

# Factsheet: FoAA rights & natural resource exploitation

## Special Rapporteur Maina Kiai's report to the Human Rights Council, June 2015 (A/HRC/29/25)



### Do the rights to freedom of peaceful assembly and of association apply in the context of natural resource exploitation?

Yes

States are obligated to protect and facilitate the rights to freedom of peaceful assembly and of association in the context of natural resource exploitation, including by ensuring that business interests do not violate these rights (A/HRC/29/25, para 14). This means enacting robust national laws that stipulate the rights and responsibilities of all, creating independent and effective enforcement and oversight mechanisms, ensuring effective remedies and promoting access to free, prior, informed consent of affected communities related to natural resource exploitation. The failure to guarantee that civil society can freely operate in an enabling environment may lead to conflict (Id., paras 14-15).

### Are there binding international human rights norms for corporations?

No

This is a significant gap in ensuring that assembly and association rights are guaranteed in the context of natural resource exploitation. Corporations are key actors in natural resource exploitation, with a growing number of businesses wielding more power, resources and influence than many States. Despite this, the primary responsibility of ensuring the exercise of human rights remains with States (A/HRC/29/25, para 69). There are, however, a number of influential voluntary standards related to business and human rights, including assembly and association rights (Id., para 20-29). A notable shortcoming of the voluntary obligations paradigm is that it does not go far enough in ensuring that both States and businesses are held accountable for any failures to comply, nor does it encourage robust oversight by governments of actions by businesses that may violate human rights (Id., para 24).

### Are there groups which are particularly at risk in this context?

Yes

In many cases, the worst violations of assembly and association rights in the context of natural resource exploitation are committed against those inhabiting regions far from centers of power, often at-risk or already marginalized within society (A/HRC/29/25, para 19). They often lack access to information, have no means to advocate for their concerns, and are confronted with uncooperative authorities. Some of the categories of persons that require special attention in this context are women (including women human rights defenders), afro-descendants, indigenous peoples, peasant farmers, fisher folk, and forest dwellers (A/HRC/29/25, para 19; see also A/HRC/26/29).

### Can unregistered associations participate in consultations on natural resource exploitation?

Yes

The ability of associations to participate in consultation procedures should not be predicated on registration status. The right to freedom of association applies to informal associations, and does not require registration (A/HRC/29/25, para 60). This principle has a particular resonance in the context of natural resource exploitation, where lobbying and advocacy is often done through social movements that may not have a formal organizational structure. A reasonable demonstration of interest should be sufficient for any group to present its views in consultation procedures or to challenge decision-making processes related to natural resource exploitation (Id.).

### Can blanket bans be imposed on assemblies surrounding natural resource exploitation operations?

No

Under the [International Covenant on Civil and Political Rights](#), States may only limit the rights to freedom of peaceful assembly and of association in strictly defined circumstances necessitated by narrowly defined legitimate purposes - prescribed by law and "necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" (A/HRC/29/25, para 22). The restriction must also be proportionate to the pursuance of legitimate aims. A blanket prohibition against protests outside business premises or surrounding the operations of mining, resource and forestry companies is not justifiable under the ICCPR (Id.).

### Can the State wash its hands of abuses by private security firms?

No

The Government bears the primary responsibility to provide public security, law and order for the benefit of all within a State's jurisdiction (A/HRC/29/25, para 56). This duty includes regulating, controlling and monitoring the activities of private security firms and holding them accountable when they breach assembly and association rights. Further, the potential for rights violations is particularly high when law enforcement responsibilities are ceded to private actors whose accountability is to their clients rather than to the public - or when security companies receive concessions to exploit natural resources in exchange for their services (Id., para 55).

### What is this report about?

This report covers the rights to freedom of peaceful assembly and of association in the context of the extraction of natural resources - how these rights are exercised, promoted or suppressed. The report takes a broad view of "natural resources," as consisting of a wide range of materials including land, water, soil, air, coal, oil, gas, mineral and metal deposits, flora, fauna, forests and more. Similarly, "exploitation" encompasses a variety of activities including extractive processes (mining, fishing, logging, etc.) and construction of mega-projects (dams, nuclear plants, hydro-electric facilities, wind farms, land reclamation large-scale farming), that are intended to make use of natural resources, particularly for large-scale commercial gain. Conservation activities carried out with an accompanying commercial benefit such as game parks and reserves often raise the same concerns related to the exercise of peaceful assembly and association rights (A/HRC/29/25, para 6, fn 3).

### Why are assembly and association rights so important in the natural resource exploitation context?

Natural resources are a potential source of vast economic wealth, yet this wealth also brings fierce competition and the potential for conflict. The rights to freedom of peaceful assembly and of association are critical because they help promote constructive dialogue, which is necessary given the shared interests and sometimes competing priorities involved in exploiting natural resources. These rights, when allowed to flourish, also help foster increased transparency and accountability in the exploitation of resources (A/HRC/29/25, paras 10-11, 30).

### Where can I find the report?

The report (A/HRC/29/25) is available at the following link: <http://freeassembly.net/rapporteurreports/natural-resources/>

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Special Rapporteur Maina Kiai's report to the Human Rights Council, June 2015 (A/HRC/29/25)

“The significance of civil society as a stakeholder in the context of natural resource exploitation is underestimated, misperceived and often resisted by both States and businesses. This is symptomatic of a growing disregard for a plurality of views – particularly those which champion non-economic values over economic ones.”

A/HRC/29/25, para 70

## By the numbers: FoAA rights & natural resource exploitation

- 30 Percentage of the territory of Indonesia estimated to be in the hands of private entities for resource exploitation
- 35 Percentage in Liberia
- 211 Total number of social conflicts documented by the Ombudsman in Peru in Feb. 2015
- 66 Percentage of these conflicts that concerned natural resource exploitation
- 93 Percentage of 73,000 natural resource concessions in eight countries that are inhabited, according to one study
- 2 Months that an NGO's equipment was confiscated after trying to screen a documentary on resource exploitation in Uganda
- 1 Rank, among the world's sovereign wealth funds, of Norway's Government Pension Fund (which is funded by oil profits)
- 80 Percentage of countries in the Natural Resource Governance Index which fail to meet satisfactory governance standards

Citations available in the report, [A/HRC/29/25](#)

## What's the Special Rapporteur's assessment?

The Special Rapporteur believes that space to exercise assembly and association rights is often more limited in relation to natural resource exploitation because of the significant impact this sector has on the economies of resource-rich countries, the bottom lines of the enterprises involved and the potential for corruption ([A/HRC/29/25](#), para 12). Public engagement is thus an imperative throughout the decision chain, from the initial exploration stages through exploitation activities and investment of revenue decisions. Assembly and association rights provide the necessary avenues for this engagement (*Id.*). While restricting these rights in order to streamline resource exploitation may seem tempting in the short term, it can be costly in the long run and cause irrevocable damage (*Id.*, para 11). As the Special Rapporteur has previously noted, ([A/HRC/26/29](#), para 26) the failure to provide any outlet for excluded groups to air their grievances can be counterproductive and carry severe consequences.

## What does the Special Rapporteur recommend?

- States: Ensure an enabling environment in which civil society can access relevant information, participate in decision-making, and express opinions freely in the context of natural resource exploitation
  - States: Meet extraterritorial obligations, particularly by providing access to remedy for victims of violations of the rights to freedom of peaceful assembly and of association.
  - States: Enact an international legally-binding instrument on human rights standards for businesses, as proposed by Human Rights Council Resolution [A/HRC/26/L.22](#), to apply to businesses working domestically and internationally
  - Corporations: Meet obligations to respect internationally accepted human rights in natural resource exploitation activities, including assembly and association rights
  - Corporations: Implement the Guiding Principles on Business and Human Rights
  - Corporations: Adhere to international law standards on public participation and free prior and informed consent
- Full recommendations available in the report at paras 67-77

## The current international legal and regulatory framework

- [Universal Declaration of Human Rights](#) (Art. 20)
- [International Covenant on Civil and Political Rights](#) (Art. 21-22)
  - ILO conventions [No. 87](#) and [No. 98](#) (establishing the rights of workers to freely establish, join and run organizations of their choosing without unjustifiable interference from the State)
- [The Guiding Principles on Business and Human Rights](#): Endorsed by the UN Human Rights Council in 2011; envisions three pillars to the relationship between business and human rights.
- [The UN Global Compact](#): corporate responsibility initiative covering areas of human rights, labor, environment and anti-corruption.
- [The Voluntary Principles on Security and Human Rights](#): Extractive industries-specific; helps companies maintain the safety and security of operations while respecting human rights.
  - [International Code of Conduct for Private Security Service Providers](#): Sets standards and principles for the conduct of private security service providers based on international human rights and humanitarian law.
- [The OECD Guidelines for Multinational Enterprises](#): Non-binding principles and standards for responsible business conduct.
- [Maastricht Principles](#): Restatement of international law clarifying States' extra-territorial obligations.
- [Extractive Industries Transparency Initiative \(EITI\)](#): Global standard to promote openness and accountability in the management of natural resource exploitation
- [Open Government Partnership \(OGP\)](#): Platform for civil society to engage with Governments to ensure that the latter are more open, accountable and responsive to their citizens.