launching his report which identifies five principles for using public procurement to support the realization of the right to food:

- Source preferentially from small-scale food producers and help them to access tenders;
- Guarantee living wages and fair prices along the food supply chain;
- Set specific requirements for adequate food diets;
- Source locally whenever possible and impose sustainability requirements on suppliers; and
- Increase participation and accountability in the food system.

‘Reliable demand at fair prices could provide a lifeline to the small-scale farmers in developing countries struggling to compete against transnational food producers, processors, traders and marketers. The full transformative potential of state purchasing must be exploited to drive a genuine transition to pro-poor food and farming models,’ concluded De Schutter.

### ***New resource on using the new complaints mechanisms of the Covenant on Economic, Social and Cultural Rights***

Following the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) in May 2013, ESCR-Net launched a new publication ‘Claiming ESCR at the United Nations: a manual on utilizing the OP-ICESCR in strategic litigation’, for which the Global Initiative’s Bret Thiele was lead author together with Julieta Rossi, Professor at the Universities of Buenos Aires, Lanús y Palermo.

The manual aims to provide theoretical and practical information for lawyers and other advocates interested in utilizing the Optional Protocol to ICESCR as a means to enforce economic, social and cultural rights. It is hoped the manual will contribute to the growing network of advocates using strategic litigation to advance ESC rights protections, by supporting ongoing exchange and collaboration.

The Manual is available [here](#).

### **Women’s Rights to Land and Productive Resources**

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#### ***New Publication: Using CEDAW to secure women’s land and property rights***

In March the Global Initiative published a new practical [Guide](#) on using the UN Women’s Rights Committee processes to advance women’s land and property rights. The purpose of ‘Using CEDAW to Secure Women’s Land and Property Rights: A Practical Guide’ is to provide advocacy information, advice and tools to those wishing to use the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol to secure the land and property rights of women. Our Guide is directed at NGOs and advocates working on these specific issues.

Two examples of successful interventions aimed at securing women’s land and property rights are the CEDAW reviews of Cameroon and Sierra Leone – see [here](#).

#### ***Kenya: UN Rights Experts speak out against retrogressive legislation on women’s property rights***

Kenyan amendments to the *Marriage and Property Act*, which came into force on 16 January 2014, effectively deny women the right to marital property upon divorce or death of their spouse, unless they can prove they made a contribution to the acquisition of the property during their marriage. Very few women in Kenya will be able to demonstrate this given that few Kenyan women have their names on land titles or have the capacity to purchase property due to the unpaid nature of their work. Many rural households in Kenya are headed by women, who rely on the land not only to produce food, but also on the income generated by it to access health care services and educational opportunities for themselves and their families. This new law could result in many Kenyan women losing access to the lands where they live and farm. This is a retrogressive step for women’s rights in Kenya, a country with relatively strong equality protection for women in its Constitution.

In a public Statement, a group of UN human rights experts (on discrimination against women, housing, food, extreme poverty and violence against women) urged the Kenyan government to repeal the new discriminatory provisions of the law.

‘Such provisions are serious retrogressive steps in the protection of women’s equal access to land and property, and are in violation of Kenya’s international and regional human rights obligations’ said independent expert Frances Raday, who heads the UN Working Group on discrimination against women in law and practice. She added ‘Women will effectively have no security of tenure, or place to live with their children if their husband leaves them or dies, which will also increase their risk of experiencing violence. The passage of the Act will have a detrimental impact on the right to food, the right to adequate housing and the right to an adequate standard of living for Kenyan women, children and communities.’ The Special Rapporteurs have expressed their readiness to assist the Kenyan Government to bring the Act into line with international human rights standards.

### ***New Publication on the link between women's land and property rights and addressing HIV, violence against women and food security***

The Open Society Foundation released a new [Briefing Paper](#) entitled 'Securing Women's Land and Property Rights: A Critical Step To Address HIV, Violence and Food Security'. The Briefing Paper, developed in partnership with the Global Initiative for Economic, Social and Cultural Rights, identifies international human rights law and advocacy strategies that can be used to strengthen the enjoyment of human rights related to land and other productive resources, and specifically addresses how such law and advocacy can have positive impact on the HIV pandemic and on ending violence against women as well as enhancing food security.

The Briefing Paper also highlights that to make rights a reality for women requires working both to strengthen the legal standards that protect women's rights and transforming biased cultural norms and practices that discriminate against women.

### **Non-State Actors and Extra-Territorial Obligations**

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The issue of extra-territorial obligations (ETOs) of States in international human rights law and the related topic of corporate accountability for human rights abuses, continued to receive attention in the first half of 2014. These issues were addressed in a number of treaty body State Party reviews, by Special Procedures mandate holders, NGO campaigns, State initiatives and the Human Rights Council.

#### ***Corporate Liability for Gross Human Rights Abuses: New Reports***

In June 2014 the Global Initiative for Economic, Social and Cultural Rights submitted to the Office of the High Commissioner for Human Rights a written [response](#) to the recent report entitled 'Corporate liability for gross human rights abuses: Towards a fairer and more effective system of domestic law remedies' by Dr. Jennifer Zerk (the [Zerk Report](#)). The Zerk Report is aimed at furthering development of the business and human rights framework by focusing on access to remedies through domestic legal frameworks, but risks taking a too conservative and narrow approach that doesn't reflect the current state of international human rights law and ignores international frameworks and mechanisms.

The Global Initiative's response focused on five key issues, namely:

1. Definition and limitations of 'gross human rights abuses';
2. Role of civil society organizations;
3. Extra-territorial aspects of the State 'duty to protect';
4. Extra-territorial jurisdiction as a barrier to corporations' home State law enforcement; and
5. Treaty-based initiatives.

It is hoped that as the area of business and human rights continues to be developed that the framework includes within its scope violations of all human rights, including economic, social and cultural rights, as well as the extra-territorial obligations of States to ensure that corporate actors don't violate human rights abroad and, if such violations occur, provide accessible accountability mechanisms and effective remedies to victims of those violations.

The report concludes: 'In our view the solution to the problem of corporate accountability for human rights abuses will be a long-term, multi-pronged project involving extensive efforts to build domestic legal systems and capacities, increased home State regulation of business entities operating abroad, improved access for foreign victims to home State legal systems and an international instrument which imposes enforceable obligations on business entities including those operating across State borders.'

#### ***Human Rights Committee Scrutinizes the United States Regarding ETOs***

The review of the US by the Human Rights Committee took place in March 2014. Our Parallel Report to the Committee addressed the extra-territorial obligations of the US under the ICCPR and in particular in relation to the regulation of corporate entities domiciled within its territory and operating overseas, and to US conduct whilst acting as part of an international financial institution that funds and supervises development projects abroad.

The Committee challenged the US to abandon its legally flawed position of denying the extra-territorial application of the ICCPR. The US delegation responded by reiterating its position that the treaty (Art 2.1) should be interpreted to mean that States have obligations only in respect of persons within its jurisdiction AND territory. In its Concluding Observations the Committee stated:

‘The Committee regrets that the State party continues to maintain its position that the Covenant does not apply with respect to individuals under its jurisdiction but outside its territory, despite the contrary interpretation of article 2(1) supported by the Committee’s established jurisprudence, the jurisprudence of the International Court of Justice and state practice. ....these elements considerably limit the legal reach and the practical relevance of the Covenant (Art. 2).’

‘The State party should:

Interpret the Covenant in good faith, in accordance with the ordinary meaning to be given to its terms in their context, including subsequent practice, and in the light of its object and purpose and review its legal position so as to acknowledge the extraterritorial application of the Covenant under certain circumstances, as outlined inter alia in the Committee’s general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant;’

### ***US uses Appropriations Bill to pressure World Bank on Chixoy Dam reparations***

In January 2014 the US 2014 *Consolidated Appropriations Act* was enacted including language calling on the World Bank and Inter-American Development Bank to ensure compliance with the reparations agreement in relation to the massacre and forced evictions of the Río Negro community to make way for the Chixoy Dam development project in the 1980s.

Specifically the US law requires US appointed executive directors of the World Bank and Inter-American Development Bank to report to the US Appropriations Committee regularly on the steps being taken to implement the 2010 Reparations Plan regarding the Chixoy Dam. It also conditions funding to the Guatemalan army on certification that the Guatemalan State is taking credible steps to implement the Reparations Plan. This inclusion places additional pressure on the Government of Guatemala to abide by the reparations agreement with the survivors of the Río Negro community and draws necessary attention to the complicity of the World Bank and the Inter-American Development Bank that financed and supervised the project at the time of these serious human rights abuses.

In 2012, the Global Initiative and Rights Action submitted a Petition to the Inter-American Commission on Human Rights seeking accountability. To date the Petition has languished before the Commission. It is hoped that the Commission will consider the accountability of the Member States of the World Bank and Inter-American Development Bank that have human rights obligations under the inter-American system and were involved in decision-making related to the Chixoy Dam project.

### ***The Committee on Economic, Social and Cultural Rights (CESCR) addresses China’s ETOs***

The CESCR reviewed China’s human rights performance under the ICESCR in May 2014. The Global Initiative urged the Committee to make recommendations highlighting China’s extra-territorial obligations to respect, to protect and, where relevant, to fulfill ICESCR rights in relation to:

- a. entities acting under its authority outside its territory, including State-Owned Enterprises;
- b. corporations and business entities domiciled in China, acting outside its territory; and
- c. its policies on official development assistance, on agriculture and trade and State-Owned overseas investment or credit entities (such as the proposed BRIC Development Bank) for decisions affecting human rights outside its territory - through human rights impact assessments and effective monitoring and complaint mechanisms.

A number of Committee members took up these issues in questions to China’s official delegation and the Committee as a whole expressed concern ‘about the lack of adequate and effective measures adopted by the State party to ensure that Chinese companies both State-owned and private, respect economic, social and

cultural rights, including when operating abroad'. The Committee followed up by issuing strong Concluding Observations which made clear that the ICESCR includes extra-territorial obligations to respect, protect and fulfill human rights, including by regulating and otherwise holding corporations accountable to those obligations for their activities abroad and ensuring that any international cooperation and development cooperation includes systematic and independent human rights impact assessments prior to making funding decisions as well as the provision of an accessible complaint mechanism if violations of economic, social and cultural rights occur in the receiving countries.

Specifically the Committee called upon China to adopt a human rights-based approach to its policies of international cooperation, by:

- a. 'Undertaking a systematic and independent human rights impact assessment prior to making funding decisions;
- b. Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures when required; and
- c. Ensuring that there is an accessible complaint mechanism if violations of economic, social and cultural rights occur in the receiving countries.'

The Committee also addressed ETOs in the context of corporate accountability, recommending that China:

- d. 'Establish a clear regulatory framework for companies operating in the State party to ensure that their activities promote and do not negatively affect the enjoyment of economic, social and cultural human rights; and
- e. Adopt appropriate legislative and administrative measures to ensure legal liability of companies and their subsidiaries operating in or managed from the State party's territory regarding violations of economic, social and cultural rights in their projects abroad.'

We hope these recommendations are followed by all States Parties to the ICESCR and urge the Committee to apply similar scrutiny of extra-territorial obligations for all State party reviews.

### ***A New Treaty on Transnational Corporations?***

The issue of a new binding international instrument on transnational corporations was under the spotlight at the June session of the Human Rights Council. Prior to and during the Council session civil society engaged in



concerted lobbying and States were engaged in intense negotiations about Ecuador's initiative to establish an inter-governmental working group to begin drafting the text of a treaty on the accountability of transnational corporations for human rights abuses. Norway, the traditional lead sponsor of the business and human rights resolution, and its Northern allies did not support the establishment of an inter-governmental working group and insisted the UN Guiding Principles on Business and Human Rights should be given more time for implementation. Norway was particularly concerned not to fracture the consensus that had been

achieved with the adoption of the UNGPs in 2011, by having 2 conflicting and voted resolutions. The Norway draft resolution underwent a number of revisions in an attempt to placate the supporters of the Ecuador initiative and encourage consensus on 1 resolution on the topic of business and human rights. In the end the opposing States could not agree on a compromise and both resolutions on business and human rights were ultimately adopted by the Council. The first to be adopted, by vote on 26 June 2014 ([A/HRC/RES/26/9](#): 20 Y, 14 Abst, 13 N), was that proposed by Ecuador (South Africa and others) which decided:

'to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, the mandate of which shall be to elaborate an

international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.<sup>3</sup>

The new working group is to meet for the first time in 2015 and to report on its progress to the 31st session of the Human Rights Council.

Norway & core group's resolution ([A/HRC/RES/26/22](#)) was adopted later without a vote but after oral revisions removing the reference in the draft resolution to a process to consider a treaty on transnational corporations and human rights. The adopted resolution focused on implementation of the Guiding Principles, including national action plans and extended the mandate of the Working Group for a further three years. However, in an acknowledgement of the unrest about lack of business accountability for human rights abuses, the resolution requests the Working Group to:

‘launch an inclusive and transparent consultative process with States in 2015, open to other relevant stakeholders, to explore and facilitate the sharing of legal and practical measures to improve access to remedy, judicial and non-judicial, for victims of business-related abuses, including the benefits and limitations of a legally binding instrument, and to prepare a report thereon and to submit it to the Human Rights Council at its thirty-second session.’<sup>3</sup>

The 500-strong pro-treaty NGO coalition hailed the passing of the Ecuador resolution as an historic win. However, some NGOs were disappointed that the proposed treaty would only cover transnational corporations and would not apply to national corporations or business entities, including State-owned or partly State-owned corporate entities.

Professor John Ruggie, the former Special Representative to the UN Secretary-General on Business and Human Rights, in commenting on the resolutions warned of the risk that the inter-governmental treaty process would go on for many years and fail like the ill-fated Code of Conduct on TNCs and Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.<sup>4</sup> He pointed out that given the likely time it will take to negotiate a treaty (particularly given the divisive nature in which the process has begun and the complexity of the subject matter) those working to improve corporate accountability may need to work with the UNGPs in the interim. Mr Ruggie said that both proponents and opponents of a treaty needed to move away from their entrenched positions and recognize the constraints on achieving their aims and look for realistic solutions. He renewed his call for ‘principled pragmatism’ which he describes as ‘narrowly crafted international legal instruments for business and human rights—“precision tools” I called them—focused on specific governance gaps that other means are not reaching’.

The coming year will be an interesting one as the inter-governmental process begins, States decide how to position themselves in that process, the Working Group on Business and Human Rights and the OHCHR continue to work on the implementation of the UNGPs and issues around remedies and access to justice for victims and NGOs consider how best to engage with both processes. There will undoubtedly be opportunities for civil society to influence the treaty discussions in the intergovernmental process but also to continue to influence the further work on the UNGPs and their implementation at the national level. It seems likely that the UNGPs will form part of the bases for any new treaty and that States who opposed the Ecuador initiative will continue to direct resources to UNGP implementation initiatives. Therefore, it will be important to ensure that NGOs remain engaged in the work and discussion about the UNGPs and don't abandon it to focus solely on the intergovernmental treaty process.

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<sup>3</sup> A/HRC/RES/26/22, OP 8

<sup>4</sup> John Ruggie, ‘Past as Prologue? A Moment of Truth for UN Business and Human Rights Treaty’, Commentary on Institute for Human Rights and Business website, 8 July 2014, <http://www.ihrb.org/commentary/board/past-as-prologue.html>

## Human Rights and Post-2015 Sustainable Development Agenda

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On 2 June 2014 the Co-Chairs of the UN Open Working Group on the Sustainable Development Goals (OWG) released their ‘Zero Draft’ of the Sustainable Development Goals (SDGs) and then on 30 June they released a refined version of their Zero Draft. In the run-up to the 13th and final meeting of the OWG there was much lobbying on the inclusion of a strong and measurable goals grounded in the human rights framework. For instance civil society groups campaigning on the rights to water and sanitation advocated for a strong goal that uses human rights standards and principles of availability, accessibility, affordability, acceptability and equality and participation, among others.

The OWG held its 13th and final session from 14 – 18 July in New York. The OWG completed a full reading of the Revised Zero Draft of the 17 SDG goals (and their targets). The Outcome Document from that session ([here](#)) contains the following important proposed goals and targets relating to housing, land and productive resources:

- Targets to eradicate extreme poverty and reduce by half the number of people living in poverty by 2030 and implement social protection systems (Goal 1);
- A target to ensure ‘equal rights to economic resources’ including ‘access to ... control over land and other forms of property, inheritance, natural resources, ...technology, and financial services...’ (Target 1.4);
- Goal 2 on ending hunger and achieving food security includes a target to ‘double the agricultural productivity and the incomes of small-scale food producers, particularly women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs ...’ by 2030 (Target 2.3). It also calls for ensuring ‘sustainable food production systems and implement resilient agricultural practices’ and refers to increased production but also maintenance of ecosystems and strengthened capacity for adaptation to climate change and disasters (Target 2.4);
- Goal on the availability and sustainable management of water and sanitation (Goal 6) which refers to ‘universal and equitable access to safe and affordable drinking water’, similar wording for sanitation, an end to open defecation and a reference to the participation of local communities.;
- A stand-alone goal on achieving gender equality and empowering women and girls (Goal 5) which includes targets addressing discrimination, violence against women, harmful practices, valuing unpaid care and domestic work, access to sexual and reproductive health and ‘rights, access to economic resources, including land.(Goal 5);
- A goal calling for the reduction of inequality within and among countries (Goal 10).;
- A goal entitled ‘Make cities and human settlements inclusive, safe, resilient and sustainable’ which includes a target to ensure by 2030, access for all to adequate, safe and affordable housing and basic services, and upgrade slums’ (Goal 11).;
- Goal 12 entitled ‘Ensure sustainable consumption and production patterns’ includes a target to ‘achieve sustainable management and efficient use of natural resources by 2030’.;
- A Goal (13) to urgently combat climate change and its impacts.;
- Goal 16 on peaceful and inclusive societies for sustainable development includes a target to ‘promote the rule of law at the national and international levels, and ensure equal access to justice for all’, ‘public access to information’ and participatory decision-making.;
- Renews the call for developed countries to implement their commitments to 0.7% of GNI in Official Development Assistance (Goal 17).

The introduction to the Proposed SDGs does reaffirm the ‘*need to be guided by the purposes and principles of the Charter of the United Nations*’ and ‘*the importance of freedom, peace and security, respect for all human rights, including the right to development and the right to an adequate standard of living, including the right to food and water, the rule of law, good governance, gender equality, women’s empowerment*’ and of the Universal Declaration of Human Rights and other international human rights instruments. However, unfortunately the Proposed SDGs do not explicitly take up human rights standards or monitoring and accountability mechanisms. Nor do they systematically require equality and non-discrimination, participation for affected communities in policy formulation, or a focus on the most disadvantaged.

The Goal on housing (11) does not talk about security of tenure for the poor or the prevention of forced evictions. Goal 12 (natural resources) lacks any specificity and omits reference to equitable distribution, participation of local communities, protection of the rights of indigenous peoples etc. The climate change Goal remains very vague and contains no targets for reducing emissions or limiting temperature rises. It also includes a note 'acknowledging that the UNFCCC is the primary international, intergovernmental forum for negotiating the global response to climate change'. This reflects the wishes of some countries, including the US, who are keen to ensure that no international fora (the OPW SDGs or the UN Human Rights system) other than the UNFCCC, attains authority over global climate change policy. As a consequence of these concerns and the cross-cutting nature of climate change, this Goal is broad, vague and therefore weak.

In relation to the Water and Sanitation Goal the inclusion of human rights standards such as 'safe' and 'affordable' is a positive development. However, the human rights to water and sanitation is not explicitly referred to and there is no requirement that sanitation be 'acceptable', which is of course very problematic in many cultural contexts. In addition, like a number of the Proposed SDGs, the Water Goal does not priorities eliminating inequalities and targeting the poorest and most marginalized.

The next step is in September 2014 when the Co-Chairs of the OWG will present these Proposed Goals and Targets to the UN General Assembly, as well as a High Level Political Forum meeting to discuss the post-2015 development agenda.

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## IN FOCUS

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### *The impact of privatization on the human right to education*

In June 2014 the Global Initiative, together with the Privatization in Education Research Initiative (PERI), held a series of events in Geneva focusing on privatization and the human right to education. The events were intended to foster discussion and engagement, as well as to raise awareness about this key emerging issue, which is having a profound impact on the realization of the right to education globally. The events were a Side Event at the Human Rights Council 26<sup>th</sup> session on 12 June, an Expert Meeting on 12 June and an Advocacy Workshop on 13 and 14 June. These events brought together experts, advocates, academics, national education practitioners and international education advocates, in order to share some of the research and advocacy efforts conducted so far on privatization in education, as well as to strengthen the analysis of the application of human rights standards to the issue through the involvement of new and varied stakeholders. The Side Event was sponsored by the Portuguese Mission to the UN and involved five speakers including the Special Rapporteur on the Right to Education and education advocates from Brazil, India and Morocco.

The key themes that emerged from the Side Event and Expert Meeting were:

- Privatization in education is a complex phenomenon involving a variety of models, actors, drivers and impacts. It is increasing at a significant rate, particularly in developing countries.
- Education is a public good and is fundamental for sustainable human, socio-economic and political development and a key element to achieving a peaceful, cohesive society.
- States have the obligation to respect protect, and fulfill the right to education which includes regulating and monitoring private actors in the education system.
- There are a number of negative human rights impacts that can result from privatization, including reinforcement of systemic discrimination, and it is critical that States and donors undertake a human rights impact assessment as part of their policy formulation process.
- There is a lack of transparency and consultation with civil society in government decision-making about education policy, including government decisions to support privatization in education.
- There is concern about the role of influential donors such as international financial institutions (World Bank, International Finance Corporation etc.) in promoting privatization, including in the context of the post-2015 SDGs, without having considered the adverse impacts on human rights.

A summary of the Side Event and the Expert Meeting can be found [here](#). Copies of the presentations made and further resources are available on the [PERI website](#).



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