



Collective Report on Business and Human Rights

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International Network for Economic,
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Corporate Accountability Working Group

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ESCR-Net is a global collaborative initiative serving organizations and activists from around the world working to secure economic and social justice through human rights. Its Corporate Accountability Working Group advocates for national and international corporate accountability for human rights abuses, involving support for international human rights standards for business. Throughout, the Working Group seeks to strengthen the voice of communities and grassroots groups who are challenging company abuses of human rights by documenting and highlighting particular cases, and by facilitating broad-based participation in United Nations and other international consultations. The Working Group also seeks to build the capacity of its participants by creating space for the exchange of information and strategies, connecting groups to one another, and providing resources for advocacy.

The Steering Committee members of the Corporate Accountability Working Group are Tricia Feeney (Rights and Accountability in Development-RAID, UK) [Coordinator], Danwood Chirwa (University of Cape Town, South Africa), Daniel Taillant (Center for Human Rights and Environment-CEDHA, Argentina), Joji Cariño (TEBTEBBA Foundation, Philippines/UK), Marco Simmons (EarthRights International—ERI, US/Thailand), María Silvia Emanuelli (Habitat International Coalition-Latin America, Mexico) and Nadia Johnson, Women’s Environment and Development Organization-WEDO, US).

* * *

The analysis and recommendations offered in this report are not necessarily shared by all ESCR-Net members.



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KEY ABBREVIATIONS

CAO	Compliance Advisor Ombudsman
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic Social and Cultural Rights
CMW	Convention on the Rights of Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
DRIP	United Nations Declaration on the Rights of Indigenous Peoples
ECHR	European Court of Human Rights
EIA	Environmental Impact Assessment
GC	General Comment
HGA	Host Government Agreement
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
UDHR	Universal Declaration of Human Rights

EXECUTIVE SUMMARY

This Collective Report on Business and Human Rights aims to bring light to situations in which companies have harmed the enjoyment of human rights. Prepared with the collaboration of 40 civil society organizations around the world, this report surveys cases of alleged human rights abuses by, or involving, companies from a wide range of documented situations in order to illuminate the scope of these incidents and identify modalities by which companies negatively impact the enjoyment of human rights. Further, the report analyzes existing gaps in the protection of human rights in the context of business, and offers recommendations to the United Nations (UN) Human Rights Council and its Member States in its 8th Session, as well as to other UN human rights bodies on how to strengthen business accountability to human rights.

At the same time, this report is envisioned as a space to offer testimony of the actual impacts that business conduct has on the human rights of individuals, communities and indigenous peoples. Discussions on these issues at the UN level have tended to focus on abstract concepts rather than the actual experiences of those affected by company human rights abuses. We deem it critical to include the views and perspectives of those suffering abuse for a proper assessment and resolution of the problem.

Through the analysis of various cases of reported abuse, the report reasserts in qualitative terms that business impacts on fundamental rights are widespread. That is, they are not limited to certain countries or regions, nor do they occur only within certain sectors or affect only certain rights. In the 159 surveyed cases from 66 countries, business enterprises have had significant negative impacts upon the enjoyment of all types of human rights, in different political systems, around the world and across industries.

Business activities can affect labor rights directly. Our review of cases points to a number of ways businesses may impact rights in the workplace, including the use of child and forced labor, repression of trade union rights, inadequate remuneration, unsafe work conditions, and discrimination in the workplace, as well as abuses of the rights to life, liberty and security of person.

Businesses can also impact the environment in ways that compromise the enjoyment of human rights by surrounding communities and individuals. Reported cases show that peoples' livelihoods and well-being can be seriously jeopardized by business activities which result in the contamination or usurpation of air, water, soil, or other public resources upon which these communities depend. The effects of these types of environmental disruptions can cause direct harm to a number of inter-related rights, particularly the rights to life, livelihood, health, food and water.

In addition, companies can abuse the right to life, liberty and security of person directly as well as through their ties to third parties. The cases illustrate that business actors may often neglect to ensure that their operations do not benefit from, or contribute to, human rights abuses committed by those with whom they have contractual or other operational links. Summary executions, arbitrary detentions, cruel, inhuman or degrading treatment, including sexual violence, have all been reported in various contexts. Business complicity in international crimes such as torture, war crimes, crimes against humanity, genocide, and enforced disappearances has also been alleged in several of the cases reviewed.

Business activities can also substantially undermine the rights of indigenous peoples, both directly and through third parties. The survey of cases indicates that indigenous peoples' land, resource and cultural rights, rights to free, prior and informed consent, life, health, water, food, collective housing, property, and effective remedy can all be substantially harmed by business activities.

Likewise, the right to adequate and secure housing can be harmed by private industry. Instances of forced eviction and displacements have been reported as a result of large public infrastructure projects, such as

dam construction, commercial development, city beautification programs, and natural resource extraction associated with mining and oil sectors. Business activities which depend upon the forced eviction, displacement or resettlement of communities have accordingly weakened the realization of rights to housing, life and security of person, livelihood and food.

Business actors can also profoundly affect people's enjoyment of the freedom of expression and right to information. Our survey of cases points to instances in which firms have harmed this set of rights by colluding with repressive governments, refusing to release key information affecting significant public matters, and infringing upon people's right to participate in public life.

Finally, actions of companies can directly or indirectly obstruct the ability of victims to obtain effective remedies for harms suffered. Businesses have been reported to interfere with access to justice in a variety of ways, including through influence over domestic judicial proceedings, intimidation and prosecution of claimants, refusal to respect and abide by domestic judgments, refusal to provide compensation, and through negotiation of special host government agreements.

In addition to presenting particular incidents of reported abuse and their distinct modalities, the report goes on to analyze existing gaps in the protection of human rights as evident in the review of cases. In the context of business activity, governments directly violated human rights, thereby failing in their duty to respect. Governments across regions and "governance zones" also continue to fail in—or are obstructed from—discharging their core obligation to protect against company abuse or to provide effective redress and accountability where such abuses occur. Companies for their part have also failed to respect human rights by infringing upon the enjoyment of these rights. Finally, the review of cases points to a serious lack of effective redress and accountability mechanisms at the domestic and international level for people suffering from business-related abuses to restore their dignity and hold perpetrators to account.

Based on the evidence presented in the cases reviewed and the analysis of gaps in human rights protection, the Collective Report concludes with following recommendations to the Human Rights Council and Member States at its 8th Session:

- 1. Establish a broader follow-on mandate on business and human rights** that includes an explicit capacity to examine real life instances of business abuse so that the views, experiences and expertise of those affected by business-related abuses fully inform the effort to identify appropriate solutions.
- 2. Ensure consultation with adversely affected individuals, communities and indigenous people** to guarantee a thorough analysis of the problem and identify meaningful solutions looking forward throughout the UN, and to give greater visibility to those whose rights are negatively affected by business.
- 3. Initiate an inter-governmental process for the adoption of global standards on business and human rights**, in conjunction with ongoing conceptual and policy discussions.
- 4. Intensify efforts to strengthen redress and accountability** to guarantee that individuals and communities have the capacity to defend their rights and that those responsible are held to account.
- 5. Enhance accountability and capacity of governments to fulfill their obligation to protect** by aligning efforts of the Universal Periodic Review process and UN Special Procedures to give increased priority to business and human right issues, and strengthening the ability of governments to protect.

The report also makes recommendations to other UN human rights bodies, including UN human rights treaty-based bodies and the Office of the High Commissioner on Human Rights.

INTRODUCTION

Today more than ever, the realization of human rights is intimately tied to movements in the global economy. Companies may impact the realization of human dignity and fundamental rights in positive and negative ways. This Collective Report on Business and Human Rights aims to bring light to situations in which companies have harmed the enjoyment of human rights. Prepared with the collaboration of thirty-seven civil society organizations around the world¹, this report brings together allegations of real life instances of abuses by, or involving companies from a wide range of documented situations in order to illuminate the scope of these incidents and identify modalities by which companies negatively impact the enjoyment of human rights. Further, the report analyzes gaps in protection from these abuses, and offers recommendations to the United Nations and Member States on how to strengthen business accountability to human rights, including through the development of appropriate inter-governmental standards and effective redress and accountability mechanisms related to business activity.

With this Collective Report as presented to the 8th Session of the UN Human Rights Council, ESCR-Net particularly hopes to contribute to the debate on business and human rights by offering systematized information on allegations of abuses. The report reasserts in qualitative terms that business impacts on fundamental rights are widespread. That is, they are not limited to certain countries or regions, nor do they occur only within certain sectors or affect only certain rights. In the reviewed cases, business enterprises² have had significant negative impacts upon the enjoyment of various types of human rights, in different political systems, around the world, and across industries.

This report also intends to make a contribution by identifying modalities of human rights abuses by, or involving, business. In the review of cases, ESCR-Net has detected a series of patterns in which companies behave in ways that harm the basic human rights of the populations with which they relate. Certain types of adverse company behaviors repeat in different contexts, regions, countries and industries. Certain gaps in the protection of human rights surfaced in this survey of cases as well. Governments across regions and “governance zones” continue to fail in—or are obstructed from—discharging their core obligation to protect against company abuse, or providing effective redress where such abuses occur. As with national governments, the international community has so far also fallen short in providing meaningful solutions. In particular, the review of cases points to a serious lack of effective redress and accountability mechanisms at the domestic and international level for people suffering from business-related abuses to restore their dignity and hold perpetrators to account.

Finally, this report is envisioned as a space to offer testimony of the actual impacts that business conduct has on the human rights of individuals, communities and indigenous peoples. Discussions on these issues at the UN level have tended to focus on abstract concepts rather than the actual experiences of those affected by company human rights abuses and we deem it critical to include this dimension for a proper assessment and resolution of the problem. Victims of human rights abuses by, or involving, companies and the local partners representing them are too often voiceless in the context of international debates on business and human rights. The actual impact business conduct has on the human rights of individuals, communities and indigenous peoples risks being underappreciated as a result, limiting the effectiveness and credibility of policy responses. For that reason, this Collective Report aspires to amplify the efforts of groups challenging and documenting business-related abuses of human rights worldwide, and to thereby further develop a collective voice to hold companies to account for fundamental human rights norms.

ESCR-Net believes that to ensure a thorough analysis of the problem of adverse business impacts on human rights and to properly identify meaningful solutions looking forward, it is essential that debate is grounded in the views, experiences and expertise of those suffering abuse, and at the same time informed by a deep and accurate understanding of the scale, nature, and patterns of business-related abuses. This Report is a step in that direction, and the ESCR-Net Corporate Accountability Working Group has

concrete plans to continue to document, compile and make publicly accessible information on business impacts on human rights worldwide.

Methodology and Content of the Collective Report

In August 2007, ESCR-Net through its Corporate Accountability Working Group invited civil society organizations from around the world to submit well-documented cases concerning alleged human rights abuses by, or involving, companies. 40 human rights and development organizations, social movements, grassroots and indigenous groups responded, providing documentation on alleged abuses. Additional cases were identified by surveying reports published by civil society organizations as well as relevant databases, such as those of the International Labour Organization, OECD-Watch and MisFortune 500. ESCR-Net also drew noteworthy cases from legal proceedings at regional human rights bodies, specifically the Inter-American Court and Commission of Human Rights and the European Court of Human Rights, as well as proceedings in US Courts pursuant to the Alien Tort Claims Statute. Finally, complaints submitted to the International Finance Corporation and Multilateral Investment Guarantee Agency's Compliance/Advisor Ombudsman of the World Bank Group were also compiled to provide a more comprehensive picture of alleged abuses. In order to achieve a fuller understanding of the issues involved in each case, supplementary information was obtained from court documents, including complaints, written testimony and judgments, as well as complementary reports from NGOs, advocacy organization websites, legal and advocacy articles, and news reports. Cases were chosen for the final survey based on the availability of sufficient and reliable documentation on specific human rights impacts. Our final survey of cases includes 159 cases from 66 countries, involving more than 250 companies operating in over 30 different industries. Summaries of each of these individual cases will soon be made available by ESCR-Net.

After identifying and compiling illustrative cases, each was then analyzed according to the human right(s) at stake. The report organizes and analyzes the cases into seven headings, in the order of rights that we consider to be affected most directly by business activity.³ Individual cases often involved allegations of numerous rights. Therefore, where there is overlap, the same case may be addressed in more than one section. However, this is a generalized categorization of rights abuses as many rights are inter-related and abuses occurred simultaneously. In addition, some abuses which were alleged in the case reports were not analyzed in this report due to resource restraints and space limitations. Categorization of the rights is as follows:

1. Labor Rights
2. Environmental Rights
3. Life, Liberty and Security of Person
4. Rights of Indigenous Peoples
5. Freedom of Expression, Information and Participation;
6. Right to Adequate Housing, Forced Evictions and Displacements
7. Right to an Effective Remedy

The Collective Report is divided into three parts. Part I presents brief descriptions of the 159 cases, as analyzed by the categories of rights abuses. Each rights section further identifies modalities of corporate abuse. Part II analyses existing gaps in human rights protection based upon the survey of cases. Part III concludes with a series of recommendations to help the UN adopt measures to both end current violations and prevent future ones.

A Few Caveats

A few words about limitations in the study. First, this Collective Report relies exclusively on

documentation made already available by civil society organizations and other official sources worldwide. ESCR-Net was unable to carry out independent fact-finding to corroborate all 159 reported incidents. Therefore, other than those reported in official court judgments, this report does not document proven facts, but instead relates specific allegations made in the various identified sources (submissions, reports, judicial decisions, etc.). The report does not intend to draw further factual conclusions on particular company or government behavior beyond what has been previously reported. While illustrative, these cases are not necessarily representative of government and company behavior everywhere. The presented analysis of gaps in protection and recommendations are thus based solely on the cases under review.

The sources relied upon for this Collective Report range from first-hand witness accounts to secondary and in some instances tertiary sources. Nevertheless, in all instances, these sources were deemed reliable advocacy accounts. Every effort has been made to give an accurate, fair and updated summary of the reported instances of abuse. However, for clarification, verification or additional information, readers are advised to consult the originator and sources referenced in the accompanying endnotes.

Second, this report compiles a number of key cases in the field, but does not intend to be a complete presentation of cases or issues related to company impacts on human rights. ESCR-Net's limited capacity, and the lack of comprehensive and reliable human rights documentation on certain subjects and sectors, prevented us from compiling a more extensive pool of incidents relating to business and human rights violations. As a result, some key issues surrounding the business and human rights debate are left un-discussed.

1. LABOR RIGHTS

The vindication of workers' rights in the workplace has long been enshrined under international law, and occupies a special place when considering the impacts of business enterprises on human dignity. In fact, protections won by workers under various International Labour Organization (ILO) conventions predate contemporary human rights law and the United Nations (UN) itself. In recognition of the key role labor rights plays in checking the power of business on society, worker's protections have since been incorporated into every aspect of today's human rights framework.⁴

The ILO Declaration on Fundamental Principles and Rights at Work, itself binding on all ILO member states, safeguards four fundamental labor rights standards.⁵ These core labor rights are freedom of association and the effective recognition of the right to collective bargaining⁶; the elimination of all forms of forced or compulsory labor⁷; the effective abolition of child labor⁸; and the elimination of discrimination in respect of employment and occupation.⁹ In addition to this core set, the right to a healthy and safe workplace and the right to adequate remuneration¹⁰ are also clearly protected under international law.

Business activities employ millions of people around the globe, and thus form the impetus to most local and national economies today. Jobs which pay a living wage can do much to strengthen the realization of human rights, whether economic, social, cultural, political or civil. Yet, companies can also severely damage the rights of workers and their families, of which there are numerous examples. Our review of cases points to a number of ways businesses impact rights in the workplace, including through the use of child and forced labor, repression of trade union rights, inadequate remuneration, unsafe work conditions, and discrimination in the workplace.

1.1. Child Labor

Children enjoy the right to live free from exploitation and free from employment which imperils their safety.¹¹ In the cases under review, this prohibition of child labor has been reported to be directly and profoundly infringed by business activities, as well as by governments who either failed to protect children, or in one account actively forced children to work. The cases also illustrated instances in which companies reportedly benefitted from the use of child labor, as well as forced children to work in inhumane, hazardous and even fatal working conditions.

The International Labor Rights Fund (ILRF), for instance, alleges that children in Bridgestone's rubber plantations in Liberia were forced to work unpaid to help meet their parents' daily production quotas.¹² In another case, Global Witness reports that Société Minière du Katanga in southern Democratic Republic of Congo (DRC) employed children in unsafe mining operations. A 10-year-old boy was reportedly found buried under a mound of earth at an artisanal mine that supplies Société Minière du Katanga and others.¹³ Germanwatch, Coalition against Bayer Dangers and Global March against Child Labour accused agriculture companies, Bayer, Advanta, Emergent Genetics, and Monsanto of benefitting from child labor in cottonseed production in India, which reportedly involved child trafficking, exposure to toxic pesticides, and abusive working conditions, leading to the deaths of some child workers.¹⁴ Women's Environment and Development Organization (WEDO) also reports that Bayer and Monsanto employed girl child bonded labor in India.¹⁵ Human Rights Watch (HRW) reports instances in which Coca-Cola benefitted from the use of child labor on plantations in El Salvador which provided sugar to Coca-Cola's refinery supplier.¹⁶ According to International Rights Advocates and Global Exchange, Nestlé knowingly abetted in forced labor of children trafficked from Mali. These children were reportedly forced to work long hours with no pay, little food or sleep, facing threats of torture and frequent beatings while working for Nestlé's cocoa suppliers in the Ivory Coast.¹⁷ In the sporting goods industry in India, the India

Committee of the Netherlands reported that child labor was used in the stitching of footballs for companies that supply Adidas among others.¹⁸ Terra de Direitos and the Departamento de Estudos Sócio-econômicos Rurais maintain that British-American Tobacco, its subsidiary Souza Cruz and other companies, coerced family farmers on their tobacco plantations in southern Brazil into contractual arrangements which fixed the prices paid to family farmers, and monopolized the sale and financing of agricultural inputs, resulting in a substantial increase in farmer dependence on agribusiness companies, and in some cases debt peonage. Family farmers were then forced to share their burdens with their children to try to escape this cycle of disempowerment.¹⁹ Finally, various firms in the Uzbekistani cotton industry, according to the Environmental Justice Foundation, benefitted from government conscription of tens of thousands of children, some as young as seven, to harvest cotton fields.²⁰

1.2. Slavery, Forced and Bonded Labor

Forced or bonded labor is understood today as akin to modern slavery, and is thus considered an international crime.²¹ An examination of cases exposes numerous situations in which companies have reportedly employed forced labor, either directly or through businesses in their supply chain. Labor is compulsory in these cases either due to lack of compensation, or as a result of bonded labor, in which work is demanded to repay debts or other incurred costs owed to the employer at rates invariably higher than wages earned. Circumstances also exist where companies have reportedly benefitted from the work of people conscripted by security or military forces. Women are particularly at risk of forced labor exploitations.

The Amaggi Group in Brazil, for instance, is reported by Misereor to have used forced labor to clear fields for its soybean production.²² The Coalition of Immokalee Workers reports on situations in which migrant farmworkers in the US were held against their will by threats and the use of violence, as well as by debt peonage.²³ A more historical case illustrates a situation in which a subsidiary of the Ford Motor Company reportedly employed forced laborers in Nazi Germany during World War II.²⁴ Numerous garment factories in Saipan cut costs through the use of indentured servitude by suppliers, according to Sweatshop Watch, Global Exchange, Asian Law Caucus, Unite, and Saipan Garment Workers.²⁵ Finally, EarthRights International (ERI) reports that Unocal, TotalFinaElf and Premier Oil in Burma benefitted when military units hired to protect their pipelines forcibly conscripted villagers to build infrastructure necessary for company operations.²⁶

1.3. Trade Union Rights

The right of workers to organize politically and collectively bargain with their employers lies at the heart of ensuring most other labor rights protections. Cases under review illustrate that companies can undermine trade union rights to varying degrees. Examples abound in which companies prevented or discouraged the establishment of trade unions and the free exercise of association in the workplace by threatening retribution against those organizing. Intimidation of this sort occurred through different modalities, including the dismissal of employees for joining union activities, harassment and threats of violence, as well as complicity in the murder of trade union leaders. Such actions by business make it next to impossible for workers to freely associate for fear of reprisal, and thus clearly constitute infringements on the right to form worker associations.

A number of cases relate to threats of worker dismissal for trade union activities. War on Want (WoW) reports that Wal-Mart pursued an “anti-union policy” of closing down profitable stores and departments that unionized.²⁷ In the Philippines, the group Protest Toyota reports that Toyota openly opposed the formation of a trade union, firing workers in support of the union and forming its own pro-management

union.²⁸ According to the Clean Clothes Campaign, workers in sports shoe factories producing for Nike and Adidas Salomon in Indonesia feared that active union involvement could lead to dismissal, imprisonment or physical assault.²⁹ According to findings of the ILO Committee on Freedom of Association, ING Seguros insurance company in Chile also implemented anti-trade union practices by *inter alia* dismissing members of the trade union, applying pressure to force members to resign from the trade union, and breaching collective agreements.³⁰ Coca-Cola, according to WoW, is reported to have utilized union-busting activities in Pakistan, Nicaragua, Peru, Russia, and Guatemala by dismissing and threatening workers affiliated with trade unions.³¹ The Dutch Clean Clothes Campaign and the India Committee of the Netherlands allege that G-Star has failed to ensure good labor conditions at its suppliers in India. As a result, workers do not have unions or compensation schemes, and working conditions violate or threaten workers' rights.³² In addition, the Hellenic Airline Pilots Association's complaint to the ILO alleged the complicity of Olympic Airways in union-busting when the government of Greece proclaimed a national state of emergency in response to the union's call for a strike, forcing pilots and flight engineers to return to work.³³ Finally, the Centro de Reflexión y Acción Laboral tells of a "campaign of persecution" carried out by the mining firm Mexicana de Cobre against unionizing workers where, after a strike led by the employees of its mine in Mexico, a large number of them were reportedly dismissed. Approximately 700 families were forced to leave their homes, and classes were suspended for one month at the company subsidized school, infringing upon the right to education of more than 1200 of the workers' children.³⁴

Cases also demonstrate that companies may go further to chill union activity through intimidation of the physical integrity of employees. The National Labor Committee, for example, reports that C&Y Sportswear officials and their subordinates were involved in assaults, harassment and intimidation against union leaders in Nicaragua.³⁵ ILRF brought a case in US courts against Fresh Del Monte Produce on behalf of five trade union leaders in Guatemala who say they were kidnapped by armed men hired by the fruit corporation's subsidiary and forced to quit their jobs at the banana farm. The suit also alleged that Del Monte was complicit in the torture and murder of union leaders by security forces hired by the company.³⁶ According to International Federation of Human Rights (FIDH), the French mining company Somadex acted in complicity with local police who unlawfully detained trade union members in the company's gold mine in Mali.³⁷ Additionally, Coca-Cola faces accusations in another US lawsuit brought by ILRF for involvement in the intimidation and torture of trade unionists and their families by special branch police in Turkey.³⁸ Lastly, Corporación para el Desarrollo del Oriente (Compromiso) holds responsible Bucarela, Palmas Monterrey, Oleaginosas las Brisas and other oil palm companies for death threats, forced displacement and collective dismissal of unionized workers on their plantations in the town of Puerto Wilches in Bucaramanga, Colombia.³⁹

Finally, some reviewed cases related instances in which company action was allegedly complicit in the killing of trade union leaders. For example, WoW reports that trade unionists who have stood up against AngloGold Ashanti mining operations in Colombia were murdered by military units assigned to protect the company.⁴⁰ Likewise in Colombia, WoW reports that a US lawsuit against Coca Cola alleged that two independent Colombian companies hired by the company assisted Colombian right-wing paramilitaries in killing several union members at Coke's bottling plant.⁴¹ ERI and the Colombian Institute of International Law also report that Chiquita Brands International funded and armed the United Self-Defense Committees of Colombia (AUC), a known "terrorist" organization in Colombia, resulting in the targeted killings of trade unionists.⁴² Outside the Colombian context, ILRF accused Daimler Chrysler in US courts for its activities in complicity with Argentinean military forces actively suppressing union associations and killing union members during the military dictatorship of the 1970s.⁴³ In addition, during a peaceful demonstration by workers demanding their jobs back after reportedly being dismissed as a result of their union activities at Mexicana de Cobre's mine, workers were, according to Centro de Reflexión y Acción Laboral, attacked with gunfire and beatings by staff of Mexicana de Cobre who, using official company vehicles, pursued the demonstrators, set fire to their vehicles and reportedly killed one worker.⁴⁴ Finally,

ILRF and the United Steelworkers of America report that Drummond mining company supported paramilitary fighters through its security arrangements at its facilities in Colombia, thereby making Drummond liable for the execution-style killings of trade union leaders.⁴⁵

1.4. Right to Adequate Remuneration

Workers may be forced to endure long hours of work, with low wages and no overtime compensation, leading to abuses of the right to adequate remuneration, sometimes referred to as wage exploitation.

The Clean Clothes Campaign, for example, reports that workers in sports shoe factories producing for Nike and Adidas Salomon in Indonesia received minimal compensation while working in humiliating conditions and living in extreme poverty.⁴⁶ Rights and Democracy, Conseil régional des organisations non gouvernementales de développement (CRONGD), Nouvelle Dynamique Syndicale (NDS), Association africaine de défense des droits de l'homme—Katanga representation (ASADHO/Katanga), Centre des droits de l'homme et des droits humanitaires (CDH), Bureau diocésain pour le développement (BDD) and Global Witness report that miners in southern DRC were paid very low remuneration and benefits in return for extremely arduous work.⁴⁷ The Coalition of Immokalee Workers also reports that migrant farm workers in South Florida endured wages below the poverty level, no access to benefits, and no overtime pay.⁴⁸ According to Federação de Órgãos para Assistência Social e Educacional (FASE)/Espírito Santo, Aracruz Cellulose company in Brazil reportedly provided workers in its eucalyptus plantations low salaries, appalling working conditions, and few employment-related services and benefits.⁴⁹ Finally, WoW reports that in Chile workers protested against Coca-Cola for forcing them to work up to 16 hours a day and failing to adhere to national minimum wage requirements.⁵⁰

1.5. Unsafe Working Conditions

In addition to working long hours without adequate remuneration or benefits, the survey of cases discloses instances in which workers endured unsafe working conditions. In the above case against Bayer, Advanta, Emergent Genetics and Monsanto, the M. Venkatarangaiya Foundation, Germanwatch, Coalition against Bayer Dangers and Global March against Child Labour report that exposure to pesticides on hybrid cottonseed farms in India has led to the deaths of at least three child laborers.⁵¹ According to Global Witness, Rights and Democracy, CRONGD, NDS, ASADHO/Katanga, CDH and BDD, artisanal miners as well as child laborers working in mines which source Société Minière du Katanga in southern DRC were subjected to extremely unsafe working conditions without any protective equipment or warnings of hazardous conditions, often resulting in fatal accidents.⁵² FASE/Espírito Santo reports that, in the case mentioned above, many former workers at the Aracruz Cellulose eucalyptus plantation suffered negative health consequences due to exposure to pesticides. Others have reportedly lost arms, legs, hands and fingers in chainsaw accidents.⁵³ Additionally, the Shell Accountability Coalition reports that workers at Shell's pesticide plant in Brazil have been harmfully exposed to toxins associated with Shell's operations.⁵⁴ Finally, Terra de Direitos and the Departamento de Estudos Sócio-econômicos Rurais report upon the damaging effects on the health of workers and their families caused by excessive and unprotected exposure to toxic agrochemicals sold to farmers by British-American Tobacco subsidiary Souza Cruz through its supply and input contracts. Associated illnesses included depression, neurological disorders, muscle pain, vomiting and cancer.⁵⁵

1.6. Gender Discrimination

Violations of labor rights in our survey of cases are often most acute for women workers, who face

gender-based exploitation, discrimination, harassment and even violence. Cases highlight situations in which firms have reportedly subjected women to sexual harassment and assault, as well as discrimination in wage, hiring and pregnancy status.

WEDO, Equal Rights Advocates, the Impact Fund and the Public Justice Center report that the largest class action lawsuit and sexual discrimination case in US history is against Wal-Mart, where more than 1.6 million current and former female employees of Wal-Mart retail stores in the US charge that the company discriminated against its female retail employees in pay, promotions, and training.⁵⁶ Discrimination against women is also highlighted in the Tesco case where Action Aid International reports that casual farm workers in South Africa—the majority of which are women—were discriminated against by being paid less in temporary employment, thereby not receiving benefits concomitant with full-time, permanent work.⁵⁷ Lastly, Platform for Labour Action alleges that African Agro Industries Ltd. dismissed a number of women workers in its flower plantations in Uganda solely on the justification that as women they would be unable to meet the demands of their respective jobs.⁵⁸

Women workers in our cases have also experienced workplace discrimination in the form of sexual harassment and assaults. Wal-Mart, in the case above, was also alleged to be involved in incidents of sexual harassment.⁵⁹ Allegations made against Kellogg Brown and Root highlight a situation in which women working with defense contractors in Iraq have reportedly been subject to sexual harassment, as well as more serious instances of sexual assault.⁶⁰ In addition, ILRF reports that sexual harassment in the workplace occurred in Thailand's export industries, where women were unaware of what constitutes sexual harassment, and therefore did not complain about such behavior even when subjected to it.⁶¹ Finally, the Equal Employment Commission reports that Ford and Mitsubishi in the US have abused women's rights in the workplace as a result of sexual harassment.⁶²

Women in our survey were also discriminated against in other ways. HRW reports that women employed in Mexican maquiladoras by companies such as Landis & Staefa, Samsung Group, Matsushita Electric, Sunbeam-Oster, Sanyo, Thomson Corporate Worldwide, Siemens, Pacific Dunlop, Lear, Johnson Controls, and Tyco International were subjected to pregnancy testing as a condition for employment, violating their right to privacy as well as impeding their right to work.⁶³ Similarly, HRW reports that women workers in the Dominican Republic's tourism and export processing industries were discriminated against in the workplace as a result of mandatory HIV-testing where positive results have allegedly led to refusals to hire and dismissals from work, affecting the medium and sometimes long-term right to livelihood of women and their families.⁶⁴

1.7. Race and Other Forms of Discrimination

Cases under consideration also point to instances of company discrimination on the basis of race. Amnesty International, for example, reports that racial discrimination against Bosniaks and Bosnian Serbs took place at Aluminij's factory in Bosnia Herzegovina.⁶⁵ Reports by Rights and Democracy, CRONGD, NDS, ASADHO/Katanga, CDH, BDD and Global Witness also allege discriminatory hiring practices against Congolese as compared to expatriate workers at the mining operations of Société Minière du Katanga in the DRC.⁶⁶ FIDH also relates that discrimination in employment against local Malians was reported at the Somadex gold mines in Mali.⁶⁷ Finally, according to Intermón Oxfam, Repsol YPF is responsible for having carried out discriminatory hiring and other practices against indigenous peoples in the Peruvian Amazon who were reported to have received lower wages than agreed, worked longer hours than their non-indigenous co-workers and faced other racially discriminatory practices.⁶⁸

2. ENVIRONMENTAL RIGHTS

Businesses can undertake various activities which impact the natural environment in ways that compromise the enjoyment of human rights by surrounding communities and individuals. Peoples' livelihoods and well-being can be seriously jeopardized by business activities which result in the contamination or usurpation of air, water, soil, or other public resources upon which these communities depend. The effects of these types of environmental disruptions can cause direct harm to a number of inter-related human rights, particularly economic, social and cultural rights.⁶⁹

This section illustrates ways in which the impact of business activities on the natural environment causes long-lasting and often irrevocable harm to the enjoyment of many interdependent human rights guarantees, specifically the rights to life, health, livelihood, food, and water. As this set of rights is intimately inter-dependent, they can be affected individually or simultaneously to different degrees depending on the situation. Where more than one right is affected, the case is addressed according to the predominant issue in the case. Related cases of severe environmental damage also have been reported to negatively impact all of these rights simultaneously.

2.1. Life

The enjoyment of the right to life is related to, and dependent upon, a healthy and abundant natural environment.⁷⁰ Levels of environmental harm caused by business activity may be so severe as to threaten peoples' lives with irrevocable consequences, as illustrated in the following cases. Amnesty International and ERI report, for example, that in 1984 half a million people were exposed to toxic chemicals during a catastrophic gas leak from the Union Carbide pesticide plant in Bhopal, India, killing more than 7,000 people within days, a further 15,000 in the following years and leaving 100,000 people to suffer from chronic and debilitating illnesses for which treatment was largely ineffective.⁷¹ According to a report by Earthjustice, the toxic chemical spill in the Ivory Coast by Dutch company Trafigura led to the deaths of at least ten people, hospitalizations and severe health problems in the local community.⁷² Corporación Colectivo de Abogados José Alvear Restrepo and ILRF report that US DynCorp's aerial spraying aimed at eradicating illegal crops led to the deaths of at least two children and caused severe health problems for local communities in Colombia and across the border in Ecuador.⁷³ Finally, Oxfam Australia, FOEI and Miningwatch report that when a dam used to keep toxic silt from a waste dump for one of Placer Dome's mines in the Philippines burst, a toxic deluge swept through the valley, drowning livestock, contaminating farmland, submerging villages and killing two children.⁷⁴

2.2. Health

In accordance with international law, every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.⁷⁵ Cases reviewed disclose that the right to health has been directly affected by contamination, accidents caused by company negligence, and by business usurpation of scarce local resources.

Contamination and pollution are prevalent sources of business impacts on health in the cases reviewed. The Frente de Defensa de la Amazonía (Amazon Defense Coalition), for example, has extensively documented and reported disproportionate rates of infant mortality, birth defects, childhood leukemia and other forms of cancer in areas operated by Texaco (now Chevron) in the Ecuadorian Amazon between 1964 and 1992. Proclaimed a "public health emergency" by public health experts, more than 30,000 people and five indigenous nationalities have been reportedly affected as a direct result of actions and omissions of Chevron.⁷⁶ Similarly, inhabitants of the Niger Delta in Nigeria, according to a report by the

Shell Accountability Coalition, suffer from multiple health problems due to exposure to the heavily polluted land and water caused by gas flaring and oil spills from the activities of Shell, Exxon Mobil, Agip, ChevronTexaco and TotalFinaElf.⁷⁷ The Shell Accountability Coalition also maintains that Dutch Shell's oil refinery in Durban, South Africa has led to serious health problems for residents living close to the refinery as a result of oil leaks and spills, as well as toxic emissions from gas flaring.⁷⁸ In addition, Shell Accountability Coalition reports that the oil depot owned by Shell in Pandacan, Philippines containing bunker oil, liquefied petroleum gas, aviation fuel and other potentially toxic substances, has resulted in the hospitalization of hundreds of members of the local community.⁷⁹ Shell's operations in Brazil, including an oil storage tank depot with a shipping terminal and a pesticide production facility, have according to the Shell Accountability Coalition polluted the land and groundwater. High concentrations of heavy metals and pesticides in the blood employees and neighbors was allegedly detected as a result, and linked to cancers, liver disorders and neurological damage.⁸⁰ Crude Accountability reports that the Karachaganak oil field in Kazakhstan—owned by British Gas, ENI/Agip, Chevron, LUKoil and others—caused a decline in the health of the local agricultural community as a result of toxic emissions from the field. These emissions reportedly led to increased incidents of disorders of the upper respiratory tract and cardiovascular system, as well as allergies and cognitive difficulties.⁸¹

A case against Rio Tinto alleges that environmental impacts from the improper dumping of waste rock and tailings from its Panguna mine on Bougainville, Papua New Guinea harmed the health of its residents.⁸² In the *Lopez Ostra* case decided by the European Court of Human Rights (ECHR) against Spain, a malfunction in SACURSA's waste treatment plant led to the release of gas fumes, pestilential smells and other contaminants, which immediately caused health problems, including nausea, vomiting, and allergic reactions to many inhabitants of the nearby town.⁸³ The Center for International Environmental Law and National Coordinator of Peruvian Communities Affected by Mining (CONACAMI) brought a case to the Inter-American Commission on Human Rights (IACHR) holding Minería Lisandro Proaño and various other mining companies—as well as the Peruvian state—responsible for the dumping of toxic mining waste near the indigenous community of San Mateo de Huanchor, impacting community members' health and personal integrity, affecting children in particular.⁸⁴ Also in Peru, the Center for Human Rights and the Environment (CEDHA), Earthjustice, the Interamerican Association for Environmental Defense (AIDA) and others reported to the IACHR that residents of La Oroya suffered grave consequences to their mental and physical health due to excessive levels of contamination brought about by the smelting operations of the Doe Run Company.⁸⁵

2.3. Livelihood and Food

The right to livelihood has its foundation in the right to work, which includes the right of everyone to the opportunity to gain one's living by work which one freely chooses, and the right to a standard of living adequate for the health and well-being of oneself and one's family.⁸⁶ The internationally recognized right to food requires that food is available in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.⁸⁷ Availability refers to the possibilities either of feeding oneself directly from productive land, or from other natural resources. The minimum core duty of this right requires that food sources not be destroyed or contaminated, and that people's efforts to feed themselves not be prevented.⁸⁸ Business activities which create strains on the availability and access to limited natural resources through destruction, contamination or over-utilization deprive the means of persons and communities to ensure successful livelihoods through their use of these resources. In doing so, they may also threaten their right to food.

Impacts on rights to livelihood and food are highlighted in a number of cases reviewed. Greenpeace and Friends of the Earth (FoE) report that fields of cocoa, mandarin and other fruit trees were crushed under the wheels of heavy machinery used for French Rougier's logging operations in Cameroon, destroying the

only source of income and livelihood of villagers.⁸⁹ Likewise in Cameroon, Greenpeace and FoE report that Wijma, Reef and CIBEC's logging activities destroyed villagers' subsistence and cash crops.⁹⁰ Urgewald, FoE and Campagna per la riforma della Banca mondiale found that the Antamina mine in Peru—a joint venture between Noranda, TeckCominco, BHP Billiton and Mitsubishi Corporation—damaged the marine environment as a result of its operations and infrastructure, severely affecting the livelihood of local fishermen.⁹¹ Reports by ECA-Watch and International Rivers Network (IRN) allege that the construction and use of the Bujagali dam in Uganda by the AES Corporation threatened to submerge highly productive agricultural land, as well as impact the health of Lake Victoria upon which millions in the region depend for food, fisheries, transport and water supply.⁹² The Shell Accountability Coalition reports that Shell's operations in Ireland were likely to impact marine life and adversely affect the livelihoods of local fishermen.⁹³ The Amazon Defense Coalition further relates extensive impacts on the livelihood of communities in Ecuador, where crude oil and waste products dumped in the area by Chevron have reportedly contaminated the water and the soil, thus threatening the local economic base of agriculture and small-scale raising of livestock.⁹⁴

In the cases surveyed, the right to food is often affected where food sources are disrupted by environmental damage or pollution. FoEI and the Indonesian Forum for Environment (WAHLI), for example, report that a mud burst in Sidoarjo, Indonesia, allegedly caused by the activities of Lapindo Brantas, an oil and gas exploration company, affected more than 15,000 people and 600 hectares of land, submerging farmland and rice fields in thick mud and destroying fish and shrimp ponds.⁹⁵ Reports by Oxfam Australia, FOE and MiningWatch indicate that the Marcopper mine owned by Placer Dome in the Philippines caused severe pollution of the sea, bay and rivers, slowly poisoning people and their food source.⁹⁶ According to Oxfam America, Rangold's mining operations in Mali contaminated local ground and surface waters, the air, and probably degraded the quality of local soils, leading to the contamination of fish and livestock so fundamental to people's nutrition in the area.⁹⁷ Finally, FoE and WAHLI allege that Buyat Bay in Indonesia was polluted after US mining giant Newmont dumped millions of tons of mining waste into the bay, reportedly causing severe pollution to the water sources resulting in health problems for the residents and a decline in the fish catch.⁹⁸

2.4. Water

The right to water means that people are entitled to water of adequate quality for personal or domestic use. That is, water must be safe and therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Further, each person and household has the right to a water supply that is sufficient and continuous, such as drinking, personal sanitation, washing of clothes, food preparation, personal, and household hygiene.⁹⁹ The right to water importantly encompasses the right to be free from interference of that right through, for example, arbitrary disconnections or the contamination of water supplies. Finally, the right guarantees a system of water supply and management that provides equal opportunity to all people in the enjoyment of this right.¹⁰⁰

Business activity has affected the right to water in our survey of cases in three main ways, namely through contamination, usurpation and price escalation. Poor communities suffer more acutely when water is polluted or made scarce by over-use. In some instances, privatization of water management has led to price escalation, disproportionately affecting the poor, and thus negatively affecting the right to water.

Business enterprises may pollute or cause other damage to water resources, thus directly affecting the right to water. Reports by WoW and the Corporate Responsibility Coalition maintain that AngloGold Ashanti's mining operations in Ghana have polluted numerous local rivers and streams previously used for drinking water and land irrigation.¹⁰¹ According to the Wassa Association of Communities Affected

by Mining and Democracy in Action, the dumping of mine waste and the creation of mine pits by Bogoso Gold in Ghana contaminated six rivers that were once a source of drinking water.¹⁰² Greenpeace and Tebtebba Foundation report that a tailing dam burst at Cambior's Omai gold mine in Guyana, causing serious pollution to the Omai River, a tributary to Guyana's main river-shed which provides drinking water to many people, livestock and wild animals.¹⁰³ The plaintiffs in the *Beanal v. Freeport-McMoRan* case in US courts alleged that the company's Grasberg mining operations in West Papua dumped 230,000 tons of waste a day, including tailings and toxic metals, into Indonesia's river system, resulting in copper concentrations in local rivers up to double the Indonesian legal fresh water limit.¹⁰⁴ Additionally, the ECHR case of *Zander v. Sweden* involved the contamination of local drinking wells as the result of the Swedish waste treatment company, Västmanlands Avfallsaktiebolag, having left refuse containing cyanide on its dump site.¹⁰⁵ Finally, according to the Amazon Defense Coalition, 18 billion gallons of carcinogenic toxic waste released into the environment by Chevron acutely affected fluvial and subterranean waterways in the delicate Ecuadorian rainforest ecosystem upon which local communities depend.¹⁰⁶

The overuse of water by business enterprises may likewise impact the local community's right to water and threaten their livelihoods by in effect usurping community access to this vital resource. WoW reports for instance that Coca-Cola's operations in India have caused a decline in water levels, adversely affecting farmers who rely on access to groundwater for the cultivation of their crops. The wells they used for drinking, cleaning, washing and sanitation reportedly dried up and were also contaminated.¹⁰⁷ In addition, villagers from Jagatsuk, a small Himalayan village in India, report that the AllainDuhangan hydropower project threatened to dry up water supplies used for agriculture, livestock and potable water.¹⁰⁸

Finally, private companies which assume the public function of providing and managing water supply may act in a discriminatory way by raising prices beyond the means of certain households. The case of Interagua, a subsidiary of Bechtel insured by the World Bank Group, is telling. The Movimiento Mi Cometa and the Unitarian Universalist Service Committee allege that the residential water supply to lower-income families was frequently cut by Interagua, sometimes for more than 36 hours at a time in the company's private service area in Guayaquil, Ecuador. In addition, service was reportedly not provided to some poorer neighborhoods, and Interagua's negative impacts on access to clean water was alleged to be responsible for an outbreak of Hepatitis A, and in a separate incident the death of two young children.¹⁰⁹ In a different case, Rights and Democracy, the Asociación Civil por la Igualdad y la Justicia and the Centro de Estudios Legales y Sociales report that the privatization of the water supply in Buenos Aires and surrounding communities in the hands of Aguas Argentinas, a consortium of French, Spanish, British, and Argentinean companies, led to violations of the right to water ranging from accessibility to safety.¹¹⁰

3. RIGHT TO LIFE, LIBERTY & SECURITY OF PERSON

International human rights law protects the physical and psychological integrity of human beings, and in so doing grants everyone the right to life, liberty and security of person.¹¹¹ Extrajudicial killings, slavery and forced labor, slave trading, sexual violence and assault, torture and other cruel, inhuman or degrading treatment and punishment, unlawful, unjustified and inhumane detentions each degrade human integrity, and are all thus legally prohibited. A certain set of these violations may qualify as international crimes, including genocide, torture, crimes against humanity, enforced disappearances, and war crimes.

In our review of cases, summary executions, arbitrary detentions, cruel, inhuman or degrading treatment, including sexual violence, have all been reported in various contexts. Business complicity in international crimes such as torture, war crimes, crimes against humanity, genocide, and enforced disappearances has also been alleged in several of the cases reviewed.

3.1. Direct Company Abuses of the Right to Life, Liberty and Security of Person

Cases illustrate that business actors may abuse the right to life, liberty and security of person directly in different ways. Companies which provide private security, for instance, have been alleged to directly abuse these rights. Human Right First, for example, reports that private security contractors working for Blackwater Worldwide in Iraq are charged with killing 17 civilians and wounding 24 more with no justification while running an armed convoy through Baghdad.¹¹² Additionally, the Center for Constitutional Rights (CCR) filed a class action lawsuit against private contractors CACI International Incorporated and Titan Corporation for directing and participating in torture, rape, assault, and cruel, inhuman, or degrading treatment of prisoners at the Abu Ghraib prison in Iraq while providing interrogation services for the US government.¹¹³

In addition, direct violations of the right to life have been reported as the result of business activities which cause severe disruptions to the environment, such as acute pollution or contamination. Such activities may lead to immediate deaths or impact the right to life by seriously limiting the means to sustain life, such as food, water and livelihood resources, consequently also threatening individual and community's health. These cases are discussed in the sections on the natural environment and the rights of indigenous peoples.

3.2. Indirect Company Abuses through Associations with Third-parties

In our review of cases, companies are also implicated in abuses of the rights to life, liberty and security of person through their ties to third parties, be they government agencies, military, paramilitary or private armed forces. In this context, the failure of governments to discharge their obligation to respect and protect human rights is evident. Yet, cases show instances in which business actors also are reported to fail to ensure that their operations do not benefit from, or contribute to, human rights abuses committed by those with whom they have contractual or other operational links. When this is the case, company complicity in human rights abuses is often alleged.

The cases reviewed show that business involvement in this context can occur as a result of direct agreement or control, indifference to known violations, or any form of association within this spectrum. For example, business enterprises may be responsible for aiding and abetting human rights violations when they choose to contract with abusive third-party actors to protect their investments either by directing such forces to commit violations, providing the means to commit such violations through funding, equipment or other logistics, turning a blind eye to the methods in which such forces operate, or

creating an atmosphere where such forces suppress the local community and commit various other abuses in favor of the business enterprise. Such violations include intimidation, assault, or even murder of employees or members of local communities in an effort to protect company facilities, personnel and investments. A number of examples are showcased in which business enterprises have been reported to tacitly agree to such means of protection, even with the knowledge of the commission of human rights abuses.

According to reports by Rights and Accountability in Development (RAID) and Action Contre l'Impunité pour les Droits Humains, for instance, Anvil Mining was alleged to have assisted in the deaths of approximately 100 people in the town of Kilwa, DRC, due to their provision of logistical support to the Armed Forces which carried out these extrajudicial killings.¹¹⁴ Similarly, ILRF maintains that Occidental Petroleum aided and abetted abuses of the right to life carried out by the Colombian Air Force through the provision of crucial logistical support for an air raid on a local village.¹¹⁵ Likewise, TVI Pacific mining company is answerable to violations committed by the Philippine Army in its violent suppression of the local community near the company's mine due to the company's security arrangements with and support of such forces, according to reports by Rights and Democracy, Christian Aid, Tebtebba Foundation, Philippines Indigenous Peoples' Links, Legal Rights and Natural Resources Center-KsK/FoE-Philippines.¹¹⁶ ERI alleges that Chevron was complicit in the shooting of peaceful protestors at Chevron's Parabe offshore platform also by providing logistical and financial support to the Nigerian military and police who carried out these abuses.¹¹⁷

Similarly, Terra de Direitos, Landless Workers' Movement and Via Campesina report that Syngenta, a Swiss biotechnology company, was complicit in murder and violent attacks on protestors due to their security arrangements with armed militias in the Brazilian countryside.¹¹⁸ ERI, CCR and the Shell Accountability Coalition allege that Shell was complicit in the arbitrary detentions and summary executions of the Ogoni Nine in Nigeria through its tacit agreement with the Nigerian military dictatorship who committed these violations.¹¹⁹ Finally, according to Amnesty International, the Vicariato del Medio Ambiente de Jaén, Peru and Comité Académico Técnico de Asesoramiento a Problemas Ambientales, a community march in protest of the construction of an open-pit mine by the Empresa Minera Majaz, a subsidiary of British firm Monterrico Metals in northern Peru, led to severe repression by police. Thirty community members were purportedly tortured over three days and one person was left dead.¹²⁰

According to reports by Global Justice Center, Movimento dos Atingidos por Barragens (MAB), the Pastoral Land Commission, and Núcleo de Assessoria às Comunidades Atingidas por Barragens (NACAB), community leaders received death threats due to their defense of the rights of those affected by the Candonga Hydroelectric Dam in Brazil, as well as for their denunciations of irregularities in the construction of the dam and other protests against the Candonga Consortium - a Brazilian company formed by the Vale do Rio Doce company and the Canadian-owned Alcan Alumínio do Brasil.¹²¹ Similarly, according to Grupo de Formación e Intervención para el Desarrollo Sostenible (GRUFIDES), the company Minera Yanacocha, mainly owned by Newmont Mining, reportedly used the services of a private company, FORZA, to threaten, persecute, bribe and conduct public campaigns against human rights activists in the region in an attempt to intimidate and silence their activities aimed at defending the environmental and human rights of local communities in northern Peru.¹²² According to the Comisión Ecuánica de Derechos Humanos (CEDHU), various community leaders who voiced dissent toward potential mining operations of Ascendant Copper Corporation in northern Ecuador have received death threats and have been physically assaulted by individuals with alleged close ties to the mining firm. Armed militia groups allegedly contracted by the company have also entered the community on various occasions, reportedly to suppress community dissent.¹²³ Also in Ecuador, various leaders of the Kichwa people of Sarayaku, as reported by Centro de Derechos Económicos, Sociales y Culturales and the community itself, have endured years of threats and attempts at their life and physical integrity in

retribution for the actions defending their lands, territories and resources against oil exploration. Facing threats of militarization of their lands purportedly made by the military and Argentinean oil company, Compañía General de Combustibles (CGC), the Sarayaku community organized seven months of emergency actions in defense of their territory, at constant cost to members' personal security. Since then, CGC reportedly has placed explosives throughout the Sarayaku territory, leaving them for years against the will and without informing residents. According to the Ecuadorian Energy Ministry, these explosives were to be used for seismic exploration, but were very dangerous and could detonate accidentally with ease, inhibiting the movement and safety of community members of this indigenous community.¹²⁴

3.3. Supporting Abusive Governments and Fueling Conflict

Rights guarantees to life, liberty and security of person are also compromised when businesses support abusive governments or non-state armed forces. A number of cases illustrate situations in which firms are alleged to have acted in complicity with abusive governments or armed factions by providing arms, equipment, transportation, services, financing or other logistical support, with the understanding that such assistance would be used to commit human rights violations, or that the groups receiving the aid were known human rights violators.

According to reports by HRW and ERI, Talisman Energy was complicit in violations of the right to life and the laws of war committed by the Sudanese government due to the company's alleged provision of logistical assistance and infrastructure, such as providing airstrips for the government's indiscriminate and disproportionate military attacks on civilians during the conflict in Southern Sudan.¹²⁵ CCR, the Palestinian Center for Human Rights and WoW report that the Caterpillar company aided and abetted alleged war crimes committed by the Israeli Defense Forces by providing bulldozers, which were purportedly used in the commission of extrajudicial killings and cruel, inhuman or degrading treatment or punishment in the Occupied Palestinian Territories.¹²⁶ Additionally, through its provision of services, various banks and firms had an instrumental role in supporting abuses committed by the South African apartheid regime, according to a report by Sustainability. Extrajudicial killings, arbitrary detention, torture and rape, for example, were all commissioned with critical support from these companies' provision of equipment, arms, information services and financing.¹²⁷

International Rights Advocates details how ExxonMobil was reportedly complicit in serious rights abuses, including kidnapping, torture, murder and rape, committed by security guards hired from the ranks of the Indonesian military, despite its well-documented history of abusing Indonesian citizens.¹²⁸ ERI and the Colombian Institute of International Law complain that Chiquita, a US-based fruit corporation, funded and armed paramilitary organizations in Colombia widely known to be responsible for the targeted killings of trade unionists, workers and other political organizers.¹²⁹ WEDO and HRW also report that AngloGold Ashanti established a relationship and made payments to the Front des Nationalistes et Integrationnistes, an armed group with a allegedly atrocious record of human rights abuses, including rape and sexual violence, in connection with their mining operations in Mongbwalu, DRC.¹³⁰ Similarly, according to WoW and Global Witness, Freeport McMoRan is accountable for human rights violations committed by the Indonesian military through their security arrangements and financial support, which were reportedly maintained despite having knowledge of human rights violations committed by their military partners.¹³¹ Furthermore, ForUM alleges that the Norwegian company Aker Kværner, through its subsidiary KPSI, contributed to abuses of liberty and security of person in the Guantanamo Bay prison system by providing services and actively engaging in the daily operation of the installations.¹³² Finally, RAID, the Human Rights Council of Australia, Chil-Out, the Brotherhood of St. Laurence and the International Commission of Jurists allege that Global Solutions Limited was complicit in subjecting detainees to a regime of indefinite and arbitrary detention through its assumption of

responsibility for immigration detention centers and acquiescence in the Australian government's policy of mandatory detention of asylum seekers without charge or judicial review.¹³³

Likewise through recent history, companies have been alleged to provide the requisite support to governments' abusive acts. The Herero tribe in what is now Namibia, for example, has sued Deutsche Bank for financing the German government and its policy of genocide in the early 20th century, which resulted in the slaughter of tens of thousands of its people. The German mining company Terex Corporation and shipping company Deutsche Afrika Linie were also condemned for allegedly profiting from the German occupation of Namibia.¹³⁴ Also comparable is the class action lawsuit filed by Cohen, Milstein, Hausfeld & Toll, et al. against IBM on behalf of all concentration camp survivors of the Holocaust for aiding and abetting crimes against humanity and violations of human rights by providing technology, products and services which were used in concentration camps.¹³⁵

The cases reviewed also make evident that companies may be complicit in violations of this category of rights through their support of ongoing conflicts when they participate in the unregulated trade of commodities. Firms involved in illegal trade and the purchase of commodities may provide direct payments or industry profits to gross human rights abusers. Numerous complaints to Organisation for Economic Cooperation and Development (OECD) National Contact Points and reports by a special UN panel, for instance, allege that various business enterprises helped to fund the ongoing conflict in the DRC, which involved numerous violations of the right to life, as well as forcible abductions, arbitrary arrests, torture, and the rape of women and girls by combatants, through the exploitation of natural resources in partnership with known human rights abusers.¹³⁶ In addition, reports by Greenpeace detail how the trade in timber by Dutch company Dalhoff, Larsen and Hornemann enriched rebel groups in Cameroon, Liberia and Sierra Leone responsible for grave human rights violations, such as killings of unarmed civilians, forcible abductions, torture and rape.¹³⁷

3.4. Life and Torture in the Workplace

Abuses of the rights to life, liberty and security of person in the workplace context have also been reported, and are addressed in the labor rights section above, particularly in the context of child labor and unsafe working conditions, as well as the killing of trade union leaders. In such instances, trade union rights are particularly threatened when businesses are implicated in killings, arbitrary detentions, torture, and disappearances of union organizers. Such abuses in the reported cases were often at the hands of contracted security personnel as discussed above, or paramilitary groups associated with the company. WoW and Amnesty International both report for example that Anglo-American was complicit in the murders of union leaders by military units assigned to protect the company in Colombia.¹³⁸ Additionally, ILRF's lawsuit against DaimlerChrysler alleges complicity in the disappearance and torture of workers and union leaders, who worked at its plant, at the hands of Argentinean security forces acting under its direction and collaboration.¹³⁹ Finally, the lawsuit against Coca-Cola also charged complicity with paramilitaries in Colombia who allegedly regularly abducted, tortured, and murdered trade union leaders.¹⁴⁰

Other cases more fully discussed in the section on labor rights demonstrate alleged instances of torture in conjunction with forced labor. For instance, ERI reports that the Burmese military tortured peasants who were forced to labor in preparation for Unocal's pipeline, yet Unocal still chose to enter into security arrangements with the military.¹⁴¹ In Mali, ILRF and Global Exchange report that Nestlé, Archer Daniels Midland Company, and Cargill benefited from the forced labor and torture of children by their cocoa suppliers.¹⁴² Finally, prisoners of war were allegedly abducted and subject to torture and forced labor in Ford's production plants in Nazi Germany.¹⁴³

4. THE RIGHTS OF INDIGENOUS PEOPLES

Indigenous peoples have inherent rights predicated on their aboriginal or native customary rights which pre-date the modern state, and which are protected under the purview of the international law.¹⁴⁴ The right of indigenous peoples to freely determine their economic, social and cultural development is the cornerstone of their collective human rights protections and survival as distinct peoples, and thus actions which impede the exercise of self-determination¹⁴⁵ are often the focus of rights violations.¹⁴⁶

Business activities can substantially undermine the rights of indigenous peoples, both directly and through third parties. A review of cases points to a gamut of such violations involving companies. Indigenous peoples' land and resource rights,¹⁴⁷ rights to free, prior and informed consent, health,¹⁴⁸ water¹⁴⁹ and food,¹⁵⁰ collective housing and property rights,¹⁵¹ cultural rights,¹⁵² right to life, and right to effective remedy are all substantially infringed by business activities.

4.1. Rights to Land, Territory and Resources and Free, Prior, Informed Consent

It is often pointed out that indigenous peoples' symbiotic relationship with their land, territories and resources is essential to their medicinal, nutritional, cultural, spiritual and economic sustenance, and thus necessary for their very survival. Accordingly, the enjoyment of secure, enforceable and collective property rights over land, territory and the accompanying resources is indispensable to the realization of indigenous peoples' rights. For this reason, indigenous peoples are entitled to both substantive and procedural guarantees of communal control over land, territory and resources.¹⁵³

Accordingly, indigenous peoples enjoy the right to be consulted over the transference of control to external agents over their lands, territories and resources, whether private or public. The satisfaction of the right to consultation of indigenous peoples is thus dependent upon their free, prior and informed consent to such activities.¹⁵⁴ That is, consultations must ensure that collective consent is freely given by legitimate indigenous authorities, obtained prior to implementation of activities, and founded upon an understanding of the full range of issues implicated by the activity or decision in question. Thereby, indigenous peoples have the right to participate in economic decision-making affecting their future, and to give or withhold their consent to activities affecting their lands, territories and resources.¹⁵⁵

The cases reviewed make evident that the right of indigenous peoples to determine the use of lands and resources, over which they enjoy traditional and collective ownership rights, is adversely affected by companies that benefit from, or actively pressure, government concessions of such land and resources without adequate consultations based upon free, prior and informed consent of indigenous peoples. In our review of cases, states often justify their failure to meaningfully consult with indigenous peoples over concessions affecting their land, territories and resources by claiming that the "public interest" of economic development outweighs particular indigenous protections. Such concessions on indigenous lands are rarely subject to judicial review in domestic courts, and thus indigenous people are often frustrated in their attempts to seek access to justice nationally. In this sense, enforceable and collective property rights of indigenous peoples are effectively violated by the state in order to accommodate the wishes of companies to access scarce natural resources.

The Forest Peoples Programme (FPP) reports, for example, that the U'wa indigenous community in Colombia was not consulted when the government issued a petroleum exploration license to US oil company, Occidental.¹⁵⁶ FPP also reports that BHP Billiton proceeded with their bauxite mining plans in the territory of the Lakono indigenous communities after the government of Suriname issued a concession and exploration permit without indigenous agreement.¹⁵⁷ The Toledo Maya Cultural Council of Belize, which represents the Mopan and Ke'ekchi Maya people of the Toledo District of Southern Belize, also

claims that their government placed a substantial portion of Maya traditional territory in a potential position of long term oil development and production activities without consulting the Maya people. By doing so, groups claim the government has refused to recognize the rights of the Maya people in connection with their traditional lands and rights to participate in decision making over them.¹⁵⁸ The Bolivian Central of Workers, on behalf of the Confederation of Indigenous Peoples of Bolivia, further allege that there was no genuine consultation with, or participation by, the affected indigenous peoples in connection with the government's decision to issue logging concessions on their lands, as reported by FPP.¹⁵⁹ The Embera Katío people of Alto Sinú, Colombia also allege that they were not consulted in connection with the construction and operation of the Urrá hydroelectric dam.¹⁶⁰ The land tenure security of the Mayagna Awas (Sumo) Tingni Community of Nicaragua was threatened when transnational companies entered their lands to inventory the valuable tropical forest resources and plan for large-scale logging, eventually leading to a concession without adequate consultation.¹⁶¹ FoE and the Bank Information Center report that Mam and Sipakapense Maya from San Marcos, the Consejo Nacional de Pueblos Indígenas, the Achjmol Maya Comprehensive Development Association, the Majawil Q'IJ, and the indigenous authorities of the Western Highlands argue that their right to consultation was infringed when the Guatemalan government made no meaningful effort to consult with indigenous communities prior to issuing concessions to Glamis Gold for the Marlin gold mine.¹⁶² Finally, according to Intermón Oxfam, Repsol YPF disregarded the protection of indigenous rights in the Peruvian Amazon, by failing to properly consult with them about potential impacts of their operations, as well as by failing to reach agreements with affected communities when determining redress for damages caused.¹⁶³

Further, Rights and Democracy reports that the Subanon indigenous communities in the Philippines argue that TVI Pacific manipulated their right to free, prior and informed consent when they empowered an alternative structure over legitimate customary indigenous authorities in relation to consultations for their mining operations.¹⁶⁴ Similarly, according to the Assembly of the Guaraní People-Itika Guasu (APG-IG) and the Centro de Estudios Aplicados de los Derechos Económicos, Sociales y Culturales (CEADESC), the operations of Repsol YPF, Chevron, British Gas, and the Bolivian state enterprise, Yacimientos Petrolíferos Fiscales Bolivianos, on traditional Guaraní lands gravely affected the right to free, prior and informed consent. It purportedly took Repsol one year, various requests and a road block demanding access to information before the company decided to release three of its environmental impact assessments (EIAs), none of which were elaborated in consultation with legitimate indigenous representatives. The company reportedly relied on approval of its activities from individuals not legitimately representative of the Guaraní communities of the area. In addition, a temporary worker's camp was installed upon a Guaraní sacred site, reportedly leading to its desecration through the introduction of alcohol, delinquency and prostitution in the area.¹⁶⁵ In yet another case, the Pehuenche communities in Chile claim that they were not consulted and their traditional decision-making structure was disregarded in connection with Endesa's plans to build a series of dams on the Bio Bio River.¹⁶⁶

In southwestern Ecuador, a number of indigenous communities have purportedly been denied the right to determine the use of their land and resources as a result of the proposed expansion of oil operations. The right to consultation of the Shuar people for example was reportedly infringed when Arco Oriente, and later Burlington Resources, disregarded the objections of the community's elected leadership to the company's petroleum exploration activities.¹⁶⁷ Similarly, the Kichwa people of Sarayaku maintain that control over 65% of their land was conceded to the Argentinean oil company CGC and Burlington Resources, now ConocoPhillips, without any consent given to the Ecuadorian government and companies involved. When the government did require CGC to provide an EIA, the company reportedly entered the area disguised as tourists to avoid suspicion by Sarayaku residents, who objected to any oil exploration on their lands and territories. Once the workers were discovered, the conflict escalated, with the national government threatening militarization of the area to honor the concession agreements. CGC opened camp on Sarayaku territory, entering without permission, felling large trees, initiating seismic exploration activities, and claiming that the area had been mined and was thus dangerous to residents.¹⁶⁸

In the case of the Didipio mine in the Philippines, Oxfam Australia reports that Australia's OceanaGold failed to obtain the indigenous community's fully-informed, freely-given consent before starting its mining development by failing to provide full information about likely impacts on the community in an accessible way or language, failing to give adequate and accessible information about potential environmental impacts, failing to give information about proposed relocations, seeking to circumvent established consent procedures, and intimidating, harassing or forcing community members to give or sell the company access to their land at prices determined by the company.¹⁶⁹

4.2. Forced Relocation of Indigenous Peoples

Indigenous peoples in our review of cases are often forcibly displaced as a result of business priorities, particularly to make room for government concessions for natural resource exploration. Forced relocation without the free, prior and informed consent of indigenous peoples irrevocably severs indigenous peoples' cultural, social, spiritual and economic relationship with their ancestral lands and resources, thus putting at serious risk their very existence as peoples.¹⁷⁰

Cases surveyed illustrate a number of instances of forced relocation of indigenous communities and families. For example, ActionAid International reports that the indigenous Dongria Kondh, Kutia Kondha and Jharania Kondha tribal groups of India claim to have been forcibly displaced to make way for Vedanta's alumina refinery.¹⁷¹ FPP and the Minority Rights Group International report that the indigenous Chinantec community of Ojitlán, Mexico claim to have had their land rights violated in relation to construction of the Cerro del Oro hydroelectric dam, which "forcibly relocated them from their native lands and sacred sites and entirely disrupted their traditional way of life," all without consent.¹⁷² Lastly, the indigenous San People of Botswana allege they were illegally evicted from their traditional hunting grounds because of a proposed Kalahari Diamonds mine.¹⁷³

4.3. Environmental Disruptions of Indigenous Rights

The cultural integrity of indigenous peoples is closely linked to the recognition of and respect for rights to land and resources, and thus preservation of the natural environment.¹⁷⁴ A number of indigenous rights can be directly affected when business activities cause environmental destruction, degradation or pollution to sensitive areas upon which indigenous peoples depend. Such activities undermine indigenous peoples' access to essential resources, thus threatening their rights to life, food, water and livelihood.

For example, environmental degradation of the ancestral territory of the Western Shoshone in the US, as a result of massive dewatering, dangerously high levels of mercury and other toxins and the rendering unusable of several cold water springs, is alleged to have led to violations of their rights to self-determination, cultural rights, livelihood, access to food and water, and consultation, all in the context of mining operations of several Canadian companies, including the Bravo Venture Group, Nevada Pacific Bold, Barrick Gold, Glamis Gold, GoldCorp and Great Basin Gold.¹⁷⁵ In addition, the Yanomami peoples' access to water and food has been reportedly adversely affected due to the pollution of water supplies from mining and deforestation as a result of logging operations in Brazil.¹⁷⁶ ActionAid International and mines, minerals and People report that the mining and refining operations of Vedanta Resources of the United Kingdom has caused damaging consequences on the hydrology and water systems that sustain the lush vegetation in the forests of Niyamgiri Mountain where the indigenous Dongria Kondh, Kutia Kondha and Jharania Kondha indigenous groups of India live, thus harming their environment, access to food and water resources, and their sacred grounds.¹⁷⁷ Amnesty International and the FPP report that the Ominayak and Lubicon Lake Band tribes in Canada alleged violations of the right

to self-determination, the right to dispose of natural wealth and resources and the right to have the means of subsistence safeguarded in connection with oil, gas, timber and other resource exploitation operations in their territory to which they have never consented.¹⁷⁸

According to a report by ERI, Amazon Watch, and Racimos de Ungurahui, Occidental Petroleum's operations in Peru have contaminated the rivers and lands of indigenous Achuar communities, disrupting their ability to fish, hunt, and raise crops, destructing their protected way of life and causing persistent health problems, even death.¹⁷⁹ According to APG-IG, environmental impacts, including deforestation, soil erosion, damage to the quality and integrity of rivers and aquifers, and disturbance of local wildlife, as a result of Repsol YPF's operations in Guaraní lands in Bolivia, have directly injured the quality of life the Guaraní people, who subsist in large part upon resources from the forest and its animals. Hunting, fishing, collection of fruits, as well as access to natural medicines have all been obstructed as a result of Repsol YPF's operations, as denounced by APG-IG.¹⁸⁰ In addition, Endesa's dams in Chile have affected water resources of the Pehuenche people, thereby disrupting their livelihoods, lifestyle and traditional semi-nomadic economic base.¹⁸¹ Finally, Amazon Defense Coalition reports that some indigenous communities in northeastern Ecuador have been forced to emigrate to other areas of the country due to high rates of cancer and other illnesses as well as contaminated soils caused by the operations of Chevron.¹⁸² Company practices were further reported to be a contributing factor in the complete disappearance of one indigenous tribe (the Tetetes), and to have forced two others (the Cofán and Secoya) to the brink of extinction.¹⁸³

4.4. Repression and the Right to Life

In this survey, the right to life of indigenous peoples has been threatened and in some cases violated. The Yanomami indigenous people of the Amazon regions of Brazil and Venezuela contend that Brazilian goldminers have violated their right to life as a result of murders precipitated by land disputes and exposure to diseases to which they had no immunity, all in connection with mining exploration on their ancestral lands.¹⁸⁴ Similarly, Derecho, Ambiente y Recursos Naturales questions the Peruvian state for continually placing business rights to natural resource exploitation at a higher legal and administrative level than the system of protections for indigenous peoples in voluntary isolation living in national ecological reserves. In particular, since 2002, activities in the area of the Camisea natural gas project led by a business consortium of Pluspetrol Peru, Hunt Oil Company and Tecpetrol del Peru, have allegedly forced undesired contact between indigenous peoples in voluntary isolation and the outside world, similar to incidents in the 1980s which led to the death of approximately 50% of the population.¹⁸⁵ Additionally, the World Rainforest Movement reports that the right to life of the Curvaradó and Jiguamiandó peoples of Colombia was also violated by paramilitary groups as a result of land disputes and associated protests against unlawful oil palm plantations.¹⁸⁶ Finally, the indigenous communities living near Glamis Gold's mining operations in Guatemala have also claimed violations to their right to life in connection with the killing of their members during mine protests at the hands of the Guatemalan military.¹⁸⁷

5. RIGHT TO HOUSING, FORCED EVICTIONS & FORCED DISPLACEMENTS

Everyone has the right under international law to live in adequate housing.¹⁸⁸ Adequacy is defined by seven core components, which together ensure the realization of this right. That is, housing must be secure, have access to basic services, be affordable, habitable, and accessible to all, in a location with access to employment and services, and be culturally appropriate.¹⁸⁹ The lack of any of these elements can be said to pose a risk to the full enjoyment of the right to housing. Accordingly, security of tenure is fundamental in protecting people from being forcibly evicted, or displaced.¹⁹⁰ Importantly, actions which undermine a secure residence also leave people more vulnerable to other types of human rights violations.¹⁹¹

Forced eviction occurs when individuals, families or communities are removed against their will from their homes or lands they live upon, without access to legal or other protections.¹⁹² Forced displacement for its part takes place when individuals, families or communities are forced to flee, or have been forcibly removed from, their lands or homes to avoid the effects of harmful situations, be they natural or man-made disasters, violent conflict, or development projects.¹⁹³ In both instances, the defining factor is the lack of consent by those negatively affected.

In order to ensure that the right to adequate and secure housing is protected, certain procedural guarantees have been developed to guide governments in cases where evictions are completely unavoidable. States must, before evicting anyone, guarantee that all viable alternatives be explored and that affected persons be genuinely consulted. Affected persons should be given adequate and reasonable notice of eviction. Additionally, legal assistance and remedies should be made available, and in this process affected persons should be able to assert their right to compensation for lost property or goods.¹⁹⁴ In cases where affected persons are particularly vulnerable, governments should, within their means, ensure that resettlement options are available, whether to adequate housing or productive land depending on the situation.¹⁹⁵

In this survey of cases, the right to adequate and secure housing has been harmed by various industries. Instances of forced eviction and displacements have been reported as a result of large public infrastructure projects, such as dam and road construction, commercial development, city beautification programs, clearing of land for agricultural purposes and natural resource extraction associated with mining and oil sectors. While violations of adequate housing generally occur at the hands of the state, business enterprises risk complicity in these abuses when they benefit from them for their operations. In our review of cases, business activities which depend upon the forced eviction, displacement or resettlement of communities have accordingly affected rights to adequate housing, life and security of person, livelihood and food, as well as related procedural rights, including entitlements to information and consultation, adequate and reasonable notice, compensation, and adequate resettlement.

5.1. Forced Evictions

The right to adequate housing is most evidently affected where communities are evicted from their homes or have their homes destroyed to make room for private sector activities in disregard to the substantive and procedural guarantees referred to above, sometimes with violent and fatal results.

The homes of the Grand Bassa community in Liberia were demolished, according to the Centre on Housing Rights and Evictions (COHRE), its farms and crops destroyed, ancestral burial plots and secret shrines desecrated in order to provide for the operations of Liberia Agriculture Company.¹⁹⁶ HRW, SOS Habitat and Amnesty International report that over a thousand houses in South Luanda, Angola were razed to the ground at police gun-point and their occupants left homeless in order to make room for commercial development.¹⁹⁷ According to Amnesty International, COHRE and the Movement for the

Survival of the Ogoni People (MOSOP), demolitions in the Waterside Community in Nigeria aimed at expanding AGIP's oil facilities involved the destruction of approximately 80-90 percent of the area, including houses, churches, and schools, making many residents homeless. Residents were reportedly subjected to violence and harassment during the eviction.¹⁹⁸ The Asian Human Rights Commission (AHRC) reports that armed police officers and workers used excessive force during an eviction which tore down 40 wooden food stalls and 71 homes and removed the belongings of the residents of Ocheuteal Beach in Cambodia to make room for a large tourist resort.¹⁹⁹ COHRE reports that a large police force together with armed private security guards evicted the last resisting families by force in order to facilitate operations of the Candonga dam in Brazil. Houses were torn down in some cases with furniture and personal belongings still inside.²⁰⁰ Furthermore, the Global Justice Center reports that one dissenter was disappeared.²⁰¹

The cases reviewed illustrate instances of violence in the course of forced evictions and displacements, often leading to injuries and deaths. Amnesty International reports that tensions surrounding potential relocation near the La Parota Dam in southern Mexico have led to violence in the affected communities.²⁰² The inhabitants of Tabaco, Colombia, were allegedly evicted and violently attacked by hundreds of armed security personnel to allow for AngloGold Ashanti's mine expansion, as reported by WoW.²⁰³ In addition, 20 Tupinikim and Guaraní indigenous people in Brazil were injured when an armed police force evicted them in Córrego D'Ouro and Olho D'Água in the state of Espírito Santo, Brazil to clear the land for the activities of Aracruz Cellulose, according to reports by COHRE.²⁰⁴ According to the Lawyers' Environmental Action Team and the Tebtebba Foundation, witnesses in the case of the Bulyanhulu gold mine in Tanzania allege that police carried out evictions with force and brutality. In the course of the evictions, 65 miners were reportedly buried alive in their mine shafts when Kahama employees backfilled the pits to render them inoperable.²⁰⁵

Finally, protestors have also been victimized in the context of forced evictions and displacements. IRN and Corner House report that authorities have shot, wounded and detained those opposed to the Merowe Dam in Sudan.²⁰⁶ Similarly, the village of Shengyou in China fell victim to violence at the hands of private security personnel as community protest against a planned power station resulted in the deaths of six people with hundreds injured.²⁰⁷ WoW further reports that critics of Anglo American's mining operations in the Philippines have been killed and targeted for execution.²⁰⁸ According to WoW, Anglo American's operations in South Africa have resulted in the repression of protests where police opened fire, resulting in the hospitalization of 26 people.²⁰⁹ Food Information and Action Network (FIAN)-West Bengal reports that in Singur Hooghly, India, the government unleashed a series of abusive actions, including surveillance and assaults of villagers for over a period of seven months in response to resistance against displacement due to land acquisition by Tata Steel.²¹⁰

5.2. Rights to Livelihood and Food

Cases reviewed also highlighted situations in which threats to the rights to livelihood and food went hand in hand with housing rights abuses, usually involving the destruction of crops or other sources of income.

Prime agricultural land in Brazil, for example, was reportedly destroyed to make room for Aracruz Cellulose's monoculture eucalyptus plantations, according to COHRE, FASE/Espírito Santo, the Finnish ECA Reform Campaign and Centro de Documentação Eloy Ferreira da Silva.²¹¹ Amnesty International reports that the La Parota Dam in Mexico threatens to flood more than 14,000 hectares of forest, directly affecting the lives and livelihoods of at least 25,000 traditional farmers and indirectly affecting 75,000 more.²¹² According to FIAN-West Bengal, agricultural laborers, sharecroppers and others who indirectly depend on agricultural lands in Singur, India, would be deprived of their livelihoods due to land acquisition by Tata Steel's automobile plant.²¹³ Finally, as reported by ActionAid International above,

Vedanta Resources mining operations have disrupted lives of local communities in India, including forcibly removing them, and bulldozing homes and farms without due consultation or compensation.²¹⁴

5.3. Rights to Adequate Notice, Consultation and Information

The cases reviewed also show instances in which procedural rights to genuine consultation with affected persons and disclosure of information regarding business activities and proposed evictions were allegedly impinged upon.

For example, the Anti-Thamanthi Dam Campaign Committee reports that neither the National Hydroelectric Power Corporation nor the Burmese government conducted consultations with the communities affected by the Thamanthi Hydroelectric Power Project.²¹⁵ According to FIAN, the Government of Chattisgarh promised the land of the Adivasis to Tata Steel without consultation of affected people, who were promptly displaced.²¹⁶ People affected by the Candonga Dam in Brazil report that consultations undertaken displayed a serious lack of transparency in the Candonga Consortium's dealings with the families and the government.²¹⁷ Amnesty International reports that community members affected by the La Parota Dam were not properly informed about its potential impacts in terms of displacement and relocation, nor has consultation been carried out adequately.²¹⁸ According to FASE/Espíritu Santo and the Finnish ECA Reform Campaign, only one public hearing was held regarding Aracruz Cellulose's development in Brazil.²¹⁹ IRN reports that communities affected by the Merowe Dam allege that the Ministry of Energy and Mining refused to communicate and consistently refused to share project documents with affected people.²²⁰ According to the Corner House and the Kurdish Human Rights Project, the resettlement action plan for the Ilisu dam lacked important information for the affected communities.²²¹ WoW reports that the Buaya community in the Philippines accused Anglo American of illegal intrusion since they had not given prior consent for the company to operate in the area.²²² FIAN reports that land grabbing in Singur Hooghly has taken place despite unwillingness of the majority of landowners to give up their lands.²²³ Finally, the village Shengyou in China resisted official demands to surrender land for the state-owned power plant because their demands had not been met by the Hebei Guohua Dingzhou Power Company.²²⁴

Many instances of forced evictions were undertaken without adequate and reasonable notice prior to the eviction, constituting an abuse of procedural protections related to the right to adequate housing. Affected communities in Luanda, Angola,²²⁵ Agip Waterside Community, Nigeria,²²⁶ Bulyanhulu, Tanzania,²²⁷ Grand Bassa, Liberia,²²⁸ those affected by the operations of Aracruz Cellulose in Brazil²²⁹ and Talisman Energy in the Sudan²³⁰ were all reportedly given insufficient notice of pending evictions.

5.4. Compensation

Another important procedural guarantee in the context of forced evictions and displacement involves the right to full compensation for lost property, goods or livelihoods.²³¹ The cases under review demonstrate various allegations of failures of compensation for lost property and livelihoods stemming from business activity.

Lawyers' Environmental Action Team reports, for example, that the families displaced and allegedly killed as a result of the operations of the Bulyanhulu gold mine in Tanzania were apparently never issued compensation for loss of property or life.²³² The Ifesowapo Host Communities Forum on the West African Pipeline Project representing communities in Nigeria's Lagos state complain that the compensation they received for the plots of land acquired for the pipeline was insufficient, as the amount of payment was left to the discretion of the pipeline sponsors, resulting in compensation only for the

actual crops on the affected land and not for the loss of future profits from their activities on the land.²³³ FIAN-West Bengal reports that the affected Adivasi communities in Bastar, India were concerned that the compensation packages proposed for their land taken to develop a Tata Steel plant was inadequate, as it would only be given to people who could prove land ownership. Most Adivasis in Bastar, they maintained, are small sharecroppers, thus not eligible to land titles, and thus would not receive compensation in this scheme.²³⁴ The Corner House and the Kurdish Human Rights Project report that according to the resettlement action plan for the Ilisu dam in Turkey, many landless families would not be compensated because compensation was tied to the property of land or houses. Yet, most land in the area was reportedly concentrated in the hands of large landowners, not the families.²³⁵ FIAN also maintains that no adequate compensation or sustainable rehabilitation package was offered to the 15,000 peasants who were to directly or indirectly lose their livelihood resources as a result of Tata Steel's operations in Singur Hooghly, India.²³⁶ According to IRN and the Corner House, the resettled families of the Merowe Dam project in Sudan have received inadequate land and compensation for their loss of livelihood.²³⁷ The villagers affected by the operations of the Hebei Guohua Dingzhou Power Company in China considered the compensation offered by the state-owned company too low.²³⁸

The Global Justice Center, MAB, the Pastoral Land Commission, and NACAB report that local sharecroppers and artisanal miners who made their living from the river and the lands affected by the Candonga Dam were completely excluded from the negotiating process. Only a few ever received compensation at all.²³⁹ MAB also reports that the construction of the Cana Brava hydroelectric dam by Tractebel Energia in the state of Goias, Brazil resulted in the evictions of 946 families, where only 123 were compensated at all.²⁴⁰ According to the Anti-Thamanthi Dam Campaign Committee, the proposed Thamanthi Hydroelectric Power Project site would forcibly relocate 35 villages and over 17,000 acres of agricultural land without any compensation to the villagers.²⁴¹ AHRC and COHRE report that the community evicted from Ochateal Beach in Cambodia was not provided alternative accommodation or compensation.²⁴² Finally, as reported by Amnesty International, COHRE and MOSOP, the Agip Waterside Communities received no compensation at all for the demolition of their houses, churches, schools, shops and other business facilities.²⁴³

5.5. Resettlement and Accommodation

Finally, surveyed cases further showed that resettlement accommodations were usually worse than previous living quarters. In some cases, no alternative accommodation was provided at all.

COHRE reports that the displaced residents of the Candonga dam in Brazil encountered a number of problems with their new houses and areas of residence including lack of access to clean water and infertile soil.²⁴⁴ Communities resettled for the Houay Ho dam in Lao People's Democratic Republic have received marginal, poor quality land, according to Proyecto Gato, ECA-Watch and IRN.²⁴⁵ Similarly, IRN further reports that the El Multaga resettlement site designated for those displaced by the Merowe Dam in the Sudan has poor soil for farming, small and cramped land plots and no adequate sanitation services.²⁴⁶ A report by WoW maintains that to make way for Anglo Platinum's Twickenham mine, the Magobading community in South Africa was reportedly forced off its land and moved to the township of Mecklenberg, where they lived in tiny houses with poor sanitation and without water or grazing or arable land.²⁴⁷ According to AHRC and COHRE, fishermen from the Ochateal Beach in Cambodia were not given alternative accommodation after being forcibly evicted to make room for a large tourist resort.²⁴⁸ Similarly, the AGIP Waterside community in Nigeria was not provided alternative accommodations when displaced to allow for the expansion of facilities of AGIP oil, as reported by Amnesty International, COHRE and MOSOP.²⁴⁹

6. FREEDOM OF EXPRESSION & RIGHT TO INFORMATION

Freedom of expression and the freedom to seek, receive and impart information are both enshrined in various international, regional and domestic instruments.²⁵⁰ The inter-related rights to free expression and information entail both negative and positive duties of government in representation of the public interest. That is, people have the right to live free of government restrictions in the open exchange of information, and government repression based upon the use of information to their detriment. In addition to these negative duties, the right to freedom of expression also obliges a positive duty on public bodies to disclose information which may affect the public interest,²⁵¹ as its acquisition is fundamental to people's participation in matters affecting them and the realization of all other human rights.²⁵² Companies which perform public functions or whose activities may affect the public interest or particular communities are understood to face similar positive disclosure obligations regarding these potential risks and impacts.²⁵³ Indeed, secrecy regarding potential impacts of company activity undermines the public's right to freedom of information, which in turn limits the public's ability to hold government officials and company employees accountable to human rights standards.

In this sense, private business actors can profoundly affect people's enjoyment of the freedom of expression and right to information. Indeed, our survey of cases points to instances in which firms impact this set of rights in at least three ways: collusion with repressive governments, refusal to release key information affecting main public matters, such as risks to the environment and health as well as financing arrangements, and interference with people's right to participate in public life, including certain consultation guarantees.

6.1. Business Collusion with State Repression

Freedom of expression can be directly put to harm by companies when they collude with governments which repress dissent. When governments devote resources and attention to restricting access to information on the Internet and the use of information technology in surveillance of its citizens, companies may fall into the trap of providing the necessary equipment, technical assistance or services which allow governments to carry out these abuses. In such circumstances, a company runs the risk of complicity in violations of the rights to free expression and right to receive and impart information.

Internet censorship and surveillance in China is one area which highlights the private sector's role in assisting a repressive government's violation of the basic freedoms of expression and information. In assisting the Chinese authorities to filter and intercept communications, as well as restrict access to information, a number of IT companies have allegedly facilitated or sanctioned the government's efforts to control the free flow of information, and are thus purported to act in complicity with human rights violations by the Chinese state. HRW and Amnesty International report, for example, on how censorship by internet service providers Yahoo!, Microsoft, Google and Skype threatened privacy rights and freedom of information in China.²⁵⁴ Amnesty International also points to Websense, Sun Microsystems, Cisco Systems, Nortel Networks, and Microsoft as reported providers of important technology which helps the Chinese authorities censor the Internet.²⁵⁵ Rights and Democracy maintains that technology provided by Canadian Nortel represented both a key component in China's railway communication system, as well as a necessary element to China's Golden Shield Project, an all-encompassing surveillance network that links national, regional and local security agencies, increasing the state's efficiency to monitor and control the flow of information and people. The improvements this technology provided reportedly led to censorship and detention of activists, assisting the Chinese government in violating numerous human rights guarantees, particularly those of the Tibetan people.²⁵⁶

6.2. Access to Information and Participation in Public Life

Where businesses take up public functions, or when their activities may pose substantial risks to the public or particular communities, firms are required, as discussed above, to publically disclose relevant information so that affected communities and the public at large are able to make informed decisions on whether or not to accept such risks. Where the natural environment may be significantly disrupted, for example, public and private authorities have the responsibility to assess potential harms and provide the public and particularly affected communities access to these assessments.²⁵⁷ These studies are referred to as environmental impact assessments (EIAs).²⁵⁸ In addition, as awareness of the potential social and human rights impacts of private development projects has increased, social and human rights impact assessments have gained recognition. Public access to, and participation in the conduct of, such impact assessments is fundamental to informing decisions taken over public matters relating to a healthy environment, health, water, life and livelihoods.²⁵⁹

In many of the cases surveyed, governments have failed in their obligation to provide information and avenues of participation in decision-making processes to communities and the general public on potential impacts of business activity. In the case of *Guerra v. Italy*, for example, the ECHR found that the Italian government had failed to give sufficient information about certain health risks caused by a local Italian chemical factory and about evacuation plans in the event of an accident.²⁶⁰ Similarly, in the case of *Marcel Claude Reyes v. Chile*, the Inter-American Court of Human Rights found that the Chilean state violated the right of access to public information regarding the potential risks of a massive logging project which had been approved to allow operations of US timber company, Trillium Ltd.²⁶¹ In the Peruvian city of La Oroya, CEDHA, Earthjustice, AIDA and others report in a complaint to the IACHR that local residents suffering from critical levels of pollution originating from the smelter activities of Doe Run Company were not clearly and sufficiently informed by their government of the level and content of the contamination, possible health impacts, or the measures needed to mitigate or repair such damages. Violations of the right to information, through lack of dispersal, manipulation and negation of information, and threats against persons who intended to diffuse information and educate were thus alleged against the Peruvian government.²⁶²

It is not only states however which fail in their obligation to disclose information regarding potentially harmful business activities. Business enterprises in our survey also reportedly interfere with the right to information by refusing to provide complete or accurate information on potential hazards posed by their operations. FoE, for example, reports that Shell failed to provide complete information on the risks and alternatives associated with its oil exploration in Ireland, thus causing great concern amongst the local community about their ability to actively participate in decisions which would affect them.²⁶³ Proyecto Gato and FoE-France also allege that Electricité de France failed to provide complete assessment studies on potentially serious impacts from the construction of the Nam Theun Dam in Lao People's Democratic Republic.²⁶⁴ Furthermore, a report by ECA-Watch asserts that Atomic Energy of Canada presented an inadequate and incomplete EIA in its development of the Cernadova nuclear plant in Romania. The Sierra Club of Canada went on to critique Atomic Energy of Canada's lack of adequate public consultation, failure to consider energy alternatives and the consequences of a nuclear accident. Nor did the company purportedly release details of an emergency plan or present a plan to manage nuclear wastes in perpetuity.²⁶⁵ Sawit Watch and FoE-Netherlands also report that Wilmar's logging operations in Indonesia did not provide adequate EIAs.²⁶⁶ Similarly, ECA-Watch reports that inadequate and incomplete EIAs and SIAs caused public participation in the development of Oxiana and Rio Tinto's gold mine in Lao PDR to suffer and led the companies to disregard key environmental and human rights risks.²⁶⁷ Similarly, MAB and Terra de Direitos report that Alcoa Alumínios and the Companhia Brasileira de Alumínio hydroelectric plant in Brazil utilized a fraudulent EIA to seek approval for the project.²⁶⁸ MAB also reports that before the construction of the Cana Brava dam in Brazil, neither the government nor the firm Tractebel conducted any studies on the environmental and social impact of the project on the

region, leaving local community members unprepared to position themselves against the negative impact of dam construction on their rights.²⁶⁹ In northern Ecuador, the grand majority of communities inhabiting the bio-diverse valley of Intag have opposed mining activity since 1995, as reported by CEDHU. Mitsubishi Metals and later Ascendant Copper Corporation have reportedly failed since that date to consult communities in the elaboration of various EIAs. Nor have the local communities been informed properly about the planned open-pit copper mine, posing a threat to water and other natural resources the farming communities depend upon.²⁷⁰ Finally, according to Acción por los Cisnes, the cellulose company Celulosa Arauco y Constitución in Chile failed to consider the social and economic impacts of its plant in its EIA, specifically missing “the identification, measurement and rigorous assessment of the potential effects on agriculture, agro-tourism, and river tourism.”²⁷¹

Two cases submitted for this report illustrate circumstances in which businesses are alleged to have provided misinformation, directly affecting the right to information. In the Philippines and in Bangladesh, baby milk companies, including Abbott Ross, Mead Johnson, Wyeth and Gerber (Novartis) and Nestlé, are alleged to have used aggressive marketing techniques, which abuse parents’ rights to receive accurate information on nutrition and the importance of breastfeeding. Such tactics have reportedly led to serious health consequences for babies in these countries, according to International Baby Food Action Network and Baby Food Action.²⁷²

6.3. Public Participation, Consultation and Free, Prior, Informed Consent

The right to participate in public life depends upon guarantees of meaningful consultation processes. In cases above in Ireland,²⁷³ Indonesia²⁷⁴ and Lao PDR,²⁷⁵ for example, company refusals to disclose full impact assessments were reportedly compounded by failures to engage in adequate and timely consultation with affected communities. In addition, according to studies conducted by the Peruvian Public Defenders’ Office, Oxfam and other international and local organizations, Empresa Minera Majaz has abused the rights of local community members to information, freedom of expression, participation, property, and the environment in the installation and the development of its mining activities in the region of Río Blanco, Peru. With respect to participation, in spite of a constitutional provision guaranteeing the right to participation, which requires that the use of lands for mining be preceded by the agreement of the landowner, irregularities were identified by the Public Defenders’ Office, including starting mining activities without the consent of two-thirds of the community members.²⁷⁶ Similarly, despite the resistance of a large majority of farming communities as well as local and municipal government, to open-pit mining activity in the bio-diverse valley of Intag, Ecuador, Ascendant Copper has reportedly disregarded local concerns, clandestinely carrying out impact assessments, creating parallel local institutions intending to supplant those resistant to its operations, and hiring armed groups to intimidate dissenters.²⁷⁷ Additional cases involving abuses of indigenous peoples’ right of free, prior and informed consent are addressed in the section on the Rights of Indigenous Peoples.²⁷⁸

7. RIGHT TO AN EFFECTIVE REMEDY

As enshrined in international human rights law, everyone has the right to an effective remedy.²⁷⁹ As primary duty-bearers, states have the obligation to ensure the necessary conditions that will allow affected individuals to access justice. In light of their international commitments, states must guarantee that individuals and communities are entitled to enjoy accessible and effective remedies that offer both redress for wrongs committed and hold responsible parties to account.²⁸⁰ Equal protection under the law, the obligation to investigate allegations of violations promptly, cessation of ongoing violations, the right to a fair and public hearing by a competent, independent and impartial tribunal, the obligation to ensure that those responsible are brought to justice, enforcement of judgments and reparation are some key elements which make up the right to effective remedy.²⁸¹

7.1. State Failure to Respect the Right to an Effective Remedy

In our review of cases, we found that domestic mechanisms for remedy do not always offer redress to victims. The cases show a lack of access to justice stemming from the inability or unwillingness of states to address company-related human rights abuses within their jurisdictions. Factors which contribute to state failure to ensure justice in the context of business-related human rights abuses include lack of institutional capacity, lack of political will, complicity with the company involved and direct actions of the state in the alleged violations. Failures of effective remedy also occur in our review of cases due to military rule, often characterized by corruption and a lack of an independent judiciary. These and other weaknesses may leave domestic systems of justice susceptible to political interference, or other pressures by those powerful companies whose actions they are meant to judge.

In many reported cases, victims of business-related abuses attempted to seek remedies and get reparation for human rights abuses through a myriad of mechanisms from local, to national, regional and even international bodies. Often this is the result of limited jurisdictional authority, or of the other factors discussed above, which contribute to repeated failures by states to meet their obligations to respect and fulfill the right to an effective remedy. This hindrance in justice is more the result of the state's failure to provide access to justice than any positive action on the part of business. Yet, businesses in most cases were most likely not opposed to benefiting from this state of affairs.

Numerous cases illustrate instances in which victims were unable to obtain justice in their national courts, and thus were forced to seek justice in other fora, such as the IACHR and the ECHR, both of which require the exhaustion of domestic remedies before exerting their jurisdiction. The cases already discussed in this report involving Ascendant Copper in Ecuador,²⁸² Trillium Ltd. in Chile,²⁸³ the Maya Indigenous peoples in Belize,²⁸⁴ the Yanomami in Brazil,²⁸⁵ the Sarayaku²⁸⁶ indigenous community in Ecuador, the Awas Tingni in Nicaragua,²⁸⁷ the Lakono in Suriname,²⁸⁸ the communities of La Oroya²⁸⁹ and San Mateo de Huanchor²⁹⁰ in Peru, and the Western Shoshone in the US,²⁹¹ each sought redress at the IACHR.²⁹² The cases concerning Enichem Agricoltura in Italy,²⁹³ SACURSA in Spain,²⁹⁴ and Västmanlands Avfallsaktiebolag in Sweden,²⁹⁵ were all heard before the ECHR. Many victims that were unable to obtain remedies in their home state sought justice in US courts taking advantage of jurisdiction under the Alien Tort Statute.²⁹⁶ For example, cases against Shell²⁹⁷ and Chevron²⁹⁸ in Nigeria, Exxon²⁹⁹ and Freeport McMoRan³⁰⁰ in Indonesia, Drummond,³⁰¹ DynCorp,³⁰² Occidental³⁰³ and Coca Cola³⁰⁴ in Colombia, Unocal in Burma,³⁰⁵ Talisman in Sudan,³⁰⁶ Caterpillar in Palestine,³⁰⁷ Union Carbide in India,³⁰⁸ Rio Tinto in Papua New Guinea,³⁰⁹ Chevron/Texaco in Ecuador,³¹⁰ Occidental³¹¹ and Newmont³¹² in Peru, Del Monte in Guatemala,³¹³ and Bridgestone in Liberia,³¹⁴ were all brought to US courts alleging, among other things, inability to obtain proper justice in the host countries. Cases were also heard before the World Bank Compliance Advisor Ombudsman and the World Bank Inspection Panel, including the Bujagali Dam in Uganda,³¹⁵ the Allain Duhangan Dam in India,³¹⁶ the Pangue Dam

in Chile,³¹⁷ the Karachaganak Oil Field in Kazakhstan,³¹⁸ the West Africa Gas Pipeline in Ghana, Nigeria, Benin and Togo,³¹⁹ the Pulp and Paper Mill in Uruguay/Argentina,³²⁰ Interagua/Bechtel water services in Ecuador,³²¹ the Antamina mine in Peru,³²² Anvil Mining in the DRC,³²³ BHP Billiton in Botswana,³²⁴ Amaggi in Brazil³²⁵ and Ascendant Copper in Ecuador³²⁶. Finally, victims sought redress through the OECD specific instance complaint procedure to various national contact points, including cases against Anvil Mining in the DRC³²⁷, Dalhoff, Larsen and Hornemann timber in Liberia,³²⁸ Global Solutions Limited in Australia,³²⁹ Bayer in India,³³⁰ football manufacturing companies in Indonesia,³³¹ Adidas and Nike in Indonesia,³³² Electricité de France and Tractebel in Laos,³³³ Toyota in the Philippines,³³⁴ TotalFinaElf in Kazakhstan,³³⁵ Alcoa Aluminio in Brazil,³³⁶ Ascendant Copper in Ecuador,³³⁷ Aker Kværner in Guantanamo Bay,³³⁸ and various companies operating in the DRC.³³⁹

Adversely affected people were sometimes forced to seek justice in various international and regional fora, often at high cost and little benefit. In the case of Union Carbide, for example, victims of the 1984 gas plant disaster are still seeking justice in both civil and criminal courts in India, in US courts as well as through shareholder remedies due to the company's reported failure to cooperate with the justice system, jurisdictional issues, as well as state failures.³⁴⁰ The case of the Pulp and Paper Mill in Argentina/Uruguay is also illustrative, as the affected communities approached a number of mechanisms seeking redress against Botnia and ENCE, including the IACHR, the CAO, three specific instance complaints to OECD National Contact Points, the Argentine criminal court, Uruguayan courts, Equator Principles, MERCOSUR, and the RAMSAR Convention on Wetlands Secretariat.³⁴¹ Recently, victims that were poisoned by toxic chemicals as a result of the toxic waste dump by a ship run by Trafigura in the Ivory Coast have had to seek justice in Dutch, British and French courts after their government entered into a settlement agreement with the company which victims considered "indecent and unacceptable," as the victims themselves were only entitled to one-third of the settlement, while the state received two-thirds. The European Parliament notes that this case highlights the difficulties of enforcing environmental violations when multiple states are involved in a single, polluting business venture.³⁴²

7.2. Business Impacts on the Right to an Effective Remedy

In addition to the state's own failure to provide an effective remedy, companies may prevent, or actively dissuade, governments from fulfilling their obligations. This section illustrates instances in which the actions of companies have directly or indirectly obstructed the ability of victims to seek effective remedies for harms suffered. Businesses interfere with access to justice in a variety of ways which are analyzed below: influence over domestic judicial proceedings, intimidation and prosecution of claimants, refusal to respect and abide by domestic judgments, refusal to provide compensation, and undermining the right to effective remedy through negotiation of special host government agreements.

7.2.1 Influence Over Domestic Proceedings

Some cases under review illustrate that businesses can yield a great deal of power over the judicial or administrative proceedings of the countries in which they operate, usually due to the significant contribution the enterprise makes to the local economy and public revenue base. Governments can be quite unwilling to penalize such companies for wrongs committed, leading at times to situations of outright impunity of business actors. HRW, for instance, reports that victims of the maquiladoras industry in Mexico were denied access to justice because of the industry's importance to the Mexican economy. Labor officials who would be called upon to investigate instances of labor rights violations reportedly claimed they were unable to monitor maquiladoras vigorously for compliance with the federal labor code for fear of reprimand from higher officials. Maquiladoras were seen as "an untouchable source of employment and foreign-income earnings."³⁴³ Likewise, the Global Justice Center and the Polaris Institute report that in Brazil, when communities affected by the Candonga dam initiated legal challenges

to the granting of licenses to operate the dam, the Candonga Consortium vigorously opposed such challenges. Residents reportedly ended up losing the case when mayors intervened on behalf of the company, prompting the President of the Superior Court of Justice of the State of Minas Gerais to overturn a previously ordered injunction to stop work on the dam.³⁴⁴ Finally, Human Rights First reports on the case of Blackwater in Iraq where the US government has failed to prosecute human rights abuses, reportedly due to its dependence on the security services of such private enterprises. According to Human Rights First, while “some incidents involving the questionable use of force by contractors against civilians and other alleged contractor abuse have been reported in the press or through official channels, few have been investigated and almost none have been prosecuted.”³⁴⁵

7.2.2 Intimidation and Prosecution of Claimants

Access to justice may be frustrated when victims are deterred from seeking redress for fear of reprisals by agents associated with the company, or by being intimidated by the threat of prosecution for speaking out against company abuses.

For instance, a report by RAID, Global Witness, Action Contre l’Impunité pour les Droits Humains and ASADHO/Katanga, documents serious flaws and irregularities in the trial of nine Congolese soldiers for war crimes and three employees of Anvil Mining Limited for complicity in such war crimes. The “Kilwa trial” concerned summary executions, torture, rape and looting carried out by the Congolese Armed Forces during an operation to suppress a small-scale rebellion in the town of Kilwa in southern DRC in which Anvil allegedly provided logistics and personnel support. According to the report, Congolese NGOs involved in representing victims were threatened by people claiming to be defending the interests of the company. Government officials also publicly discouraged victims from testifying and making allegations against the mining interests.³⁴⁶

In addition, the Center for Environmental Law and Community Rights and the Australian Conservation Fund report that Rimbunan Hijau logging is accused of intimidating a villager to drop a case against the company in Papua New Guinea. When the villager had a case brought against the company before the courts, he was allegedly assaulted by a group of men he believed to be working for the company.³⁴⁷

Finally, ILRF alleges that in Ecuador, communities feared bringing their case against DynCorp alleging serious human rights abuses, including systematic damage to their persons and their property, torture, extrajudicial killing and crimes against humanity as a result of DynCorp’s use of fumigants sprayed from airplanes onto cocaine and opium poppy plantations in the Colombian and Ecuadorian rainforest. According to ILRF’s complaint filed in the US District Court for the District of Columbia, claimants “would face certain retribution and punishment from interested private parties and operatives of the Government of Colombia” should they have brought their case in Ecuador.³⁴⁸

States may be so dependent on the presence of business enterprises in their jurisdiction that they may not only deny victims the right to effective remedy, but may even go as far as prosecuting those who speak out against particular business activities. The case of Ken Saro Wiwa and the Ogoni Nine in Nigeria is illustrative, where environmental activists who had been speaking out about the contamination and other problems caused by petroleum companies in the Niger Delta were tried and hung by the Nigerian government.³⁴⁹ In the Philippines, protesting union members were criminally prosecuted for grave coercion after Toyota filed criminal complaints against them. The Fiscal’s Office alleged that “those union members looked at the management of [Toyota] in a threatening manner and shouted invective words, when the management tried to enter the company’s premises during the strike.”³⁵⁰ In the Olympic Airways case, after members of the Hellenic Airline Pilots Association called a strike against the company, the government of Greece ordered the civil mobilization of Olympic Airways pilots and flight engineers who were summoned to appear before Olympic Airways officials and offer their services. A

number of pilots and flight engineers were almost simultaneously arrested for failing to comply with the civil mobilization order, criminal, administrative and civil proceedings were initiated, pilots were jailed, property was sequestered and families were intimidated.³⁵¹ FIDH reports that in Mali, 32 striking workers were detained for complicity in an act of arson by gendarmes with ties to Somadex. According to FIDH, Somadex personnel management had provided the gendarmes with a list of the “main ringleaders” of the protest movement. Twenty-three accused were released on bail after spending over a month in pre-trial detention and the other nine were finally released after 14 months’ detention.³⁵²

7.2.3 Refusal to Respect and Abide by Domestic Judgments

In addition to attempts to prevent the courts from hearing cases contrary to their interests, our survey of cases shows instances in which business enterprises allegedly refused to abide by court orders or judgments entered against them, impeding enforcement of those decisions. In these cases, the state also failed in their obligation to provide an effective remedy by not having in place procedures or mechanisms to properly give effect to judicial orders and judgments.

Amnesty International and ERI report that Union Carbide and its CEO refused to appear before the court in Bhopal, India after arrest warrants were issued in response to the Indian Supreme Court allowing criminal cases to proceed against them.³⁵³ In Brazil, FoE reports that Shell had not undertaken activities ordered by a judge at the federal court and compelled by the Public Ministry of Union/Public Ministry of Labour, which required Shell to stop dumping chemical waste, clean up contaminated areas, decontaminate drinking water sources and take steps to protect workers’ health, including providing medical examinations for hundreds of former and current workers.³⁵⁴ Amnesty International reports that in Mexico the government-run Federal Commission of Electricity disregarded federal injunctions requiring it to halt construction work on infrastructure for the La Parota Dam on community lands pending a ruling of the Agrarian Court in a land dispute submitted by the communities.³⁵⁵ Finally, the Lawyer’s Environmental Action Team reports that Barrick and Sutton Resources twice deliberately violated lawful orders of the High Court of Tanzania which had granted artisanal miners an injunction restraining the government and the company from evicting them until the Constitutional Court was able to consider the miners’ claims. With domestic avenues reportedly frustrated, the victims of the Bulyanhulu mine sought redress at the Compliance/Advisor Ombudsman of the International Finance Corporation of the World Bank which also resulted in an unfavorable outcome.³⁵⁶

7.2.4 Refusal to Provide Compensation

Yet another aspect of the right to an effective remedy with which businesses may directly interfere, is the provision of compensation as a form of reparation. Our review of cases illustrates instances in which businesses were alleged to refuse to compensate victims of human rights violations for injuries as a result of activities conducted by their enterprises. As in the previous section, in these cases the state fails in their obligation to provide an effective remedy by not having in place procedures or mechanisms to oblige companies to provide compensation to victims.

In the Philippines, for example, Mines and Communities and Oxfam report that Placer Dome, owners of the Marcopper mine on Marinduque Island, had not compensated the communities who were affected by damage to the Mogpog and Boac rivers as a result of the improper disposal of tailings from its mine operations.³⁵⁷ Additionally, in the case of Rougier and its subsidiary SFID in Cameroon, FoE-Europe reports that the companies refused to compensate villagers whose agricultural resources had been destroyed as a consequence of illegal exploitation of the rainforest.³⁵⁸ As a result of the failure to obtain appropriate compensation, the villagers filed a complaint with the Prosecutor of the Republic of Cameroon which further frustrated their right to an effective remedy by reportedly failing to conduct a proper investigation of their allegations due to the refusal of the SFID representative to submit himself to

the judge's investigation. The villagers' continued quest to access justice was further thwarted when their civil action lawsuit in France was thrown out as a result of the Appeals Court judging that they had not provided adequate proof of the alleged impossibility of obtaining a penal conviction in Cameroon.³⁵⁹

7.2.5 Undermining the Right to an Effective Remedy through Special Host Government Agreements

Foreign businesses often negotiate host government agreements (HGAs) whose terms they negotiate to provide a degree of certainty to their investments. An HGA is a legal agreement between a foreign investor and the local government which is designed to reduce risk posed to investors by unexpected changes in domestic law. If a country breaches an agreement by interrupting or modifying a project, it is often penalized. This eventuality may deter interventions by government necessary to protect human rights and enforce national laws and human rights obligations.³⁶⁰ Such agreements therefore may effectively prevent a state from creating, enforcing or implementing judicial, legislative or other regulatory measures aimed at protecting human rights impacts of companies. Regardless of the terms of HGAs, however, states remain bound by their human rights obligations.

Amnesty International, ECA-Watch, the Corner House, the Kurdish Human Rights Project, PLATFORM, CEE Bankwatch and the Baku Ceyhan Campaign claim that the HGAs entered into between each country along the BTC pipeline's route and the BTC Consortium, lead by British Petroleum, established a legal framework which in effect placed the company and the project outside the regulatory powers of both domestic and international law. The HGAs reportedly exempted the Consortium from any obligations under host country laws and allowed the Consortium to refuse to implement any new environmental, social or other laws affecting the pipeline that the states might introduce in the proceeding 40-60 years. Further, the HGAs indemnified the Consortium against potential liability arising from human rights violations committed in the course of pipeline construction or operation and thus denied victims effective redress for damages done during the course of the project by requiring any disputes to go to commercial arbitration in Geneva.³⁶¹ In Zambia, RAID reports of another example in which victims of environmental degradation and human rights abuses surrounding the Kongola mines have had no means of redress due to the 20-year stability clause included in the Development Agreement for mine privatization entered into between Anglo-American and First Quantum with the Zambian government. The stability clause prevented Zambia from enacting any legislation to the detriment of the company, limiting the state's enforcement authority and thus allowing the mine to breach existing standards.³⁶²

8. GAPS IN PROTECTION

Throughout this survey of cases, clear gaps in the protection of universally-recognized human rights are apparent. In order to more efficiently contribute to the ongoing debate, these gaps have been organized in general accordance with the “protect, respect and remedy” framework most recently presented to the Human Rights Council by the UN Special Representative on Business and Human Rights, John Ruggie.³⁶³ In the context of business-related human rights abuses, states fail to respect and protect. Companies likewise fail to respect, and in carrying out public functions fail to fulfill, human rights guarantees. The absence of effective mechanisms for remedy and accountability compound the original harms by denying victims redress and allowing perpetrators to continue their operations with impunity. Until these gaps are addressed in good faith and resolved through concerted efforts at all levels, severe business impacts on the enjoyment of human rights can only continue.

8.1 Failure of States to Meet Their Duties to Respect and Protect

States, as duty bearers of human rights protections, are responsible for enforcing human rights principles corresponding to international customary norms and their particular treaty-based obligations. As such, States have a duty to respect, protect and fulfill their human rights obligations. Governments may fail in each of these duties, yet the survey of cases suggests that in the context of business activity governments fail most often in their duties to respect their own commitments and to protect against human rights abuses committed by companies.

8.1.1 State Failure to Respect

A clear gap exists between state obligations to respect human rights and their actual implementation. In the name of development and economic progress, governments often commit grave human rights violations, of both a substantive and a procedural nature. Abusive actions and omissions by states particularly affect the least powerful in society, those who are often unable to protect themselves and further marginalized by large-scale impacts of business operations.

In our survey of reported cases, states have been directly involved in human rights violations, such as where government military forces commit grave violations of the right to life. In addition, numerous reports disclosed incidents of intimidation and murder of trade unionists and protestors by police and other public security or military forces. States have also purportedly violated human rights by forcing children to work, repressing trade union rights, and restricting freedom of expression and the right to receive information. States in the review also purportedly violated a range of procedural rights, most often in connection with evictions and environmental degradation, such as notice, compensation and accommodation guarantees, as well as the right to consultation, including free prior and informed consent, and the right to receive and impart information. State action, or inaction, affected the due process rights of indigenous peoples in particular.

In general, a significant tension became apparent in the reported cases between the desire of states to attract economic activity on the one hand, and to discharge their obligation to respect human rights on the other. States in our review often directly violated human rights in order to make room for investment activities. For example, many cases exposed instances in which states granted concessions over land or other natural resources in favor of business enterprises and to the detriment of the rights of indigenous and other communities. The review also highlights instances in which states were reported to violate the right to housing by implementing policies of forced evictions and displacement for the implementation of business projects. In these situations, governments hardly acted as neutral institutions, impartially arbitrating between the competing interests of investor rights and human rights. Instead, governments

acted on behalf of their own particular economic interests, often in league with companies, and in active disregard of their human rights obligations.

8.1.2 State Failure to Protect

International human rights law provides that states have a duty to protect against human rights abuses affecting persons within their territory or jurisdiction committed by non-state actors, including business. The duty to protect implies that states must prevent and investigate abuse, punish those responsible, and provide access to redress for those harmed. Both regulation and adjudication of business activities *vis-à-vis* human rights are appropriate in exercising the duty to protect.

However, from the perspective of our review, states are not adequately fulfilling this obligation. A crucial gap exists between the commission of violations of human rights by business enterprises and the states' ability to restrain such violations by regulating, adjudicating or otherwise addressing claims in the business context. As discussed in the section on right to an effective remedy, many reasons exist for states' failures to protect against human rights abuses by business, including the lack of institutional capacity or political will, often driven by the pursuit of economic interests, abusive, repressive or corrupt government regimes, company complicity and direct actions of the state in the alleged violations.

State failures to protect against abuses committed by businesses appear from these cases to often be the result of the inadequacy of domestic regulations and mechanisms to prevent businesses from violating human rights, or actions in complicity with such violations. Domestic legislation may not exist to regulate business activities and hold companies operating within their jurisdiction accountable for human rights abuses. Even where such legislation does exist, it may be inadequate as states fail to implement such laws. Finally, where implementation does take place, inadequate resources or failure of the local court system, may impede the adequate execution of the laws. Some of the cases demonstrated that local enforcement resources are so scarce that investigations are never even initiated, or claims by victims are never made due to the lack of credibility of and reliability in government bodies to protect human rights. Available domestic mechanisms in this survey were therefore often ineffective at best.

Further, many states fail to protect human rights, the cases suggest, because they are inhibited from doing so. Individual governments may intentionally choose not to take actions to protect human rights in the business context for fear of being perceived as hostile to investors, thus scaring off capital-investing firms, or triggering other retributive acts such as international arbitration. This environment substantially inhibits states from individually regulating or prosecuting abusive companies. Correspondingly, the economic power of business over government is an important contributing factor to the failure of states to meet their human rights obligations. The imbalance of power between the two often results in business developing stronger leverage over certain public policy concerns, in turn leading to further obstacles for states to legislate, arbitrate, adjudicate or enforce human rights protections. In some instances, for example, states entered into agreements with foreign investors which had the result of restrict their ability to protect human rights.

8.2 Failure of Business Enterprises to Meet Their Duty to Respect

Businesses have an obligation to respect universal human rights.³⁶⁴ The Preamble of the Universal Declaration of Human Rights, states that “every individual and *every organ of society*, keeping this Declaration in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance [emphasis added].” The concept of “every organ of society” encompasses business enterprises. This obligation means at a minimum that companies do not infringe upon, or

negatively impact, the enjoyment of these rights. That is, companies are therefore obliged to “do no harm”. This report has extensively documented cases in which all types of human rights were reportedly abused by companies, either directly or through third-party associations.

8.2.1 Direct Company Abuses

The reported cases imply that business may directly affect all human rights, yet occur particularly with regard to labor rights, the environment, life and security of person, and the right to remedy.

Businesses in this review have purportedly employed child and forced labor. They have also implemented discriminatory practices in their hiring and promotions, particularly based on gender and race. Other labor related violations included failure to provide safe working environments and wage exploitation, including failure to provide benefits and overtime pay. Finally, businesses conducted anti-union policies, thereby harming the right to form and join trade unions and freedom of association. Other instances of direct violations of human rights by business enterprises relate to the natural environment. Pollution of the environment, water and food sources through toxic emissions and spills, gas leaks, oil spills, toxic waste disposal, as well as exhaustion and destruction of natural resources, severely impact rights to life and health, livelihood, food, water, property and a healthy environment. Businesses are also directly involved in violations of the right to life and security of person. Deaths, for example, were reportedly caused by private security forces, extreme pollution and unsafe working conditions. Finally, the right to an effective remedy was also directly abused by businesses in this survey through intimidation and prosecution of claimants, refusal to respect and abide by domestic judgments or provide compensation, and the undermining of domestic enforcement through the negotiation of special host government agreements.

8.2.2 Indirect Company Abuses

The responsibility of business to respect human rights includes avoiding complicity in abusive acts. Cases reviewed brought to light instances of business complicity in human rights abuses. In association with government agencies, military, paramilitary and private security forces, companies’ actions have resulted in violations of the right to life, including in murders of trade unionists and protestors. Complicity was also illustrated where business supports abusive governments, financially, logistically or otherwise. In addition, businesses were shown to act in complicity with government repression of information as well as contributing to state failures to respect the right to access information by failing to provide adequate information concerning risks associated with their activities. Finally, businesses were reported to benefit from, and often encourage, human rights violations, in particular where states grant land and natural resource concessions to the detriment of indigenous communities, or when business actors benefit from forced displacement, relocations or evictions.

8.3 Absence of Effective Mechanisms for Remedy and Accountability

Perhaps the most telling gap in the protection of human rights is the absence of adequate mechanisms for effective remedy and redress for company rights and to hold responsible parties to account. Such mechanisms are vital to the effective exercise of the state duty to protect as well as business duty to respect. The presented cases support the assertion made by the Special Representative on Business and Human Rights and others that the institutional capacity of individual states in relation to many transnational firms often impedes their ability to hold companies to account domestically. Neither have regional or international mechanisms offered strong avenues for justice in this survey.

As explored above under state duty to protect, domestic mechanisms are often unable to provide adequate redress. Individual governments may lack the will or capacity to do so at the domestic level. Domestic

mechanisms may also suffer when governments are inhibited from adjudicating complaints or from taking other actions against business for fear of disturbing investor confidence, or suffering other retributive acts.

As a result of domestic failures, many victims in our cases have turned abroad in pursuit of justice, looking to other jurisdictions, as well as to regional or international redress mechanisms. Yet, wide gaps in protection also exist when seeking redress outside the domestic sphere. With limited success, victims of human rights abuses in our cases have sought redress in a range of available mechanisms, including domestic regulatory bodies, constitutional, civil and criminal courts and human rights commissions, the courts of the home state, shareholder mechanisms, regional human rights mechanisms, such as the European Commission on Human Rights and the Inter-American Commission and Court on Human Rights, as well as international mechanisms, such as the International Labor Organization, the Human Rights Committee of the Office of the High Commissioner for Human Rights, OECD National Contact Points, the World Bank Inspection Panel and the Compliance/Advisor Ombudsman. Yet, each of these distinct avenues came with distinct, often prohibitive, limitations. Regional and international mechanisms, like extraterritorial fora, have limited jurisdiction and require extensive resources on the part of the claimant. Several mechanisms exercise jurisdiction only over states, merely indirectly addressing activities of business. In addition, the mechanisms apply varying standards to hold business accountable due to fact that the no universal legal framework on business and human rights exists. At best, inadequate solutions result, often leaving many areas of human rights unaddressed, many regions of the world poorly protected, many responsible parties with impunity, and many victims with little or no redress for abuses committed.

These deficiencies in existing redress and accountability mechanisms have the effect of creating a permissive environment of abuse in which very little incentive exists for companies to prevent their operations and associations from committing human rights abuses, while strong economic incentives endure for businesses to continue to benefit from abuse.

9. CONCLUSION

This Collective Report illustrates numerous cases in which states fail in their duties to respect and protect human rights, businesses defy their duty to respect, and redress and the right to an effective remedy remains under duress as a result of business activity. Meaningful solutions—based on victims’ views, experiences and expertise, together with a proper understanding of the nature, scale and patterns of these abuses—are urgently needed to prevent further business abuse.

This survey of cases affirms that business is involved in a wide range of activities that affect human rights. These activities take place in various sectors and in different parts of the world. Businesses that contribute to human rights abuses range from domestic to international, private to state-owned, large and small. While this survey is by no means exhaustive, it shows a broad range of affected rights: the rights to life, liberty, and security of person, freedom from torture, arbitrary detention and disappearances, rights to livelihood, health, water, food, and a clean and healthy environment, rights to housing and security of tenure, indigenous rights, including rights to self-determination, free, prior and informed consent, participation in decision-making, and the use, management, and conservation of natural resources on their lands, cultural rights, freedom from forced labor, child labor, gender and race discrimination in the workplace, rights to work, adequate remuneration, and a safe working environment, freedom of association and rights to form trade unions and to collective bargaining, freedom of expression, the right to seek, receive and impart information, and to participate in public life, and the right to an effective remedy including timely investigations, fair trials, enforcement of judgments and compensation.

Companies abuse human rights directly as well as through their relationships with abusive regimes, private and public security forces and suppliers. Business has the obligation to ensure that they do not contribute to, or benefit from, human rights violations. Accordingly businesses should also be sure not to profit from, or encourage the state failures to protect human rights. The findings in this report further suggest that any proper response to business impacts on human rights must consider both the direct and indirect nature of them. In effect, business activities within their sphere of influence must be regulated to further uphold the international community’s dedication to a functioning human rights regime.

These findings contradict the view that business impacts on human rights are limited to certain industries, regions, contexts or rights, supporting the conclusion that any effective efforts to hold companies accountable for their human rights abuses will need to have universal application to all forms of business enterprise, in every country and region of the world and embrace the entire range of human rights.

A Collective Action Problem...

Wide gaps exist at the domestic level in regulating business. Human rights harms involving business do not respect national boundaries, and continue to proliferate as a result of these gaps in protection. Yet, individual governments can only do so much in the face of competition for scarce investment opportunities, and confronted with an international legal system which defends private investor rights at the transnational level, while failing to protect fundamental human rights relating to business at the local level. What has developed in the growth of the global economy is in effect a *collective action problem* in which individual governments are inhibited from acting in protection of human rights for fear of losing key investment opportunities to countries less scrupulous about such obligations. Well-meaning, rights-adhering governments are in effect punished in today’s global economy for discharging their international obligations.

...requires a Collective Action in Response

These gaps—and this collective action problem—can only be addressed with a collective response in good faith and through efforts at all levels. Much needs to be done at the national, regional and international levels to address these breaches and provide meaningful mechanisms, based on the universally-accepted human rights framework, to prevent and protect against these enduring challenges to the realization of human rights. On this the 60th anniversary of the Universal Declaration of Human Rights, the international human rights regime must be sufficiently adapted to address new challenges to human rights in this drastically transformed global environment. The recommendations which follow are designed to offer important steps towards addressing this shared and urgent problem of business-related human rights abuse.

10. RECOMMENDATIONS

The final section of this report offers a series of recommendations to assist the Human Rights Council, Member States and other UN human rights bodies in adopting measures conducive to closing the current governance and legal gaps in human right protection in the business context.

The United Nations, as a global body whose purposes as defined in the UN Charter include “promoting and encouraging respect for human rights for all,” has a unique responsibility to address the urgent human rights problems that arise in the context of business activity. On this 60th anniversary of the Universal Declaration of Human Rights, it is essential that the UN human rights system clearly distinguishes between corporate social responsibility on the one hand and business accountability to human rights on the other. In doing so, the Council must ensure that its approach to business and human rights is consistent with its approach to other human rights issues. Accordingly, it must guarantee that victims of human rights abuses by, or involving companies, are given as much protection and voice as victims suffering from other situations of abuse. In this light, we offer the following recommendations:

To the Human Rights Council (HRC) and Member States during its 8th Session in June 2008:

1. Establish a broader follow-on Special Procedures mandate on Business and Human Rights

The widespread scope and complex nature of rights impacts presented in this report point to the need for a concerted, collective and sustained response from various actors, including UN human rights bodies. It is imperative then that the issue of business and human rights remains on the UN human rights agenda and particularly among the priorities of the Human Rights Council. As one key way to assure this, we urge the Council to establish a follow-on mandate to the UN Special Representative on Business and Human Rights. Further, we urge the Council to broaden the focus of the mandate to include the explicit capacity to examine real life instances of business abuse in order to properly ground the important conceptual and policy discussions underway.

We wish to underline the absolute need that this new mandate ensures that the views, experiences and expertise of those adversely affected by business-related abuses fully inform the effort to identify appropriate solutions. Broadening the scope as suggested is, we believe, vital to ensuring that any proposed framework, policy solutions and recommendations are robust and credible. This in turn is critical to ensuring the work of the mandate can better aid states, companies, and the UN to effectively prevent violations involving companies and hold those responsible to account.

2. Ensure consultation with adversely affected individuals, communities and indigenous peoples

Victims of human rights abuses by, or involving, companies and the domestic organizations representing them are too often voiceless in the context of international debates on business and human rights. The actual impact business conduct has on the human rights of individuals, communities and indigenous peoples risks being underappreciated as a result, limiting the effectiveness and credibility of policy and legal responses. Discussions on these issues at the UN level have too often focused on abstract concepts rather than the actual human rights impacts of business conduct.

In line with the recommendation outlined above, we therefore urge the Council to take measures to ensure that all proposed policy and legal responses within the UN on this issue are underpinned by the views,

experiences and expertise of those negatively affected by business-related human rights abuses. In order to guarantee a thorough analysis of the problem and the identification of meaningful solutions looking forward, more in-depth consultations and analysis of specific situations and cases is needed in order to give greater visibility to those whose rights are negatively affected by business activity, to deepen understanding of the drivers of human rights abuses in the context of business, and to ensure a reliable and vigorous response.

3. Initiate an inter-governmental process for global standards on business and human rights, in conjunction with ongoing conceptual and policy discussions

As highlighted in this and other reports to the Council, companies fail in many instances to respect human rights. The current normative incoherence and inapplicability of human rights principles to company behaviour, in our view, has created an environment permissive of these types of abuses. Setting social expectations in this regard is simply not enough. While it is important to build on proposed conceptual and policy-based discussions, this focus should not close doors to other necessary analysis and action at the UN level, in particular in developing innovations in international law to address the adverse human rights consequences of business activity.

We thus deem it vitally important at this time to begin an inter-governmental process to negotiate and adopt a UN declaration, or other similar instrument, which would outline a set of global standards on business and human rights. In conjunction with ongoing conceptual and policy discussions, the declaration would help specify existing state obligations to prevent businesses as private actors from violating human rights, as well as clarify and progressively develop duties of business with respect to human rights. In so doing, such a common, global standard—ultimately enforceable—would serve as the anchor of future mechanisms for redress and accountability.

In addition, the process of agreeing on such a document would serve to increase recognition of, and build consensus around, these standards, which would help lay the conceptual and political groundwork for the future development of binding international law. Moreover, by setting out clear, common standards in relation to each of these points, a political declaration of this type on business and human rights would provide an overarching global framework and a clear, shared reference point to inform policies and practices of governments, companies, investors, consumers, lenders, and others. Moreover, it would serve as a minimum human rights benchmark for a variety of other business and human rights initiatives, thereby promoting much-needed coherence and consistency among them. Finally, a properly negotiated declaration of this type would assist in ensuring greater recognition of, and adherence to, the full spectrum of human rights at stake.

4. Intensify efforts to strengthen redress and accountability

Existing mechanisms for redress and accountability at the national and international level are painfully inadequate in confronting the immense challenges of large-scale business-related rights abuse. The denial of justice to those suffering harm further compounds the original abuses, much too often opening the door for their recurrence.

To close these clear gaps in the protection of all human rights, especially the right to an effective remedy, the Council should take steps to align its efforts to ensure that victims of business-related abuse have access to effective justice in the domestic arena, supplemented by adequate redress mechanisms at the international level. Moreover, efforts must be strengthened to guarantee that individuals and communities have the capacity to defend their rights, and that those responsible for abuses are held to account.

5. Enhance accountability and capacity of governments to fulfill their obligation to protect

In the short-term, much can be done to enhance the accountability of governments to implementing their human rights commitments.

The Council, under the Universal Periodic Review process, should pay particular attention to the duty to protect against business abuse and ensure that Members States provide effective redress mechanisms to victims and adequately regulate the activities of their respective companies, both at home and abroad.

UN Special Procedures (on a country or thematic basis, through field visits, reports and analysis of individual communications) should be asked to give increased priority to analyzing and making recommendations regarding the obligation of states to comply with their duty to protect against human rights abuses by, or involving, companies, paying heed also to the respective duties of companies. Through their field visits and reporting, they should also help draw attention to the scope and nature of human rights abuses in which companies are implicated in relation to their specific mandate. In order to ensure consistency and coordination of the work of different UN Special Procedures on business impacts, mandate-holders should work in fuller cooperation in sharing relevant information on and dealing with business-related human rights abuses. UN Special Procedures mechanisms should also be asked to cooperate more fully with one another in monitoring, analyzing and denouncing government failures to respect and protect against business-related human rights abuses. Special emphasis should be given to identifying and analyzing factors which inhibit governments from discharging their duty to protect. Special emphasis throughout should be given to the protection of human rights defenders in the context of business activity.

Finally, the provision of independent, affordable technical and legal expertise and policy advice will be useful in the medium to long-term in strengthening the ability of governments to adequately discharge their duties to protect *vis-à-vis* business activities. Governments who have the will to protect against abuse and hold perpetrators to account are often restrained from doing so because of lack of capacity.

To Other UN Human Rights Bodies

Various UN human rights bodies should continue to expand their work to develop an understanding of the human rights duties of companies, as well as monitor state and business conduct in this regard. These efforts, like the ones above, must be anchored in the views, experiences and expertise of directly affected people and organizations.

UN human rights treaty-based bodies should (on a treaty-by-treaty basis in general comments and concluding observations) give increased priority to analyzing and making recommendations regarding the obligation of states to comply with their duty to protect against human rights abuses by, or involving companies, paying heed also to the respective duties of companies.

The Office of the High Commissioner on Human Rights (OHCHR) should continue to play its invaluable role in supporting and coordinating between different human rights bodies. The OHCHR could have a valuable role in building awareness and understanding of the different aspects of business and human rights issues by continuing to host seminars and workshops and providing other forum for discussion among government representatives, experts, civil society representatives, affected individuals and communities, and businesses. The UN High Commissioner on Human Rights can play a critical leadership role in articulating the need for human rights protection in the context of business and human

rights, in highlighting the situations of victims of human rights abuses involving companies, and in advocating for redress and accountability. In this context, the High Commissioner should also play a role in outlining the way that international law regarding non-state actors can and should develop.

The OHCHR should also prioritize building the capacity of treaty-based monitoring bodies and UN Special Procedures to pay greater attention to business and human rights issues through increasing access to expertise and relevant information. As it does on other human rights issues, including those for which a Special Procedure mandate exists, the OHCHR should also continue to develop its own views and positions on these issues, building on its own considerable knowledge and experience. Just as the Council, the OHCHR should ensure that its approach to business and human rights issues remains consistent with its approach to other human rights issues and bodies. Victims of human rights abuses by, or involving, companies must be afforded as much protection and voice as victims of other types of violations.

ENDNOTES

*All web links were last checked in April, 2008.

¹ For the identification of these organizations, see the list on Acknowledgements page of this Report.

² For reasons of inclusivity, the description of cases uses the broader terms of business enterprise, firm and company, so as to include corporations as well as other types of business consortiums and state-owned companies

³ We are grateful to Human Rights Watch and the Center for Human Rights & Global Justice at New York University School of Law for their helpful analytical contributions as presented in, “On the Margins of Profit: Rights at Risk in the Global Economy,” (Feb. 2008), Vol. 20, No. 3(G), available at: <http://hrw.org/english/docs/2008/02/19/global18087.htm>.

LABOR RIGHTS

⁴ More specifically, labor rights are recognized in a considerable number of international legal documents as related to the cases presented. These include: the right to just and favorable conditions of work (Art. 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Art. 11.f of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Arts. 25 and 70 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), Art. 27.1 of the Convention on the Rights of Persons with Disabilities (CRPD)), the right to reasonable working hours (Art. 7 of the ICESCR and Art. 31.1 of the Convention on the Rights of the Child (CRC)), the right to just and favorable remuneration (Art. 7.a of the ICESCR and Art. 25 of the CMW), the right against forced labor (International Labour Organization (ILO) Convention No. 122/1964), the right to free choice of employment (Art. 6.1 of the IESCR and Art. 11.1 of the CEDAW), the right to freedom of association, including the right to form and join trade unions (Art. 5.d of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Art. 8.1 of the ICESCR, Art. 22 of the International Covenant on Civil and Political Rights (ICCPR), Art. 7.c of the CEDAW, Art. 15 of the CRC, Arts. 26 and 40 of the CMW, Art. 27.1 of the CRPD, Arts. 2, 7 and 11 of ILO Convention No. 87/1948 and Art. 1 of ILO Convention No. 98/1949), and the right to non-discrimination (Art. 11.1 of the CEDAW, Art. 10.2 of the ICESCR, Arts. 20 and 21 of the CMW, Art. 27.1 of the CRPD, Art. 5.e of the CERD, Arts. 1 and 2 of ILO Convention No. 100/1951). Furthermore, a number of international treaties especially protect children in employment (Art. 10.3 of the ICESCR, Arts. 32 and 36 of the CRC, Arts. 2-5 of ILO Convention No. 138/1973, Arts. 3, 6 and 7 of ILO Convention No. 182/2000 and the Optional Protocol (OP) to the CRC on the Sale of Children). The Committee on Economic Social and Cultural Rights (CESCR) has recognized with respect to the right to work that “the obligation to protect follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties. They include omissions such as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to work of others; or the failure to protect workers against unlawful dismissal” (General Comment (GC) CESCR No. 18/2005, para. 35). Besides, the Committee on the Rights of the Child understood in its General Recommendation No. 5/2003 that “responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include [...] non-State services and organizations” (para. 56).

⁵ This Declaration is based on eight key ILO conventions: Nos. 138, 182, 87, 98, 29, 105, 100, and 111, and establishes that all ILO members, whether or not parties to these eight conventions, are obliged by their ILO membership to, at a minimum, abide by the four core standards.

⁶ The freedom of association and to form a trade union is also protected in Universal Declaration of Human Rights (UDHR) Art. 23(4), ICESCR Art. 8(1); ICCPR Art. 22; CEDAW Art. 7(c); CERD Art. 5(d); CRC Art. 15; CMW Art. 40; and CRPD Arts. 27(1).

⁷ Prohibition against forced and bonded labour is also upheld in UDHR Art. 4 and ICCPR Art. 8.

⁸ Children are similarly protected in ICESCR Art. 10(3) as well as in CRC Art. 32 and 36, and its OP on the Sale of Children.

⁹ Non-discrimination in the workplace is also protected under UDHR Art. 23 (2); ICESCR Art. 7, and 10(2); CERD Art. 5(e); CEDAW Art. 11(1); CMW Arts. 20 and 21; and CRPD Art. 5(e). Particular protections for women and

children apply under CEDAW Art. 11(2), Art. 25(2), ICESCR Arts. 10 (2) and 10 (3), and CRC Arts. 32 and 36.

¹⁰ The right to adequate remuneration is enshrined in ICESCR Art. 7, ILO Convention No. 155 (Occupational Safety and Health and the Working Environment, 1981), and CMW Art. 25.

¹¹ See *supra*, note 8.

¹² See (1) International Labor Rights Forum (ILRF), *Firestone Rubber & Latex Company: Prospering from Child Labor and Enslavement in Liberia*, Jamie Menutis (4 Dec. 2007) available at <http://www.laborrights.org/stop-child-labor/stop-firestone/932>; (2) Social Funds, *Alien Tort Claims Act Lawsuit Alleges Slavery and Child Labor on Liberian Firestone Plantation*, William Baue (30 Dec. 2005), available at <http://www.socialfunds.com/news/article.cgi/article1897.html>; (3) OneWorld.net, *Tire Giant Firestone Hit with Lawsuit over Slave-like Conditions at Rubber Plantation*, Haider Rizvi (8 Dec. 2005), available at <http://www.commondreams.org/headlines05/1208-07.htm>; and (4) International Rights Advocates (IRA), *Cases, Bridgestone-Firestone*, available at <http://www.iradvocates.org/bfcase.html>.

¹³ See (1) Global Witness, *Digging in Corruption, Fraud, abuse and exploitation in Katanga's copper and cobalt mines*, (5 Jul. 2006), available at http://www.globalwitness.org/media_library_detail.php/154/en/digging_in_corruption; and (2) International Centre for Human Rights and Democratic Development (Rights and Democracy), *Human Rights Impact Assessments for Foreign Investment Projects: Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina, and Peru* (2007), available at http://www.dd-rd.ca/site/_PDF/publications/globalization/hria/full%20report_may_2007.pdf [hereinafter *Rights and Democracy report*].

¹⁴ See (1) Germanwatch, Coalition against Bayer Dangers and Global March against Child Labour, *Organisation for Economic Cooperation and Development (OECD) Complaint Against Bayer because of Child Labour in India, Current Investigation: Children die due to poisoning by pesticides at Cotton Seed farms in India* (11 Oct. 2004), available at <http://www.germanwatch.org/presse/2004-10-11e.htm>; (2) M. Venkatarangaiya Foundation, *Combating child labour in Cotton Seed production: A statement on the present role of multinational companies in Andhra Pradesh*, available at <http://www.germanwatch.org/tw/bay-stat.pdf>; (3) OECD Watch Newsletter (Jun. 2006) at 16 available at <http://www.germanwatch.org/tw/kwi-06-06.pdf>. See also *Child Labour in Hybrid Cotton Seed Production in Gujarat and Karnataka*, Davuluri Venkateswarlu, available at <http://www.germanwatch.org/tw/bay-stug.pdf>; and India Committee of the Netherlands, *Child Labour in Hybrid Cotton Seed Production in Andhra Pradesh: Recent Developments*, Davuluri Venkateswarlu (Sep. 2004), available at <http://www.germanwatch.org/tw/bay-stua.pdf>.

¹⁵ See Women's Environment and Development Organization (WEDO), MisFortune 500, *Child Labour and Trans-National Seed Companies in Hybrid Cotton Seed Production in Andhra Pradesh*, available at <http://www.misfortune500.org/Company/Show.aspx?articleid=73>.

¹⁶ See Human Rights Watch (HRW), *Turning a Blind Eye: Hazardous Child Labor in El Salvador's Sugarcane Cultivation* (Jun. 2004), available at <http://www.hrw.org/reports/2004/elsalvador0604/elsalvador0604.pdf>.

¹⁷ See (1) IRA, *Cases, Nestle, Archer Daniels Midland, and Cargill*, available at <http://www.iradvocates.org/nestlecase.html> and (2) GLENDALE NEWS PRESS, *Labor group sues Nestle*, Robert Chacon (20 Jul. 2005), available at <http://www.globalexchange.org/campaigns/fairtrade/cocoa/3391.html>.

¹⁸ See India Committee of the Netherlands, *The Dark Side of Football, Child and Adult Labour in India's football industry and the role of FIFA* (Jun. 2000), available at <http://www.indianet.nl/iv.html>.

¹⁹ See (1) Departamento de Estudos Sócio-econômicos Rurais (DESER) and Terra de Direitos, *Informe de Caso: Grupo British Tobacco*, presented at the Tribunal dos Povos Transnacionais Europeias e sua atuação na América Latina e Caribe (May 2006), available on file with ESCR-Net; (2) Terra de Direitos, *Submission to ESCR-Net Collective Report on Business and Human Rights* (Oct. 2007), available on file with ESCR-Net; (3) Terra de Direitos, *Fumo: servidão moderna e violação de direitos humanos*, Guilherme Eidt Gonçalves de Almeida, (Curitiba: 2005), available at <http://www.terradedireitos.org.br/wp-content/uploads/2008/02/livro-fumo1.pdf>.

²⁰ See Environmental Justice Foundation, *White Gold, The True Cost of Cotton, Uzbekistan, cotton and the crushing of a nation* (2005), available at http://www.ejfoundation.org/pdf/white_gold_the_true_cost_of_cotton.pdf.

²¹ Rome Statute of the International Criminal Court, Art. 7 (1)(c), U.N. Doc. A/CONF.183/9 (1998), available at <http://untreaty.un.org/cod/icc/statute/rome.htm>. See e.g. "Forced Labour in Myanmar (Burma): Report of the

Commission of Inquiry Appointed Under Art. 26 of the Constitution of the ILO to Examine the Observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)", ILO, Part IV.9.A.P 198 (1998).

²² See Ulrike Bickel, Misereor Human Rights Officer, *Human Rights violations and environmental destruction through soybean production in Brazil* (20 Oct. 2005), available at <http://www.sojacontrelavie.org/data/File/MisereorSoja.pdf>.

²³ See (1) Inter-American Commission on Human Rights (IACHR) Hearing 122nd Period of Sessions, *Joint General Interest Hearing Regarding the Rights of Migrant Workers in the United States, Written Testimony of Lucas Benitez of The Coalition of Immokalee Workers on The Human Rights Violations Facing Migrant Agricultural Workers in the US & Cathy Albisa of The National Economic Social Rights Initiative on Government and Corporate Responsibility for Human Rights Violations against Migrant Farmworkers* (3 Mar. 2005), available at http://www.rfkmemorial.org/human_rights/2003_CIW/CIWjointtestimony.pdf; and (2) Amnesty International, Center for Constitutional Rights (CCR), Global Rights, Human Rights First, HRW, National Economic and Social Rights Initiative, Oxfam America, RFK Memorial Center on Human Rights and US Human Rights Network, *Letter to Santiago A Canton, executive secretary, Inter-American Commission on Human Rights* (2 Mar. 2005), available at http://hrw.org/english/docs/2005/03/02/usdom10284_txt.htm.

²⁴ See Fafo, *Business and International Crimes, Category II: Forced Labor/Enslavement*, available at http://www.fafo.no/liabilities/part_II-2forc-lab.htm; and *Ford Motor Co. charged in Nazi secret profits on slave labor*, Howard Hobbs (18 Mar. 1998) available at http://www.bulldognews.net/issues_ford_slave_labor.html. See also *WWII Era Japanese Forced Labor Litigation*, where Plaintiffs, Chinese, Filipino and Korean nationals, alleged that, as prisoners of war, the Japanese corporations named in these consolidated lawsuits forced them to work without compensation during World War II. Fafo, *Business and International Crimes, Category II: Forced Labor/Enslavement*, available at http://www.fafo.no/liabilities/part_II-2forc-lab.htm.

²⁵ See (1) Nikki F. Bas (Sweatshop Watch), Medea Benjamin (Global Exchange), and Joannie C. Chang (Asia Law Caucus), *Saipan Sweatshop Lawsuit ends with Important Gains for Workers and Lessons for Activists* (8 Jan. 2004), available at <http://www.cleanclothes.org/legal/04-01-08.htm> ; and (2) BNet Business Network, *Six Firms Added to Saipan Sweatshop Lawsuit – Levi Strauss, Calvin Klein, Brooks Brothers, Abercrombie and Fitch, Talbots – Brief Article*, Shaw Meadows (May 2000), available at http://findarticles.com/p/articles/mi_m3638/is_9_41/ai_63058111;

²⁶ See (1) EarthRights International, *More of the Same: Forced Labor Continues in Burma* (October 2000 – September 2001) available at http://www.earthrights.org/burmareports/more_of_the_same_forced_labor_continues_in_burma_october_2000-september_2001.html ; and (2) EarthRights International *Supplemental Report: Forced Labor along the Yadana and Yetagun Pipelines* (February 2001), available at <http://www.earthrights.org/files/Reports/supp.pdf>.

²⁷ See War on Want (WoW), *ASDA Wal-Mart, the Alternative Report* (Sep. 2005), available at <http://www.waronwant.org/download.php?id=369>.

²⁸ See (1) LabourNet Germany, *Protest Toyota Campaign*, Newsletter No. 3 (24 Apr. 2002), available at <http://www.labournet.de/branchen/auto/toyota/newsletter3.html>; and (2) OECD Watch, *Five Years On, A Review of the OECD Guidelines and National Contact Points* (2005) at 59.

²⁹ See (1) Clean Clothes Campaign (Europe), Oxfam Community Aid Abroad (Australia), Oxfam Canada, Global Exchange (USA) and the Maquila Solidarity Network (Canada), *We are not machines: Nike and Adidas workers in Indonesia* (Mar. 2002), available at <http://www.cleanclothes.org/companies/machines/summary.html>; (2) Oxfam Australia, *Like Cutting Bamboo, Nike and Indonesian Workers' Right to Freedom of Association* (Sep. 2000), available at <http://www.oxfam.org.au/campaigns/labour/reports/other.html>.

³⁰ See Committee on Freedom of Association Report, *Chile (Case No. 2337) The National Trade Union Workers of ING Seguros de Vida S.A. (SNTISV) and supported by the Confederation of Banking and Related Trade Unions (CSBA)* (26 Feb. 2004), available at <http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=7901&FILE=2349&hdroff=1&DISPLAY=CONCLUSION>.

³¹ See WoW, *Coca-Cola, The Alternative Report* (Mar. 2006) at 8-9, available at <http://www.waronwant.org/downloads/cocacola.pdf> [hereinafter *WoW Coca-Cola, The Alternative Report*].

³² See The Schone Kleren Kampagne, (Dutch Clean Clothes Campaign) and the Landelijke India Werkgroep (India Committee of the Netherlands) *Complaint to the Dutch National Contact Point of the OECD Guidelines for*

Multinational Enterprises regarding G-Star International B.V. (11 Oct. 2006), available at http://www.oecdwatch.org/docs/SKK_&_LIWDutch_vs_GStar_complaint.pdf.

³³ See ILO, *Report of the Committee set up to examine the representation made by the Hellenic Airline Pilots Association (HALPA) under article 24 of the ILO Constitution alleging non-observance by Greece of the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)* (1988) available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=15&chapter=16&query=%28hellenic%29+%40title+&highlight=&querytype=bool&context=0>; and *The International Law of Human Rights and States of Exception*, Anna-Lena Svensson-McCarthy (1998 Martinus Nijhoff) at 336, available at http://books.google.com/books?id=ofp0Aph2m1sC&pg=PA336&lpg=PA336&dq=hellenic+airline+pilots+association+forced+labour&source=web&ots=KCpomDOsus&sig=ZsZvQd8L_E66WoTSPwNDzCI94yU.

³⁴ See Centro de Reflexión y Acción Laboral, *Violaciones a los derechos humanos de los trabajadores de las secciones 298 y 207 fracción I del Sindicato Minero, cometidos por la empresa Mexicana del Cobre, S.A de C.V durante los años 2006 y 2007, Submission to the ESCR-Net Collective Report on Business and Human Rights* (Sep. 2007) at 6 and 11, available on file with ESCR-Net.

³⁵ See Gladys Manzanarez Tercero, Zenayda Torrez Aviles, Harling Bobadilla, and Felix Rosales Sanchez v. C&Y Sportswear, Inc., Nien Hsing Textile Co., Ltd. and Chentex Garments, S.A., Complaint, available at http://www.nlcnet.org/campaigns/archive/sweatingforkohls/history.shtml#court_complaint.

³⁶ See Terry Collingsworth, *Summary of International Labor Rights Fund Cases Under the Alien Torts Claims Act*, American Civil Liberties Union (ACLU) International Civil Liberties Report (2003), available at http://www.sdshh.com/ICLR/ICLR_2003/16_Collingsworth.pdf [hereinafter *Summary of ILRF Cases Under ATS*].

³⁷ See Fédération Internationale des Droits de l'Homme (FIDH), *Mali: Mining and human rights, International fact-finding mission report* (Sep. 2007), available at <http://www.fidh.org/IMG/pdf/mali477ang2007.pdf>.

³⁸ See ILRF, *Lawsuit Charges Coca-Cola with Torture, Intimidation of Trade Unionists in Turkey*, Daily Labor Report (17 Nov. 2005), available at http://lrights.igc.org/press/Coke/turkeysuit_dailylabor_111705.htm.

³⁹ See Corporación para el Desarrollo del Oriente in cooperation with Pastoral de Trabajadores del Magdalena Medio de la Diócesis de Barrancabermeja, El Sindicato Nacional de Trabajadores de la Industria Agropecuaria (Sintrainagro Subdirectiva Puerto Wilches) y el Sindicato de Industria de los Trabajadores de empresas de palma oleaginosas y similares (Sintrapalmas), *Submission to ESCR-Net Collective Report on Business and Human Rights* (Sep. 2007), available on file with ESCR-Net.

⁴⁰ *Infra* note 101.

⁴¹ *Supra* note 31.

⁴² *Infra* note 129.

⁴³ See Global Policy Forum, *DaimlerChrysler Sued Over Alleged Argentine Abuses*, Pablo Bachelet (14 Jan. 2004), available at <http://www.globalpolicy.org/intljustice/atca/2004/0114daimler.htm>.

⁴⁴ See *Violaciones por Mexicana del Cobre*, *supra* note 34, at 14.

⁴⁵ See (1) Terry Collingsworth, *Recent ILRF Cases to Enforce Human Rights Under the ATCA*, International Civil Liberties Report (2002), available at http://www.civilrightslawla.com/ICLR/ICLR_2002/18_Collingsworth.pdf and (2) THE WALL STREET JOURNAL, *Colombian Killings Land US Company in American Court* (6 Oct. 2003), available at http://lrights.igc.org/press/drummond_wsj_oct03.htm.

⁴⁶ *Supra* note 29.

⁴⁷ *Supra* note 13, *Rights and Democracy* report.

⁴⁸ *Supra* note 23.

⁴⁹ See Federação de Órgãos para Assistência Social e Educacional (FASE)/Espírito Santo, *Economic, Social, Cultural and Environmental Rights Violations in Eucalyptus Monoculture: Aracruz Cellulose and the State of Espírito Santo* (13 Aug. 2002).

⁵⁰ *Supra* note 31, at 9.

⁵¹ *Supra* note 14.

⁵² *Supra* note 13, *Rights and Democracy* report.

⁵³ *Supra* note 49.

⁵⁴ See Shell Accountability Coalition, *Use your profit to clean up your mess*, *infra* note 77.

⁵⁵ *Supra* note 20, at 10.

⁵⁶ See (1) *Current Legal Developments Concerning Wal-Mart*, available at <http://www.walmartlitigation.com/currentd.htm>; (2) Equal Rights Advocates, *6 Women Sue Wal-Mart, Charging Bias*, Reed Abelson (20 Jun. 2001), available at http://www.equalrights.org/media/nytimes_walmart.asp; (3) Equal Rights Advocates, *Dukes v. Wal-Mart Stores*, <http://www.equalrights.org/professional/walmart.asp>; (4) Wal-MartWatch, *Betty v. Goliath: A History of Dukes v. Wal-Mart* (Nov. 2006), available at http://walmartwatch.com/img/blog/dukes_backgrounder.pdf; (5) WEDO MisFortune 500, Wal-Mart Stores, Inc., available at <http://www.misfortune500.org/Company/Show.aspx?companyid=5>.

⁵⁷ See (1) ActionAid International, *Rotten fruit: Tesco profits as women workers pay a high price* (Apr. 2005), available at http://www.actionaidspace.org/news/documents/tesco_southafrica.pdf; and (2) The Corporate Responsibility Coalition, *Corporate Abuse In 2007, A discussion paper on what changes in the law need to happen*, Jennifer A. Zerk (Nov. 2007), available at http://www.corporate-responsibility.org/module_images/corporateabuse_discussionpaper.pdf.

⁵⁸ See (1) Platform for Labour Action, *Submission to ESCR-Net Collective Report on Business and Human Rights* (Oct. 2007), available on file at ESCR-Net; and (2) Platform for Labour Action, *High Court of Uganda vide High Court Civil Suit 615/2006*, Sanyu Christine et. al vs. African Agro Industries, Ltd.

⁵⁹ *Supra* note 56.

⁶⁰ See The New York Times, *Limbo for US Women Reporting Iraq Assaults*, James Risen (13 Feb. 2008), available at http://www.nytimes.com/2008/02/13/world/middleeast/13contractors.html?_r=1&oref=slogin.

⁶¹ See ILRF, Rights for Working Women Campaign, *Sexual Harassment in the Workplace: A Report from Field Research in Thailand*, Ubon Kompipote (Jun. 2002), available at <http://www.laborrights.org/files/Thailand.pdf>.

⁶² See Business and Human Rights Resource Centre (BHHRC), Selected cases Ford, at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/FordlawsuitresexualharasmentinUSA> and BHHRC, Selected cases, Mitsubishi, at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/MitsubishilawsuitresexualharasmentinUSA>.

⁶³ See (1) HRW, *A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector* (Dec. 1998), available at <http://www.hrw.org/reports98/women2/>; (2) HRW, *No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector* (1996), available at <http://hrw.org/reports/1996/Mexi0896.htm>.

⁶⁴ See HRW, *A Test of Inequality: Discrimination against Women Living with HIV in the Dominican Republic* (Jun. 2004), available at <http://www.hrw.org/reports/2004/dr0704/dr0704.pdf>.

⁶⁵ See (1) Amnesty International, *Behind closed gates: ethnic discrimination in employment* (26 Jan. 2006), available at <http://www.amnesty.org/en/library/asset/EUR63/004/2006/en/dom-EUR630042006en.html>; and (2) Amnesty International, *Bosnia and Herzegovina: Stop Ethnic Discrimination in Access to Employment* (26 Jan. 2006), available at http://www.amnesty.org/en/alfresco_asset/128e1c49-a434-11dc-bac9-0158df32ab50/eur630012006en.html.

⁶⁶ *Supra* note 13.

⁶⁷ *Supra* note 37.

⁶⁸ See Intermón Oxfam, *Pueblos sin derechos: La responsabilidad de Repsol YPF en la Amazonía peruana* (July 2007) at 29-30, available at http://www.intermonoxfam.org/UnidadesInformacion/anexos/8578/070724_Pueblos_sin_derechos_Repsol_Per%C3%BA.pdf, Executive Summary in English available at: http://www.intermonoxfam.org/UnidadesInformacion/anexos/8578/070724_People_without_rights.pdf.

ENVIRONMENTAL RIGHTS

⁶⁹ Business impacts on the environment may result in violations to the rights to life, health, livelihood, food, and water, among others. Those rights are protected in international human rights law, and the normative content of these rights are described under each section's endnotes below.

⁷⁰ As established by the Human Rights Committee (HRC) in its GC No. 6: "the Committee has noted that the right to life has been too often narrowly interpreted. The expression 'inherent right to life' [recognized by the ICCPR, Art. 6] cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures." HRC, *General Comment No. 6: the right to life (art. 6)* (30 Apr. 1982), at para. 5, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/84ab9690ccd81fc7c12563ed0046fae3?Opendocument). The many linkages between protection of human rights and protection of the environment have long been recognized. The 1972 United Nations Conference on the Human Environment declared that "man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights—even the right to life itself. See Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Environment Programme (UNEP) joint expert seminar on Human Rights and the Environment, available at <http://www.unhchr.ch/environment>.

⁷¹ See (1) Amnesty International, *India: Clouds of Injustice: Bhopal disaster 20 years on* (29 Nov. 2004), available at <http://www.amnestyusa.org/business/bhopal.pdf>; (2) ERI, *Indian Judge Orders Dow to Explain Shielding of Subsidiary in Bhopal Criminal Case* (11 Jan. 2005), available at http://www.earthrights.org/legalpr/indian_judge_orders_dow_to_explain_shielding_of_subsidary_in_bhopal_criminal_case.html; (3) The International Campaign for Justice in Bhopal, *The poisoning of Bhopal*, available at <http://www.bhopal.net/legalsituation.html>; (4) ERI, *Bano v. Union Carbide case history* (2 Feb. 2004), available at http://www.earthrights.org/site_blurbs/bano_v._union_carbide_case_history.html and (5) Amnesty International, *India: Union Carbide Corporation (UCC), DOW Chemicals and the Bhopal Communities in India - The Case* (21 Jan. 2005), available at <http://www.amnesty.org/en/library/asset/ASA20/005/2005/en/dom-ASA200052005en.html>

⁷² See (1) Earthjustice, *Environmental Rights Report 2007* (20 Jun. 2007), available at <http://www.earthjustice.org/library/references/2007-environmental-rights-report.pdf>; (2) REUTERS, *Dutch plan to charge Trafigura over toxic ship* (19 Feb. 2008), available at <http://africa.reuters.com/wire/news/usnL19884993.html>; (3) FINANCIAL TIMES, *Business Life: Lawyers in a hunt for big game*, Michael Peel (31 Jan. 2008), available at <http://search.ft.com/nonFtArticle?id=080131000067&ct=0>; (4) AFROL NEWS, *Côte d'Ivoire toxic waste probe goes to France* (26 Jul. 2007), available at <http://www.afrol.com/articles/26229>; (5) DutchNews.nl, *Two arrests in Probo Koala scandal (update)* (16 Feb. 2007), available at http://www.dutchnews.nl/news/archives/2007/02/two_arrests_in_probo_koala_sca.php; (6) AFROL NEWS, *Côte d'Ivoire toxic waste probe goes to France* (2008), available at <http://www.afrol.com/articles/26229>.

⁷³ See (1) The Center for International Policy's Colombia Project, *International Labor Rights Fund (ILRF) Lawsuit against DynCorp: Class Action Complaint for Equitable Relief and Damages; Jury Trial Demanded* (Sep. 2001), available at <http://www.ciponline.org/colombia/irlfdyncorp.htm>; and (2) Colectivo de Abogados José Alvear Restrepo, *Private Security Transnational Enterprises in Colombia. Case Study: Plan Colombia* (February 4, 2008) Bogotá, Colombia, available at http://www.colectivodeabogados.org/IMG/pdf/0802_merc_wisc_eng-2.pdf.

⁷⁴ See (1) Oxfam Australia, *Mining Ombudsman Case Report – Marinduque Island* (2005), available at <http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/marinduque/docs/report.pdf>; (2) Oxfam International website, *Campaigns – Marinduque Islands, the Philippines*, available at <http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/marinduque/>; (3) Catherine Coumans, *Placer Dome Case Study: Marcopper Mines* (Apr. 2002), available at http://www.miningwatch.ca/updir/PD_Case_Study_Marcopper.pdf; (4) Friends of the Earth International (FoEI), *Hands Off! Why International Financial Institutions Must Stop Drilling, Piping and Mining* (2003), available at <http://foei.org/en/publications/pdfs/handsoff.pdf>.

⁷⁵ The ICESCR recognizes the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health (Art. 12). The CERD and the CEDAW establish the right to health without any discrimination (Arts. 5.e and 10 respectively, as well as GC CESCR No. 14/2000). In relating it to other rights, GC 14 interprets the right to health as including the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, and healthy occupational and environmental conditions. Certain private-sector responsibilities are also recognized in the right to health (GC CESCR No.

14/2000, para. 42).

⁷⁶ See (1) Amazon Defense Coalition, *Rainforest Catastrophe: Chevron's Fraud and Deceit In Ecuador: An Investigative Report* (Nov. 2006), available at: http://www.texacotoxico.org/docs/PDF%20Files/rainforest_catastrophe.pdf; (2) San Sebastián, M. and Hurtig, A. *Oil exploitation in the Amazon basin of Ecuador: a public health emergency*, PAN AMERICAN JOURNAL OF PUBLIC HEALTH 15(3), (2004) at 205-211, available at: http://www.texacotoxico.org/docs/PDF%20Files/Public_Health_Emergency_RPSP%20%28ENG%29.pdf; and (3) Amazon Defense Coalition, *Submission to ESCR-Net Collective Report on Business and Human Rights* (Feb. 2008), available on file at ESCR-Net.

⁷⁷ See (1) Shell Accountability Coalition, *Use your profit to clean up your mess: Report on how Shell should fund local solutions for environmental and social destruction caused by its projects* (2007), available at <http://www.foei.org/en/publications/pdfs/mdshellh.pdf>; and (2) Environmental Rights Action/Friends of the Earth Nigeria (ERA/FOE), *Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity* (Jun. 2005), available at <http://www.foe.org/camps/intl/gasnigeria.pdf>.

⁷⁸ See (1) *Use your profit to clean up your mess*, *supra* note 77 and (2) Friends of the Earth (FoE), *Failing the Challenge The Other Shell Report* (Apr. 2003), available at http://www.foe.co.uk/resource/reports/failing_challenge.pdf.

⁷⁹ See *Use your profit to clean up your mess*, *supra* note 77.

⁸⁰ See *Use your profit to clean up your mess*, *supra* note 77.

⁸¹ See Crude Accountability, *Karachaganak Campaign*, available at <http://www.crudeaccountability.org/en/index.php?page=karachaganak>; and Compliance Advisor Ombudsman (CAO), *Kazakhstan – Karachaganak I (LUKoil Overseas)*, available at http://www.cao-ombudsman.org/html-english/complaint_karachaganak.htm.

⁸² See (1) BHHRC, Selected cases, Rio Tinto lawsuit (re Papua New Guinea), at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/RioTintolawsuitrePapuaNewGuinea>; (2) *Opinio Juris, Case of the Month: Sarei v. Rio Tinto*, John Knox and Roger Alford, available at <http://www.opiniojuris.org/posts/1157061441.shtml>; (3) PLANET ARK, *Islanders Win Appeal in Claim Against Rio Tinto*, Steve James (8 Aug. 2006), available at <http://www.planetark.com/dailynewsstory.cfm/newsid/37553/story.htm>; (4) THE GUARDIAN, *Islanders sue in US over impact of Rio Tinto mine*, David Pallister (8 Sep. 2000), available at <http://www.guardian.co.uk/world/2000/sep/08/davidpallister.riotinto>.

⁸³ See European Court of Human Rights (ECHR), *Judgment-Case of Lopez Ostra v. Spain*, 16798/90 [1994] ECHR 46 (9 Dec. 1994), available at http://www.ruidos.org/Noise/ECHR_941209.html.

⁸⁴ See (1) Center for International Environmental Law (CIEL), *Brief to Inter-American Commission of Human Rights, Case Comunidad San Mateo Huanchor Reitera Solicitud de Medidas Cautelares Urgentes: Retiro Inmediato de los Relaves Mineros Toxicos*, Marcos Orellana (Jul. 2004), available at http://www.ciel.org/Publications/SanMateo/MC_San%20Mateo_21Jul04.pdf; (2) CIEL, *Brief to Inter-American Commission of Human Rights, Case 12.471 – Comunidad San Mateo Huanchor: Presentacion sobre el fondo*, Marcos Orellana (Jun. 2006), available at http://www.ciel.org/Publications/SanMateo/Merits_SanMateo_14July06.pdf.

⁸⁵ See (1) Centro de Derechos Humanos y Ambiente (CEDHA), Earthjustice, Asociacion Interamericana para la Defensa del Ambiente (AIDA) and others, *Petición de Caso ante la Comisión Inter-Americana de Derechos Humanos – Comunidad de La Oroya*, (Dec. 2006), available at http://www.earthjustice.org/library/legal_docs/human-rights-petition-on-la-oroya-to-iachr.pdf; (2) Sociedad Peruana de Derecho Ambiental, and Asociación Interamericana para la Defensa del Ambiente, *La Oroya Cannot Wait*, Anna Cederstav and Alberto Barandiarán, (Sep. 2002), available at http://www.aida-americas.org/templates/aida/uploads/docs/La_Oroya_Cannot_Wait.pdf; and (3) Carlos Silva, *Submission to ESCR-Net Collective Report on Business and Human Rights* (Sep. 2007), available on file at ESCR-Net.

⁸⁶ UDHR, Arts. 23 and 25, ICESCR Art. 11.

⁸⁷ The ICESCR explicitly recognizes the right to food as an element of the right of everyone to an adequate standard of living, in Art. 11(1): "the right of everyone to an adequate standard of living for himself and his family, including

adequate food, clothing and housing, and to the continuous improvement of living conditions," and Art. 11(2): "the fundamental right to freedom from hunger and malnutrition". The Committee on ESCR further explains in its GC No. 12/1999 that "the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement" (para. 6). Besides, says the Committee, "while only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities in the realization of the right to adequate food" (para. 20).

⁸⁸ See, for example, African Commission on Human and Peoples' Rights, *Communication No. 155/96, The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria*, listed in ESCR-Net Caselaw Database, available at http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=404115.

⁸⁹ See (1) FoE Europe, *Corporate Irresponsibility, Case-study: SA Rougier and SFID: No Environmental Justice for Communities*, available at <http://www.foeeurope.org/corporates/pdf/study7.pdf>; (2) Greenpeace, *Illegal logging in Cameroon: How French Government action is fuelling rainforest destruction* (Dec. 2005), available at <http://www.greenpeace.org/raw/content/international/press/reports/forest-crime-file-illegal-log.pdf>; and (3) FoEI, *Logging Over Livelihoods: Cameroonian Villagers Sue French Forest Company*, available at <http://www.foei.org/en/publications/link/env-rights/10.html>.

⁹⁰ See Greenpeace International, *Illegal logging and the heart of darkness* (22 Apr. 2003), available at <http://www.greenpeace.org/international/news/illegal-logging-in-cameroon>.

⁹¹ See (1) Urgewald, FoE and Campagna per la riforma della Banca mondiale, *Risky Business: How the World Bank's Insurance Arm Fails the Poor and Harms the Environment* (Jul. 2001), available at <http://www.foe.org/res/pubs/pdf/MIGARReport.pdf>; (2) CAO, *Final Assessment Report: Complaint Regarding the Antamina Mining Project in Huarney, Peru* (May 2006), available at http://www.cao-ombudsman.org/html-english/documents/Final_Antamina_Assessment_May06a.pdf; (3) AccountAbility, Business for Social Responsibility and Brody Wester Burns, *Business & Economic Development: Mining Sector Report* (Dec. 2004), available at http://www.economicfootprint.org/files/mining_report_2004.pdf.

⁹² See (1) International NGO Campaign on Export Credit Agencies (ECA-Watch), *Race to the Bottom, Take II: An Assessment of Sustainable Development Achievements of ECA-Supported Projects Two Years After OECD Common Approaches Rev 6* (Sep. 2003), available at http://www.internationalrivers.org/files/race_bottom_take2.pdf [hereinafter *ECA-Watch Race to the Bottom, Take II*]; (2) International Rivers Network (IRN) and National Association of Professional Environmentalists, *Analyzing Bujagali Hydroelectric Project's Compliance with the Strategic Priorities of the World Commission on Dams* (8 Feb. 2007), available at http://internationalrivers.org/files/BujagaliWCD2007_0.pdf; and (3) IRN, *Bujagali Dam, Uganda*, available at <http://internationalrivers.org/en/africa/bujagali-dam-uganda>.

⁹³ See *Use your profit to clean up your mess*, *supra* note 77.

⁹⁴ See Amazon Defense Coalition Submission, *supra* note 76, at 3.

⁹⁵ See (1) FoEI, *Lapindo Brantas and the Mud Volcano - Sidoarjo, Indonesia* (2007), available at http://www.foeeurope.org/publications/2007/LB_mud_volcano_Indonesia.pdf; (2) FoEI, *Major Banks Finance Catastrophic Mud Volcano*, FOEI Press Release (21 Jun. 2007), available at <http://www.foei.org/en/media/archive/2007/banks-finance-mud-volcano/?searchterm=sidoarjo>; (3) Indonesian Forum for the Environment (WALHI), *Summary of WALHI's Legal Suit Against PT. Lapindo Brantas Inc.*, available at http://www.eng.walhi.or.id/kempanye/cemar/industri/070212_walhislegal_lapindo_cu/; (4) NEW YORK TIMES, *New Indonesian Calamity: A Man-Made Mud Bath*, Raymond Bonner and Mukhtita Suhartono (6 Oct. 2006), available at http://www.nytimes.com/2006/10/06/world/asia/06mud.html?_r=1&hp&ex=1160107200&en=5d507fd52480d308&ei=5094&partner=homepage&oref=slogin; (5) NATIONAL NINE NEWS, *Santos May Avoid Toxic Mud Prosecution* (16 Oct. 2006), available at <http://news.ninensn.com.au/article.aspx?id=152853>.

⁹⁶ *Supra* note 74.

⁹⁷ See Oxfam America, *Tarnished Legacy: A Social and Environmental Analysis of Mali's Syama Goldmine* (Feb. 2004), available at http://www.oxfamamerica.org/newsandpublications/publications/research_reports/art6791.html/OA-

Syama_Analysis.pdf.

⁹⁸ See (1) FoEI, *Newmont Urged to Reform*, available at <http://www.foei.org/en/campaigns/corporates/newmont.html>; and (2) WAHLI, *Exposing Buyat – Findings, Neglect and Collusion* (2006), available at http://www.eng.walhi.or.id/kampanye/cemar/industri/070412_buyat_summary_li/.

⁹⁹ In its GCs No. 6/1995 and No. 15/2002, the CESCR recognizes that the right to water is implicitly recognized in Arts. 11 and 12 of the ICESCR. It also adds that “water is a limited natural resource and a public good fundamental for life and health” and it is needed to produce food (right to food) and for securing livelihoods (right to gain a living by work) (CESCR GC 15/2002, par. 1, 6 and 7). “The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water” (CESCR GC 15/2002, par. 10). Finally, States’ obligations to protect the right to water encompass the act of “prevent[ing] third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority” (CESCR GC 15/2002, par. 23). The right to water is also recognized by the CEDAW (Art. 14.h) and by the CRPD (Art. 28). See CESCR, *General Comment No. 15 - The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)* (20 Jan. 2003) available at <http://daccessdds.un.org/doc/UNDOC/GEN/G03/402/29/PDF/G0340229.pdf?OpenElement>. See also CESCR, *General comment No. 6 - The economic, social and cultural rights of older persons* (8 Dec. 1995) available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/482a0aced8049067c12563ed005acf9e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/482a0aced8049067c12563ed005acf9e?Opendocument).

¹⁰⁰ As to the right to water, in its GCs No. 6/1995 and No. 15/2000, the CESCR clarified that this right was implicitly recognized in Arts. 11 and 12 of the ICESCR. It also added that “water is a limited natural resource and a public good fundamental for life and health” and it is needed to produce food (right to food) and for securing livelihoods (right to gain a living by work) (para. 1, 6 and 7). “The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.” (GC CESCR No. 15, para. 10) Finally, States’ obligations to protect the right to water encompass the act of “prevent[ing] third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority” (GC CESCR No. 15). The right to water is also recognized by the CEDAW (Art. 14.h) and by the CRPD (Art. 28).

¹⁰¹ See (1) WoW, *AngloAmerican: The Alternative Report* (Aug. 2007), available <http://www.waronwant.org/Anglo%20American%20The%20Alternative%20Report%2014777.twl> [hereinafter *WoW, AngloAmerican: The Alternative Report*] and (2) Jennifer Zerk, *Corporate Abuse in 2007: A Discussion Paper on What Changes in the Law Need to Happen*, Corporate Accountability Coalition (2007), available at http://www.corporate-responsibility.org/module_images/corporateabuse_discussionpaper.pdf.

¹⁰² See (1) ESCR-Net Corporate Accountability Working Group, *Joint NGO Submission, Consultation on Human Rights and the Extractive Industry*, Geneva, 10-11 Nov. 2005 (Final version dated 9 Dec. 2005), available at http://www.escr-net.org/usr_doc/ESCR-Net_on_HR_and_Extractive_Industry.pdf [hereinafter *ESCR-Net Extractive Industry Report*]; (2) No Dirty Gold Campaign, *What's At Stake? Tell Golden Star Resources to Respect Human Rights in Ghana*, available at <http://actionnetwork.org/campaign/bogoso/explanation>; and (3) Democracy in Action, *Tell Golden Star to Respect Human Rights in Ghana*, available at http://www.democracyinaction.org/dia/organizationsORG/earthworks/moreInfo.jsp?campaign_KEY=2432

¹⁰³ See (1) Tebtebba, *World Bank Group Financed Projects in Extractive Industries: A Case Study Compilation* (2001), available at http://www.tebtebba.org/tebtebba_files/susdev/mining/eir/wbfinancedprojects.pdf; and (2) Greenpeace International, *Mining Cases* (2002), available at http://archive.greenpeace.org/earthsummit/docs/corpcrimes_3of3.pdf.

¹⁰⁴ See (1) BHHRC, Selected cases, Freeport-McMoRan lawsuits (re West Papua), at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/Freeport->

McMoRanlawsuitsreWestPapua; (2) WoW, *Fanning the Flames, The role of British mining companies in conflict and the violation of human rights* (20 Nov. 2007), available at <http://www.waronwant.org/Fanning%20the%20Flames+15142.twl>; (3) Modrall Sperling Lawyers, *International Environmental Claims Against Mining Company Operating in Indonesia Rejected by Fifth Circuit*, Stuart Butzier (3 Apr. 2000), available at <http://www.modrall.com/0927071190913157.art>; (4) NEW YORK TIMES, *Below a Mountain of Wealth, a River of Waste*, Jane Perlez and Raymond Bonner (27 Dec. 2005), available at <http://www.globalpolicy.org/soecon/tncs/2005/1227gold.htm>; (5) Global Witness, *Paying for Protection: The Freeport Mine and the Indonesian Security Forces* (2005), available at http://www.globalwitness.org/media_library_detail.php/139/en/paying_for_protection.

¹⁰⁵ See ECHR, *Zander v. Sweden*: 18 Eur. Ct. H.R. 175 (1994) available at http://www.manskligarattigheter.gov.se/dynamaster/file_archive/020501/2cdea6d412b8333f9174c063298c8ce0/zander.doc.

¹⁰⁶ See *Rainforest Catastrophe*, *supra* note 76, at 4.

¹⁰⁷ See (1) WoW *Coca-Cola, The Alternative Report*, *supra* note 31, and (2) India Resource Center, *No Water? Drink Coke* (May 2002), available at <http://www.indiaresource.org/campaigns/coke/2003/nowaterdrinkcoke.html>.

¹⁰⁸ See (1) CAO, *Assessment Report: Complaint regarding Allain Duhangan Hydropower Project, Himachal Pradesh, India* (23 Mar. 2004), available at http://www.cao-ombudsman.org/html-english/documents/FinalAssessmentReport_23Mar05.pdf; and (2) CAO, *Allain Duhangan Hydro Power Project, India, Complaint Conclusion Report* (Mar. 2008), available at http://www.cao-ombudsman.org/html-english/documents/AllainDuhangan-Conclusionreport_and_Agreement5May07.pdf.

¹⁰⁹ See (1) Movimiento Mi Cometa, *Complaint to Compliance Advisor Ombudsman regarding the International Water Services Guayaquil Interagua C. Ltda. In Guayaquil, Ecuador* (Jan. 2008) at 3, available at <http://www.cao-ombudsman.org/html-english/documents/CAODENUNCIAFINAL-editado1.pdf>; (2) Movimiento Mi Cometa, Unitarian Universalist Service Committee, Observatorio Ciudadano de Servicios Público, *Ni Agua Ni Autoridades, El Gran Corte del Agua*, E. Joiner (Oct. 2007) at 77, available at <http://www.micometa.org.ec/descargas/Aguita%20Amarilla%20por%20Emily%20Joiner.pdf>; and (3) Movimiento Mi Cometa and UUSC, *Submission to ESCR-Net Collective Report on Business and Human Rights* (Oct. 2007), available on file at ESCR-Net.

¹¹⁰ See Centro Estudios Legales y Sociales and Asociación Civil por la Igualdad y la Justicia, *Argentina – The Privatization of Water: Unequal Access*, in *Rights and Democracy* report, *supra* note 13.

RIGHT TO LIFE, LIBERTY & SECURITY OF PERSON

¹¹¹ The UDHR states in Art. 3 that “Everyone has the right to life, liberty and security of person.” Further, the right to life is explicitly protected by a number of UN treaties, such as ICCPR (Art. 6), CRC (Art. 6), CMW (Art. 9), and CRPD (Art. 10). The HRC stated in its GC No. 6/1982 that the right to life is “the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (Art. 4)” (para. 1). Besides, from the expression “inherent right to life”, the Committee understands that this right “requires that States adopt positive measures” of protection (para. 5).

The right to liberty and security of persons is protected, for instance, by the ICCPR (Art. 9), CMW (Art. 16), CRPD (Art. 17) and CERD (5.b). The ICCPR establishes that “no one shall be subjected to arbitrary arrest or detention” and that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power” (Art. 9). In its GC No. 7/1982, the HRC underscores that persons deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (para. 2). On this same line, the CERD determines that the right to security of person encompasses the “protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution” (Art. 5).

Violations to the right to life and to the right to liberty and security may be considered war crimes, crimes against humanity or genocide, depending on the circumstances of the case (*See* Arts. 6, 7 and 8 of the Rome Statute). Such violations can be taken to the International Criminal Court either when committed by governmental officials or by other persons (Art. 27).

¹¹² See Human Rights First, *Private Security Contractors at War, Ending the Culture of Impunity* (2008), available

at <http://www.humanrightsfirst.info/pdf/08115-usls-psc-final.pdf> [hereinafter *Private Security Contractors at War*].

¹¹³ See Center for Constitutional Rights, *Current Cases: Saleh v. Titan*, available at <http://www.ccrjustice.org/ourcases/current-cases/saleh-v.-titan>; and *Private Security Contractors at War*, *supra* note 112.

¹¹⁴ See (1) Action Contre l'Impunité pour les Droits Humains (ACIDH), Association Africaine de Défense des Droits de l'Homme/African Association for the defence of Human Rights (ASADHO/KATANGA), Global Witness, Rights and Accountability in Development (RAID), *KILWA TRIAL: A Denial of Justice* (17 Jul. 2007), available at http://www.raid-uk.org/docs/Kilwa_Trial/Kilwa-chron-EN-170707.pdf; (2) ACIDH and RAID, *Joint Report on Kilwa: A Year After the Massacres of October 2004* (Oct. 2005), available at http://www.raid-uk.org/docs/Kilwa_Trial/Joint_Report_Eng.pdf; (3) RAID, *Unanswered Questions: Companies, Conflict and the Democratic Republic of the Congo* (Mar. 2004), available at http://www.miningwatch.ca/updir/DRC_unanswered_questions.pdf; (4) CAO, *CAO Audit of MIGA's Due Diligence of the Dikulushi Copper-Silver Mining Project in The Democratic Republic of the Congo* (Nov. 2005), available at <http://www.cao-ombudsman.org/html-english/documents/DikulushiDRCfinalversion02-01-06.pdf>; and (5) Mining Watch Canada, *Anvil Mining and the Kilwa Massacre, D.R. Congo: Canadian Company Implicated?* (Jun. 2005), available at http://www.miningwatch.ca/index.php?/Anvil/Anvil_Mining_Kilwa.

¹¹⁵ See (1) *Summary of IIRF Cases Under ATS* *supra* note 36; and (2) LOS ANGELES TIMES, *Occidental Sued in Human Rights Case*, Lisa Girion (25 Apr. 2003), available at <http://www.laborrights.org/end-violence-against-trade-unions/colombia/486>.

¹¹⁶ See (1) *Rights and Democracy* report, *supra* note 13; (2) Christian Aid & Philippines Indigenous Peoples Links, *Extractive Industries Report - Breaking Promises, Making Profits: Mining in the Philippines* (2004), available at http://www.piplinks.org/development_issues/mines_quarries.htm; (3) Canadian Ministry of Foreign Affairs, *Mining in Developing Countries- Corporate Social Responsibility: The Government's Response to the Report of the Standing Committee on Foreign Affairs and International Trade* (Oct. 2005) available at <http://www.international.gc.ca/assets/trade-agreements-accords-commerciaux/pdfs/scfait-response-en.pdf>; (4) Legal Rights and Natural Resources Center-Kasama sa Kalikasan [LRC-KSK/Friends of the Earth Philippines], *Unmasking the Secrets of TVI Resource Development Corporation* (2005); (5) LRNRC-KSK/Friends of the Earth Philippines, *Hear No Evil, See No Evil: Philippine Government Turning a Blind Eye*, Ingrid Gorre, Tan-awan, Vol. 6, No. 2 (2003); (6) *ESCR-Net Extractive Industry Report* *supra* note 102.

¹¹⁷ See (1) ERI, *Factsheet: What Happened at Parabe?*, available at http://www.earthrights.org/legalrelated/factsheet_what_happened_at_parabe.html; (2) ERI, *Bowoto v. ChevronTexaco Case Overview*, available at http://www.earthrights.org/site_blurbs/bowoto_v._chevrontexaco_case_history.html; (3) *Bowoto v. Chevron Texaco Corporation*, 312 F. Supp. 2d 1229 (a judicial decision in which the federal court for the Northern District of California refused to dismiss defendant corporation's motion to dismiss the plaintiff's complaint).

¹¹⁸ See (1) Via Campesina Press Release, *Armed Militia Attacks Via Campesina Encampment and Kills Activist* (22 Oct. 2007), available at <http://www.reports-and-materials.org/Via-Campesina-Brazil-22-Oct-2007.doc>; (2) Terra de Direitos, *Syngenta Seeds Report* (2006), available at <http://www.mstbrazil.org/?q=book/print/371>; (3) *ESCR-Net, Solidarity Letter in Support of Landless Workers Movement (MST)* (5 Nov. 2007), available at http://www.escr-net.org/usr_doc/TerraDireitos-SolidarityLetter_FINAL_En_1.pdf; (4) Center for International Policy, *Allied with Brazilian Agribusiness, Syngenta Resists Governor's Decree to Expropriate Site*, Americas Program Report (2007), available at <http://americas.irc-online.org/pdf/reports/0705syngenta.pdf>.

¹¹⁹ See (1) ERI, *Wiwa v. Royal Dutch Shell Case History* (2006), available at http://www.earthrights.org/site_blurbs/wiwa_v._royal_dutch_shell_case_history.html; (2) CCR, *Current Cases: Wiwa v. Royal Dutch Petroleum, Wiwa v. Anderson and Wiwa v. Shell Petroleum Development Company*, available at <http://ccrjustice.org/ourcases/current-cases/wiwa-v.-royal-dutch-petroleum,-wiwa-v.-anderson-and-wiwa-v.-shell-petroleum-d>; (3) *Use your profit to clean up your mess*, *supra* note 77; (4) Amnesty International, *Ten Years On: Injustice and Violence Haunt the Oil Delta* (2005), available at <http://www.amnesty.org/en/library/asset/AFR44/022/2005/en/AFR440222005en.html>; (5) Amnesty International, *Nigeria: Are Human Rights in the Pipeline?* (2004), available at <http://www.amnesty.org/en/library/asset/AFR44/020/2004/en/AFR440202004en.html>.

¹²⁰ See *infra* note 276.

¹²¹ See (1) Implementation of General Assembly resolution 60/251 (15 Mar. 2006) entitled “Human Rights Council, Report of the Special Representative of the Secretary-General on the situation of human rights defenders,” Hina Jilani, Addendum, Summary of cases transmitted to Governments and replies received, A/HRC/4/37/Add.1 (27 Mar. 2007), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-37-Add-1.pdf>; and (2) *On the Front Line: Human Rights Defenders in Brazil, 2002-2005* (Dec. 2005), Justiça Global and Terra de Direitos, available at <http://www.global.org.br/docs/relatoriodefensores2005ingles.pdf>.

¹²² See Grupo de Formación e Intervención para el Desarrollo Sostenible (GRUFIDES), *Informe acerca del caso Empresa Minera Yanacocha* (2007), available on file with ESCR-Net.

¹²³ *Infra* note 270.

¹²⁴ *Infra* note 168.

¹²⁵ See (1) ERI, *Amicus Brief in Presbyterian Church of Sudan v. Talisman Energy* (2007), summary available at http://www.earthrights.org/legaldocs/presbyterian_church_of_sudan_v._talisman_energy.html, full text available at <http://www.earthrights.org/images/stories/ERI%20Talisman%20amicus.final.pdf>; (2) HRW, *Extractive Industries Report – Sudan, Oil, and Human Rights* (2003), available at <http://www.hrw.org/reports/2003/sudan1103/sudanprint.pdf>; (3) HRW, *Extractive Industries Report - Sudan, Oil, and Human Rights* (2003), available at <http://www.hrw.org/reports/2003/sudan1103/>; (4) Second Amended Complaint, *Presbyterian Church of Sudan v. Talisman Energy* (filed 18 Apr. 2003); and (5) *Presbyterian Church of Sudan v. Talisman Energy*, 453 F.Supp.2d 633 (S.D.N.Y. 2006) (granting summary judgment in favor of defendant Talisman Energy).

¹²⁶ See (1) CCR, *Current Cases: Corrie et al v. Caterpillar* (2007), available at <http://ccrjustice.org/ourcases/current-cases/corrie-et-al.-v.-caterpillar>; and (2) WoW, *Caterpillar: The Alternative Report* (2005), available at http://www.catdestroyshomes.org/downloads/WoW_Caterpillar_Report.pdf.

¹²⁷ See (1) SustainAbility, Swiss Re, Insight Investment, Foley Hoag LLP, *The Changing Landscape of Liability: A Director’s Guide to Corporate Environmental, Social and Economic Liability* (2004), available at <http://www.sustainability.com/publications/Liability/The%20Changing-Landscape-of-Liability%202004.pdf>; (2) BHHRC, *Selected Cases – Apartheid reparations lawsuits*, at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ApartheidreparationslawsuitsreSoAfrica>; (3) ONEWORLD, USA: Apartheid Victims Sue Global Corporations, Alison Raphael (13 Nov. 2002) available at <http://www.corpwatch.org/article.php?id=4856%20>; (4) *Khulumani et al. v. Barclays et al.* complaint, available at <http://www.cmht.com/pdfs/apartheid-cmpl.PDF>; and (5) *Khulumani et al. v. Barclays et al.*, 509 F3d 148 (C.A.2. 2007) (denying defendant’s petition to stay the Second Circuit’s mandate to remand the case to the trial court for further review while awaiting a petition for Supreme Court review).

¹²⁸ See (1) Cohen, Milstein, Hausfeld and Toll, *International Human Rights Cases, ExxonMobil – Aceh, Indonesia, Doe v. ExxonMobil*, available at http://www.cmht.com/cases_exxonmobilaceh.php; (2) IRA, *Cases, ExxonMobil*, available at <http://www.iradvocates.org/exxoncase.html>; and (3) BHHRC, *Selected cases, ExxonMobil lawsuit (re Aceh)*, at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ExxonMobillawsuitreAceh>.

¹²⁹ See (1) ERI, *EarthRights International Launches New Law Suit Against Chiquita for Funding, Arming, and Supporting Colombian Terrorists* (17 Jul. 2007), available at http://www.earthrights.org/legalpr/eri_launches_lawsuit_against_chiquita.html; (2) *Doe v. Chiquita Brands Official Complaint* (2007), available at http://www.earthrights.org/cbi_final_complaint.signed.pdf; (3) REUTERS, *Chiquita Sues in New York Over Killings in Colombia* (14 Nov. 2007), available at <http://www.alertnet.org/thenews/newsdesk/N14211578.htm>; (4) Law.com In House Counsel, *Blood Money Paid by Chiquita Shows Company’s Hard Choices*, Sue Riesenger (27 Nov. 2007), available at <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1195639472310>; (5) *In the Matter of Chiquita Brands International, Inc.*, Securities Exchange Act Proceeding Release No. 4492 (3 Oct. 2001), available at <http://www.sec.gov/litigation/admin/34-44902.htm>; and (6) BHHRC, *Selected Cases, Chiquita lawsuits (re Colombia)*, at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ChiquitalawsuitsreColombia>.

¹³⁰ See WEDO, *MisFortune 500, AngloGold Ashanti gold mines in Mongbwalu, supports rebel group that commits*

mass rape, available at <http://www.misfortune500.org/Company/Show.aspx?articleid=74>.

¹³¹ See *supra* note 104.

¹³² See (1) Forum for Utvikling og Miljø (ForUM) *Complaint to the Norwegian OECD National Contact Point* (20 Jun. 2005), available at http://www.oecdwatch.org/docs/ForUM_vs._%20Aker_Kvaerner_complaint.pdf and (2) Statement from the Norwegian Contact Point for OECD's Guidelines for Multinational Enterprises (1 Dec. 2005), available at http://www.oecdwatch.org/docs/ForUM_vs._Aker_Kvaerner_NCP_final_statement.pdf.

¹³³ See (1) Rights & Accountability in Development (RAID), the Human Rights Council of Australia, Children Out of Detention (ChilOut), the Brotherhood of St Laurence and the International Commission of Jurists (ICJ), *Submission to the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises concerning Global Solutions Limited (Australia) Pty Ltd.*, available at <http://www.hrca.org.au/OECD.pdf>; (2) OECD Watch, *Guide to the OECD Guidelines for Multinational Enterprises' Complaint Procedure, Lessons from Past NGO Complaints*, available at http://www.bsl.org.au/pdfs/OWguide_guidelines_3.pdf; (3) OECD Watch newsletter (Apr. 2007), available at http://www.bsl.org.au/pdfs/OW_newsletterapril07_english_2.pdf; (4) Statement by the Australian National Contact Point 'GSL Australia Specific Instance', available at http://www.bsl.org.au/pdfs/FinalStatement_GSL_Australia.pdf; and (5) Brotherhood of St. Laurence, *Detention Centers Meet NGO Demands* (20 Apr. 2006), available at <http://www.bsl.org.au/main.asp?PageId=3857>.

¹³⁴ See (1) BHHRC, *Selected cases, German cos. lawsuit (by Hereros)*, at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/GermancoslawsuitbyHereros>; (2) BBC NEWS, *German bank accused of genocide*, Duncan Bartlett (25 Sep. 2001), available at <http://news.bbc.co.uk/1/hi/business/1561463.stm>; (3) DEUTSCHE WELLE, *Germany Urges Herero to Drop Lawsuit* (5 Aug. 2004), available at <http://www.dw-world.de/dw/article/0,,1287663,00.html>; (4) BBC NEWS, *Germany admits Namibia genocide* (14 Aug. 2004), available at <http://news.bbc.co.uk/2/hi/africa/3565938.stm>.

¹³⁵ See (1) Cohen, Milstein, Hausfeld & Toll, P.L.L.C. *Files Class Action Lawsuit Against IBM* (11 Feb. 2001), available at http://www.cmht.com/cases_cwibm1.php/; and (2) Cohen, Milstein, Hausfeld & Toll, P.L.L.C., *IBM Holocaust case to be voluntarily dismissed* (29 Mar. 2001), available at http://www.cmht.com/cases_cwibm2.php.

¹³⁶ See (1) Global Witness, *Under-mining Peace, Tin: The Explosive Trade in Cassiterite in Eastern DRC* (2005), available at http://www.globalwitness.org/media_library_detail.php/138/en/under_mining_peace_tin_the_explosive_trade_in_cassiterite_in_eastern_drc; (2) RAID, *Unanswered Questions: Companies, Conflict and the Democratic Republic of Congo* (2004), available at http://www.corporate-accountability.org/eng/documents/2004/unanswered_questions.pdf; (3) WoW, *AngloAmerican: The Alternative Report* *supra* note 102; (4) HRW, *The Curse of Gold: Democratic Republic of Congo* (2005), available at <http://www.hrw.org/reports/2005/drc0505/drc0505text.pdf>; (5) Global Witness, *Afrimex(UK) Democratic Republic of the Congo: Complaint to the UK National Contact Point Under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises* (2007), available at http://www.globalwitness.org/media_library_detail.php/510/en/global_witness_calls_upon_the_uk_government_to_hol;Undermining_Peace; (6) OECD Watch, *Five Years On: A Review of the OECD Guidelines and National Contact Points* (2005), available at http://www.oecdwatch.org/docs/OECD_Watch_5_years_on.pdf; and (7) OECD Watch, *Netherlands National Contact Point Statement*, available at <http://www.oecd.org/dataoecd/5/1/38031157.pdf>.

¹³⁷ See (1) Greenpeace, *DLH: A Partner in Global Forest Crime* (2002), available at <http://www.greenpeace.org/raw/content/international/press/reports/dlh-a-partner-in-global-forest.pdf>; and (2) Greenpeace, *Liberian Timber Trade Fuels Regional Insecurity* (2002), available at <http://www.illegal-logging.info/uploads/GreenpeaceLiberiaRegionalInsecurityMarch02.pdf>.

¹³⁸ See (1) Amnesty International, *Colombia: Killings, arbitrary detentions, and death threats – the reality of trade unionism in Colombia* (2007), available at <http://www.amnesty.org/en/library/asset/AMR23/001/2007/en/dom-AMR230012007en.pdf> and (2) WoW, *AngloAmerican: The Alternative Report* *supra* note 101.

¹³⁹ *Supra* note 43.

¹⁴⁰ See WoW *Coca-Cola, The Alternative Report*, *supra* note 31.

¹⁴¹ *Supra* note 26.

¹⁴² *Supra* note 17.

¹⁴³ *Supra* note 24.

THE RIGHTS OF INDIGENOUS PEOPLES

¹⁴⁴ The rights of indigenous peoples are protected by international human rights law, including by the recently adopted UN Declaration on the Rights of Indigenous Peoples (DRIP) (2007), the ICCPR (especially Arts. 1 and 27), the CRC (especially Arts. 17, 20, 23, 29 and 30), and ILO Convention No. 169/1989.

¹⁴⁵ The right to self-determination is protected by the ICESCR (Arts. 1 and 25), the ICCPR (Art. 1), ILO Convention No. 169 (Art. 7) and DRIP (Arts. 3 and 4). Each state that all peoples have the right of self-determination by virtue of which they may freely determine their political status and freely pursue their economic, social and cultural development. In order to protect the right to self-determination, Art. 8 of the DRIP states that “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture and States shall provide effective mechanisms for prevention of, and redress for, inter alia, any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; any action which has the aim or effect of dispossessing them of their lands, territories or resources; any form of forced population transfer which has the aim or effect of violating or undermining any of their rights.”

¹⁴⁶ These rights are protected in a number of human rights treaties and in the DRIP. The right to enjoy one’s own culture is protected by the ICCPR (Art. 27), CRC (Art. 30), ILO Convention No. 169/1989 (Arts. 4.1, 5, 8 and 13) and DRIP (Arts. 11-15, 31, 33 and 34), including the right not to be subjected to forced submission (Arts. 8.1 of the DRIP) and the right to the land (Art. 8.2 of the DRIP and Arts. 14, 17 and 18 of the ILO Convention No. 169). According to the HRC (GC No. 23/1994), Art. 27 of the Covenant “provides that, in those States in which ethnic, religious or linguistic minorities exist, persons belonging to these minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The Committee observes that this Article establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant” (para. 1). Collective rights to culture have been recognized in other treaties such as the ILO Convention No. 169 (Art. 13) and the DRIP (Arts. 1, 7 and 40).

¹⁴⁷ Indigenous peoples’ right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources is also recognized by Art. 15 of the ILO Convention No. 169 and by Arts. 29 and 32 of the DRIP. The right to fully participate in the political, economic, social and cultural life of the State, as well as in decision making processes, is protected by the ILO Convention No. 169 (Art. 6) and by the DRIP (Arts. 5, 18, 19 and 23). The HRC understands that “that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. T[he right to culture] may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them” (GC No. 23, para. 7).

¹⁴⁸ The right to health is recognized by the ICESCR (Art. 12), CERD (Art. 5.e), CEDAW (Art. 10), ILO Convention No. 169 (Art. 25) and DRIP (Art. 24).

¹⁴⁹ The right to water is protected by the ICESCR (Arts. 11 and 12), CEDAW (Art. 14.h), CRPD (Art. 28) and DRIP (Arts. 25 and 32).

¹⁵⁰ The right to food is stated by the ICESCR (Art. 11).

¹⁵¹ The right to housing is protected by the ICESCR (Art. 11), CMW (Art. 43.1), and CERD (Art. 5.e). It includes the right not to be forcibly removed from one’s lands and resources (Art. 16 of the ILO Convention No. 169 and Arts. 10, 25 and 26 of the DRIP).

¹⁵² Art. 11 of the DRIP states: “Indigenous peoples have the right to practice and revitalize their cultural traditions and customs.” Art. 12 goes on: “Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.” Finally, Art. 18 states: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making

institutions.”

¹⁵³ Art. 26 of the DRIP states: “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. As such, they have the right to own, use, develop and control such lands, territories and resources that they possess.” See also Art. 32: “Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.”

¹⁵⁴ The right of indigenous peoples to fully participate in the political, economic, social and cultural life of the State, as well as in decision making processes, is protected by the ILO Convention No. 169/1989 (Art. 6) and by the DRIP (Arts. 5, 18, 19 and 23). The HRC understands “that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. T[he right to culture] may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. *The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.*” HRC, *General Comment No. 23 - The rights of minorities (Art. 27)* (8 Apr. 1994) at par. 7, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument). See also Commission on Human Rights, *Standard Setting, Preliminary working paper on the principle of free, prior and informed consent of indigenous peoples in relation to development affecting their lands and natural resources that would serve as a framework for the drafting of a legal commentary by the Working Group on this concept submitted by Antonella-Iulia Motoc and the Tebtebba Foundation*, E/Cn.4/sub.2/AC.4/2004/4 (8 Jul. 2004), available at http://www.un.org/esa/socdev/unpfii/documents/FPIC_2005_Com%20on%20Human%20Rights.pdf.

¹⁵⁵ See DRIP, Art. 32(2): “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

¹⁵⁶ See (1) Forest Peoples Program (FPP), *A Guide to Indigenous Peoples Rights in the International Labour Organization*, Fergus MacKay (2002), available at http://www.forestpeoples.org/documents/law_hr/ilo_guide_ip_rights_jul02_eng.pdf [hereinafter *A Guide to Indigenous Peoples’ Rights in the International Labour Organization*] and (2) ESCR-Net Caselaw Database, *U’wa Indigenous Community/Precautionary Measures Case No. 11.754*, available at http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=414389.

¹⁵⁷ See FPP, *Free, Prior and Informed Consent: Two Cases from Suriname* (2007), available at http://www.forestpeoples.org/documents/law_hr/fpic_suriname_mar07_eng.pdf.

¹⁵⁸ IACHR, Organization of American States, *Case 12.053 Maya Indigenous Communities and their Members, Belize*, Report No. 78/00 (5 Oct. 2000), available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Admissible/Belize12.053.htm>.

¹⁵⁹ See *supra* note 156, *A Guide to Indigenous Peoples’ Rights in the International Labour Organization*.

¹⁶⁰ See (1) *Supra* note 156, *A Guide to Indigenous Peoples’ Rights in the International Labour Organization*; (2) Colombia Human Rights Network website, Action Alert, *The Embera Katio People Under Threat by Urrá Hydroelectric Project*, available at <http://colhrnet.igc.org/urgentaction/urra.htm>; (3) Nadir, *Colombian Indigenous People Killed Opposing Dam* (10 Feb. 1999), available at <http://nadir.org/nadir/initiattiv/agp/free/colombia/puebla/urradam.htm>; (4) The Inventory of Conflict and Environment [ICE], *Urrá and the Embera-Katio (Colombia)*, Regina Kreger, ICE Case Studies (Aug. 2005), available at <http://www.american.edu/ted/ice/urra.htm>.

¹⁶¹ See (1) ESCR-Net Caselaw Database, *Case of the Mayanga (Sumo) Awas Tingni Community v. Nicaragua*, available at http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=405047; (2) S. James Anaya & Claudio Grossman, *The Case of Awas Tingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples*, ARIZONA JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW, vol. 19, no. 1 (2002), available at <http://www.indianlaw.org/sites/indianlaw.org/files/AT%20ICT%202001-09-25.pdf>; (3) INDIAN COUNTRY TODAY, *Inter-American Court Rules for Awas Tingni Indians: Decision Sets and International Precedent*, Brian Stockes (25 Sep. 2001), available at <http://www.indianlaw.org/sites/indianlaw.org/files/AT%20ICT%202001-09-25.pdf>.

¹⁶² See (1) FoE, *Glamis Gold’s Marlin Mine Project in Guatemala, Ensuring Free, Prior, Informed Consent for*

Affected Communities, available at <http://www.foe.org/camps/intl/institutions/glamiscasestudy.pdf> (2) Bank Information Center, *Glamis in Guatemala: A Project Alert on the Marlin Mine* (7 Mar. 2005), available at http://www.bicusa.org/Legacy/Marlin_mine_1_eng.pdf; (2) ESCR-Net, *ESCR-Net Extractive Industry Report supra* note 102; (3) FIAN/Misereor, *Open Pit Gold Mining: Human Rights Violations and Environmental Destruction—The Case of the Marlin Gold Mine* (Sep. 2005) available at http://www.escr-net.org/actions_more/actions_more_show.htm?doc_id=431017; and (4) Halifax Initiative Coalition, *The World Bank and Extractive Industries—The Divisive ‘Demonstration Impact’ of the Marlin Mine* (Jun. 2005) available at http://www.halifaxinitiative.org/index.php/Reports_Analysis/685.

¹⁶³ *Supra* note 68, Intermón Oxfam *Pueblos sin derechos: La responsabilidad de Repsol YPF en la Amazonía peruana*.

¹⁶⁴ *See* (1) *Supra* note 116; and (2) *ESCR-Net Extractive Industry Report, supra* note 102.

¹⁶⁵ *See* (1) Asamblea del Pueblo Guaraní de Itika Guasu (APG- Itika Guasu) and Centro de Estudios Aplicados de los Derechos Económicos, Sociales y Culturales (CEADESC), *Inspección In Situ de las Operaciones de Repsol YPF en el Campo Margarita* (Dec. 2006), available at <http://www.ceadesc.org>; (2) APG- Itika Guasu, CEADESC and Centro Estudios Regionales de Tarija (CERDET), *Impactos ambientales, sociales y culturales de REPSOL YPF en territorios indígenas de Bolivia: Monitoreo indígena independiente* (Dec. 2005), available at <http://www.ceadesc.org> and (3) CEADESC, *Submission to ESCR-Net Collective Report on Business and Human Rights* (Oct. 2007), available on file at ESCR-Net; and (4) Intermón Oxfam, *REPSOL YPF EN EL CHACO BOLIVIANO: El pueblo guaraní en el proceso de defensa de sus derechos* (Aug. 2007), available at http://www.intermonoxfam.org/UnidadesInformacion/anexos/8590/070810_NotaInfo_Repsol_YPF.pdf.

¹⁶⁶ *See* (1) CAO, *Chile: Pangué Case Summary*, available at http://www.cao-ombudsman.org/html-english/complaint_pangué.htm; (2) CIEL, *Indigenous Peoples, Energy, and Environmental Justice: The Pangué/Ralco Hydroelectric Project in Chile’s Alto BióBió*, Marcos Orellana (2004), available at http://www.ciel.org/Publications/Ralco_Brief_22Jul04.pdf; (3) Institute of Indigenous Studies, *The Ralco Dam and the Pehuenche People in Chile: Lessons from an Ethno-Environmental Conflict*, José Aylwin (2002), available at [http://www.historiaecologica.cl/Ralco%20\(Aylwin\).pdf](http://www.historiaecologica.cl/Ralco%20(Aylwin).pdf); (4) World Rainforest Movement, *Bulletin: South America – Local Struggles and News, Chile: The Struggle of the Pehuenche Against the Ralco Dam* (2001), available at <http://www.wrm.org.uy/bulletin/42/Chile.html>.

¹⁶⁷ *See* (1) Suzana Sawyer, *Crude Chronicles: Indigenous Politics, Multinational Oil, and Neoliberalism* (Duke University Press, 2004); (2) *supra* note 156, *A Guide to Indigneous Peoples’ Rights in the International Labour Organization*; (3) ESCR-Net Caselaw Database, *Case Summary of Federación Independiente del Pueblo Shuar del Ecuador*, c. Arco Oriente s/ Amparo (1 Apr. 2000), available at http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=406016; (4) Human Rights Dialogue, *The Meaning of a Legal Victory in the Ecuadorian Amazon* (6 Apr. 2000), Tamara Jezic and Chris Jochnick, Series 2, No. 2, available at http://www.cceia.org/resources/publications/dialogue/2_02/articles/616.html.

¹⁶⁸ *See* (1) Centro de Derechos Económicos, Sociales y Culturales (CDES), *Informe: El Caso del Pueblo Kichwa de Sarayaku: Amazonía Ecuatoriana, Submission to ESCR-Net Collective Report on Business and Human Rights* (Oct. 2007), available on file with ESCR-Net. (2) Pueblo Sarayaku, *Submission to ESCR-Net Collective Report on Business and Human Rights* (Sep. 2007), available on file with ESCR-Net. (3) *ESCR-Net Extractive Industry Report supra* note 102 at 18. (4) Melo, Mario and CDES, *El Caso Sarayaku y los Derechos Humanos: ¿Porqué Sarayaku se va constituyendo en un Caso Emblemático de Exigibilidad de Derechos a nivel internacional?* (Aug. 2004); (5) Inter-American Court on Human Rights (IACtHR), *Medidas Provisionales Solicitadas por la Comisión Interamericana de Derechos Humanos Respecto de la República del Ecuador: Caso Pueblo Indígena de Sarayaku: Resolución de la Corte Interamericana de Derechos Humanos* (Jul. 2004), available at: <http://www.acnur.org/biblioteca/pdf/2850.pdf> (6) IACtHR, *Medidas Provisionales: Caso Pueblo Indígena de Sarayaku: Resolución de la Corte Interamericana de Derechos Humanos* (Jun. 2005), available at <http://www.cidh.org/Indigenas/MedidasCautelares.htm>.

¹⁶⁹ *See* Oxfam Australia, *Mining Ombudsman Case Report: Didipio Gold and Copper Mine* (2007), available at <http://www.oxfam.org.au/campaigns/mining/ombudsman/cases/didipio/docs/2007-Didipio-Case-Report.pdf>.

¹⁷⁰ *See e.g.* DRIP, Art. 10:” Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

¹⁷¹ See (1) ActionAid International, *Vedanta Cares? Busting the Myths About Vedanta's Operation in Lanjigarh, India* (2007), available at http://www.actionaid.org/assets/pdf%5Cvedanta_report.pdf; (2) Roger Moody et al., *Ravages Through India: Vedanta Resources plc Counter Report 2005*, Nostromo Research & India Resource Center (2005), available at <http://www.indiaresource.org/issues/globalization/2005/RavagesThroughIndia28.pdf>; (3) mines, minerals, and PEOPLE, *Global MNCs and Endangered Adivasis: The Case of Vedanta Alumina Refinery and the Niyamgiri Mines, Orissa, India* (2005); (4) ESCR-Net *Extractive Industry Report supra* note 102.

¹⁷² See (1) *supra* note 156, *A Guide to Indigenous Peoples' Rights in the International Labour Organization* and (2) Minority Rights Group International & Anti-Slavery International, *The International Labour Organization: A Handbook for Minority and Indigenous Peoples*, Chanra Roy and Mike Kaye (2002), available at <http://www.minorityrights.org/download.php?id=59>.

¹⁷³ See CAO, *Botswana – Kalahari Diamonds* at http://www.cao-ombudsman.org/html-english/complaint_botswana.htm and CAO, *Assessment Report Complaint Regarding IFC's Investment in Kalahari Diamonds Ltd. Botswana* (Jun. 2005), available at http://www.cao-ombudsman.org/pdfs/Kalahari_24Jun05.pdf.

¹⁷⁴ Art. 29 of the DRIP states for example: “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.”

¹⁷⁵ See Report on the Effects of Canadian Transnational Corporate Activities on the Western Shoshone Peoples of the Western Shoshone Nation, Submitted to the CERD, 70th Session, by Western Shoshone Defense Project, in Relation to Canada's 17th and 18th Periodic Reports to CERD (Feb. 2007) available on file at ESCR-Net.

¹⁷⁶ See (1) ESCR-Net Caselaw Database, *Comunidad Yanomami: Case No. 7615, Resolución 12/85*, at http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=412519; (2) ICE, *Conflict and Human Rights in the Amazon: The Yanomami*, Stephanie Bier, *ICE Case Studies No. 19* (2005), available at <http://www.american.edu/ted/ice/yanomami.htm>; and (3) Survival: The Movement for Tribal Peoples website, *Yanomami Action Alert*, available at <http://www.survival-international.org/tribes/yanomami>.

¹⁷⁷ *Supra* note 171.

¹⁷⁸ See (1) FPP, *A Briefing on Indigenous Peoples' Rights at the United Nations Human Rights Council*, Fergus MacKay (2001), available at http://www.forestpeoples.org/documents/law_hr/unhrc_fpp_brief_dec01_eng.shtml#V_C; (2) HRC, Communication No. 167/1984: Canada (1990), CCPR/C/38/D/167/1984, available at <http://www.unhchr.ch/tbs/doc.nsf/0/c316bb134879a76fc125696f0053d379?Opendocument>; (3) Amnesty International, *Time is Wasting: Respect for the Land Rights of the Lubicon Cree Long Overdue* (2003), available at <http://www.amnesty.org/en/library/asset/AMR20/001/2003/en/AMR200012003en.html>.

¹⁷⁹ See (1) ERI, Racimos de Ungurahui, Amazon Watch, *A Legacy of Harm, Occidental Petroleum in Indigenous Territory in the Peruvian Amazon* (Apr. 2007), available at http://www.earthrights.org/files/Reports/A_Legacy_of_Harm.pdf; (2) ERI, *Indigenous Peruvians Sue Occidental Petroleum* (10 May 2007), available at http://www.earthrights.org/legalfeature/indigenous_peruvians_sue_occidental_petroleum.html; and (3) BBC NEWS, *Peru Tribe Battles Oil Giant Over Pollution*, Dan Collins (24 Mar. 2008), available at <http://news.bbc.co.uk/2/hi/americas/7306639.stm>.

¹⁸⁰ See *supra* note 165.

¹⁸¹ *Supra* note 166.

¹⁸² See *Amazon Defense Coalition Submission, supra* note 76, at 3.

¹⁸³ See *Rainforest Catastrophe supra* note 76, at 15.

¹⁸⁴ *Supra* note 176.

¹⁸⁵ See (1) Derecho, Ambiente y Recursos Naturales (DAR), *Informe Especializado las Obligaciones del Estado Peruano sobre la Protección de los Pueblos Indígenas en Aislamiento y en Contacto Inicial de la Reserva Territorial Nahua, Kugapakori, Nanti y Otros*, Gamboa Balbín, C. and Cueto, V. (Sep. 2007); and (2) DAR, *Informe Legal: Superposición Irregular de Lotes de Hidrocarburos Con Áreas Naturales Protegidas y Reservas Territoriales Existentes*, Gamboa Balbín, C. and Da Roit Bao, G. (Jun. 2007).

¹⁸⁶ See (1) World Rainforest Movement, *Bulletin: South America – Local Struggles and News, Colombia: Oil Palm*

Plantations on Usurped Communal Lands (2005), available at <http://www.wrm.org.uy/bulletin/100/SA.html#Colombia>; (2) Amnesty International, *Urgent Action - Colombia: Fear for Safety*, Enrique Petro (2006), available at <http://asiapacific.amnesty.org/library/Index/ENGAMR230372006?open&of=ENG-COL>; (3) World Rainforest Movement, *Oil Palm – From Cosmetic to Biodiesel: Colonization Lives On* (2006), available at <http://www.wrm.org.uy/plantations/material/Palm2.pdf>.

¹⁸⁷ *Supra* note 162.

RIGHT TO HOUSING, FORCED EVICTIONS & FORCED DISPLACEMENTS

¹⁸⁸ The right to adequate housing is protected by the ICESCR (Art. 11), the CMW (Art. 43.1), and the CERD (Art. 5.e). The C ESCR observed in its GC No. 4/1991 “that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats [and that] forced evictions are prima facie incompatible with the requirements of the Covenant” (GC CESCRC No. 7, para. 1).

¹⁸⁹ *See* CESCRC GC No. 4/1991.

¹⁹⁰ The CESCRC observed in its GC No. 4/1991 “that all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats [and that] forced evictions are prima facie incompatible with the requirements of the Covenant” (GC CESCRC No. 7, par. 1).

¹⁹¹ *See* CESCRC in 1997 stated in GC No. 7 that forced eviction should mean “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (para. 3). It also added that “evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights” (para. 16).

¹⁹² *See* CESCRC, GC No. 7, The Right to Adequate Housing: forced evictions (Art. 11(1), UN Doc. E/C.12/1997/4, para 3). Special mention is made by the CESCRC in para. 7 of GC 7 of certain forms of evictions that are specifically prohibited under international law, including those carried out “in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, [and] unbridled speculation in land.”

¹⁹³ *See* UNHCR, *Handbook for the Protection of Internally Displaced Persons, Part V: Protection Risks, Prevention, Mitigation, Action Sheet 1: Forced and Unlawful Displacement* (Provisional Release 2007), at 164, available at <http://www.unhcr.org/protect/PROTECTION/4794b2d52.pdf>.

¹⁹⁴ *See* CESCRC GC 7, para. 13 and 15.

¹⁹⁵ *See* CESCRC GC 7, para. 16.

¹⁹⁶ *See* (1) Centre on Housing Rights & Evictions (COHRE), *Global Survey on Forced Evictions: Violations of Human Rights* (Dec. 2006), available at http://www.sarpn.org/documents/d0002751/Forced_evictions_COHRE_Dec2006.pdf [hereinafter *COHRE Global survey*]; (2) UN Mission in Liberia, Human Rights and Protection Section, Bi-Monthly Report Oct. – Nov. 2005 (Jan. 2006), available at http://unmil.org/documents/human_rights_oct_nov05.pdf; and (3) THE ANALYST, *LAC perpetrators will be rounded up, Pres. Johnson-Sirleaf Assures* (Nov. 20, 2007), available at http://www.analystliberia.com/lac_perpetrators_will_be_rounded_up_nov19_07.html.

¹⁹⁷ *See* (1) HRW, *They Pushed Down the Houses: Forced Evictions and Insecure Land Tenure for Luanda’s Poor* (May 2007), available at <http://hrw.org/reports/2007/angola0507/angola0507web.pdf>; and (2) Amnesty International, *Angola: Mass Forced Evictions in Luanda - A Call for a Human Rights-Based Housing Policy* (Nov. 2003), available at <http://www.amnesty.org/en/library/asset/AFR12/007/2003/en/dom-AFR120072003en.pdf>.

¹⁹⁸ *See* (1) Amnesty International, *Nigeria: Making the Destitute Homeless – Forced Evictions in Makoko, Lagos State* (Apr. 2005), available at <http://www.amnesty.org/en/library/asset/AFR44/001/2006/en/dom-AFR440012006en.html>; (2) Association of Eviction Victims of Port Harcourt Waterfront, *Written Intervention submitted to the Commission of Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Minorities*, 11th Session (30 May – 3 Jun. 2005), available at http://www2.ohchr.org/english/issues/minorities/docs/11/Port%20Harcourt_3a.doc; (3) *COHRE Global survey*

supra note 196.

¹⁹⁹ See (1) Asian Human Rights Commission (AHRC), *Cambodia: Authorities Destroy Peoples' Livelihoods and Freedom of Enterprise*, Urgent Appeals (30 Jun. 2006), available at <http://www.ahrchk.net/ua/mainfile.php/2006/1814/>; (2) Kenneth Fernandes, Sahnakum Teang Tnaut and Housing Rights Task Force, *A Summary of 2006 Evictions in Cambodia*, CAMBODIA EVICTION MONITOR, Issue No. 1 (Jun. 2007), available at <http://www.cohre.org/store/attachments/Eviction%20Monitor%20Jan-Dec%202006.pdf>; (3) *COHRE Global survey supra* note 196.

²⁰⁰ See *infra* note 344.

²⁰¹ See *Can Alcan Aim to be the Best?*, *infra* note 344.

²⁰² See (1) Amnesty International, *Mexico: Human Rights At Risk in La Parota Dam Project* (2007), available at <http://www.amnesty.org/en/library/asset/AMR41/029/2007/en/dom-AMR410292007en.html> and (2) Amnesty International Canada, *Mexico, Lands and Life at Risk, Human Rights Threatened by Proposed Dam* (2008), available at http://www.amnesty.ca/take_action/actions/mexico_dam_opponents_at_risk.php.

²⁰³ See *WoW, AngloAmerican: The Alternative Report supra* note 101.

²⁰⁴ See (1) *ECA-Watch Race to the Bottom, Take II, supra* note 92; (2) *COHRE Global survey supra* note 196; and (3) FASE, *Economic, Social, Cultural, and Environmental Rights Violations in Eucalyptus Monoculture: Aracruz Cellulose and the State of Espírito Santo* (Aug. 2002), available at http://www2.fase.org.br/downloads/2004/09/553_relat_desc_es_ing.pdf.

²⁰⁵ See (1) Environmental Law Institute, *Tanzania: Human Rights Advocacy and the Bulyanhulu Gold Mine*, Tunda A.M. Lissu, available at <http://www.eli.org/pdf/advocacytoolscasesstudies/casestudy.tanzania.final.pdf>; (2) Lawyers' Environmental Action Team (LEAT), *Robbing the Poor to Give to the Rich: Human Rights Abuses and Impoverishment at the MIGA-Backed Bulyanhulu Gold Mine*, Submission to the Extractive Industries Review Board of the World Bank, Maputu, Mozambique (Jan. 2003), available at <http://www.lead.or.tz/activities/bulyeir.submission/>; (3) Tebtebba, *World Bank Group Financed Projects in Extractive Industries: A Case Study Compilation*, available at http://www.tebtebba.org/tebtebba_files/susdev/mining/eir/wbfinancedprojects.pdf. See also CAO, *Tanzania – Bulyanhulu Gold Mine* (2006), available at <http://www.cao-ombudsman.org/html-english/complaintBulyanhulu.htm>; and (4) Bank Information Center, *Bulyanhulu Gold Mine Project* (2006), available at <http://www.bicusa.org/en/Project.Updates.4.aspx>.

²⁰⁶ See IRN and Corner House, *A Critical Juncture for Peace, Democracy, and the Environment: Sudan and the Merowe/Hamadab Dam Project* (May 2005), available at <http://internationalrivers.org/files/050428merowe.pdf>.

²⁰⁷ See (1) THE TIMES, *Party bows to people power as villagers resist state land grab*, Jane McCartney (22 Jul. 2005), available at <http://www.timesonline.co.uk/tol/news/world/article546547.ece>; (2) *COHRE Global survey supra* note 197; (3) TERRA DAILY, *Hebei Incident Shows China's Dark Side*, Edward Lanfranco (20 Jul. 2005), available at <http://www.terradaily.com/news/china-05zzzzt.html>; (4) China Internet Information Center website, *Seven Killed in Clash Over Land in Hebei* (14 Jun. 2005), available at <http://www.china.org.cn/english/2005/Jun/131937.htm>; (5) WASHINGTON POST, *Chinese peasants attached in land dispute*, Philip Pan (15 Jun. 2005), available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/14/AR2005061401542.html>.

²⁰⁸ See *WoW, AngloAmerican: The Alternative Report supra* note 101.

²⁰⁹ *Id.*

²¹⁰ See (1) FIAN, *Imminent Eviction in Singur, West Bengal, Livelihoods of 15,000 at Stake*, available at <http://fianwb.org/fian-news.html>; and (2) FIAN, *Singur, West Bengal - Urgent Action*, available at <http://fianwb.org/downloads/0615singur.pdf>.

²¹¹ *Supra* note 204.

²¹² *Supra* note 202.

²¹³ *Supra* note 210.

²¹⁴ *Supra* note 171.

²¹⁵ (1) BURMA DIGEST, *Thamanthi Dam & Kuki People's Fate: Interview with Thangjulan, Leader of Kuki Students'*

Democratic Front and Anti-Thamanthi Dam Campaign (30 Jul. 2006), available at <http://www.tayzathuria.org.uk/bd/2006/7/30/kuki.htm>; (2) *Kukis Voice Against Thamanthi Dam, Demonstrations and Other Activities*, available at <http://www.freewebs.com/anti-htamanthi/activitiesmediacoverup.htm>.

²¹⁶ See FIAN, *Parallel Report: The Right to Adequate Food in India, Reference: second to fifth periodic reports of India*, UN Doc. E/C.12/IND/5 submitted to the CSCR, 40th Session (Apr. 2008) at 62-63, available at http://huachen.org/english/bodies/cescr/docs/info-ngos/ParallelReport_India_FIAN.pdf.

²¹⁷ *Infra* note 344.

²¹⁸ *Supra* note 202.

²¹⁹ *Supra* note 204.

²²⁰ *Supra* note 206.

²²¹ See (1) *Ilisu Dam Campaign & Corner House, Leaked Report Reveals Major Problems with Ilisu Resettlement: An Ilisu Dam Campaign Briefing on the 'Ilisu Dam's Resettlement Action Plan' (RAP) – Achieving International Best Practice* (Sep. 2000), available at <http://www.thecornerhouse.org.uk/item.shtml?x=52194#index-14-00-00-00>; and (2) *COHRE Global survey*, *Supra* note 196.

²²² See *WoW, AngloAmerican: The Alternative Report* *supra* note 101.

²²³ *Supra* note 210.

²²⁴ *Supra* note 207.

²²⁵ *Supra* note 197.

²²⁶ *Supra* note 198.

²²⁷ *Supra* note 205.

²²⁸ *Supra* note 196.

²²⁹ *Supra* note 204.

²³⁰ See *supra* note 125.

²³¹ See CESCR GC 7, para. 13 and 15. The OHCHR recommends “that all persons subjected to any forced eviction not in full accordance with the Comprehensive Human Rights Guidelines On Development-Based Displacement, should have a right to compensation for any losses of land, personal, real or other property or goods, including rights or interests in property not recognized in national legislation, incurred in connection with a forced eviction. Compensation should include land and access to common property resources and should not be restricted to cash payments.” UN OHCHR Expert Seminar on ‘The Practice of Forced Evictions’, Comprehensive Human Rights Guidelines on Development-Based Displacement, UN document: E/CN.4/Sub.2/1997/7.

²³² *Supra* note 205.

²³³ See (1) Bank Information Center, *Nigerian Communities Register Complaint With World Bank Inspection Panel Over West Africa Gas Pipeline* (11 May 2006), available at <http://www.bicusa.org/en/Article.2775.aspx>; (2) ERA/FOE, *The Myths of the West African Gas Pipeline* (Jan. 2006), available at <http://www.foei.org/en/publications/pdfs/wagp-inet.pdf>; (3) World Bank Inspection Panel, Report and Recommendation on Request for Inspection, Re: Request for Inspection, Ghana: West African Gas Pipeline Project (IDA Guarantee No. B-006-0-GH) (2006), available at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/FinalEligibilityreportJuly7.pdf>.

²³⁴ *Supra* note 216.

²³⁵ *Supra* note 221.

²³⁶ *Supra* note 210.

²³⁷ *Supra* note 206.

²³⁸ *Supra* note 207.

²³⁹ *Infra* note 344.

²⁴⁰ See (1) Inter-American Development Bank, *Cana Brava Hydroelectric Power - Project Abstract of Panel Report and IDB Management Response* (2005), Para. 1.3, available at

<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=671013>; and (2) Movimento dos Atingidos por Barragens (MAB), *Violações de direitos humanos dos atingidos pela Barragem Cana Brava* (2007), available on file with ESCR-Net.

²⁴¹ *Supra* note 215.

²⁴² *Supra* note 199.

²⁴³ *Supra* note 198.

²⁴⁴ *Infra* note 344.

²⁴⁵ See (1) Probe International, *Electricité de France Accused of Violating OECD Guidelines in Nam Theun 2 Dam Project in Laos* (2004), available at <http://www.eprf.ca/pi/index.cfm?DSP=content&ContentID=12001>; (2) IRN, *Nam Theun 2 Delays Reaching Critical Stage: International Rivers Network Report* (2008), available at <http://www.internationalrivers.org/node/2519>; (3) IRN, *Nam Theun 2, Trip Report and project Update* (2008) at 1, available at <http://internationalrivers.org/files/IR%20NT2%20Trip%20Report%20Feb%202008.pdf>; (4) Proyecto Gato, Amis de la Terre, *French Utility Faces OECD Scrutiny For Laotian Dam Project* (10 Feb. 2005), available at http://www.business-humanrights.org/Categories/Individualcompanies/E/EDF?&batch_start=71.

²⁴⁶ *Supra* note 206.

²⁴⁷ See *WoW, AngloAmerican: The Alternative Report*, *Supra* note 101.

²⁴⁸ *Supra* note 199.

²⁴⁹ *Supra* note 198.

FREEDOM OF EXPRESSION & RIGHT TO INFORMATION

²⁵⁰ The right to freedom of expression is recognized by the ICCPR Art. 19, ICESR (Art. 5.d), CRC (Arts. 12 and 13), CMW (Art. 13) and CRPD (Art. 7.3), while the right to receive and impart information is protected by the ICCPR (Art. 19) and CRC (Art. 13).

²⁵¹ See, for example, the *Report by the Special Rapporteur on Freedom of Opinion and Expression*, E/CN.4/2000/63 (April 2000), available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/16583a84ba1b3ae5802568bd004e80f7?Opendocument>, which further delineates the meaning of this human right.

²⁵² The right to participate in public life is independently recognized by the ICCPR (Art. 25), CERD (Art. 2) and CEDAW (Art. 14.2). In its GC No. 25/1996, the HRC stipulated that “Art. 25 [of the ICCPR] deals with the right of individuals to participate in those processes which constitute the conduct of public affairs.” See also Right to freedom of opinion and expression, C.H.R. res. 1997/27, ESCOR Supp. (No. 3) at 100, U.N. Doc. E/CN.4/1997/27 (1997).

²⁵³ See for example Principles 14 and 23 of the OECD Principles for Private Sector Participation in Infrastructure (20 May 2007) available at <http://www.oecd.org/dataoecd/41/33/38309896.pdf>.

²⁵⁴ See (1) HRW, “*Race to the Bottom*”, *Corporate Complicity in Chinese Internet Censorship*, Volume 18, No. 8(c) (2006), available at <http://www.hrw.org/reports/2006/china0806/china0806web.pdf>; (2) Amnesty International USA, *People’s Republic of China, State Control of the Internet in China* (2007), available at <http://www.amnestyusa.org/document.php?lang=e&id=50A38A55EB758C0C80256C72004773CD>; (3) Amnesty International USA, Testimony before the Congressional Human Rights Caucus, The United States Congress (2007), available at <http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20060201001>; and (4) Amnesty International, *Undermining Freedom of Expression in China, The Role of Yahoo!, Microsoft and Google* (2006), available at <http://www.amnesty.org/en/library/asset/POL30/026/2006/en/dom-POL300262006en.pdf>.

²⁵⁵ See *People’s Republic of China, State Control of the Internet in China*, *supra* note 254.

²⁵⁶ See (1) Rights and Democracy, *Tibet - Tracking Dissent on the High Plateau: Communications technology on the Gormo-Lhasa railway* (2005), available at http://www.dd-rd.ca/site/_PDF/publications/globalization/hria/Tibet%20-%20REPORT.pdf and (2) *Rights and Democracy* report *supra* note 13.

²⁵⁷ See, for example, Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment (14-16 Jan. 2002), *Background Paper No. 1, Human Rights and Environment Issues in Multilateral Treaties Adopted between*

1991 and 2001, Dinah Shelton, available at <http://www.unhchr.ch/environment/bp1.html>.

²⁵⁸ See for example United Nations Economic Commission for Europe (UNECE) Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991); UNECE Convention on Access to Information, Public Participation in Decision Making and Access to Justice in International Environmental Matters (Aarhus 1998); Principle 10 of the Rio Declaration on Environment and Development (1992); World Bank Operational Policy 4.01 in World Bank Operational Manual (1999) and the Framework Convention on Climate Change (1992).

²⁵⁹ The right to access to information is also fundamental to other human rights, such as the right to water and the right to health. In its GC No. 15/2002, the CESCR determines that protection to the right to water should encompass “right to seek, receive and impart information concerning water issues” (par. 12). In its GC No. 14/2000, the Committee recognizes that the right to health is “closely related [...] to access to information” (par. 3 and 12).

²⁶⁰ See ECHR, *Case of Guerra and others v. Italy* (116/1996/735/932), Judgment Strasbourg (19 Feb. 1998), available at <http://www.worldlii.org/eu/cases/ECHR/1998/7.html>.

²⁶¹ See (1) Justice Initiative, ARTICLE 19, Libertad de Información Mexico, Asociación Civil, Instituto Prensa y Sociedad (IPYS) of Peru and Access Info Europe. *Amicus brief* (Brief presented before the IACtHR, Case No. 12108, *Marcel Claude Reyes and others v. Chile*, in Mar. 2006), available at http://www.justiceinitiative.org/db/resource2?res_id=103162; (2) IACHR, *Annual Report of the IACHR* (2006) at para. 556, available at <http://www.cidh.org/annualrep/2006eng/Chap.3v.htm>.

²⁶² See *Petición de Caso La Oroya*, *supra* note 85 at 61.

²⁶³ See *Use your profit to clean up your mess*, *supra* note 77 at 33 - 35.

²⁶⁴ See *Supra* note 245.

²⁶⁵ See *ECA-Watch Race to the Bottom, Take II*, at 46-52, *supra* note 92.

²⁶⁶ See (1) FoE Netherlands, *Policy, practice, pride and prejudice - Review of legal, environmental and social practices of oil palm plantation companies of the Wilmar Group in Sambas District, West Kalimantan* (2007), available at http://www.foeeurope.org/publications/2007/Wilmar_Palm_Oil_Environmental_Social_Impact.pdf; (2) Oxfam International. *Bio-fuelling Poverty Why the EU renewable-fuel target may be disastrous for poor people* (2007), available at http://www.oxfam.org/en/files/bn_biofuelling_poverty_0711.pdf/download; (3) FoE, *Greasy palms – palm oil, the environment and big business* (2003), available at http://www.foe.co.uk/resource/reports/greasy_palms_summary.pdf; (4) CAO, *Indonesia – Wilmar Group* at http://www.cao-ombudsman.org/html-english/ombudsman_complaint_indonesia.htm; and (5) BBC NEWS, *Losing land to palm oil in Kalimantan*, James Painter (3 Aug. 2007), available at <http://news.bbc.co.uk/2/hi/asia-pacific/6927890.stm>.

²⁶⁷ See *ECA-Watch Race to the Bottom, Take II*, *supra* note 92.

²⁶⁸ See <http://www.oecdwatch.org/docs/press%20release%20english.pdf>.

²⁶⁹ *Supra* note 240.

²⁷⁰ See Comisión Ecuémica de Derechos Humanos (CEDHU), *Submission to ESCR-Net Collective Report on Business and Human Rights* (Sep. 2007), available in Spanish on file at ESCR-Net.

²⁷¹ Acción por los Cisnes, *Demanda Ante el Tribunal Latinoamericano del Agua* (Jan. 2005) at 21-22, available at http://www.accionporloscisnes.org/documentos/demanda_ante_tribunal.pdf.

²⁷² See (1) International Baby Food Action Network, *ICDC Focus, Outrageous Claims* (May 2005), available at <http://www.ibfan.org/english/pdfs/icdcclaims05.pdf>; (2) Baby Milk Action, *Help the Philippines stand up to company bullying* at <http://www.babymilkaction.org/CEM/cemnov06.html>; (3) Baby Milk Action, *Nestle defends targeting mothers with infant formula leaflets in Bangladesh*, at <http://www.babymilkaction.org/CEM/cemjune07.html>; (4) THE GUARDIAN, *Milking it*, Joanna Moorhead (15 May 2007), available at <http://www.guardian.co.uk/business/2007/may/15/medicineandhealth.lifeandhealth>.

²⁷³ *Supra* note 77.

²⁷⁴ *Supra* note 266.

²⁷⁵ *Supra* note 264.

²⁷⁶ See (1) Mesa técnica de apoyo al caso Majaz, *Una cronología del caso Majaz*, available at <http://www.todosobremajaz.com/informes/Una%20cronologia%20del%20Caso%20Majaz.pdf>; (2) Oxfam Internacional, IEP, CIPCA, PSG, *Minería y Desarrollo en el Perú, Con Especial Referencia al Proyecto Río Blanco, Piura*, A. Bebbington et al. (2007), available at http://www.perusupportgroup.org.uk/pdfs/PSG_reporte_mineria.pdf; (3) PERU, Defensoría del Pueblo, *Informe defensoral*, INFORME N° 001 -2006/ASPMA-MA, available at <http://www.todosobremajaz.com/informes/INFORME%20DEFESORIAL%20-%20MAJAZ.pdf>; (4) Milagros Salazar, MINERÍA-PERÚ: Delito de lesa fotocopia, IPS (2008), available at <http://ipsnoticias.net/nota.asp?idnews=88005>; (5) Vicariato del Medio Ambiente de Jaén (Peru) and Comité Académico Técnico de Asesoramiento a Problemas Ambientales - CATAPA (Belgium), *Informe acerca del caso Empresa Minera Majaz* (2007), available on file with ESCR-Net; (6) Amnesty International, *Peru: Amnesty International calls for guarantees that human rights will be respected during protests in Piura and Cajamarca* AI Index: AMR 46/008/2005 (17 Aug. 2005), available at <http://www.amnesty.org/en/library/info/AMR46/008/2005>.

²⁷⁷ See *supra* note 270.

²⁷⁸ See *infra* notes 144-187.

RIGHT TO AN EFFECTIVE REMEDY

²⁷⁹ UDHR, Art. 8. See also UDHR, Arts. 10 and 11; ICCPR Arts. 2 (3), 9 and 14; the CRC, Arts. 12(2) and 40; CERD, Art. 6; the Convention Against Torture, Arts. 13 and 14; Declaration on the Protection of All Persons from Enforced Disappearance Arts. 9 and 13; the Declaration on Human Rights Defenders Art. 9; and ECHR Art. 13.

²⁸⁰ ICCPR, Art. 2 states: “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; and (c) To ensure that the competent authorities shall enforce such remedies when granted.”

²⁸¹ *Id.*; ICCPR Art. 14 and 26; UDHR, Art. 7; HRC, GC 31, *Nature of the General Legal Obligation on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004) at paras. 15-20.

²⁸² *Supra* note 270.

²⁸³ *Supra* note 261.

²⁸⁴ *Supra* note 158.

²⁸⁵ *Supra* note 176.

²⁸⁶ *Supra* note 168.

²⁸⁷ *Supra* note 161.

²⁸⁸ *Supra* note 157.

²⁸⁹ *Supra* note 85.

²⁹⁰ *Supra* note 84.

²⁹¹ *Supra* note 175.

²⁹² See for more on access to justice in the Inter-American System of Human Rights, Inter-American Commission on Human Rights, *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System Of Human Rights*, OEA/Ser.L/V/II.129, Doc. 4 (September 2007), available at <http://www.cidh.org/pdf%20files/ACCESS%20TO%20JUSTICE%20DESC.pdf>.

²⁹³ *Supra* note 260.

²⁹⁴ *Supra* note 83.

²⁹⁵ *Supra* note 105.

²⁹⁶ The Alien Tort Statute (ATS) of 1789 grants jurisdiction to US Federal Courts over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." Many recent cases use ATCA to sue transnational corporations for violations of international law in countries outside the US.

- ²⁹⁷ *Supra* note 119.
- ²⁹⁸ *Supra* note 117.
- ²⁹⁹ *Supra* note 128.
- ³⁰⁰ *Supra* note 104.
- ³⁰¹ *Supra* note 45.
- ³⁰² *Supra* note 73.
- ³⁰³ *Supra* note 115.
- ³⁰⁴ *Supra* note 31.
- ³⁰⁵ *Supra* note 26.
- ³⁰⁶ *Supra* note 125.
- ³⁰⁷ *Supra* note 126.
- ³⁰⁸ *Supra* note 71.
- ³⁰⁹ *Supra* note 82.
- ³¹⁰ *Supra* note 76.
- ³¹¹ *Supra* note 179.
- ³¹² *Supra* note 122.
- ³¹³ *Supra* note 36.
- ³¹⁴ *Supra* note 12.
- ³¹⁵ *Supra* note 92.
- ³¹⁶ *Supra* note 108.
- ³¹⁷ *Supra* note 166.
- ³¹⁸ *Supra* note 81.
- ³¹⁹ *Supra* note 233.
- ³²⁰ *Infra* note 341.
- ³²¹ *Supra* note 109.
- ³²² *Supra* note 91.
- ³²³ *Supra* note 114.
- ³²⁴ *Supra* note 173.
- ³²⁵ *Supra* note 22.
- ³²⁶ *Supra* note 270.
- ³²⁷ *Supra* note 114.
- ³²⁸ *Supra* note 137.
- ³²⁹ *Supra* note 133.
- ³³⁰ *Supra* note 14.
- ³³¹ *Supra* note 18.
- ³³² *Supra* note 29.
- ³³³ *Supra* note 264.
- ³³⁴ *Supra* note 28.
- ³³⁵ *Supra* note 81.
- ³³⁶ *Supra* note 268.
- ³³⁷ *Supra* note 270.

³³⁸ *Supra* note 132.

³³⁹ *Supra* note 136.

³⁴⁰ *See supra* note 71.

³⁴¹ *See* CEDHA, Bank Track, *Botnia and ENCE Paper Mills Uruguay, Social and Environmental Disaster Risks Derailing Uruguayan Pulp and Paper Mill Industry* (2006), available at <http://www.cedha.org.ar/docs/press-kit-celulosa-eng.pdf>.

³⁴² *See supra* note 72.

³⁴³ *See supra* note 63.

³⁴⁴ *See* (1) Residents and workers affected by the Candonga Hydroelectric Dam, Global Justice Center, MAB (Regional Ponte Nova, MG), Pastoral Land Commission (Comissão Pastoral da Terra – CPT Regional Campo das Vertentes, Minas Gerais), Association for the Legal Representation of Populations Affected by Dams (Núcleo de Assessoria às Comunidades Atingidas por Barragens – NACAB), *Letter to United Nations Special Rapporteur on Adequate Housing re: Request for urgent action to prevent further violation of the right to adequate housing of the residents, sharecroppers, and miners of rural São Sebastião do Soberbo (in the city of Santa Cruz do Escalvado) and of the district of Santana do Deserto (in the city of Rio Doce), arising out of the commencement of the operation of a dam administered by the Candonga Consortium in the State of Minas Gerais, Brazil* (20 Nov. 2004), at 40-42, available at <http://www.global.org.br/portuguese/arquivos/candongaenglishfinal.pdf>; (2) Polaris Institute, *Can Alcan Claim to Be the Best? Its Corporate and Social Responsibility in Question, a Profile of Canadian Aluminum Giant* (2005), at 30-31, available at <http://www.polarisinstitute.org/files/Alcan.pdf>; (3) ESCR-Net, *UN Human Rights Norms for Business: Briefing Kit* (2005), available at http://www.escri-net.org/actions_more/actions_more_show.htm?doc_id=430993; (3) *COHRE Global survey supra* note 196; (4) CEDHA, *Working Paper – Environmental Discrimination*, Jorge Daniel Taillant (Nov. 2000), available at <http://www.cedha.org.ar/docs/doc24.doc>.

³⁴⁵ *See Private Security Contractors at War, supra* note 112.

³⁴⁶ *See supra* note 114.

³⁴⁷ *See* Australian Conservation Foundation, Centre for Environmental Law and Community Rights Inc. (CELCoR), *Bulldozing Progress: Human Rights Abused and Corruption in Papua New Guinea's Large Scale Logging Industry* (2006), at 11, available at <http://www.celcor.org.pg/image/HR.pdf>.

³⁴⁸ *See supra* note 73.

³⁴⁹ *Supra* note 119.

³⁵⁰ *Supra* note 28.

³⁵¹ *Supra* note 33.

³⁵² *Supra* note 37.

³⁵³ *Supra* note 71.

³⁵⁴ *See Use Your Profit to Clean up Your Mess, supra* note 77 at 41-42.

³⁵⁵ *See supra* note 202.

³⁵⁶ *See supra* note 205.

³⁵⁷ *See supra* note 74.

³⁵⁸ *See supra* note 89.

³⁵⁹ *Id.*

³⁶⁰ Bretton Woods Project, *Glossary, Host Government Agreements*, at <http://www.brettonwoodsproject.org/glossary/item.shtml?x=507172>.

³⁶¹ *See* (1) *ECA-Watch Race to the Bottom, Take II*, at 12-14, *supra* note 92; and (2) Amnesty International, *Human Rights on the Line, the Baku-Tbilisi-Ceyhan Pipeline Project* (2003), available at <http://www.amnestyusa.org/business/humanrightsontheline.pdf>; and (3) *ESCR-Net Extractive Industry Report, supra* note 102.

³⁶² See *ESCR-Net Extractive Industry Report supra* note 102 at 22, citing Tricia Feeney/RAID, *Limitations of Corporate Social Responsibility on Zambia's Copper Belt*, (Nov. 2001).

³⁶³ Promotion and Protection of all human rights, civil, political, economic, social and cultural rights, including the right to development; Protect, Respect and Remedy: a framework for Business and Human Rights. Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Advanced Edited Version, A/HRC/8/5, 7 April 2008, ps. 6-27. The final report of the SRSG emphasizes three key principles: the State duty to protect, the corporate responsibility to respect, and access to remedies for victims. He underlines in the report the State duty to protect human rights in the context of corporate activity, and recommends urgent action by governments to fulfill this duty, particularly in light of escalating reports of business-related human rights abuses. The SRSG also confirms the corporate responsibility to respect all human rights, and the corresponding requirement for concrete action by companies to discharge this duty. Through research carried out under his mandate, he confirms that allegations of abuse by business affect all human rights and all business sectors, and arise in all parts of the world. The SRSG's report also recognizes the inadequacy of existing mechanisms to address business-related abuses and ensure justice for the victims. See also *supra* note 4, ps. 6-27.

³⁶⁴ See ILO, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) (Rev. 2000), available at <http://www.ilo.org/public/english/standards/norm/sources/mne.htm>; OECD, *The Revised OECD Guidelines for Multinational Enterprises* (2000), available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf>; and U.N. Global Compact, *The Ten Principles*, available at <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.



ESCR-Net is a global collaborative initiative serving organizations and activists from around the world working to secure economic and social justice through human rights. Its Corporate Accountability Working Group advocates for national and international corporate accountability for human rights abuses, involving support for international human rights standards for business. Throughout, the Working Group seeks to strengthen the voice of communities and grassroots groups who are challenging company abuses of human rights by documenting and highlighting particular cases, and by facilitating broad-based participation in United Nations and other international consultations. The Working Group also seeks to build the capacity of its participants by creating space for the exchange of information and strategies, connecting groups to one another, and providing resources for advocacy.



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