**HRC Thematic Report on FOAA in the context of the exploitation of natural resources**

**Expert Consultation – 15-16 December 2014**

**Concept Note**

1. Introduction and background

The increasing demand for natural resources including land, water, timber, minerals, oil, gas and others, which are finite means intense competition for access to these resources. Conflict often results between those intending to exploit the resources (and their beneficiaries) and those to whom the resources belong/ those who live close to areas where resources are exploited/ those who are directly affected by the exploitation/ those whose human rights are directly affected by natural resource exploitation.

Many resource rich countries suffer from low levels of development, particularly human development, and economic and political instability – the ‘resource-curse’. The opaqueness of decision-making around resource exploitation contributes to this state of affairs. Those most affected by exploitation activities are often not consulted. Local residents and those who own the lands and territory in which the resources are found can be excluded from negotiations and agreements concerning the land and its resources.

In the context of natural resource exploitation, the systematic exclusion of key stakeholders, including civil society organizations, social movements and communities, are counterproductive and may, in some circumstances, amount to a deprivation of the rights to freedom of peaceful assembly and of association. This exclusion can lead to anger, divisions within society and long-term threats to the project in question.

A better approach is to be more inclusive of civil society – including informal coalitions of individuals and groups affected by natural resource exploitation – and more permissive of individuals who exercise their right to freedom of peaceful assembly. Civil society plays a key role in advocating on behalf of affected communities. Civil society involvement contributes to communities being consulted in decisions that affect them and facilitating access to information, participation and consent before operations can begin in their lands and territories. Civil society involvement can also have other benefits to society and communities, such as ensuring that resource exploitation projects respect international human rights law and standards, especially labor and environmental rights and that the companies and governments involved are transparent and accountable. In the event that negative impacts result from resource exploitation projects, civil society involvement encourages the formulation of mitigation measures and remedies in response.

FOAA rights in the context of the exploitation of natural resources, as in many other contexts, offer individuals the ability to aggregate and represent their common interests. Government and corporate interests in many cases prioritize revenue-generation over other concerns, and even well-intentioned policies may have adverse effects on the rights of individuals, communities and groups. In many cases, affected communities rely upon assembly and association rights to join efforts, or as a measure of last resort, to express themselves where other avenues have failed. Indeed in many countries, affected individuals, local residents and communities take part in social protests and form informal grassroots opposition movements as the only options to denounce the lack of consultation or participation in decision-making processes. FOAA rights may also be their only hope for securing some sort of remedy, particularly in States where judicial and law enforcement systems are corrupt or subservient to the executive.

Civil society advocacy, monitoring and engagement as well as peaceful protests are not often welcomed by governments or corporations in the context of natural resource exploitation. As a consequence, the space for individuals and civil society groups to act in these contexts is limited, and is becoming even more constrained as the competition for resources increases. In the past years, in various parts of the world, numerous human rights defenders have been killed as a result of their activism on resource issues; indigenous peoples are arbitrarily deprived of their land and territories disrupting their livelihoods; individuals and communities have been displaced without access to basic services; organizations working on these issues are under constant threat of being shut down (some have been shut down); and peaceful assemblies are violently dispersed.

Against this backdrop, the UN Special Rapporteur (UNSR) plans to devote his upcoming thematic report to the Human Rights Council in June 2015, to examining the exercise of the rights to freedom of peaceful assembly and of association (FOAA rights) in the context of the exploitation of natural resources. In the development of this report the UNSR is convening a global consultation on this topic in order to draw from expertise and practical experiences.

This concept note presents preliminary thoughts on the key issues for discussion.

1. The report

In his report, the Special Rapporteur will explore the nature of restrictions to the rights to freedom of peaceful assembly and of association within the context of resource exploitation. He will identify the gaps in the legal framework as well as practices and patterns that enable these restrictions and explore possible solutions to these challenges. The UNSR begins with the premise that the three key actors – the private entity or individual exploiting the resources, the States in which resources are to be exploited (host State) and the State in which the private entity or individual are domiciled (State of origin) – have obligations and responsibilities in respect to the enjoyment of FOAA rights in the context of exploitation activities. With these three categories in mind, the report will therefore assess the legal framework and practice of each category and how these help or hinder FOAA rights.

The Special Rapporteur also hopes in this report to annex a few case studies – essentially first-hand accounts of the challenges that individuals and communities are facing that are illustrative of the significance of the rights to freedom of peaceful assembly and of association.

1. Issues for discussion

* Framing of the problem/scope of the report/contextualisation - at a broader level the environment for civil society to engage on issues of natural resource exploitation is generally constrained. But this affects the exercise of all human rights. The objective would be:
  + to narrowly define the problem in relation to FOAA rights, nature of violations and how linked to natural resource exploitation
  + to identify the civil society groups to be covered in the report
  + providing justification for focussing on the rights in this context
  + illustrating the significance of the rights in addressing the challenges arising in the context of natural resource exploitation
  + identify the obligations of key players in this context – States, corporations, - and the basis of these obligations (law or otherwise)
  + conceptual understanding of government/business/civil society – sectoral equity, roles of each sector, etc
* Examining challenges to the exercise of FOAA rights:
  + Legal framework:
    - Lack of a legal framework – absence of regulation on some issues?
    - Inadequate legal framework – international human rights law - adequacy of UN Guiding Principles on business and human rights or similar guidelines?? National laws?
    - Development of other relevant laws and policies eg HRC resolution 26/9, Company laws, environmental laws, labour laws, land laws that do not take account of States human rights obligations
    - Institutions - ineffective? not independent? Lack capacity? Corrupt? Lack of political will when government officials are profiting personally from resource exploitation? Independence of the judiciary
* Practice
  + Voluntary guidelines/industry standards – do they exist in relation to FOAA rights – labour issues? How effective?
  + Use of bilateral trade agreements to restrict/protect FOAA rights?
  + Implementation and enforcement – effective? Use of private security to prevent peaceful assembly? Prohibitions of assemblies in certain locations? Are there redress mechanisms in event of violations?
  + Political will/ political support provided to corporations – (how) does this lead to restrictions of FOAA rights?
  + Unequal bargaining power – labour rights – formation of trade unions, right to strike restricted?
* Recommendations
  + Legal framework
    - Freedom of peaceful assembly
    - Freedom of association
* Practice
  + Freedom of peaceful assembly
  + Freedom of association