



Land grabbing and International Criminal Law- Prosecuting Corporate Abuses

Project Partner: FIAN International

About FIAN

FIAN International is an international human rights organisation that has been advocating for the realization of the right to food and nutrition for over 30 years. FIAN supports grassroots communities and movements in their struggles against the violation of this right. Through national sections and networks, FIAN works in over 50 countries around the world. Holding a consultative status with the UN Economic and Social Council, FIAN also works closely with the international human rights system through an international secretariat based in Heidelberg and a permanent representation in Geneva.

As a human rights organisation working on the right to food and nutrition, FIAN International has been actively supporting several cases of land grabbing and forced evictions by businesses and corporations in Latin America, Asia and Africa.

Project Overview

Every year, millions of people are being forcibly displaced from their land, housing and the natural resources they depend upon to make way for large-scale industrial plantations, hydropower dams, mines, power plants and infrastructure projects. Those who are displaced are rarely compensated for what they have lost.

Access to, use of, and control over land and related natural resources are necessary conditions for the realisation of human rights for the people living off these resources. This includes, among others, the right to food and nutrition, the right to water and sanitation, the right to health, the right to housing, the right to work, the right not to be deprived of one's means of subsistence, and the right to take part in cultural life. Land grabbing and forced evictions also often entail and lead to violations of several civil and political rights, including the rights to physical integrity and personal liberty.

In cases where human rights abuses and violations have occurred, communities face major difficulties to obtain adequate and just reparation, since there are often no effective accountability mechanisms in place, or because the complicity of State officials makes it impossible for such mechanisms to be accessible for those affected. In addition, there are numerous instances of criminalisation, repression and victimisation of those who defend their rights.

Land grabs and exploitation of natural resources disproportionately affect indigenous peoples and other marginalised groups like women, children and people with disabilities. All over the world, there are numerous cases of businesses bypassing national and international



regulations, intimidating local population and causing severe environmental destruction to meet corporate needs and make profit.

This project will contribute to a better understanding of the existing international legal mechanisms available to make States and businesses accountable for such human rights violations and abuses. As an important step towards corporate accountability, the Prosecutor of the International Criminal Court (ICC), announced in the “Policy paper on case selection and prioritization” (September 2016) that the ICC will prioritise crimes within its jurisdiction that are committed by means of or result in “the destruction of the environment, the illegal exploitation of natural resources, or the illegal dispossession of land”. Prioritising such cases can help close the impunity gap for human rights abuses and environmental damage committed by businesses and corporations. This is a significant indication as corporate criminal liability or prosecution of corporations as juridical persons is still not permissible under the Rome Statute. As of now, only individual criminal accountability can be evoked at the ICC. Additionally, litigating cases at the ICC faces considerable jurisdictional, admissibility and evidentiary hurdles.

Another recent legal development in this regard is the ongoing discussion and drafting of a binding international legal instrument to establish the liability of transnational corporations (TNCs) and other business enterprises in the area of human rights and environmental legislation. This is an important global moment to include the notion of corporate criminal liability for international crimes as States discuss the nature of obligations to be imposed on corporations. It will also send a clear message to corporations regarding their potential role in the commission of international crimes and will be a powerful tool for advocacy purposes and in redressing victims of human rights violations.

Often communities who depend on natural resources for their livelihood sustain a long struggle to retain their lands and continue their sustainable farming practices, despite constant intimidation, threats and other violations of their basic rights. Through advocacy and casework, FIAN supports peoples’ movements around the world that resist corporate land grab of their land, forest, seeds and water and who face forced evictions.

Project Output

A 25-30 page report (plus annexes if any) will be submitted to FIAN International at the end of the research. The research will address two main issues.

Firstly, a comprehensive review/mapping of the international legal forums available for prosecuting cases that a) involve land and food related criminal acts, b) involve business and corporations as perpetrators of international crimes, and c) include indifference or complicity from the State. These crimes can include widespread land grabbing, forced evictions, large-scale environment destruction, etc. This section will include results from research conducted on past or ongoing cases/communications with the abovementioned characteristics, filed at



the ICC. This section will also require looking at other international avenues or strategies available for holding businesses accountable, including engagement with shareholders. This section will be used as a handbook/guide for shaping FIAN's advocacy and casework.

The second section of the report will involve working on a pilot case involving forcible acquisition of land, environment destruction and severe violations of human rights, wherein the project team will research on exploring strategic forums for litigating the case at an international or national level. Further details on the research and case shall be shared with the project team in due course under the premise of confidentiality.

FIAN and the Human Rights Centre Clinic will consider the possible publication at least of the first part of the research, subject to quality assurance.

Project Outline

Phase 1: November-December 2020

- Preliminary research, understanding the project and developing research/report outline.
- FIAN will share the list of people/organisations pre-identified as experts for interviews and questionnaire.
- Mapping of cases, bibliography and literature review. The outline, bibliography to be submitted by the end of autumn for comments.
- Seeking internal ethical approval for the interviews.

Phase 2: January-March 2021

- Carrying out the interviews online or via telephone.
- Research and data gathering.
- Report writing.
- Submission of the first full draft (25-30 pages, plus annexes if any) to FIAN.

Phase 3: April- June 2021

- Revision and finalising the research based on FIAN's input.
- Possible blog at FIAN website and/or elsewhere based on the research, subject to quality assurance.

Essential readings

Alessandra Lehmen, Juchem Advocacia, "ICC to focus on environmental crimes: A landmark move for international environmental law", (March, 2017) <https://www.expertguides.com/articles/icc-to-focus-on-environmental-crimes-a-landmark-move-for-international-environmental-law/arligbwe>



Business and Human Rights Resource Centre, “Turning up the heat: Corporate legal accountability for climate change”, (2018). https://www.business-humanrights.org/sites/default/files/CLA_AB_2018_Full.pdf

Business & Human Rights Resource Centre, “Criminal liability for corporate-related human rights abuses”, <https://www.business-humanrights.org/en/corporate-legal-accountability/special-issues/criminal-liability-for-corporate-related-human-rights-abuses>

Business & Human Rights Resource Centre, “Cambodian villagers’ Intl. Criminal Court complaint (re land grabbing)”, <https://www.business-humanrights.org/en/cambodian-villagers%E2%80%99-intl-criminal-court-complaint-re-land-grabbing#c147646>

FIAN International, “A binding treaty to stop corporate abuse”, <https://www.fian.org/en/struggle/a-binding-treaty-to-stop-corporate-abuse>

Maysa Zorob & Antonella Angelini, Business & Human Rights Resource Centre, “Are shareholders the new champions of climate justice?” (June 2019). <https://www.business-humanrights.org/en/are-shareholders-the-new-champions-of-climate-justice-0>

Nadia Bernaz, Business & Human Rights Resource Centre, “Including Corporate Criminal Liability for International Crimes in the Business and Human Rights Treaty: Necessary but Insufficient”, <https://www.business-humanrights.org/en/including-corporate-criminal-liability-for-international-crimes-in-the-business-and-human-rights-treaty-necessary-but-insufficient>

Office of the Prosecutor of the ICC, “Policy paper on case selection and prioritization”, (September 2016). https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

Peter A. Allard School of Law, The University of British Columbia, “Investigating and Prosecuting Land Grabbing as an International Crime”, (2018). http://www.allard.ubc.ca/sites/www.allard.ubc.ca/files/uploads/IJHR/breaking_new_ground_-_allard_ijhr_land_grabbing_manual_-_public_version.pdf

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