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

This publication represents the third 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, this edition on ‘Our Top 5 Priorities on Economic, Social and Cultural Rights for the UN High Commissioner for Human Rights.’

Recent Developments in human rights associated with housing and land

Special Rapporteur on adequate housing presents 1st Report: Priorities for the mandate

At the 69th session of the General Assembly in November 2014, the new Special Rapporteur on the right to adequate housing, Ms Leilani Farha, presented her first report (A/69/274). The report identifies the themes the Special Rapporteur intends to work on and her initial thoughts on priority focus areas. It commences with a brief and very useful history of the mandate and then discusses the problem of the ‘implementation gap’. Using the extent of homelessness and inadequate housing as evidence, it diagnoses a crisis of commitment to, or understanding of, implementation. The report then sets out the thematic priorities for the mandate:

- National – international interaction;
- Clarifying the obligations of progressive realisation;
- Equality and non-discrimination; and
- Role of the State (sub-national and local governments, private actors, global actors).

Finally, the report details the ‘priority focus areas’ for the mandate:

- Marginalised and vulnerable groups (women, indigenous peoples, migrant workers, persons with disabilities) and criminalisation, stigmatization and exclusion;
- Homelessness and criminalisation and discrimination;
- Housing strategies based on human rights;
The Global Initiative for Economic, Social and Cultural Rights

- Access to justice;
- Sub-national governments (this is the topic of the Special Rapporteur’s forthcoming report to the Human Rights Council in March); and
- Housing as part of the global agenda (post-2015 development goals, Habitat III).

**NGO consultation with Special Rapporteur on the right to adequate housing: Geneva**

In October 2014 the Global Initiative ESCR hosted an NGO consultation in Geneva with the new Special Rapporteur on housing. The consultation was attended by 15 representatives from NGOs. Participants discussed the right to adequate housing in relation to the following four topics:

- Homelessness and criminalisation/discrimination;
- Displaced persons;
- Non-State actors, international financial institutions; and
- Access to justice.

A summary of the meeting can be found on our website [here](#).

**Housing in national contexts**

**Ireland**’s social housing policy is the subject of a complaint to the European Committee of Social Rights, alleging that up to 130,000 low income households are living in substandard housing and have access to very poor community facilities in violation of housing, social protection and anti-discrimination standards enshrined in the European Social Charter (Articles 11, 16, 17, 30 & E). The complaint, lodged in July by NGO FIDH on behalf of Irish social housing tenants, describes dampness, mould, fungal contamination, sewage invasions, foul odors and inadequate housing maintenance and presents medical evidence of the health impacts of these conditions. The complaint also alleges a lack of effective legal remedies or grievance mechanisms available to affected tenants and no representative body enabling tenants to participate in decision-making as a group. See [here](#).

In November the UN Committee on Economic, Social and Cultural Rights considered the situation of ESC rights in **Romania**. The European Roma Rights Centre and Amnesty International submitted information on the continuing exclusion and discrimination against Roma people in a number of areas including housing. The **Concluding Observations** of the Committee expressed strong concerns about ‘widespread discrimination and social exclusion of Roma, especially in the areas of housing, education, health and employment’. In relation to housing the Committee said:

*The Committee is concerned that the majority of Roma continue to live in substandard housing conditions, without safe drinking water or sanitation facilities, electricity, heating, sewage, waste disposal or legal security of tenure, which exposes them to the risk of eviction. The Committee is also*
concerned at the limited number of social housing units available and the absence of a monitoring mechanism to ensure that the allocation of social housing is transparent and non-discriminatory. The Committee recommends that the State party adopt all appropriate measures to ensure access to adequate housing for the Roma, inter alia by ensuring that adequate resources are allocated to increase the supply of social housing units, giving priority in the assignment of such dwellings to disadvantaged and marginalized groups, particularly Roma.\(^1\)

The Committee is very concerned at cases of forced eviction of Roma from irregular settlements, often without genuine prior consultation and reasonable notice, and at their relocation to unsafe or polluted sites, which threaten their lives and health. It is also concerned that the Roma are often relocated to segregated areas where access to work, education, health and other services is difficult. The Committee is particularly concerned about reports that, upon eviction, some families with children were left without adequate alternative housing, compensation and protection (art. 11).

The Committee urges the State party to amend its national legislation to provide a minimum degree of security of tenure for persons living in informal settlements, and to adopt legislation to ensure that evictions are carried out in compliance with international human rights standards, and that remedies are effectively provided to those affected by eviction orders. In particular, the State party should prevent forced evictions of Roma from taking place until the Roma concerned have been consulted, afforded due process guarantees and provided with alternative accommodation or compensation enabling them to acquire adequate accommodation.\(^2\)

Many European States have experienced a sharp rise in homelessness since 2009 according to the European Observatory on Homelessness which published its 4th statistical Update in December 2014. The increases (eg: 16% in Denmark, 50% in France and 21% in Germany) were seen in all EU member countries under review (15 countries) except Finland and were particularly high for young people and young women. The homeless migrant population also increased, particularly in France and Spain.

**New OHCHR Report on land**

In November the Office of the High Commissioner for Human Rights published a report on land and human rights, which provides a human rights analysis of land-related issues, in particular on land management, States’ obligations and other actors’ responsibilities. It also lays out the criteria that States should apply when considering land and human rights issues in relation to specific groups and existing human rights. The Report was presented to ECOSOC on 17 November 2014.

**Forced evictions and land grabbing continue across the globe, for example:**

Myanmar: The Thilawa Social Development Group, representing residents displaced from the site of the Thilawa Special Economic Zone project has slammed as ‘inadequate’ a report by a Japanese

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\(^1\) E/C.12/ROU/CO/3-5, para 9  
\(^2\) E/C.12/ROU/CO/3-5, para 19
investor (Japanese International Cooperation Agency (JICA)) into the status of landowners forced to leave their homes to make way for the project. 81 households were evicted and relocated and victims lodged a complaint with the JICA alleging loss of access to farmland, loss of livelihood opportunities, impoverishment caused by the forced relocation, loss of educational opportunities, substandard housing and loss of access to clean drinking water. See further here.

Ethiopia: Local communities of the South Omo, Gambela and SNNPR regions of Ethiopia have experienced violent forced evictions and land grabbing over the past decades following the government’s adoption of a controversial development policy including its ‘villagization’ program (also called ‘sefara’) which involves the coerced settlement of non-sedentary Ethiopians. The government has awarded to domestic and foreign investors long term leases of millions of hectares of land declared ‘unutilised’, but in fact inhabited and farmed by indigenous peoples. The process involves forced displacement, political repression and loss of communities’ livelihoods. The situation is complicated by the large influx of South Sudanese refugees in recent years and internally displaced Ethiopians. Violent conflicts have been increasing, see here. See also this report by the Oakland Institute.

Malawi: Small scale farmers have been the victims of land grabs to make way for foreign owned sugar plantations, other agricultural crops and the exploitation of natural resources. See here, here, here and here.

Thailand: Harassment and violence continue against the Khlong Sai Pattana Community in Chaiburi District, Surat Thani Province, Thailand who are fighting to defend their land from corporate palm oil plantation owners. See here.

The Munden Project (an investor consultancy) published an interesting report that analysed 73,000 land concessions for mining, agriculture, logging and oil and gas projects in eight countries and found that 93% involved inhabited land: ‘Communities as Counterparties: Preliminary Review of Concessions and Conflict in Emerging and Frontier Market Concessions’. The report considers 100 conflicts between companies and local communities in emerging market concessions from the perspective of investors and draws out patterns.

Complaint filed with ICC alleging land grabbing, forced evictions and violence in Cambodia

Cambodian victims of alleged crimes against humanity filed a complaint with the International Criminal Court (ICC) in October 2014 describing widespread and systematic land grabbing, forced evictions, violent attacks on the civilian population, including murder, forcible transfer of
populations, illegal imprisonment, persecution, and other inhumane acts. The allegations are made against senior members of the Cambodian government, its security forces, and government-connected business leaders. They allege mass human rights violations carried out over more than a decade and impacting up to 770,000 victims. The complaint details how the authorities suppressed all dissent through assassinations, threats, intimidation and imprisonment on trumped-up charges. The complaint provides evidence that the violations were part of a widespread and systematic attack on the civilian population and were of such scale and gravity as to amount to ‘crimes against humanity’ in violation of the *Rome Statute*. The complaint was submitted with the assistance of Global Diligence LLP and FIDH. See [here](#).

**Human Rights Committee agrees denial of access to land violates right to privacy and the home**

In an exciting development, in October the Human Rights Committee, during its review of Israel, confirmed that denial of access to agricultural land violates Articles 1 (self-determination) and 17 (privacy, family & home) of the ICCPR. In doing so, it looked at both the Bedouin’s right to ancestral land as well as confiscation of and denial of access to Palestinian’s agricultural land. Reasserting the extra-territorial reach of the Covenant, the Committee called on Israel to: facilitate non-discriminatory access of Palestinians to land, natural resources, water and sanitation and livelihoods; put an end to the expropriation of land including for Israeli settlements and the Separation Wall; and withdraw all settlers from the West Bank including East Jerusalem.

The Committee again condemned punitive house demolitions as well as discriminatory forced evictions undertaken in the context of Israel’s planning and zoning regime (Arts 7, 17, 26). The forced eviction and forced relocation of Bedouin communities in both the West Bank and the Negev region were also condemned, including for not taking into account these communities’ traditional pastoral economy, social fabric, and rural way of life (Art 27). The Committee called for an immediate halt to forced evictions and house demolitions and effective remedies to victims.

The Committee expressed its concern about the restricted access to basic services of Bedouins living in unrecognized and recently-recognized villages in the Negev, including adequate housing, water and sanitation, healthcare, education and public transportation. It also condemned the blockade of Gaza and its impact on access to food, health, electricity, water and sanitation which the Committee reaffirmed amount to violations of Articles 6 (right to life), 7 (prohibition against torture) and 26 (equality before the law) of the Covenant.

The Concluding Observations can be found [here](#).

The GI-ESCR Parallel Report on these issues can be found [here](#).
New Special Rapporteur on the rights to water and sanitation

In late 2014, Ms Caterina de Albuquerque finished her mandate as the UN Special Rapporteur on the human right to safe drinking water and sanitation after six years in the role.

On 1 December 2014 Mr Léo Heller (Brazil) took up his position as the second mandate holder. Mr Heller is an academic and environmental engineer and is currently working as a researcher with the Oswaldo Cruz Foundation in Brazil. He has experience in formulating policies, teaching and researching in the field of public policy and management and environmental health related to water and sanitation.

New handbook on the right to water and sanitation

In September Ms. Catarina de Albuquerque, presented to the Human Rights Council a Handbook on the realisation of the rights to water and sanitation.

Comprised of nine booklets, the Handbook explains the meaning and legal obligations that arise from the rights to water and sanitation, translating the often complex technical and legal language into accessible information. This substantial piece of work will be a very helpful and practical tool for States and others in implementation of these rights.

UN Human Rights Council resolution on the rights to water and sanitation

The resolution on the human right to safe drinking water and sanitation (A/HRC/RES/27/7) was presented by the traditional co-sponsors Germany and Spain at the September 2014 session of the HRC. After intense negotiations the resolution was eventually adopted without a vote with the US disassociating from pre-ambular paragraph 21 arguing that the language used to define the right to water and sanitation was based on views of the Committee on Economic, Social and Cultural Rights, is not contained in treaty law and does not represent a consensus position.

The final resolution was not ground breaking and some strong language in the first draft was diluted in negotiations. Disappointingly the full definition of the right was shortened and moved to the pre-ambular paragraphs. A positive development was the inclusion of a paragraph about menstrual
hygiene management and pre-ambular paragraph 21 includes reference to ‘socially and culturally acceptable’ in relation to sanitation. WASH United has produced a useful briefing on the Resolution here.

**Two final reports of the out-going Special Rapporteur: Common Violations & Participation**

The out-going Special Rapporteur presented her final two reports during the second half of 2014. Her report to the Human Rights Council in September dealt with Common Violations of the rights to water and sanitation. The Report affirms a comprehensive approach to violations and presents a typology of common violations with the aim of assisting States in identifying, preventing and remedying violations. It examines breaches of each of the obligations to respect, to protect, to fulfil, to refrain from discrimination, to ensure substantive equality and to ensure active, free and meaningful participation. It also addresses extra-territorial obligations. The report then emphasises that all these violations are justiciable and effective remedies must be available, which in practice means that States must ensure access to justice for victims of violations.

This is an important Report for ESC rights more generally as it tackles head-on the often problematic approach taken to violations of ESC rights, focusing on violations of the obligation to respect (eg: interferences with access to water) and ignoring violations of the ‘positive’ obligation to fulfil ESC rights (ie. take positive steps such as allocating appropriate resources) or considering them mere aspirational policy goals. The latter category of obligations is frequently the category involving systemic violations that impact the largest numbers of people.

The Global Initiative ESCR made an oral statement at the Council in support of the Report and thanking the Special Rapporteur for her excellent work in the mandate.

Her report [A/69/213] to the General Assembly in November addressed the right to participation in the context of the rights to water and sanitation. The Special Rapporteur stressed the role of participation in guaranteeing democracy and cautioned that when participatory processes ‘do not address entrenched power structures and marginalization, they risk reinforcing and ‘legitimising’ inequalities.’ The report acknowledges participatory processes are challenging but insists ‘where participatory processes are meaningful and inclusive, the improvements in sustainability and empowerment are significant.’

The report describes the legal basis of the right to participation, sets out the elements of active, free and meaningful participation, addresses some of the difficulties (factoring in costs, balancing direct participation and group representation, inclusion etc.) and details how to implement participation in national processes at all levels of decision-making.
Detroit water shut-offs: two Special Rapporteur’s visit Detroit

The Special Rapporteur on adequate housing and the Special Rapporteur on water and sanitation together conducted an informal visit to Detroit, US in October to investigate the continuing grave situation with water shut-offs. The Rapporteurs expressed their serious concern about the unprecedented level of disconnections (27,000 between Jan - Oct 2014) and the disproportionate impact on poor people and African Americans.

They noted that with the 8.7% increase in water charges (to cover the costs of leakages due to the aging infrastructure), a decreasing number of customers, an increasing unemployment rate and high rates of poverty in Detroit, Detroit water bills are increasingly unaffordable for many residents.

‘Denial of access to sufficient quantity of water threatens the rights to adequate housing, life, health, adequate food, integrity of the family. It exacerbates inequalities, stigmatizes people and renders the most vulnerable even more helpless. Lack of access to water and hygiene is also a real threat to public health as certain diseases could widely spread’ said the Rapporteurs.

Whilst the US has not ratified the ICESCR, the Rapporteurs pointed out that

The human rights to safe drinking water and sanitation and to adequate housing both derive from the right to an adequate standard of living which is protected under, inter alia, article 25 of the Universal Declaration of Human Rights which is fully applicable to the United States. In addition, adequate housing and access to safe water are clearly essential to maintain life and health, and the right to life is found in treaties the United States has ratified, including the ICCPR.

The Rapporteurs suggested that (inter alia):

- the City of Detroit restore water connections to residents unable to pay and vulnerable groups of people, stop further disconnections of water when residents are unable to pay, and provide them the opportunity to seek assistance … through social assistance schemes.
- the City of Detroit, the State of Michigan and the national government to adopt a mandatory affordability threshold … specific policies should be adopted for people who live in poverty.
- the City of Detroit provide urgent measures, including financial assistance, to ensure access to essential water and sanitation (min amount necessary for personal and domestic uses, …) and to housing when people are unable, for reasons beyond their control, to cover the costs themselves. … protection of vulnerable groups of people must be prioritized.
- Governments make every effort to ensure that the most vulnerable .... are not evicted from or lose their housing as a result of water shut-offs or water bill arrears.
Federal and state agencies ... should require water and sanitation utilities, as a condition for funding and permits, to collect data and report annually and publically on water shut-offs by age, income level, disability, race, and chronic illness. ...discriminatory impacts must be addressed and discontinued.

- ensure access to administrative and legal remedies, public, accessible, adequately resourced.

**Women’s rights to land and productive resources**

*Treaty bodies take up women’s access to land and housing*

During the past six months a number of treaty bodies have taken up the issue of women’s access to housing, land and property. This was particularly pleasing to hear from the Human Rights Committee which has not frequently addressed these issues.

The Human Rights Committee recently highlighted the pressing human rights concerns regarding discrimination against women in the area of land and property rights, in its Concluding Observations on Burundi and Sri Lanka.

On Burundi, the Committee said that Burundi ‘should adopt the draft law on inheritance, matrimonial regimes and gifts and to ensure full compliance with the provisions of the Covenant,’ and added that ‘The state should also conduct awareness campaigns for the population to change traditional attitudes that impede the exercise by women of their human rights’ (translation from the original in French).

On Sri Lanka, in its Concluding Observations the Committee expressed concern about discriminatory provisions against women in domestic legislation and asked the State to ‘Undertake a comprehensive review of its domestic laws, including those governing rights of succession in respect of land permits and grants, the disposal of immovable property’ so as to bring these laws into conformity with the Covenant, and specifically Articles 3, 23 and 26.

In November, following its review of Ghana the CEDAW Committee issued its Concluding Observations addressing women’s access to housing, land and property. The Committee said:

*The Committee remains concerned about the widespread poverty and illiteracy among rural women and the lack of sufficient targeted strategies and measures in place to address discrimination against rural women in access to justice, education, health and housing, economic opportunities and social benefits, adequate water and sanitation, as well as about their exclusion from decision-making processes...and the persistence of traditional customs limiting women’s access to inheritance and land.*

The Committee recommended that Ghana:

*Ensure that obstacles to women’s land ownership are removed, and that domestic courts, including customary courts, enforce women’s land and property rights, in line with ...the Convention;*
Eliminate harmful practices and discrimination against rural women and address customs and traditions that perpetuate them;

Ensure that all discriminatory customary laws are repealed or amended and brought into full compliance with the Convention and the Committee’s general recommendations.

Finally, the Committee specifically recommended the State:

- Expeditiously adopt the Property of Spouses Bill, 2009, in its current version so that equal distribution of property rights covers women in the three types of marriage as well as women in de facto unions;
- Expeditiously adopt the Intestate Succession Bill, 2009, and ensure its effective implementation throughout the State party;

**Non-State actors and extra-territorial obligations**

**Human Rights Committee highlights Canada’s ETOs for forthcoming dialogue**

The Human Rights Committee is set to scrutinize Canada regarding its extra-territorial human rights obligations under the ICCPR when Canada appears before the Committee in July 2015 for its periodic review. In December the HR Committee released its List of Issues for Canada which requires Canada to ‘inform the Committee of any measures taken or envisaged to monitor the human rights conduct of Canadian oil, mining, and gas companies operating abroad’ and to ‘also inform what the available legal venues are in the State party for victims of human rights abuses arising from overseas operations of Canadian extractive firms.’  The Committee has previously made clear that the ICCPR includes extra-territorial obligations to respect and to ensure human rights, including by regulating and otherwise holding corporations accountable to those obligations for their activities abroad and providing access to justice for overseas victims in the event of such violations.

**New Practitioner’s Guide on ETOs in the context of corporate human rights violations**

ESCR-Net’s Corporate Accountability Working Group has published a new resource entitled ‘Global Economy, Global Rights – A Practitioners’ Guide for interpreting human rights obligations in the global economy’ to support the interpretation and application of ETOs in the context of corporate human rights abuses.  Launched at a gathering of outgoing and incoming UN Special Procedure Mandate Holders in Geneva, the resource is designed to support the work of human rights practitioners. It synthesizes and provides an analysis of the UN treaty body pronouncements – concluding observations and general comments – in relation to corporate human rights violations.

**Civil Society Bangkok Declaration on ETOs**

Following a roundtable meeting in Bangkok in October 2014 attended by civil society and South-East Asian National Human Rights Institutions (and representatives of the Governments of the Philippines
and Indonesia), the convener, the Asia Pacific Forum on Women, Law and Development, issued a Declaration on ETOs.

**World Bank Safeguards review**

The World Bank is in the process of reviewing its social and environmental safeguards policies. In July 2014 it released its draft Environmental and Social Framework for public consultation (Draft Safeguards) and it has received strong criticism from a large number of civil society actors and some UN actors.

In December, 28 UN Special Procedures mandate holders (lead by the Special Rapporteur on human rights and extreme poverty) wrote to the World Bank expressing their serious concerns about the Draft Safeguards and their incompatibility with human rights on a range of issues. The **letter** states ‘by contemporary standards, the document seems to go out of its way to avoid any meaningful references to human rights and international human rights law.’ It notes that by not engaging with human rights the Bank ‘is setting itself apart from other international organisations and agencies which have long since recognized the importance of human rights in the context of carrying out their specialized mandates, and have also rejected the notion that human rights are somehow problematically ‘political’ in ways that the many other accepted goals of development policy are not.’ In this regard it describes the Bank as an ‘increasingly isolated outlier’ amongst development actors. The letter regrets the apparent view of the Bank that human rights increase the cost and processing time of loans and that the increasingly competitive lending environment is influencing the Bank’s partaking in a ‘race to the bottom’ in terms of social and environmental standards.

The Special Procedures mandate holders also emphasise that ‘human rights are not merely a matter of sound policy, but of legal obligation’ and describe the Bank’s and Member States’ legal obligations to comply with international human rights standards (World Bank Articles of Agreement, general rules of international law, UN Charter, States’ treaty obligations).

Specifically, in urging the Bank’s President to honour his promise that the revision process will not result in a dilution of the Safeguards, the mandate holders critique the Draft Safeguards’:

- lack of clarity and precision in language, which signifies a move away from a requirements-based policy, to an aspirational one;
- reliance on information supplied by the borrower when carrying out due diligence requirements, with no requirement for the Bank to seek information from other sources or to consult with affected communities;
- failure to require full compliance with the Safeguards before the commencement of a project (ie. allowing projects to meet Safeguards standards at some unspecified point in the project);
The letter also highlights concerns relating to forced evictions, resettlement and land-grabbing and the dilution of protections in the draft ESS5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement. It notes the Draft ESS5 ‘does not prohibit projects that will cause forced evictions, no reference is made to the need to inform potentially displaced persons about their rights.... No references are made to the need to consult with affected people about options prior to resettlement;...... there is no prohibition on the use of bank funds for land-grabbing ....

Human rights defenders of land and environmental rights

Unfortunately, threats, attacks and reprisals against human rights defenders of land and environmental rights continued to rise during the second half of 2014 and the issue continued to receive international attention. Here are some examples.

In South Africa very serious intimidation, threats, violent attacks and murders have been perpetrated against leaders of Abahlali baseMjondolo, a movement of shack dwellers, who have been active in defending the rights of inhabitants of informal settlements. At least four advocates have been murdered following their involvement in resisting forced evictions or investigating corruption in the distribution of public housing. For further information see here.

Cambodian defenders of land and housing rights also continue to face harassment and violence at the hands of the State. Up to 19 people have recently been detained, immediately convicted and sentenced to one year imprisonment and fines in relation to their peaceful protesting against the forced evictions of almost 20,000 families living around Boeung Kak Lake, in Phnom Penh, Cambodia in 2008. The evictions were followed by the draining of the lake to make way for real estate and commercial development owned by a politician. The Special Rapporteur on Cambodia also drew attention to this issue:
‘It saddens me to see the courts being used again and again as a tool of the executive,’ Mr. Subedi said in response to the recent series of arrests and immediate convictions of land activists. In the past week, eleven activists have been arrested, swiftly charged and sentenced in mass trials for taking part in non-violent protests. ‘The lack of judicial independence is one of the central obstacles to achieving the just, inclusive society that Cambodians strive for’ he stressed.

In December Amnesty International published a report on reprisals against human rights defenders in Latin America and the Caribbean: ‘Defending Human Rights in the Americas: Necessary, Legitimate and Dangerous’ (Spanish only). The report highlights the very concerning increase in the rate of violence and repression against rights defenders in the Americas and the particularly high levels of violence against advocates working on rights relating to ‘land, territory and natural resources’ (also women’s and LGBT rights).

**Human rights, the environment and climate change**

**Special Rapporteurs urge States to put human rights front & centre of climate change negotiations**

In October 2014, just before the Conference of the Parties (COP) to the UN Framework Convention on Climate Change (FCCC) in Lima, over 25 UN Independent Experts and Special Rapporteurs sent an open letter to the FCCC Parties, urging them to ensure that the new climate change agreement is consistent with their international human rights obligations. The letter called on States to:

> recognise the adverse effects of climate change on the enjoyment of human rights, and to adopt urgent and ambitious mitigation and adaptation measures to prevent further harm. We call on the State Parties to include language in the 2015 climate agreement that provides that the Parties shall, in all climate change related actions, respect, protect, promote, and fulfil human rights for all. And we urge the State Parties at COP 20 in Lima to launch a work program to ensure that human rights are integrated into all aspects of climate actions.

**COP 20 Lima, December 2014**

As part of the process to develop an international agreement on climate change, the 20th COP to the FCCC was held in December in Lima, Peru, the purpose of which was to consider elements for a draft negotiating text. The aim is for the final agreement to be adopted at the 21st session of the COP in Paris in 2015 and for it to come into effect from 2020.

The outcome of COP 20 was considered disappointing by most civil society groups but claimed by States and UN actors as a success and as putting the world on track for agreement in Paris next year. The negotiations were long and difficult and deep divisions between developed and developing nations threatened to derail the process. But an outcome document called the ‘Lima Call for Climate Action’, was finally agreed. As with all previous climate change negotiations, one of the big sticking points was the sharing of the burden between developed and developing States for mitigation,
adaptation costs and technology and the costs of adverse impacts. The final compromise diluted the previous strong distinction between developed and developing States’ responsibilities by referring to ‘common but differentiated responsibilities and respective capabilities, in light of different national circumstances’.

Another contentious issue was the extent to which States would be required to submit information about plans to reduce greenhouse gas emissions. The final agreement asks States to submit such information by an informal deadline of end of March 2015 and whilst the Secretariat will prepare a report analysing the aggregate impact of State commitments on climate warming, it will not review and compare them. Small island States that are most at risk of climate change harms managed to secure the inclusion of promises to finance ‘loss and damage’. Unfortunately, despite significant campaigns, human rights did not feature in the outcome document.

The significant issues dodged were the specific legal structure of the deal and the financing to flow to developing States. These outstanding issues and the difficulty of negotiations at Lima, do not bode well for a strong binding agreement in Paris, to reduce emissions to the extent necessary to avoid the crucial two degree warming.

**Human rights principles and climate change: New paper by John Knox**

The Independent Expert on human rights and the environment, Mr John Knox, published a paper in July 2014 entitled ‘Human rights principles and climate change’ which provides a succinct discussion of the relationship between international human rights law and climate change. The paper considers whether and how climate change interferes with the enjoyment of human rights, State human rights obligations to address climate change and the growing body of jurisprudence on the application of human rights norms on environmental harms generally and how this might apply to the challenge of climate change.

**Report on constitutional rights to a healthy environment**

The Independent Expert on human rights and the environment, together with the United Nations Environment Programme, recently published a report on the relationship between human rights obligations and environmental protection, with a focus on constitutional environmental rights. The report was the product of a consultation held in January in Johannesburg on that topic. It provides an interesting discussion of the benefits of constitutional environmental rights, the challenges of implementation and enforcement and good practices for the better realisation of constitutional environmental rights (such as: active constitutional courts; effective, low-cost administrative courts;
improving access to courts, including standing provisions; effective independent monitoring bodies; and access to information).

IN FOCUS: GI-ESCR’s top five ESC rights priorities for the High Commissioner for Human Rights

The High Commissioner’s recent statement to the General Assembly in presenting the annual report of the work of his Office had an encouraging emphasis on economic, social and cultural (ESC) rights and evidenced a nuanced understanding of the interdependence of all rights and of the role of ESC rights in crisis and conflict causation and prevention. Highlighting two ‘looming tragedies’, Ebola and climate change, the High Commissioner acknowledged that ‘failure to address systemic and systematic denial of economic, social and cultural rights may be not only a causal factor …, but also among its far-reaching consequences’.

We couldn’t agree more. However, we are concerned by the tendency of States and multilateral institutions to prioritise civil and political rights over ESC rights, even 20 years after the Vienna Conference and the commitments made to universality and indivisibility. We are keen to see the continued high-level promotion of ESC rights by the Office. Here are our top five suggestions.

1. Promoting ESC rights

It is important for the Office to continue to reinforce the key principles emanating from the Vienna Declaration, namely the universality, indivisibility and interdependence of all rights. All rights – civil, cultural, economic, political and social – should be given equal attention and the seriousness and devastating impact of ESC rights violations must be acknowledged.

We encourage the High Commissioner to continue to promote the ratification of the OP-ICESCR, as its growth and success will substantially improve the understanding and acceptance of ESC rights through jurisprudence and put to rest any remaining questions about justiciability. It will also enable a closer and more sophisticated consideration of key ESCR concepts which will assist in refining State strategies for implementation of ESC rights.

The High Commissioner is well-placed to highlight the underlying ESC rights violations economic, social and cultural (ESC) rights during the High Commissioner for Human Rights’ term.

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4 This is an abbreviated version of a piece we published in November offering our top five suggestions for advancing
as both causes and consequences of many conflicts and violence. This approach opens up opportunities to advocate for the realisation of ESC rights as a means of conflict prevention. This is particularly pertinent when considering the impact of climate change which many commentators are predicting will lead to significant violent conflicts over scarce resources within the next generation.

The High Commissioner has already taken a lead in highlighting the role of the failure to realise rights to health care, food, livelihoods and housing and access to information, in fuelling the Ebola epidemic. Similar leadership in advocacy in relation to climate change and human rights will be vital in the coming year, as the States Parties to the UN Framework Convention on Climate Change meet in Paris in December 2015 (COP 21) to adopt a new legal instrument on climate change.

There is growing alarm at the serious attacks on human rights defenders working to defend ESC rights, and in particular rights over key resources. Again, promotion of ESC rights at the national level, and particularly the principles of transparency and participation in decision-making, could help to reduce conflicts and risks for ESC rights defenders.

The OHCHR also plays a constructive role in helping States to understand how to implement their ESC rights obligations. The obligations to respect and protect have historically received greater attention, but the obligation to fulfill ESC rights needs increased focus and attention. We suggest, for example, field offices working with States on the positive ESC rights obligations associated with the obligation to fulfill. For instance, by utilizing some of the excellent practical tools and information available, such as the Handbook on Realizing the Rights to Water and Sanitation recently developed by the Special Rapporteur on the right to water and sanitation, and the Guidelines on Security of Tenure developed by the Special Rapporteur on the right to adequate housing.

2. Defending women’s ESC rights

The feminized face of poverty is testament to the persistent discrimination against women in law and practice in the area of ESC rights, such as access to land and productive resources, secure housing, access to sexual and reproductive health care and information and access to education. There is ample evidence to demonstrate that securing women’s equal ESC rights can have a transformative impact on the lives of poor women and their families and communities.

For instance, research evidence suggests that secure land rights for women can lead to better health, nutritional and educational outcomes for their children, may help prevent the spread of HIV/AIDS by promoting women’s economic empowerment and can reduce their vulnerability to some forms of gender-based violence and exploitation.

Successful strategies for securing women’s ESC rights must involve combating the persistent harmful gender stereotypes and deeply embedded social norms and practices which discriminate against women in all areas of their life. It will also involve firmly responding to the recent, damaging backlash against the universality of rights and attempts to undermine the human rights of women (and other groups).
is occurring most notably in the Human Rights Council where we have seen a large group of States pursuing a ‘traditional’ or ‘family values’ agenda which seeks to subvert the rights of individuals within the family, usually women, to the ‘greater good’ of maintenance of tradition and the family.

It is crucial that the High Commissioner and his Office show very strong leadership on these issues and be vigilant in countering moves to rollback progress and undermine universality. If ‘traditional and family values’ continue to garner support at the expense of fundamental individual human rights, the foundations of the system will be diminished and many of the hard-won gains in women’s rights (and LGBT rights) will be at risk.

3. Human rights and the post-2015 development agenda

The Office and former High Commissioner did a lot of great work in urging the integration of the universally accepted human rights norms and principles into the work on the post-2015 development agenda and the sustainable development goals (SDGs).

The next year is a critical time and a once-in-a-generation opportunity for transformational change as the post-2015 process enters its final stage of intensive State negotiation with final agreements to be reached in September 2015. The SDGs will determine global development policy and influence national strategies and priorities, for the next 15 years.

We would highlight 3 priorities:

- ensure that human rights principles are integrated into the proposed SDGs;
- ensure that discrimination and inequalities, both within and between countries, are directly addressed; and
- ensure that effective human rights based monitoring and accountability mechanisms are incorporated.

The failure of the original MDGs to pay attention to inequalities is one of their greatest failings. For many of the goals, progress was heralded on the basis of national statistics, whilst ignoring the significant lack of progress for certain groups: often women and girls, people in rural areas and other marginalized groups. We know that inequality is on the rise globally and there is ample evidence of the links between greater equality within societies and healthier, happier, more cohesive, less violent, societies and sustainable economic growth. Sustained advocacy is required to ensure that inequalities measures are not watered-down, that they link to the human rights principles of equality and non-discrimination and that the collection of disaggregated data to capture systemic discrimination is integrated into the targets and implementation plans.

We have also seen how the lack of access to justice and effective accountability mechanisms in the original MDGs has in part caused their relatively modest progress. States and other powerful actors must be answerable for the new SDGs in order to avoid
long-term sustainable development goals being sacrificed to short-term economic demands. This remains the biggest deficiency of the current draft SDGs: no specific accountability mechanism is identified. We think the High Commissioner can play a pivotal role in engaging with States to convince them of the benefits of integrating a human rights approach and in particular the value of the well elaborated human rights principles of: participation, equality and non-discrimination and accountability.

4. Human rights and the economic sphere

Economic and social rights will continue to go unrealized for millions of poor people around the world without tackling the inequities in the global economic systems. Despite the clear links between human rights impacts and actors in the economic sphere, the economic sphere has proved to be somewhat impermeable to human rights approaches and advocacy in the past, in part as a function of differences of culture, priorities, conceptual frameworks and technical capacities. However, recent years have seen strong human rights advocacy in various economic policy discussions: tax justice; oversight of international financial institutions; human rights budgeting; the restrictive provisions of bi-lateral investment treaties; and the impacts of so-called ‘vulture funds’.

The OHCHR, a number of special procedures mandate holders and treaty bodies are directly tackling these issues and it is important to give this work greater prominence. We encourage the OHCHR to promote a broad understanding of human rights obligations, which encompasses the economic sphere and advise and support domestic policy makers to apply human rights to economic policies and processes, in particular the principles of transparency, participation and accountability.

The global financial crisis and austerity policies in Europe brought these issues to the fore and civil society groups provided strong critiques of the complete failure of governments to consider human rights in their policy responses to the global financial crisis and advocated for the inclusion of human rights considerations into the discussion. However, greater clarity and specificity about how to tackle economic crises in a human rights compliant manner is required.

Again, leadership from the Office on these issues, together with greater technical capacity to participate in discussions happening in the economic sphere, would assist to normalize the inclusion of human rights considerations in key international economic fora and develop a more sophisticated dialogue between the economic and human rights spheres.

5. Non-State actors and Inter-Governmental Organizations

In an increasingly globalized world, with private actors searching for new investment opportunities in emerging markets, the proliferation of State and donor-led policies of
privatization of public services and the proliferation of new multi-lateral financial institutions, the role of non-State actors and inter-governmental organizations in both the fulfillment of human rights and in human rights abuses must be urgently and critically examined.

Within the UN human rights system most treaty bodies and special procedures have drawn attention to the role of business actors including State owned enterprises, international financial institutions and development institutions, multi-lateral organisations including UN agencies, and overseas development assistance bodies. With the emergence of new lenders and greater competition, IFIs are reducing the rigor of their social and environmental standards to try to attract more borrowers. 5

Civil society has long campaigned for greater regulation and accountability of business actors including those acting across national borders, and more recently States have begun to take substantive steps to address these issues. Significantly, the Human Rights Council has endorsed the UN Guiding Principles on business and human rights (GPs), established the Working Group on the issue of human rights and transnational corporations and other business enterprises and established an Inter-Governmental Working Group (IGWG) mandated to elaborate a treaty on transnational corporations and human rights.

These are important advances, but the GPs of course are unenforceable and the IGWG process is likely to be a long, difficult and political process, given the politics involved in its establishment. This topic is at a critical juncture and could benefit from high-level attention to ensure that the work of the two initiatives just mentioned is complementary.

Work on the accountability of non-State actors should continue beyond but in line with these two processes, in particular on:

a) Access to justice and remedies for violations, including ESC rights violations, and in particular the cross-border human rights impacts of non-State actors. The OHCHR report on access to domestic remedy highlighted many of the problems, but we now need to identify solutions, which must include consideration of ESC rights violations and ‘home’ States ensuring the availability of remedial mechanisms for overseas victims of violations involving their registered business entities.

b) State treaty obligations to consider the extra-territorial human rights impacts of non-State actors, including:

- The impacts of corporations registered in their territories but operating overseas;
- The impacts of international financial institutions they are a member of;
- The impacts of State-owned enterprises operating overseas;
- The impacts of overseas investments of State investment entities.

More needs to be done to promote the existence of these obligations and to encourage States to incorporate human rights due diligence, monitoring, accountability and

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5 Examples are the European Bank for Reconstruction and Development which reviewed its standards earlier this year watering down human rights protections and the on-going World Bank safeguards review process.
access to remedy into their corporate regulatory frameworks and ODA bodies.

c) Privatization of public services is increasingly the preferred policy of many States, yet in many cases this policy is adversely impacting universal access, exacerbating structural inequalities and failing to prioritize the most disadvantaged people. It is largely going unregulated and unmonitored but is having significant and long-term impacts – often detrimental – on the rights to health, education, food, water and sanitation. Greater attention needs to be paid to investing in and strengthening public services and ensuring that public services, when provided by private actors, are human rights compliant.

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These are our suggested ‘top five’ priorities for ESC rights for the High Commissioner as he plans his work during his first term in office. Undoubtedly you will have others of equal importance and impact which we would be interested to hear about.

Website: http://globalinitiative-escr.org/