

NO-ONE IS ABOVE THE LAW



THE OPPOSITION

STUDY GUIDE

Written by Andre Frankovitz

theoppositionfilm.com



DOCUMENTARY AUSTRALIA
FOUNDATION



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SECTION 01

THE OPPOSITION

FOREWORD

In 2014 I was invited to work with a gutsy young filmmaker who had begun to document and expose the removal, brutality and betrayal of a Papua New Guinean community who lived on the shores of Port Moresby, one of the oldest settlements on the island. The struggle by the Paga Hill community, led by resident and anthropologist, Joe Moses against forces wanting the land for development, was boldly captured on film by the intrepid Hollie Fifer, who traveled to PNG at high risk to chronicle their fight. Her remarkable documentary, *The Opposition*, gives visibility to a community displaced and fragmented by the delusions of progress.

Too often, the horrors of eviction and demolition experienced by settlement and Indigenous communities, justified on claims to economic advancement, go unnoticed and undocumented. The dumping of these people on lands that have no connection to the generations before them and the consequent destruction of cohesive communal infrastructure, is not only a deep violation of their human rights, but a negligent contribution by governments and their agents to fostering divided, unproductive, damaged communities whose life prospects are thwarted and harmed by the violent, frequently unlawful, acquisition of land.

The Opposition study guide takes the reader into the world of community resistance and its precarious cycle of the heroic moves forward and the inevitable falling back. It provides a practical palette of strategies that may assist in challenging the forced eviction of communities and the holding to account of governments and corporations, the beneficiaries of these acts of inhumanity. The guide covers critical components of effective opposition to human rights violations, from the use of domestic litigation and international human rights mechanisms, to the protection and role of human rights defenders and the power of global alliances.

The extraordinary impact of *The Opposition* is ultimately the value of the visual, the documentary form which serves not only as a disrupter, but also as a means of taking us as the audience straight in to the blows of real worlds and their wounds. It also stands as a testament to collective resistance and the courageous struggle by marginalised peoples around the world for a home, for their livelihood and for their dignity.

Professor Andrea Durbach

Director, Australian Human Rights Centre
Faculty of Law
University of New South Wales



THE OPPOSITION

ABOUT THE FILM

The Opposition is an award-winning investigative documentary set in Papua New Guinea that follows local leader Joe Moses' struggle to save his 3,000 strong community before they are forcibly evicted from their homes. Despite police brutality and risks to his own life, Joe battles through the courts for three years fighting those who want to take away his community's home.

The saga starts on Mother's Day, Port Moresby 2012: 100 policemen wield machetes and assault rifles and descend on the Paga Hill Settlement to bulldoze their houses to the ground. Residents are beaten, and cut with machetes; the policemen open fire on the crowd. Dame Carol Kidu, Leader of the Opposition, there to protect the community, is taken away by the police and later released without charge.

This demolition is to make way for the new multi-million dollar 'master planned development' including a five-star hotel, marina wharf and executive residential apartments which will 'set a new precedent in PNG' ¹.

As the struggle unfolds, Joe Moses recruits a coalition of allies including Dame Carol Kidu, investigator Dr Kristian Lasslett and a motivated team of pro-bono lawyers.

Piecing together the evidence, *The Opposition* shines a light on the pressures of urban development at a time when displacement is becoming a common occurrence for communities around the world.

The obstacles stack up against the community: in a devastating blow to their morale, their supporter Dame Carol Kidu retires from politics as the Leader of the Opposition and in a surprising about-turn, begins working with the development company who want to evict them. Where once Dame Carol Kidu stood in front of bulldozers to defend the people, she is now in charge of relocating the community, paid by the development company.

As the Supreme Court date draws closer, the pressure mounts. Late one night, two plain-clothed policemen attempt to arrest Joe Moses and refuse to tell him the reason for his arrest or produce a valid warrant. Fearing for his safety if taken into custody, Joe is able to escape into hiding...

REQUIRED VIEWING

- [The Opposition](#)
- [Humanitarian Resettlement in PNG](#)
- [The Corporation](#)

ABOUT THE STUDY GUIDE AUTHOR – ANDRÉ FRANKOVITS

André Frankovits is the former Campaign Director of Amnesty International Australia and former Executive Director of the Human Rights Council of Australia. He has been a consultant to the UN Office of the High Commissioner for Human Rights, the UN Development Program, UNICEF, UNESCO and the Asian Centre for the Progress of Peoples. He has facilitated workshops and seminars on human rights and on development for government officials and NGOs in all continents and served as the Australian member of the Group of Experts for the project “Global Charter-Agenda for Human Rights in the City”. Among his many publications, *The Rights Way to Development: Policy and Practice* co-authored with Eric Sidoti and Patrick Earle has been influential in development debates worldwide. He is currently Editor and Program Facilitator for the Diplomacy Training Program at the University of NSW.

PAGA HILL – HISTORY OF THE STRUGGLE

The Opposition reveals the facts behind the violent attacks on the Paga Hill community by agents of the Papua New Guinea State.

It is difficult to trace those who would benefit directly from the project since the majority of shares are held by the company’s Director and Principal of Liria Lawyers, Stanley Liria.

Paga Hill is a picturesque and historic piece of land near the Central Business District of the capital of Papua New Guinea, Port Moresby. Over forty years, a community grew to close to 3,000 people by the year 2000. There are 360 degree views over the water the summit of Paga Hill.



The Paga Hill community after the first demolition attempt.

TIMELINE OF EVENTS

- 1987** Paga Hill declared a national park. However, the government department charged with its maintenance was disbanded.
- 1988** A developer named Paga Hill Land Holding Company (PHLHC) submits an expression of interest in developing the site².
- 1997** With Ministerial support, PHLHC is granted a five-year Urban Development Lease to develop the site. At the time the Lease was issued, the land was still zoned open space. PHLHC was owned by Rex Paki, Felix Leyagon and Fidelity Management Pty Ltd. The latter was owned by Gudmundur Fridriksson (see below) and Byron Patching.
- 2000** Registration of a new company, the Paga Hill Development Company, entirely owned by Fidelity Management Pty Ltd.
- 2000** PHDC granted a 99-year lease for a prescribed rent. The CEO of both companies is Gudmundur Fridriksson.
- 2000** The rent for Paga Hill under the 2000 Urban Development Lease is K250,000 per year with an improvement covenant of K10 million³ and a handwritten amendment reducing the rent to K50,000 per year.
- 2009** PHDC negotiates a revised 99-year business lease. The annual rent is reduced officially to K50,000 and the improvement covenant to K5 million.
- 2012** On 16 February, an eviction order is made by the District Court of Papua New Guinea and on 4 April, an ultimatum is delivered to the community giving them three options for leaving the settlement. This includes moving to Six Mile, the site of a large decommissioned dump and a 17,000 person settlement.⁴

In pursuit of justice, community organisers enlisted the support of a wide range of international organisations. One of these is the [International State Crime Initiative](#), 'a multi-disciplinary, cross-institutional and international initiative designed to gather, collate, analyse and disseminate research-based knowledge about criminal state practices, and resistance to these practices'.

- 2012** **May 2** – The police come to Paga Hill to prepare for the eviction and tell the community that an eviction order has already been granted by the courts. The community organised to stay the order and this was denied by the court on 11 May with the community being given until 18 May to move out. The community led by resident Joe Moses took action for a stay on humanitarian grounds to halt the demolition. The appeal by the community was to be heard on May 12.

2012 **May 12** – Despite the court hearing on the 12th, the police come with bulldozers and begin to tear down houses, beginning with Joe Moses’ and his neighbours’ houses. The then-Leader of the Opposition in the PNG Parliament, Dame Carol Kidu, who is a strong supporter of the community’s rights, objects and comes to Paga Hill in an attempt to prevent the threatened eviction. Dame Carol Kidu is taken away by the police but later released by the police without charge.



[THE OPPOSITION CLIP 01: DEMOLITION](#)

The stay is granted by the court and once Joe Moses arrives at Paga Hill community, the police stop the demolition.

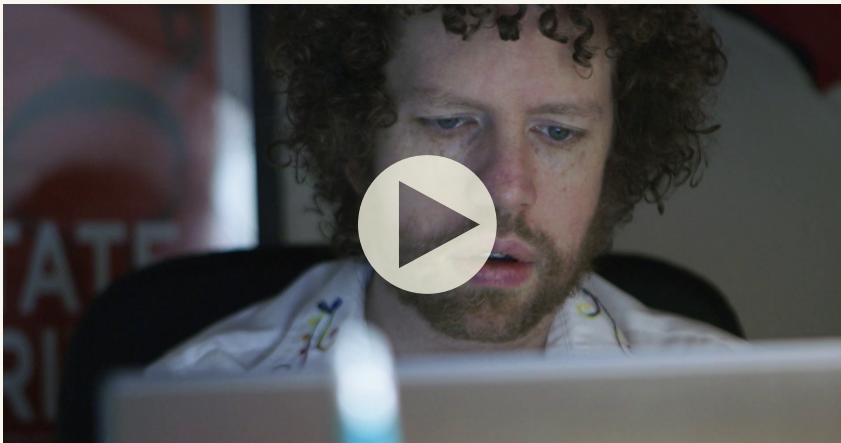


In 2012, ISCI documented the demolition of the Paga Hill community housing in a report, [The Demolition of Paga Hill](#):

“On 12 May 2012, one hundred police officers descended on the prominent Port Moresby landmark, Paga Hill. Armed with assault rifles, machetes and sticks, they had come to demolish one of the city’s oldest settlements. This forced eviction would make way for the Paga Hill Estate, an “exclusive” property development that promises to turn the 13.7 hectare site into “the icon of the new progressive Papua New Guinea”.

2013 Joe, the community, their lawyers and their alliance collect evidence and prepare their case.

2014 **29 January** – The National Court rules in favour of the Paga Hill Development Company stating that Portion 1597 boundaries went from the summit of Paga Hill to the waterfront.⁵ The community appeals to the Supreme Court.



[THE OPPOSITION CLIP 02: EVIDENCE COLLECTING](#)

2014 **29 May** – Two policemen come to Joe Moses' reconstructed home in Paga Hill Settlement and attempt to arrest him without an official arrest warrant. Tear gas canisters were deployed within the community and shots were fired in the air. Joe refused to leave with the police officers when they failed to produce a warrant. He insisted on accompanying the officers to the police station to verify if there was an official arrest warrant against him. Upon arrival to the police station, both in downtown Port Moresby and in Boroko, Joe found that there was no arrest warrant against him. Outside the police station, officers attempted once again to arrest him, but were unsuccessful. Due to the ongoing police surveillance, harassment and threats, Joe went into hiding to avoid arbitrary arrest.

2014 **3 June** – The police issue a press release entitled 'NCD Police on hunt for Joe Moses for unlawful discharge of firearm'. The statement claims that Joe had escaped from custody, and is the subject of a manhunt. It is also alleged that Joe owned a firearm, without a license. However, he did not own a firearm, and no official arrest warrant was issued against him.

2014 **1 July** – Because of new evidence including a new land survey, the Supreme Court rules in favour of the Paga Hill community stating that Portion 1597 was a separate area of land from the piece of land near the south of Paga Hill and towards Paga Point described as reclaimed land.

2014 **21 July** – Another demolition takes place in the Paga Hill community by the police.

2014 **25 July** – The Royal Papua New Guinean Constabulary’s Chief Superintendent Nicholas Miviri issues a letter to the General Manager of Curtain Bros PNG Ltd stating:

“This office has been advised that you are alleged to be unlawfully causing destruction to structures and evicting persons living at Paga Hill in the National Capital District. We have been served copies of the Supreme Court Orders dates 1st July 2014 and which has been verified at the Supreme Court Registry to be correct.”

“... You are instructed to cease all forms of demolition or eviction until Police are fully satisfied that your activities are lawful based on our investigations.”

2014 **September** – Mr Moses receives threatening messages, including drawings and death threats at his office at the University of Papua New Guinea.

2014 **1 October** – The official handover date of the Six Mile Resettlement, now called ‘Tagoa Community’, where 200 families were given ‘Land User Agreements’ to reside on the land. This does not give the community security of tenure as the land remains customary land.



[THE OPPOSITION CLIP 03: JOE ARRESTED AND IN HIDING](#)

2014 **10 October** – The final demolition and forced eviction of the Paga Hill community. The police burn the school, the church and the houses, bash women and children at gunpoint and flatten the community until they are forced to leave.

2017 **11 June** – Human Rights investigators report that the majority of settlers evicted from Paga Hill have been “simply abandoned”, with some now sleeping rough. Of the estimated 400 people at Six Mile Resettlement, most remain in temporary accommodation – tents under a steel shed roof – because they can’t afford to enter into the “land use agreements” that were offered. In a [news article in the Sydney Morning Herald](#), a Paga Hill Development Company spokesman said: “PHDC cannot be held responsible

for the relocation site almost three years after it was formally handed over in October 2014 to UN acclaim.”

However, Roy Trivedy, the United Nations’ resident co-ordinator in PNG, said he attended one meeting where he was impressed with written plans for the resettlement but has not been involved in anything to do with Paga Hill since. He said he had asked the company to stop using his name to endorse something he hasn’t seen.



THE LEGAL CASE AGAINST THE FILMMAKERS

2016 March – Dame Carol Kidu launches a legal case against director of *The Opposition* Hollie Fifer, Media Stockade and later adding Beacon Films, claiming that the defendants had engaged in unconscionable conduct and breached a contract with Dame Carol.

At the beginning of filming in 2012, Kidu had signed a standard Participant Release and was actively engaged in the filming throughout multiple stages of the production process over a period of three to four years. However, in 2016, she argued that she had been misled into participating in what she thought was simply a school project concerning her political career, including her time as Opposition Leader.



2016 April – *The Opposition* was due to screen at the world renowned festival Hot Docs, Toronto in May 2016.

At a pre-trial hearing (an ‘interlocutory’ hearing) at the Supreme Court of NSW, Justice Slattery placed a temporary injunction on footage in the film in which Kidu appeared or which she had facilitated. This was in place until a full hearing could be scheduled – or the parties could agree on a settlement.

See the temporary injunction judgement:

[April 22, 2016](#)

[April 29, 2016](#)

2016 May – The filmmakers were forced to create a redacted version of the film in order to get the film to Hot Docs. To legally get the film to Hot Docs, the film team got creative to comply with the court-ordered temporary injunction. The team used black screens with white explanatory text over the enjoined footage, while actress Sarah Snook narrated the action that could not be shown. The redacted version of the film was well received at Hot Docs.



2016 June – Once back in Australia, the film team then had to go to a full court trial to argue their case and try to get the original film back. The defendants in the case were Hollie Fifer, Media Stockade and Beacon Films.

A piece of evidence which came out in the court case was that Paga Hill Development Company indemnified Kidu for the court case costs (ie. they funded the legal challenge, not Kidu).

Throughout the court proceedings, the film team worked tirelessly to run the case in collaboration with their incredible legal supporters Peter Bolam, Solicitor; Richard Potter, Barrister; and Mark Maconachie, Junior Barrister.

2016 8 July – After months of litigation proceedings, Justice Rein resoundingly ruled in favour of Fifer, Media Stockade and Beacon Films. Here is a link to the [final judgement](#).

The filmmakers won the court case and won the right to screen the original version of the film. The filmmakers were also awarded costs and damages. This legal dispute raised questions about freedom of speech as well as the viability of independent film production. For more information, please view the news section of the film's website: theoppositionfilm.com/news.



THE MAIN PLAYERS



JOE MOSES

Joe Moses was a resident of Paga Hill and elected Chairman of the Paga Hill Community in 2012. A trained anthropologist, he was employed by the University of Papua New Guinea as an administration assistant. He led the community in its attempt to resist the eviction by the Paga Hill Development Company (PNG) Ltd. Assisted by many in the community, he created the Paga Hill Heritage Association and tried to use the justice system to prevent the eviction. His house was the first to be bulldozed followed by his neighbours', and later in 2014, the church and the school. He has continued to fight for adequate restitution and for his efforts has been harassed by the police and has received death threats. In May 2014, he was approached by plain-clothed police who sought to arrest him without an official warrant and he was forced into hiding. Afraid for his life (and his family), he has left PNG temporarily and continues to seek support for his struggle from international sources. In 2017, he received support to study a short course in International Human Rights Law at Nottingham University⁶.



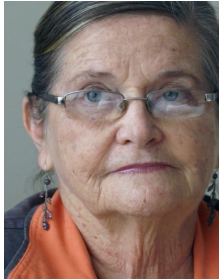
DR KRISTIAN LASSLETT

Kristian Lasslett is a Lecturer in Criminology at the University of Ulster and sits on the International State Crime Initiative executive board. He is editor of the State Crime Testimony Project and joint editor-in-chief of State Crime. Kristian has a long history of investigating human rights abuses and corruption in Papua New Guinea. His PhD focussed on the Bougainville Crisis and the culpability of Rio Tinto and Bougainville Copper Limited in human rights abuses. Kris has been working on collecting evidence in the Paga Hill land dispute since May 2012.



GUDMUNDUR FRIDRIKSSON

Gudmundur Fridriksson is the Chief Executive Officer at Paga Hill Development Company PNG Ltd (PHDC). He was also the Director of CCS Anvil, consultants to PNG Government departments from 2000 to 2006. Fridriksson is a resident of Queensland and a former chief executive of Cape York Institute. He has managed projects in PNG, Europe, China, Hong Kong and Australia.



DAME CAROL KIDU

Australian-born Dame Carol Kidu was the wife of the first Indigenous Chief Justice of PNG, Buri Kidu. In 1997, after her husband's death, she entered Parliament and was a Minister under Sir Michael Somare's Government. Following Peter O'Neil's takeover of the Government in 2011, Dame Carol Kidu became leader of the Opposition. She resigned her position in July 2012. Dismayed by the decision to negate the status of the Paga Hill area as national park, she became a forceful advocate for the rights of the Paga Hill community. In May 2012, she issued a [scathing statement](#) detailing the numerous breaches of the Land Act that occurred in the Paga Hill land acquisition by PHDC.

Following her resignation from Parliament, Dame Carol formed a consultancy company called CK Consultancy, which entered into a contract with PHDC. Her contract with PHDC focused on negotiating the resettlement of the Paga Hill community and re-homing the evicted residents of Paga Hill. Dame Carol argues that she didn't not know all the facts back in 2012 when she campaigned against PHDC and [wrote to PHDC \(PNG\) Ltd accordingly](#).

With financial help from PHDC, she unsuccessfully sued *The Opposition* filmmakers, seeking an injunction in the Supreme Court of New South Wales to stop parts of the film in which she appears or which she facilitated from being screened. Her argument was breach of contract and unconscionability, claiming her consent to be filmed was used for a different purpose than for which it was given.

STANLEY LIRIA

Stanley Liria is a lawyer from the Southern Highlands of PNG and Principal of Liria Lawyers. He became a major shareholder of Anvil Holdings Limited, a Fridriksson vehicle in 2011. He is also a major shareholder in PHDC. It was Liria who accompanied the PNG police at the issuing of ultimatums to the Paga Hill community in April 2012.

MICHAEL NALI

Michael Nali is a prominent PNG politician from the Southern Highlands. When he was Minister for Civil Aviation, Culture and Tourism, he declared the Paga Hill Development as a project of national significance, thus facilitating the review of the lease to Gudmundur Fridriksson's PHDC. He is also a shareholder in PHDC.

THE FILMMAKERS



DIRECTOR: HOLLIE FIFER

As a director, Hollie Fifer's documentaries are inspired by the true life stories that are too bizarre and courageous to believe.

In 2009, she was commissioned by Australian Volunteers International to direct her first documentary, *Children of the Rainbow Serpent* (NITV), set in Tamil Nadu, India. She went on to make *Common Ground* (SBS), which won seven awards from international and Australian festivals. Her most recent shorts *Corinna* and *Very Impressive* both premiered at the Antenna Documentary Film Festival in 2013 and 2014 respectively. *The Opposition* is Hollie's first feature documentary, released at HotDocs 2016 in a redacted version (during the Kidu vs Fifer court case) and IDFA 2017 in its full version once a temporary injunction had been discharged by the Court.

Hollie studied a Bachelor of Film and Television (Hons) at Swinburne University and The Northern Film School in the UK under the Vice-Chancellor's Scholarship, graduating with First Class Honours and the Award for Creative Excellence. Hollie continued her studies to receive a Graduate Certificate in Sustainability and Social Change followed by a Graduate Diploma of Documentary from the Australian Film Television and Radio School, graduating with the Shark Island Prize for Best Social Impact Documentary. Hollie has also worked as a documentary tutor at the National Institute of Dramatic Art (NIDA).



Director Hollie Fifer filming *The Opposition* in Papua New Guinea.



PRODUCER: REBECCA BARRY

Rebecca's driving passion is to facilitate stories, share these with an audience in a creative way and get people thinking. She was director and producer of the feature documentary, *I am a Girl*, which was launched in cinemas in 2013 to sell-out sessions, and was nominated for four AACTA Awards including Best Direction in a Documentary, as well as a nomination for Best Direction in a Documentary Feature at the Australian Directors Guild Awards. Rebecca was a producer of *The Surgery Ship* (SBS), *Call Me Dad* (ABC) and *Psychics in the Suburbs* (ABC) and was an Impact Producer on feature documentary, *Embrace*.



PRODUCER: MADELEINE HETHERTON

Madeleine's filmmaking has taken her around the world shooting in challenging locations, including diamond diving in Africa, wildlife trafficking in Burma and to the remote outback of Australia. She is an experienced, award-winning director and producer working across a wide range of television documentary and top-rating factual programs and series.

Her work has been nominated and won numerous awards including the Australian Director's Guild award for Best Directing, Best Contemporary Documentary by the Association of International Broadcasters, and Best Documentary at the Sarasota Film Festival. Madeleine produced and directed the award-winning ratings success *The Surgery Ship* (SBS), now an eight-part National Geographic series, of which she is the creator and series producer. She is also the producer of *Call Me Dad* (ABC) and *Psychics in the Suburbs* (ABC).

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SECTION 02

THE STUDY GUIDE

OUTLINE OF THE STUDY GUIDE

The events described in *The Opposition* raise issues of concern to all those who support an international system based on:

- the rule of law
- the realisation of human rights and the role of the human rights defender
- the holding to account of Governments for the welfare and rights of their people
- the holding to account of corporations
- the rights of communities to participate in decisions that affect their rights
- international solidarity.

PURPOSE OF THE STUDY GUIDE

The Paga Hill Estate struggle is typical of many conflicts over development in both rich and poor countries around the world. Forced resettlement is also involved in the building of facilities for mega-events such as the Olympics, in the spread on to traditional lands of agribusiness such as palm oil plantations, for supposed security reasons, and in the building of infrastructure such as roads and railways.

This study guide is designed to outline the standards and norms that are supposed to govern the practices of governments and private corporations in order to protect the rights of citizens. It looks at mechanisms of accountability and possible avenues for those struggling against forced resettlements in the international human rights framework and in evolving standards governing the behaviour of private corporations.

The Opposition documentary highlights various strategies for fighting against forced relocation by communities. The study guide explores these strategies and focuses on ways to research abuses, the identification of allies – both domestic and international, and highlights the right of communities to participate meaningfully in decisions that affect their rights as agreed through international standards enshrined in international law on human rights and in development.

DISCUSSION AND ACTIVITY KEY

- Q** Discussion Questions
- A** Assignments and Activities
- R** Research



THE OPPOSITION CLIP 04: LAWYER MEETING

The study guide may be used in a formal classroom settings by academic institutions and may be appropriate to courses and subjects in business, human rights, law, social inquiry and community development. Course facilitators may select sections most appropriate to their specific course outlines.

NGOs and civil society groups with a focus on human rights, governance institutions and corporate social responsibility arms of business will also find this guide useful in a workshop setting.

The study guide contains opportunities for written work, suggested research topics and practical exercises, as well as lists of reference documents. All of these focus on means of exposing abuses through the use of available accountability mechanisms and through the unearthing of information useful for advocacy.

The way these assignments and exercises are used depend on the circumstances in which the film is shown. This may vary from one showing to its use in academic courses. If a part of an academic course, it would be up to the lecturer to decide how much or how little of this guide would be appropriate and which of the exercises and assignments are appropriate to the specific course.

SECTION 03

HUMAN RIGHTS

THE RIGHT TO ADEQUATE HOUSING AND ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

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SECTION 03**HUMAN RIGHTS****THE RIGHT TO ADEQUATE HOUSING AND ECONOMIC,
SOCIAL AND CULTURAL RIGHTS****THE OPPOSITION CLIP 05: SETTLEMENT**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) are elaborations of the rights prescribed in the UN Universal Declaration of Human Rights (UDHR) adopted in 1948. This Declaration has become part of international customary law and all member States of the UN are expected to treat it as such. The two Covenants were originally meant to be one. However, during the Cold War, their content became entangled in geopolitics and while they both came into force in 1976, the ICCPR was seen to be in the main interest of the West, whereas the ICESCR became the document mostly promoted by the countries on the other side of the Iron Curtain.

Since then, the UN has expended considerable effort to clarify the meaning and importance of these Covenants in order to specify more precisely the obligations of governments for the realisations of all the rights therein. For example, article 2 of ICESCR states: "... each State Party... undertakes to takes steps... with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures". In answer to a common claim by governments that they simply do not have the resources to address all the rights in the Covenant, the UN Committee on Economic, Social and Cultural Rights has handed down a number of General Comments clarifying how State parties are to deal with "progressive realisation". In particular, the commentary clarifies that even in times of few resources, the State is still obliged to embark on ensuring that human rights are realised without delay. It has done this with many of the Articles in ICESCR.

The universal right to adequate shelter is included in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). To clarify the general intent of this Article, the ICESCR Committee has written General Comment 4 and has gone further by addressing forced evictions in General Comment 7. In addition, the UN has adopted the Maastricht Guidelines and the Limburg Principles which go into greater details about violations of ESC rights and the imperative for remedy and restitution.

Article 11.1 states:

1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent.

We see that this formulation of the right to housing does not provide much content for the right. The core content of the right is clarified in the General Comments and in a briefing paper jointly produced by the Office of the High Commissioner for Human Rights and UN Habitat (Fact Sheet 21).

A Assignment and Activities

- Read the relevant General Comments, the Maastricht Guidelines and the Limburg Principles.
- Read the UN Basic Principles and Guidelines on Evictions and Resettlement.
- Write an account of where and how the events described in The Opposition are in breach of international law, citing the relevant points in these documents.
- Research and identify the accountability mechanisms available in the international human rights system that would be available to the Paga Hill community and its supporters.

Q Discussion Questions

- How would you help the Paga Hill communities to bring their concerns to the relevant United Nations bodies? What should their demands be?
- What impediments would a community like Paga Hill face in accessing these mechanisms?
- Do you think these mechanisms offer remedies that would make a difference to communities facing existential challenges?



Joe Moses speaking on a panel at the United Nations about the experience of Paga Hill.

REFERENCE DOCUMENTS

- The [UDHR](#) and the International Covenants on [Civil and Political](#), and [Economic, Social and Cultural Rights](#) – The International Bill of Rights
- General Comments [4](#) and [7](#) to the ICESCR
- [The Maastricht Guidelines](#) on the Violation of Economic, Social and Cultural Rights
- [The Limburg Principles](#) on the Implementation of the International Covenant on Economic, Social and Cultural Rights
- [The UN Basic Principles and Guidelines on Evictions and Resettlement](#)
- [The Right to Adequate Housing, Fact Sheet No 21](#), UN Habitat

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SECTION 04

BUSINESS AND HUMAN RIGHTS

CORPORATE SOCIAL RESPONSIBILITY



THE OPPOSITION CLIP 06: PHDC'S CSR

It is a commonplace to state the all-pervasiveness of globalisation in modern times. Corporations have become multinational. The headquarters of a corporation may be registered in one country, the manufacture of the components of the product that it sells may be in another, the assembly of the product in yet another. Finance capital is mobile as well. Investment knows no boundaries and a corporation in country A financing development in country B may deposit its profits in country C because of the latter's low rates of taxation.

The magnitude of these transactions dwarf the budgets of many countries where these corporations/businesses operate. It is clear that in many countries the power of the multinational corporation is greater than that of their governments. There is no question that in some cases, this state of affairs is beneficial to the countries that host the presence of the corporations. However, some cases, the activities of the corporation can lead to a variety of abuses, most often related to the welfare of the workers involved in manufacturing, but also in agriculture where agribusiness can lay waste to vast tracts of land and dispossesses traditional communities, in mining which may cause irreparable harm to the environment and in real estate developments.

In some cases, the governments' hands are bound. The perception that the benefits to the governmental economic bottom line outweigh the harm done to its citizens, lead governments to ignore abuses committed by corporations. Additionally, a government's economic bottom line can overlap with the personal commercial interests

of senior state officials, who employ the state as a device for personal enrichment and rewarding clients.

Corporations with a paramount interest in maximizing financial benefits to their shareholders and to their CEOs, may justify practices to negatively affect the local population by their loyalty to these. The situation enables activists in the countries where they operate and where they are headquartered to expose abuses caused by their policies and practices. And the shareholders – and indeed the companies themselves – can be uncomfortable with this, particularly since the exposure may even affect their bottom lines. So even where companies operate where governments are little concerned about the human rights of their citizens, companies might be vulnerable to international criticism.

In response, many multinational and domestic companies have developed codes of conduct and have stated policies on corporate social responsibilities. The issue here is that all of these are voluntary, that there are no normative standards, no accountability mechanisms, and no avenue for verification. This is not to say that some companies are not applying their social responsibility policies. But for some CSR can be used to boost the image of the company with little or no impact on its practices. Some companies use CSR to whitewash the human rights abuses so they actually don't have to change their practices (including abuse) – they merely have to create a socially responsible reputation. We are all familiar with the cases of sportswear manufacturers with highly developed CSR policies that do not apply in the factories sub-contracted in poorer countries.



A mother and child from the Paga Hill community.

HOLDING COMPANIES TO ACCOUNT

There have been numerous efforts to standardise CSR and even to insert a modicum of obligation in order to hold companies accountable. The United Nations Global Compact is a framework for business encompassing human rights, environment and corruption. Companies are encouraged to sign and join the global compact and to abide by its ten principles that include human rights and labour standards. It is voluntary and like individual company CSR policies, can sometimes be used for publicity purposes to boost a company's image.

In 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights approved the *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights*. The Sub-Commission was a body of the UN Human Rights Commission of Human Rights, the precursor to the UN Human Rights Council, and its draft attempted to codify standards for corporations' human rights obligations. There was considerable support for the Norms from NGOs and others, but the Sub-Commission handled the presentation of the norms poorly, insisting from the outset that their adoption would instantly make them legally binding. The Human Rights Commission agreed that the Norms would have no legal standing.

With the failure to adopt the obligatory norms for transnational corporation, the UN Secretary-General engaged John Ruggie, one of the original proponents of the Global Compact, to explore the drafting of standards concerning business and human rights. Ruggie came up with a set of principles that have now been accepted by numerous stakeholders, the UN Guiding Principles on Business and Human Rights. They were endorsed by the UN at the Human Rights Council in 2011. The Guidelines reaffirm that the state has the obligation to protect human rights. That is, that governments must prevent human rights abuses by third parties, in this case companies and corporations. Business then must accept the responsibility to respect human rights – a legal obligation of the state, but not legally binding on business. Finally, the principles grant the victims of abuses brought about by the practices of business access to remedy. This is a shared responsibility between the state and business.

Once again, these are guidelines only and in no way enforceable. However, their almost universal acceptance provides human rights advocates a modicum of opportunity to expose those governments and business who do not abide by the Principles.



Dr Kristian Lasslett, International State Crime Initiative.

WHERE THERE'S SMOKE, THERE'S FIRE

Economists generally agree that bribery and corruption are costs that are ultimately borne by society as a whole rather than by the institutions that engage in these. These so-called 'externalities' add to the cost of an enterprise and are taken up by governments where the corruption occurs. They interfere with the efficient allocation of resources in a free market.

In order to maximise economic efficiency, regulations are needed to reduce market failures and imperfections, like internalising externalities. When market imperfections exist, the efficiency of the market declines.

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All of the efforts to entrench corporate social responsibility such as the *Norms* and the *Guidelines* seek to create rules to abolish the externalities of corruption.

We are all familiar with high-profile prosecutions of companies and individuals for their corrupt practices. These generate scandalous accounts in the media and sometimes (all too rarely) result in severe penalties including imprisonment for the CEOs of the companies. Unfortunately, corruption and shady dealings, especially when they involve senior Government officials, are notoriously hard to prove. When they do see the light of day, the revelations are the product of meticulous and persistent research by concerned individuals, NGOs, the media and on occasion by governments.

The reality is that most of the suspect dealings between companies and decisions makers are rarely exposed and, all too often, when they are exposed, they do not lead to sanctions for either parties. This does not mean that the efforts to expose corruption are worthless. A parallel is the International Human Rights Framework. International human rights standards are said to be binding but, short of pursuit by international tribunals that may condemn individuals, they can rarely be enforced. Yet the practice of exposing does have an impact. No government likes to stand accused in the court of international public opinion and governments go to extreme lengths to deny that they violate rights.

This is also the case with corporate social responsibility, where exposure may not bring immediate results, but where the reputational damage can lead to eventual changes in practice. The oil company Shell faced boycotts and a global campaign by human rights activists and NGOs following the death of Ken Saro-Wiwa in Nigeria:

Corporate human rights policies are of recent origin – Shell was the first major company to adopt an explicit human rights policy in 1998 after global criticism of its failure to intervene with the Nigerian Government to prevent the execution of the activist Ken Saro-Wiwa after an unreliable terrorism trial. Saro-Wiwa had been active in protest activity of the Ogoni people against Shell’s Niger Delta operations.

Professor Paul Redmond

For it to have an effect, research into corporate behaviour and collusion with government officials needs to be thorough and credible – just like research into human rights abuses.

The International State Crime Initiative is one of many institutions that conduct research into suggestions of corporate malfeasance. Its researchers inquired into the main players involved in the Paga Hill Estate, compiled available biographical information and corporate histories of the proponents of the development on the links between the various companies involved as principals and as associates, on the degree of shareholdings of the decision makers, and on the relationships between the developers and government officials.

One challenge in mounting a case for collusion between government officials and companies is the organisation of information. This can be a difficult process for non-expert individuals and NGOs. One useful tool for arranging materials in a simply understandable format is the one available from [Visual Investigative Scenarios](#).



[THE OPPOSITION CLIP 07: GOVERNMENT IS INVOLVED](#)

(VIS) is a data visualisation platform designed to assist investigative journalists, activists and others in mapping complex business or crime networks. Our aim is to help investigators understand and explain corruption, organised crime and other wrongdoings and to translate complex narratives into simple, universal visual language.

[VIS website](#)

There are also a range of software packages. One powerful package that is available freely to not-for-profit users is [Maltego Casefile](#).

A Assignment

- Read the International State Crime Initiative report, [The Demolition of Paga Hill](#).
- Select a recent instance of accusations of corporate malfeasance in the media.
- Make a list of the sources that need to be consulted to make the case for the malfeasance. You may use the templates available from [Visual Investigative Scenarios](#).

REFERENCES

- [The International State Crime Initiative](#) (ISCI)
- [The Demolition of Paga Hill](#) – report by ISCI
- [The city as a space of power and exclusion](#) – article by Kristian Lasslett
- [Visual Investigative Scenarios](#) website

“WE’RE A SOCIALLY RESPONSIBLE BUSINESS”

Over the past two decades, a consensus has emerged that with respect to international human rights, states have a threefold responsibility: to respect, to protect and to fulfil their obligations. These obligations were first elaborated in the implementation of the International Covenant on Economic, Social and Cultural Rights and have now been accepted as law by the UN human rights and development mechanisms. The obligation to fulfil rights is often seen as two-fold: the obligation to fulfil is usually split between the obligation to facilitate and the obligation to provide.

What do these terms mean? The obligation to respect human rights means that governments are forbidden to violate human rights, whether in policy or practice. The obligation to protect rights means that governments must prevent third parties – non-government entities, including corporations – from violating rights. If they do, the government must ensure that remedies and restitutions are put in place. Finally, the obligation to fulfil means that either the governments must make sure that budgets and finances are adequate for people to access their rights or, in case of conditions brought about by economic downturns or disasters, governments must provide emergency aid for people to access their rights.

Thus governments who have become parties to UN human rights treaties have an obligation to prevent corporations from abusing the rights of the citizen and to force corporations to provide remedies or restitution. Should these not be forthcoming, the government has the onus to itself provide remedies and restitution. The implementation of these obligations can be challenged at the Universal Periodic Reviews and at the examination of governments’ periodic reports to the UN Treaty Bodies.



Discussion Questions

- In the case of the events at Paga Hill, what were the human rights obligations of the PNG Government and where did it fail in its obligations to respect, protect or fulfil the rights of the Paga Hill community?

OECD GUIDELINES ON MULTINATIONAL ENTERPRISES

[The OECD Guidelines for Multinational Enterprises](#) were drawn up in 1976 by the Organisation for Economic Co-operation and Development to assist corporations to maintain certain standards seen by governments as essential to good governance, particularly in relation to investment. They cover a range of issues, including labour and human rights, consumer protection, bribery and corruption, taxation, the environment and information disclosure.

The Guidelines are voluntary and not binding on corporations and therefore it is up to the latter to decide to abide by some or all of the Guidelines.

The OECD Guidelines for Multinational Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. The Guidelines are the only multilaterally agreed and comprehensive code of responsible business conduct that governments have committed to promoting.

[Foreword to the Guidelines, 2011](#)

At the 50th Anniversary Ministerial Meeting in 2011, Governments adopted a new chapter to the Guidelines on human rights. This chapter draws in the main on the work of John Ruggie and the consequent United Nations Framework for Business and Human Rights, the 'Protect, Respect and Remedy' and is in line with the Guiding Principles for its Implementation. The new Chapter notes that "States have the duty to protect human rights" and that corporations should abide by the human rights obligations of the countries in which they are present. Thus, they should respect and protect human rights and should take part in remediation where their activities lead to human rights abuses.

One important aspect of the Guidelines is the creation of National Contact Points (NCP) in each of the OECD countries. These are designed to promote and implement the Guidelines. In many instances, they consist of a single staff member from – usually – the treasury or the finance ministry. One important function of the NCP is to provide a forum to mediate and conciliate in case of complaints that a specific corporation has not abided by the guidelines. With the inclusion of human rights in the Guidelines, this provides an avenue for the lodging of complaints by human rights defenders. First, the complaint (called the 'specific instance') is lodged. If the NCP decides it has merit, it will contact the company and depending on the circumstances, will host a meeting of the company, the complainant party and possibly a representative of the government of the country of the NCP. The NCP then produces a report which is made available to the parties for possible further mediation.

NATIONAL CONTACT POINTS AND THE COMPLAINTS PROCEDURE

National Contact Points (NCPs) are responsible for encouraging observance of the Guidelines in a national context and for ensuring that the Guidelines are well known and understood by the national business community and by other interested parties. The NCPs also deal with “specific instances”, which is the term used for complaints. If the parties involved do not reach an agreement with regard to the specific instance, the NCP is required to issue a statement. However, NCPs do not monitor whether or not companies are following the Guidelines.

NCPs should respond to enquiries about the Guidelines from other NCPs, the business community, employee organisations, NGOs, the public and governments from non-adhering countries. NCPs have the right to screen cases, that is decide if they are admissible or not through the initial assessment procedure.

When a party raises a case, the NCP is required to make an initial assessment of whether the issue raised merits further examination and respond to the party. Generally, issues are dealt with by the NCP in whose country the issue has arisen. If there is no NCP in that country, cases can instead be brought before the NCP of the country where the company is headquartered. The institutional set up of the NCP differs from country to country: most NCPs consist of a single government department, while some consist of multiple government departments, some tripartite and some quadripartite. Therefore, there is an obvious risk that NCPs make different initial assessments. After completion of the initial assessment, the focus is on problem solving with help from experts, stakeholders, other NCPs and through mediation with the parties involved.

Any person or organisation may approach a National Contact Point to enquire about a matter related to the Guidelines. Because of the central role it plays, the effectiveness of the NCP is a crucial factor in determining how influential the Guidelines are in each national context.

Source: OECD Watch

A Assignment

- Read the human rights chapter in the [OECD Guidelines on Multinational Enterprises](#).
- Write a submission to the National Contact Point complaining that a Company is in breach of the OECD Guidelines.



The Paga Hill community hold a meeting to discuss the struggle to save their homes.

A Activity

ROLE PLAY – THE NATIONAL CONTACT POINT HOSTS A MEETING

- Select three groups to play a) a representative of the Company, b) a representative of the Complainant, c) the designated National Contact Point Officer.
- Each group prepares arguments from their specific perspectives.
- Each group selects a spokesperson.
- The meeting is held.
- In plenary, discuss possible outcomes from the meeting.
- Discuss how these outcomes can be used to assist the Paga Hill communities.

REFERENCES

- [United Nations Global Compact](#)
- [The ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy](#)
- [The United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights](#)
- [The OECD Guidelines for Multinational Enterprises](#) (the class can be encouraged to research whether there have been complaints lodged with the National Contact Point and what the outcomes have been).
- [Guiding Principles on Business and Human Rights](#)
- International Corporate Responsibility, Professor Paul Redmond, 2011 (see Appendix).

SECTION 05

DEVELOPMENT

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SECTION 05

DEVELOPMENT

“YOU CAN’T STOP PROGRESS”

The concept of development is usually defined as an effort to improve people’s lives and wellbeing. Yet its origins lie in the economic efforts led by the USA to mitigate the ravages of World War II, and models such as the Marshall Plan were designed to lead to the economic recovery of Europe. More recently, development has been equated ever more closely to economic growth.

Based on the outcomes of the Marshall Plan, the provision of what came to be known as ‘development assistance’ was designed to help establish economic structures and political stability and thus to prevent the spread of communism. Development assistance was seen as a means to help what were then called “third world” countries to develop and encourage profitable economic activity. It was also used as a foreign policy initiative to bind the possible emerging economies politically to the providers of assistance (the relationship between PNG and Australia is a prime example).

Following decolonisation in the 1960s, more and more countries became the targets for development assistance, with some becoming dependent on foreign aid to survive. As decolonisation proceeded, the United Nations grew exponentially and begun to provide a forum for the expression of dissatisfaction at the economic balance which became known as the developed and underdeveloped world (the latter term soon morphing into “developing”). The “developing world” began to question this imbalance, basing its arguments on the undeniable fact that the developed world had only become such through the exploitation of the resources of the former colonies.

This is certainly the case with PNG and a case can be made that colonisation continues within the relationship between PNG and Australia and that the Bretton Woods Institutions have done little to rebalance the economic inequities between former colonies and the colonisers that seem to be accentuated as time goes on.

Globally, the push for economic rebalancing was shepherded through the UN to culminate in the 1986 UN Declaration on the Right to Development (UNDHR). The Right to Development remains a contested right due to the lack of consensus on its precise meaning and the tension between those who focus on its global redistributive impetus and those who want to emphasise the human dimension of development and on people’s wellbeing.

DECLARATION ON THE RIGHT TO DEVELOPMENT (1986)

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised...

Article 2

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

The main value of the Declaration lies in the insistence that “the subject of development is the human person” and that development can only be achieved through the realisation of human rights.

By placing the individual at the centre of development activities and proclaiming an integrated vision of all human rights, the Declaration is a vehicle for the indivisibility and complementarity of different categories of human rights and for recognising the promotion and protection of all human rights as the basis and measure of sustainable development.

Mary Robinson, Former High Commissioner for Human Rights

Unlike the UDHR, however, due to its contested nature, the Declaration on the Right to Development does not have the force of customary (in its international human rights law definition) law and is not even morally enforceable.

Following the adoption of the Declaration, the UN convened a series of historically important conferences in the 1990s: the World Summit for Children (1990); the UN Conference on Environment and Development (1992); the World Conference on Human Rights (1993); the International Conference on Population and Development (1994); the World Summit for Social Development (1995); the Fourth World Conference on the Status of Women (1995); the Second UN Conference on the Status of Women (1996); and the World Food Summit (1996).

Each of these resulted in a declaration outlining the commitments by the governments of the world to work cooperatively to promote sustainable development and to respect and protect human rights.



People from the Paga Hill community participate in a yoga class.

A Assignment

Read the Declaration on the Right to Development.

What aspects of the Declaration could be raised in arguing against the economic growth model that is the foundation of the events at Paga Hill?

THE SUSTAINABLE DEVELOPMENT GOALS

The Millennium Development Goals (MDGs) were a set of targets for developing countries to reduce extreme poverty. The targets covered income poverty, hunger, disease, lack of adequate shelter, and exclusion – while promoting gender equality, education and environmental sustainability. Drawing on the Declaration on the Right to Development, the MDGs called on the countries of the developed world to assist. The MDGs did face considerable criticism for not paying adequate attention to the international human rights obligations of governments, to peoples' participation and for their emphasis on the economic dimension of development. The MDGs were also criticised for the targets selected and for a lack of emphasis on environmental sustainability. Nevertheless, the MDGs were effective in approaching some of the agreed targets in a number of countries, notably China and India.

It was at the Rio+20 Conference, the third world conference on environmental sustainability, that the proposal for the Sustainable Development Goals was formulated.

Three years later, and following a complex and exhaustive world-wide consultation, governments at the UN adopted and launched the 2030 Agenda for Sustainable Development, which includes 17 Goals.

The 17 Goals deal with poverty, hunger, health, education, gender equality, water and sanitation, affordable and clean energy, decent work and economic growth, infrastructure and industry, inequality, sustainable cities, consumption, climate, protection of oceans, protection of land, peace and justice, and international co-operation. Unlike the MDGs, the SDGs target have been adopted by all countries, not only developing ones.

Importantly, the SDGs stress the responsibility of business in achieving the Goals, not only in terms of finance and economic growth, but also to accord with the Guiding Principles on Business and Human Rights.

A Assignment

Read the 2030 Agenda.

The 2030 Agenda commits governments to establishing a 'robust, voluntary, effective, participatory, transparent and integrated follow-up and review framework' and sets out important principles to guide the review process at all levels, including gender sensitivity and respect for human rights.

Choose three of the goals yet to be met in your own country. Review these goals and what pressure human rights defenders need to devise for the goals to be met by 2030.

REFERENCES

- [The Declaration on the Right to Development](#)
- [The Millennium Development Goals](#)
- [The 2030 Agenda](#)

WHO HAS A SEAT AT THE TABLE? PEOPLES' DECISION-MAKING

... participation is now a right and it is crucial for accelerating change. Broad, effective partnerships for rights become particularly essential if long-term, sustained changes are to be achieved in values and in consciousness... This calls for an approach to partnerships that is based on continuous strategic analysis, not just on short-term opportunities.

'A Human Rights Approach to UNICEF Programming for Children and Women: What It Is, And Some Changes It Will Bring', UNICEF, New York, April 1988

The Declaration on the Right to Development states that the 'human person' must have a say in decisions that affect the realisation of rights and that genuine and meaningful participation will guarantee that the benefits of development are shared more equitably.

Participation should therefore be an integral part of the development process. It is a major objective for any development. This is increasingly recognised by multilateral and bilateral agencies and features in the policy statements of the OECD, the World Bank and the UN development agencies. Sadly it is all too honoured by these in the breach and it becomes an endless struggle to enable the stakeholders to be involved in the decision-making.

The challenge therefore is to ensure that participation is more than a token process with little chance of affecting outcomes and that those who participate are as far as possible and as far as practical, representative of the stakeholders in development. The identification of participating groups and individuals thus becomes critical if participation is to be meaningful. Participation in the human rights sense emphasises an expectation that participation can make a difference in the decision-making process. In this, it is an essential step on the road to democratisation.

Participation in this sense is also valuable for development programs in that it sensitises all the stakeholders to the value of political involvement in decision-making in a non-confrontational way. Not only does this lead to greater sustainability, but it accords with most policies on good governance and democratisation.

While the widest possible level of participation is called for at every stage, it is obviously impossible to involve every stakeholder in every decision. Not only would this be unworkable, paralysing the whole process, but it is not demanded by the stakeholders themselves. The guiding principle for participation is that people should be involved and consulted in decisions that affect them at the most immediate level.

This principle of subsidiarity can ensure that realistic limits are placed on the process. This does not relieve governments of the responsibility of consulting as widely as possible, but it does mean that every effort should be made to identify responsible representatives of interested parties to take part in the participatory process at the appropriate level. In this context, the active provision of information is critical.

At the same time, the challenge of ensuring a modicum of participation in the high level discussions between government departments and other interested parties is not inconsiderable. How can you reflect the popular will in agreements which are negotiated between involved parties and which are often essentially technical in nature? Is it possible to manage some kind of input which is truly representative of civil society at this level? These questions are especially problematic in countries whose political system is not truly democratic and where it is difficult, if not impossible, to gauge popular opinion on government policies and programs through official channels.

One answer is to increase transparency in the entire process. There is surely very little which is so sensitive that it must remain secret and where public criticism would affect the process adversely. The challenge for the parties in difficult political circumstances is still for them to initiate the participation of the various sectors of civil society without, of course, jeopardising their security.

Here the involvement of civil society organisations becomes essential. The benefits of the involvement of non-government and community-based organisations (CBOs) in the development process are obvious. NGOs and CBOs can bring to the process particular skills and a capacity for effective action in areas such as community participation and grass roots development.

Discussion Questions

Consultation with the Paga Hill community was woefully inadequate in the history of the Paga Hill development. The community's only recourse was the legal system and the engagement of powerful supporters such as Dame Carol Kidu.

- Looking at the history of the Paga Hill development, at what specific points should the company have listened to the community and heeded their demands? What would have needed to happen for this to take place? How can the company make sure participation is not superficial? What should happen when the community's participation is at odds with the financial projections for the vision of the project?

SECTION 06

INTERNATIONAL ACCOUNTABILITY

HUMAN RIGHTS ACCOUNTABILITY MECHANISMS

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SECTION 06

INTERNATIONAL ACCOUNTABILITY

HUMAN RIGHTS ACCOUNTABILITY MECHANISMS

There are various forums that human rights advocates can turn to in support of their campaigns. Human rights accountability mechanisms are based on international laws that are not enforceable. However, the process of naming and shaming can affect the practices and policies of governments. International recognition that abuses have or are still taking place may be used by advocates in publicising these at both international and domestic levels. And shining international light on such abuses can generate support and empower those who campaign against them.

Some of the accountability mechanisms available through the standards and norms for business have been addressed previously. The international human rights framework provides other avenues to lodge complaints.

THE UNITED NATIONS HUMAN RIGHTS COUNCIL

The UN Human Rights Council has instituted the [Universal Periodic Review](#). This is the mechanism through which all members of the United Nations have to report every four years on the performance of each member of the United Nations. The basis of the review is the UN Charter, the obligations of government under the various human rights mechanisms, and the commitments governments have made during previous reviews.

There are a number of opportunities for civil society to have an input into the reviews. The Human Rights Council urges civil society to provide complementary information on the performance of the government. All members of the Human Rights Council are entitled to participate in all the reviews and ask questions and follow up on commitments of the government under review. Civil society can provide information on their concerns to members of the Human Rights Council, requesting them to raise relevant questions. The answers and commitments made by a government under review can be used to further publicise the issues.

THE TREATY BODIES

Under the articles of each of the human rights Covenants and Conventions, governments who have become parties to these treaties have the obligation to report periodically on their performance in implementing the obligations under the relevant treaty. To oversee this process each treaty calls for the establishment of committees of independent experts who conduct reviews of the periodic reviews. These are commonly known as the Treaty Bodies.

The Committees base their reviews of the governments' periodic reports on information compiled by the Office of the UN High Commissioner for Human Rights. They also encourage information from other sources such as international human rights organisations. Most importantly, they seek information from civil society organisations from the country under review. These alternative sources of information – also called “shadow” or “alternative” reports – are key to completing record. The Committees finally produce Concluding Observations which contain recommendations to the governments on meeting their obligations in areas of concern. These Concluding Observations can in turn be used by human rights advocates in their domestic and international campaigns.

The abuses that occurred at Paga Hill would be of interest and concern to the Committee on Human Rights and the Committee on Economic, Social and Cultural Rights.

THE SPECIAL PROCEDURES

From time to time, the UN Human Rights Council appoints independent experts to investigate human rights on either specific themes or on individual countries. These are called ‘Special Procedures’. These individuals are not staff members of the UN, but serve in a personal capacity and are supported by the Office of the High Commissioner for Human Rights. They serve at considerable sacrifice to themselves and since the Office of the High Commissioner is badly underfunded are almost always overworked.

The Special Procedures conduct country visits at the invitation of governments. It is most often at the suggestion of the Special Procedures that they are willing to conduct a country visit that the invitation is issued by a government. Most important for human rights advocates, the Special Procedures can issue letters and urgent appeals to governments when there are allegations of human rights in their country. Special Procedures also produce thematic and country reports and welcome input from individuals and civil society.

The Opposition filmmaker Hollie Fifer and Joe Moses met with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context in Geneva to brief her on the events at Paga Hill.

SECTION 07

SOMEONE HAS TO STAND UP

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SECTION 07**SOMEONE HAS
TO STAND UP****THE UN DECLARATION ON THE RIGHTS
OF HUMAN RIGHTS DEFENDERS****THE OPPOSITION CLIP 08: JOE KEEPS FIGHTING**

Throughout the world, individuals take action in defence of human rights. They may work alone or with others to ensure that civil, cultural, economic, political and social rights are promoted and protected. They may be involved in research and exposure, community activism, supporting victims of abuses, holding governments accountable or human rights education. And throughout the world, human rights defenders face increasing opposition from governments and others to prevent them achieving their objectives.

This opposition takes many forms. Some governments institute laws that prevent human rights defenders from accessing funds from overseas, as in Russia and China. Others impose conditions on human rights defenders for the access of government funding if they criticise the government, as has been threatened in Australia. In some countries, governments turn a blind eye to corporate practices that adversely impact human rights, such as in Indonesia and West Papua. However, in too many countries around the world, human rights defenders are threatened physically, imprisoned and even killed.

In 1998, on the occasion of the 50th anniversary of the Universal Declaration of Human Rights, the UN General Assembly adopted the [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedom](#) known as the Declaration on Human Rights Defenders. The Declaration is not legally binding on UN members. However, it is an

acknowledgement of the importance and worth of those who fight for the realisation of civil, cultural, economic, political and social rights.

In a groundbreaking commentary on the Declaration, the UN Special Rapporteur on the situation of human rights defenders, Ms Margaret Sekaggya, produced a report entitled *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, which listed nine rights in the Declaration. These were the rights to be protected, to freedom of assembly, to freedom of association, to access and communication with international bodies, to freedom of opinion and expression, to protest, to discuss new human rights ideas, to an effective remedy, and to access to funding. We don't have to delve too deeply into the history of Paga Hill to realise how many of Joe Moses' and the Paga Hill community's rights have been violated.

THOSE WHO DEFEND THE HUMAN RIGHTS DEFENDERS

Joe Moses and many others in the Paga Hill community have put their lives on the line to defend their human rights and their homes. It is unclear to what extent the brutal treatment by the PNG police is sanctioned by the Government. For example, the systematic harassment of Joe Moses has included anonymous death threats to the extent that he has been forced to seek refuge, initially in Port Moresby and finally outside PNG.

Many organisations around the world are mandated to protect human rights defenders. They generally fall within three broad categories:

- organisations that monitor the situation of human rights defenders and issue international calls for action and urgent appeals. These include [Amnesty International](#), the [Committee to Protect Journalists](#), [Front Line Defenders](#), [Protect Defenders EU](#), [Human Rights Watch](#), the [International Federation for Human Rights](#), [Reporters Without Borders](#), the [World Organisation Against Torture](#) and [Defend Defenders](#).
- organisations that provide information and technical assistance to help human rights defenders achieve their goals. These include the [International Service for Human Rights](#) and [Witness](#) (with its affiliate [Engage Media](#)).
- organisations that provide financial support or physical protection for human rights defenders. These include Front Line Defenders, Protect Defenders EU, Reporters Without Borders, the [Urgent Action Fund for Women's Human Rights](#), the World Organisation Against Torture, and Defend Defenders.

A Assignment

Look at the web sites of the organisations listed above. Which of these might have provided support for Joe Moses and his advocacy? At what stage of the struggle should each have been approached? What type of intervention should have been sought?



Joe Moses.

R Research

Research a human rights defender in your community who is standing up for the rights of others.

REFERENCES

- [Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedom](#)
- [Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms](#)

SECTION 08

**ORGANISING
COLLECTIVELY**

THE PAGA HILL COMMUNITY CAMPAIGN

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SECTION 08**ORGANISING
COLLECTIVELY****THE PAGA HILL COMMUNITY CAMPAIGN****THE OPPOSITION CLIP 09: COMMUNITY RESISTANCE**

It was through a set of fortuitous circumstances that the abuses of the Paga Hill community were able to be recorded by the makers of *The Opposition*. Many similar struggles occurring daily around the world remain hidden from public view except in very rare cases. The exposure of these abuses is dependent on the forging of alliances and recruiting support from domestic and international sympathisers.

Support from the political class is always important. The role initially played by Dame Carol Kidu brought the issue into the PNG Parliament and empowered the community to continue its struggle. Her intervention possibly dampened the aggression of the PNG police, at least when she was visible. Her resignation from the Parliament and her company's subsequent contract with the developers was a major disappointment to Joe and other members of the Paga Hill community.



[THE OPPOSITION CLIP 10: DR KRISTIAN LASSLETT](#)



[THE OPPOSITION CLIP 11: DAME CAROL KIDU](#)

The alliance formed with the International State Crime Initiative and Dr Kristian Lasslett points to the importance of forging links with research institutions and drawing support from their expertise.

The type of publicity generated by the release of *The Demolition of Paga Hill* would not have been possible without such an alliance.

When Joe Moses was seeking to find refuge to avoid threats made against him, an international alliance including the United Nations and human rights defenders' protection organisations began to form an alliance to help Joe and find him temporary harbour in the UK in an academic institution.

The legal fraternity is also a valuable ally. Many domestic and international law firms have pro bono programs designed to support campaigners for social justice. Establishing

links with these institutions can have major impacts. The Law School at the University of NSW provided advice to the filmmakers throughout a three-year period, strategising the release and impact. Key practicing lawyers have lent their expertise not only for the court injunction case against the filmmakers, but to strategy, impact and advice for the characters within the film.

The Opposition was screened at Transparency International's International Anti-Corruption Conference (IACC) in Panama involving heads of state, UN representatives, civil society anti-corruption campaigners and the private sector. The similarity between what took place at Paga Hill and many other struggles over land was striking. It turned out to be an empowering experience to other campaigners to meet up with Joe Moses and to compare notes. This network of people struggling over similar issues serves as a means to exchange experiences and strategies and strengthens the movement for human rights.

The Opposition has been the vehicle for the exposure of abuse of human rights, for bringing together civil society in common cause, for facilitating harbour for a human rights defender at risk and for demonstrating the need for solidarity in the search for social justice.

REFERENCES

- ¹ Property developer Gummi Fridriksson on leave to concentrate on business interests in PNG, *The Australian*, 16 October 2012
- ² PHLHC 1998: 18 (quoted in *The Demolition of Paga Hill*)
- ³ *The Demolition of Paga Hill*, page 13-14
- ⁴ [Not Just Criminals – A response to the Paga Hill Development Company](#) and [Papua New Guinea – Aust exec admits role in human rights abuse](#)
- ⁵ Orders 3 and 4 of the National Court of 29 January re Proceedings OS No. 573 of 2012
- ⁶ As at April 2017



Director Hollie Fifer with people from the Paga Hill community.

