



**Questionnaire: UN Special Rapporteur on the Situation of
Human Rights Defenders**

*Theme: Large-scale development projects and human rights
defenders*

Submission made by CIVICUS: World Alliance for Citizen Participation

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1) Please indicate what you see as the main challenges and opportunities of a human rights-based approach to development, with particular attention to large-scale development projects and the role, protection and effective participation of human rights defenders. What do you think are the best measures to mitigate the challenges? Kindly provide examples of good practices in this respect.

Meaningful development cannot be achieved without the realisation of human rights, as both are intertwined. A major set of challenges impeding the attainment of a human-rights based approach to development are legislative and administrative policies and practices which restrict the work of human rights defenders and civil society. [CIVICUS' State of Civil Society Report 2013](#) highlights some of these challenges, including laws and policies which limit the formation of independent civil society groups and subject them to excessive government interference, as well as failure of governments to protect human rights defenders and anti-corruption activists exposing rights violations from harm by state and non-state actors.

CIVICUS' research shows that in many countries around the world, communities that traditionally relied on rivers, forests and communal lands are increasingly being displaced through collusion between private corporations and government officials and politicians. Economic, land-rights and indigenous activists are thus seen as a political and economic threat by vested interests, making them vulnerable to various forms of persecution. The [Busan Partnership for Effective Development Cooperation](#) which emerged from the 4th High Level Forum on Aid and Development Effectiveness in 2011 commits governments and international organisations to enable civil society organisations (CSOs) to “exercise their roles as independent development actors, with a particular focus on enabling environment, consistent with agreed international rights, that maximises the contributions of CSOs to development.” Development initiatives thus need to recognise human rights defenders and civil society groups as key stakeholders.

A primary challenge to the inclusion of human rights defenders in development projects is that state parties often abdicate their duty to create an enabling environment for participation, and in some cases work in collusive relationships with business entities to actively target human rights defenders and undermine their efforts. It is in instances such as these that international institutions must find ways to either incentivize states to create enabling environments, or create accountability mechanisms to hold states responsible for their failures. Entities responsible for development must make a firm commitment to respect, protect and fulfill human rights in all of their activities.

Under the [UN's Guiding Principles on Business and Human Rights](#), the state has the primary duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication. This means that states should take the initiative to enact policies, regulations and legislation to operationalise human rights standards. Furthermore, these need to be supported by independent judicial and quasi- judicial institutions such as human rights commissions and ombudsperson's offices.

Notably, businesses themselves have a responsibility to respect human rights. However, most international agreements for corporate conduct, such as the UN's Guiding Principles on Business and Human Rights, the U.N. Global Compact, and the OECD Guidelines for Multinational Enterprises, remain largely voluntary. Therefore, states again must take the primary responsibility for ensuring that corporations domiciled within their borders follow human rights obligations when undertaking development projects, both in the domestic sphere and by creating extra-territorial obligations for projects conducted overseas.

The [Vienna Declaration and Programme of Action](#) recommended that one way states can fulfill these obligations is by drawing up national action plans which identify steps states can take to improve the promotion and protection of human rights. National action plans thus need to incorporate protection of human rights defenders and measures to protect populations from rights violations by large scale development projects. For instance, Mexico's National Human Rights Plan 2008 – 2012 defines the competencies of state bodies in the protection of human rights. Moreover, after multi-stakeholder consultations involving civil society groups, Mexico passed a [law for the protection of human rights defenders and journalists](#) in 2012. This legislation has created mechanisms, such as evacuation and relocation procedures, to ensure the safety of journalists and human rights defenders, and includes a Consultative Council composed of four human rights organisations, four journalists, and two academicians and a Government Board, ensuring input by key stakeholders.

2) Please explain how, in your view, large-scale development projects can best be elaborated in order to the effective [sic] participation of human rights defenders. Please describe participation/consultation mechanisms in place and provide examples of good practices.

Participation of and consultation with civil society should be an essential requirement while undertaking large scale development projects. Civil society has a role in advocating for inclusive processes and holding duty bearers to account for their commitments. Civil society participation provides a critical bulwark against the capture of national and international agendas by narrow vested interests. Some examples can be seen in numerous consultations involving civil society, the private sector and other development actors organised by the UN to determine the focus of the [post-2015 development agenda](#), regional consultations organised by the African Development Bank in the case of Africa and the New Partnership for Africa's Development's (NEPAD) knowledge Platform, known as the [Africa Platform for Development Effectiveness \(APDev\)](#).

Consultative mechanisms need to be formalised to enable local human rights defenders to provide input in design, implementation, monitoring and evaluation for development projects. International Labor Organization's [Indigenous and Tribal Peoples Convention](#), 1989 provides a blue print for public participation.

[OECD Guidelines for Multinational Enterprises](#) mandate the establishment of a National Contact Point, which adhering countries set up to undertake promotional activities, handle inquiries, and engage in

discussions with the parties concerned on all matters covered by the guidelines. This mechanism provides a focal point through which the input of local stakeholders can be funneled. Another example is the [International Finance Corporation's Sustainability Framework](#) which underscores the principle of 'free, prior and informed consent', requiring clients to obtain consent from indigenous communities that could be affected by their projects. Nevertheless, there are concerns that the framework is not broad enough and about its operationalization in practice.

3) How do you think that human rights defenders can effectively monitor the impact of large-scale development projects? Please provide examples of successful experiences/mechanisms in this regard and kindly address the issues below.

The introduction of governance and human rights variables which are measurable makes it easier for human rights defenders to monitor development projects. Governance and human rights indicators and targets can be linked to existing national and global norms and databases which track progress and challenges. Indicators should measure government policy efforts, for example the contribution of the various mechanisms and legal frameworks to enhance the promotion of human rights. These indicators can help to ensure a stable enabling environment for human rights defenders to operate.

a) Kindly indicate how relevant information about large-scale development projects is made available and accessible to the public. Provide concrete examples if applicable

It is critical that a policy of proactive disclosure is followed with regard to large scale development projects. This can be undertaken through traditional means such as public notices in newspapers and in municipal offices, as well as through the utilisation of new technologies such as the creation on online portals to enable the dissemination of information such as impact assessments to concerned stakeholders.

Moreover, the role of enabling freedom of information legislation cannot be overemphasized. Enabling legislation is a key vehicle for citizens to gain information about funding, scope and impacts of large scale development projects.

b) How can defenders complain if they feel that human rights are unduly restricted or violated in the context of the implementation of large-scale development projects? Kindly provide concrete examples of mechanisms in place to seek redress at every stage of the process, that is, assessment, design, implementation, monitoring and evaluation.

Progressive legislation and a judicial system that promote economic, social and environmental justice are critical to ensure redress for human rights defenders. Moreover, quasi-judicial complaints mechanisms play a complementary role to traditional courts. Lastly, and importantly national action plans for the protection of human rights provide a critical basis for defenders to raise concerns.

c) How do you ensure that human rights defenders can peacefully voice their opposition to development projects without fear of intimidation or violence of any sort?

Deficits in democracy in many countries around the globe have led to the marginalization of civil society and a clampdown on fundamental freedoms. States need to create reliable public institutions which respect the rule of law, freedom of expression, peaceful assembly and association. This can be achieved through state policy, legislation and programs, as well as by vigilant efforts on the part of state institutions. Moreover, human rights defenders can only safely voice their opposition to development projects in an environment that is enabling and which allows them to communicate with each other, join coalitions and raise funds for their activities.

4) How, in your view, can business and corporations involved in large-scale development and investment projects be best monitored regarding corporate social responsibility principles and their engagement with human rights defenders? What is, in your view, the role of defenders in this process and how could their capacity to engage be strengthened?

As discussed above, the primary responsibility for monitoring the activities businesses and corporations that negatively impact communities lies primarily with the state through the application of appropriate policies, regulations, and adjudication. Frameworks are needed to promote the implementation of the UN Guiding Principles on Business and Human rights to encourage and incentivize corporate social responsibility practices. Moreover, states must ensure the application of legal measures to extra-territorial actions taken by businesses and corporations domiciled within their borders. Legislative reform and its implementation should focus on a rights-based approach to business and development and provide recourse mechanisms for public, civil society human rights defenders to claim their rights.

Failing an appropriate response by the state, international mechanisms must be strengthened to ensure compliance with instruments and accountability. A Convention on Corporate Social Responsibility and Accountability that gives the UN powers to investigate and monitor violations, receive complaints from individuals and states, and ensure action on recommendations to states and companies through reporting requirements would be a positive step.

5) How, in your view, should development cooperation programmes integrate the role of human rights defenders and the notion of a safe and enabling environment in recipient countries? How do you think can the expertise of human rights defenders on the ground be best used to design, implement, monitor and evaluate development cooperation programmes? How should security/protection concerns be addressed when necessary?

The key is for countries to adopt a rights-based approach to development. Legal obligations should be placed on governments to uphold their commitments towards protecting human rights and creating an enabling environment for civil society. Development cooperation programmes must be supported by robust democratic institutions at national and international levels to ensure participation by civil society

and accountability by decision makers.

Development cooperation programmes must ensure input from local human rights defenders who are stakeholders in any development project. This means that rather than implementing top-down policies which ignore local conditions, development cooperation programmes should be designed with the recognition that the input of and effect on local actors should be the primary consideration in development projects. As discussed above, this means consultative mechanisms need to be established to allow local human rights defenders opportunity input in design, implementation, monitoring and evaluation. The notion of public private partnerships needs to be reviewed to ensure citizens are not exploited by governments and the private sector.

In either case, specific indicators and targets on the enabling environment must measure progress or the lack thereof for human rights defenders and communities. This should include the collection of data relating to regulations and degree of enforcement, corporate compliance and participatory mechanisms for redress of human rights violations.