

QUESTIONNAIRE: UN SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS

Theme: “Large-scale development projects and human rights defenders”

Submission from Trócaire, the official overseas development agency of the Catholic Church in Ireland. Trócaire supports partner organisations in Latin America, Asia and Africa working in the areas of sustainable development and human rights. For more information on Trócaire’s work please see www.trocaire.org. In responding to the questionnaire, we have highlighted specific experience from our partner organisations in Guatemala. For more information on the answers contained in this questionnaire please contact Julian Waagensen, Trócaire’s governance and human rights policy officer email: jwaagensen@trocaire.ie or Blanca Blanco, Trócaire’s country director for Guatemala, email: bblanco@trocaire.org.gt. We have confined our submission to questions 2, 3 and 5.

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

One thing remains true for all HRDs, in latter years we have seen an increased global crackdown on civil society in general, and HRDs in particular. Large-scale development projects, including dams, extractive industries and biofuel plantations are often carried out without respect for the rights of indigenous people or other vulnerable groups, who are directly affected by the projects. Indigenous communities and others who have lived on land for years are sometimes forcibly evicted to make way for large scale development projects. HRDs play an imperative role as the voice of these communities but they are often faced with harassment and threats to personal security because of their work. All those who are going to be affected directly or indirectly by a large-scale development project need to be consulted on their views.

In Guatemala, many community consultations based on ILO Convention 169 have taken place in the last few years. They have been the mechanism to ensure effective participation of indigenous peoples and human rights defenders around this issue.

However, and despite the fact that there are articles of the Guatemalan Constitution and Municipal Code that consider them lawful, the reality has been so far that the results of these consultations have not been legally-binding.

It is also important to highlight that at the moment royalty rates remain very below (between 1%-5% depending on the metals). Taking into account the low revenue in country and the poor human development indexes, increasing royalties and royalty collection accountability would be desirable.

Finally, one of the main concerns raised by human rights defenders is related with the protection of Guatemalan natural resources. Thus, improved environmental accountability on behalf of the Government and companies would also be a step forward. This could comprise that companies would have to carry out environmental impact studies which include the observation of human rights defenders. Also, the approval mechanism of such studies has to be modified because at the moment the Ministry of Energy and Mines only reviews them if there a public complain has been filed against such study.

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.

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

b. How can defenders complain if they feel that human rights are unduly restricted or violate 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.

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?

The Guatemalan Access to Information Law allows any citizen to access information from public institutions (as part of transparency law). However, one needs to have the resources to pay for the copies and not everyone in Guatemala can afford to do so.

There are several human rights defenders organisations in Guatemala who are currently monitoring the impact of large-scale development projects, e.g. CSOs monitoring water pollution levels in the Sipakapa mine (Department of San Marcos) and produce shadow reports to those submitted by the government/companies. However, more needs to be done, not only on the environmental side of things but also in terms of accountability and social auditing.

At the moment human rights defenders can file complains at the Ministry of Environment. However, they tend to get filed away and hardly ever get a response. Most of the time human rights defenders have to file complaints with international bodies such as the UNHCHR office in country and/or at the Interamerican Commission for Human Rights.

In order to ensure that human rights defenders can peacefully voice their concerns around development projects without fear of intimidation or violence of any sort, the Guatemalan government needs to seek and promote dialogue, instead of constantly imposing states of emergency or exception where there is no guarantee that human rights are respected, particularly those of children, women and indigenous people.

There also needs to be international accompaniment in country for human rights defenders at risk. International organisations and institutions have to hold the Guatemalan government to account through different mechanisms: international treaties and voluntary agreements such as the FAO Voluntary Guidelines on Land, Fisheries and Forests, the reports of UN Special Rapporteurs, UPRs and in the European case abide the human rights clause of the recently approved Association Agreements.

Q 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?

HRDs fulfill a crucial role, both in speaking up and providing a voice for the most vulnerable in society, but also by acting as a watch-dog, monitoring Government policy and actions and holding them to account for violations. HRDs can take many guises – opposition parliamentarians, lawyers, journalists/media professionals, grassroots activists, union activists, women land rights activists, NGO workers and NGOs, just to name a few, and their role in relation to development cooperation programmes (DCPs) and the support they need to carry out their work will differ.

There is a real need to ensure an enabling environment for HRDs to allow them to carry out their work. In this respect security and protection remain serious concerns. Initiatives such as the EU Guidelines on HRDs are most welcome, however, the impact of the guidelines remain limited as a result of spotty and inconsistent implementation by individual EU missions (something that has also been raised as a concern by the European Parliament). In general the most effective responses to security/protection concerns are based on country-specific approaches taking into account the situation in a given country, but experiences from Trócaire's partners in different regions around the world has shown that the international community (UN missions, country embassies, EU missions) showing an interest in the work of HRDs and legitimizing the work of HRDs through interactions, support both in public and private, often provides a certain level of security for HRDs. A coordinated approach amongst the international community is invaluable in this regard and should include the establishment of early warning systems, as well as the effective and timely dissemination of information related to security threats against HRDs.

Raising public awareness and increasing communication among authorities and the general public about the work of HRDs both in country and internationally, and the important role they fulfill, remains a key to better security for HRDs. The creation of better communication between HRDs and local authorities, potentially in the form of formalized dialogue mechanisms will go a long way to improve the security of HRDs and the impact of their work. The creation of such dialogue mechanisms could potentially be taken up as part of a DCP.

In addition, DCPs should include specific resources aimed at providing training for HRDs on crucial issues such as personal security and effective monitoring and documentation.

HRDs can play an impactful role in the design and implementation of DCPs. They represent vulnerable groups, whose concerns should be heard and acted upon within the context of a DCP. Consulting HRDs in the design phase allows for a stronger assessment of the needs and concerns of the most vulnerable and ensures that the DCP takes into account the needs of vulnerable groups, while ensuring that the DCP does not bring with it unintended negative impact against said groups. HRDs often have substantial experience in monitoring human rights abuses and can play an important role in a DCP, through ensuring that human rights are respected within the programme and that large scale development projects does not result in human rights violation, including where the project forms part of a causal chain of events with unintended negative impact.