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Enforcing Environmental Rights: Strategic Litigation Workshop

June 11-14, 2019, Ulaanbaatar, Mongolia

Co-organizers: Center for Human Rights and Development, Open Society Forum, ESCR-Net



Overview

From 11-14 June 2019, in Ulaanbaatar, Mongolia, the [Centre for Human Rights and Development](#) (CHRD), and their partner the [Open Society Forum](#), co-organized with the Strategic Litigation Working Group (SLWG) of ESCR-Net a strategic litigation workshop entitled **“Enforcing Environmental Rights.”** Over two dozen litigators and other human rights advocates from organizations in Africa, Asia, Europe, Latin America and the Middle East attended.

This workshop was the first of a series envisioned by the SLWG to bring together human rights litigators, other advocates and movement leaders to analyze and strategize about existing casework, jurisprudence, and legal openings concerning themes prioritized by network members and responsive to the global ESCR challenges described in the network’s social movement-derived [Common Charter for Collective Struggle](#). These systemic challenges include impoverishment and dispossession amid abundance; corporate capture of the state; deepening inequality; degradation of ecosystems and a changing climate; and growing repression of human rights defenders.

The primary aims of the Ulaanbaatar workshop were to:

1. Consider key linkages between human rights and the environment;
2. Enable confidential strategic exchange and legal problem-solving;
3. Analyze structural factors producing environmental human rights violations; and
4. Lay the foundation for solidarity and collective action in the future.

The workshop contained participants from Mongolia and around the world, including: Akhona Mehlo ([Centre for Applied Legal Studies](#) at Witwatersrand University); Amgalanbayar Lkhagvasuren (Bugat Zaamar Burgast Tuul); Arnold Kwesiga ([Initiative for Social and Economic Rights](#)); Bayarmaa Byambasuren (Patrons of the Lake Khuvsgul); Binota Moy Dhamai ([Asia Indigenous Peoples Pact](#)); Cannelle Lavite (European Center for Constitutional and Human Rights); Dashdemberel Ganbold (environmental attorney); Fernando Delgado (ESCR-Net); Gantsogt Dashnamjil (Khalkhgal Numrug Basin Protection Movement); Giogi Antadze ([Georgian Young Lawyers’ Association](#)); Guillermo Torres ([Proyecto Derechos Economicos, Sociales y Culturales](#)); Jhenifer Mojica Florez ([Comisión Colombiana de Juristas](#)); Joie Chowdhury (ESCR-Net); Kranti LC ([Human Rights Law Network](#)); Letícia Aleixo ([Conectas](#)); Manja Bayang ([Tebtebba Foundation, Indigenous Peoples’ Centre for Policy Research and Education](#)); Marcel Didier von der Hundt ([Observatorio Ciudadano](#)); Nasanga Aki ([Kenya Human Rights Commission](#)); Oyun Sonompil (environmental attorney); Patrick Chiekwe ([Foundation for the Conservation of the Earth](#)); R. Ulziitsetseg (Committee on Lawyers Public Benefit Activities of the Mongolian Bar Association); Ruth Stephani Panjaitan ([International Commission of Jurists](#)); Salma Karmi-Ayyoub ([Al-Haq](#)); Urantsooj Gombosuren ([Centre for Human Rights and Development](#)); Victoria Beltrán ([Project on Organizing, Development, Education and Research](#)); and Youngah Park ([Minjusahoereul wihan Byeonhosamoim](#)). Strategic exchange with the Mongolian participants enabled participants from other regions to learn from and ground discussion in the local context. Day one of the workshop also included numerous Mongolian civil society representatives and administrative court judges. It opened with remarks by Khunan Jargalsaikhan, President of the Mongolian Bar Association, and contained research presentations by Munkhzul Ravdandorj, researcher. Environmental lawyer Jargalsaikhan Shagdar and Mongolian Bar Association member J. Erkhembaatar also presented on Day

1.

Workshop structure

Four intersecting strands of exchange were present at the workshop:

- Case presentations grouped by themes drawn from participants' casework (e.g. environmental litigation against corporate actors; free, prior, and informed consent; and environmental human rights defenders);
- Strategic exchange on critical perspectives relating to economic, social, cultural, and environmental rights litigation, for example, regarding access to justice, the role of court-based strategies in structural change, developing/transforming norms, leveraging litigation, and securing implementation;
- Consideration of opportunities for collective or mutually reinforcing work; and
- Grounding technical and strategic discussions from national, regional, and international contexts in the concrete legal and political realities confronting civil society and human rights lawyers in Mongolia.

The workshop was interpreted, and key materials were translated, to and from English, Mongolian, and Spanish.

Highlights

Day 1: Addressing challenges to environmental public interest litigation in Mongolia

The first day (11 June) of the workshop focused on environmental public interest litigation (PIL) in Mongolia. The proceedings were led by local partners, the Open Society Forum and CHRD. The convening included numerous environmental litigators, advocates, administrative court judges, and other national stakeholders.



The event aimed at informing key actors about trends in environmental public interest litigation in Mongolia; addressing the legal and practical obstacles faced by nongovernmental organizations engaging in PIL; and dialoguing about related experiences in other countries. The Open Society Forum presented the results of their research regarding challenges to PIL, based on an extensive analysis of relevant court decisions in Mongolia.

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The event included a panel with ESCR-Net members, who spoke about international experiences regarding PIL in their countries. Panelists included Akhona Mehlo from Centre for Applied Legal Studies at Witwatersrand University (South Africa); Kranti LC from Human Rights Law Network (India); Manja Bayang from Tebtebba Foundation, Indigenous Peoples' Centre for Policy Research and Education (Philippines), and Nasanga Aki from Kenya Human Rights Commission (Kenya). The panelists presented comparative perspectives in relation to four questions proposed by Open Society Forum:

1. What should be the scope of public interest in the law?
2. Who should have standing to sue for the public interest?
3. How can lawyers be incentivized to litigate for the public interest?
4. How can PIL serve as a tool to enhance protections of environmental human rights?



The day ended with small group and plenary discussions on how to enable PIL in Mongolia.



Day 2: Mapping fundamental features and methods of environmental human rights litigation

The second day (12 June) included two substantive sessions, the first on Economic, Social and Cultural Rights (ESCR) and the environment through the lens of dam disasters, and the second regarding critical perspectives on environmental human rights litigation.

In the dam disaster session, the key discussants—Cannelle Lavite, European Centre for Constitutional and Human Rights (Germany); Leticia Aleixo, Conectas (Brazil); Nasanga Aki, Kenya Human Rights Commission (Kenya); Victoria Beltrán, Project on Organizing, Development, Education and Research (México); Youngah Park, Minjusahoereul wihan Byeonhosamoim (South Korea)—presented on their casework on dam disasters, leading the group in a rich discussion that offered a window onto the broader environmental human rights litigation landscape.



Participants engaged with questions, such as:

- What are the common legal and advocacy challenges and openings in these dam disaster related cases?
- What does the fact of there being a repeat corporate offender in such cases tell us strategically about how to litigate and otherwise face this kind of a threat to human rights?
- How can corporate capture be a key challenge in such cases?
- Even assuming favorable judgments, are courts adequately equipped and inclined to enforce them against entrenched powers?
- When is international advocacy necessary?
- How can extraterritorial obligations be enforced?

Though speaking on cases touching several continents, patterns emerged relating to the sources of violations and political pressures confronting litigators and affected communities, which led to insights beyond the specificities of dam disasters. Participants were able to share strategies and identify repeat offenders, spurring commitments of bilateral collaboration.

The session on critical perspectives on environmental human rights litigation was led by key discussants Akhona Mehlo, Centre for Applied Legal Studies at the University of Witwatersrand (South Africa), Kranti

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LC, Human Rights Law Network (India) and Ruth Panjaitan, International Commission of Jurists (Indonesia). Grounding their reflections in current casework, the three discussants explored:

- What is the role of court-based strategies in structural change?
- How can litigation be grounded in communities, movements and broader advocacy strategies?
- Is there tension between some community members saying no to 'development' and others seeking benefits sharing agreements and/or compensation?

Presenters discussed structural change as a function of movements and lawyers working together, all while ensuring affected communities speak in their own voices.

The experiences and strategies the discussants shared resonated with other participants, who offered similar reflections from their own practice. Participants responded to various dimensions of the question: how can strategic litigation have transformative potential?



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Day 3: Holding corporations accountable, safeguarding human rights defenders, and responding to the Common Charter for Collective Struggle

The third day (13 June) started with a strategy discussion on ESCR-Net's theory of change and the network's [Common Charter for Collective Struggle](#). Members discussed in small groups how their casework or methods connected to the Charter's *Global Common Conditions* (addressing impoverishment and dispossession amongst abundance; deepening inequality; corporate capture of the state; climate change and eco-degradation; or growing repression); or its *Emerging points of Unity* (reclaiming human rights; connecting struggles; advancing the leadership of the dispossessed, impoverished or marginalized; articulating alternative models).

Members deeply engaged with this exercise, debating the possibilities and limitations of litigation in addressing systemic ESCR violations.

The second session of the day focused on case presentations relating to environmental human rights litigation against corporate actors. The key discussants were Gantsogt Dashnamjil, Khalkhgoi Numrug Basin Protection Movement (Mongolia), Giorgi Antadze, Georgian Young Lawyers' Association (Georgia), Marcel Didier von der Hundt, Observatorio Ciudadano (Chile) and Salma Karmi-Ayyoub, Al-Haq (Palestine).



The discussants covered key substantive, procedural, and strategic issues regarding litigation against corporate actors, including corporate capture and how litigators could work more closely with other advocates.



In the third session, participants discussed the protection and enabling of environmental human rights defenders. The key discussants for this session—Amgalanbayar Lkhagvasuren, Bugat Zaamar Burgast Tuul (Mongolia); Jhenifer Mojica Florez, Comisión Colombiana de Juristas (Colombia) and Patrick Chiekwe, Foundation for the Conservation of the Earth (Nigeria)—led a powerful conversation centered on being defenders and on working closely with those on the frontlines. The session opened by honoring defenders' memories. As participants shared stories of intimidation, harassment, and harm against themselves or those close to them, they were celebrated by others in solidarity for their integrity and perseverance. All present reflected on the personal and professional costs of human rights work, and why, despite that, the struggle for environmental rights remains imperative.



Day 4: Demanding free, prior, and informed consent; securing implementation; and looking ahead

The fourth day (14 June) explored the fundamental principle of free, prior, and informed consent and the challenge of implementing positive environmental human rights laws and judgments. It also offered space for reflecting on possible future collaborations.

Key discussants for the session on free, prior, and informed consent included Arnold Kwesiga, Initiative for Social and Economic Right (Uganda); Binota Moy Dhamai, Asia Indigenous Peoples Pact (Thailand), Guillermo Torres, Proyecto Derechos Economicos, Sociales y Culturales (México); and Manja Bayang, Tebtebba Foundation, Indigenous Peoples' Centre for Policy Research and Education (Philippines). Across several jurisdictions,



participants examined the application of this principle, its origins, and its importance, including its potential role in environmental human rights litigation in Mongolia. Discussants referred to phases of litigation strategies, from reactive, to preventive, to structural.



Bayarmaa Byambasuren, Patrons of the Lake Khuvsgul (Mongolia), environmental attorney Dashdemberel Ganbold (Mongolia), and Urantsooj Gombosuren, CHRD, led the workshop session on implementation of environmental human rights laws and judgments, examining successes and challenges, and evaluating different cases. The conversation contrasted how environmental laws are enforced against small traditional herders, as compared with lax enforcement against large extractive industries. Participants talked through positive examples of enforcement and attempted to distill factors that promote such results.

In a concluding session, participants raised ideas for collaborative work in the field of environmental human rights litigation. In addition to numerous bilateral commitments to cooperate, participants expressed support for continuing the conversation on how environmental human rights litigation can be responsive to the global ESCR challenges detailed in the network's Common Charter. The secretariat hopes facilitate this dialogue going forward, capitalizing on the inspiring energy and work of the participants.