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## **Working for Change, No. 1**

# **A Practical Guide to Acting Against the Economic, Social and Cultural Root Causes of Torture and Other Forms of Violence through Action Files**

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This guide was prepared as part of the World Organisation Against Torture (OMCT) project “Preventing Torture and Other Forms of Violence by Acting on their Economic, Social and Cultural Root Causes”. The European Union through the European Initiative for Democracy and Human Rights provided substantial support for the project, which is also supported by the Karl Popper Foundation, the InterChurch Organisation for Development Cooperation (ICCO) and the Foundation for Human Rights at Work. The Swiss Agency for Development and Cooperation supported this project in 2007 and 2008. The contents of this report are the responsibility of the author and do not necessarily reflect the views of the funding organisations.

This publication is intended as a practical guide to help NGOs effectively address the economic, social and cultural root causes of torture and other forms of violence by preparing and disseminating communications or “Action Files”.

Action Files aim at halting or preventing torture, cruel, inhuman and degrading treatment, summary or arbitrary executions, forced disappearances, violence against women and violence against children and other forms of violence. This is done by calling for preventive and/or remedial action in relation to situations, policies or projects involving violations of economic, social and cultural rights that cause violence or that present a real and substantial risk of causing violence. In turn, ending violence can lead to an increase in the enjoyment of economic, social and cultural rights.

Action Files are prepared in cooperation with national NGOs including members of the World Organisation Against Torture (OMCT) SOS-Torture Network. They include recommendations for specific action, are sent to the competent United Nations Special Procedures mandate holders and to government authorities with direct responsibility for taking action. In addition, international financial and development institutions, the European Union, trans-national corporations and banks are seized when they are involved in projects that cause or risk causing violence.

Action Files are also sent to the members of the SOS-Torture Network (some 290 national NGOs) and other NGOs belonging OMCT’s network on economic, social and cultural rights along with requests for supportive action on their part. In addition, the information and recommendations developed in connection with these interventions can be included in alternative reports to United Nations (UN) Treaty Bodies<sup>1</sup> and submitted to other procedures, for example the Human Rights Council’s Universal Periodic Review of respect for human rights by UN Member States and to the institutions of the European Union.

OMCT has prepared a PowerPoint presentation on using action files “OMCT Action files on ESCR” available at <http://escr.omct.org>. For more information and copies of all OMCT action files, see *Bringing about change through Action Files* also at <http://escr.omct.org> Please mention “ESCR Action Files”.

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<sup>1</sup> See the companion guide “Working for Change, No. 2 A Practical Guide to Preparing Alternative Reports to United Nations Treaty Bodies addressing the Economic, Social and Cultural Root Causes of Violence” <http://escr.omct.org>

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## Preface

This guide has been produced in the context of the World Organisation Against Torture (OMCT) project “Preventing Torture and Other Forms of Violence by Acting on their Economic, Social and Cultural Root Causes” funded by the European Union’s European Initiative for Democracy and Human Rights, the Karl Popper Foundation, the InterChurch Organisation for Development Cooperation (ICCO) and the Foundation for Human Rights at Work. The Swiss Agency for Development and Cooperation (DDC) supported this project in 2007 and 2008. This project is founded on the principle of the interdependence of human rights and seeks to develop human rights responses that address the link between poverty, inequality and discrimination on the one hand, and torture and violence on the other.

Torture and cruel, inhuman or degrading treatment or punishment and other forms of violence – including summary or arbitrary executions, forced disappearances, violence against women and children, – are related in a range of ways from disrespect for economic, social and cultural rights.<sup>2</sup> If, therefore, these phenomena are to be effectively eliminated, their economic, social and cultural root causes must be, first, understood and, secondly, effectively addressed.<sup>3</sup> The converse equally applies: acting to reduce levels of violence in a given society is a fundamental step towards ensuring the widespread enjoyment of economic, social and cultural rights.

Dealing effectively with these issues is an important challenge for human rights activists. Ms. Louise Arbour, as UN High Commissioner for Human Rights, stated in her preface to the OMCT study on this theme that the question of **“how to prevent or reduce violence, including torture, by acting on its root causes, often found in violations of economic, social and cultural rights”**, is one that, **“goes to the very heart of human rights protection”**.<sup>4</sup> It is with the aim of going “to the very heart of human rights protection” that this practical guide has been produced.

The importance of this challenge was further emphasised by Sir Nigel Rodley, in his role as UN Special Rapporteur on the question of torture, when he stated that **“as long as national societies and, indeed, the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are indirectly and, as far as the exposure to the risk of torture is concerned, directly contributing to the vicious circle of brutalization that is a blot on and a threat to our aspirations for a life of dignity and respect for all”**.<sup>5</sup>

The present guide is accompanied by a complementary OMCT publication on working with the UN Treaty Bodies to address the economic, social and cultural root causes of violence (Working for Change, No. 2). These guides have been prepared for OMCT by Michael Miller

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<sup>2</sup> See OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, <http://escr.omct.org>.

<sup>3</sup> Of course, many other measures must be taken to eliminate torture in addition to addressing its economic, social and cultural root causes. These are dealt with in OMCT-sponsored alternative reports to the UN Human Rights Committee, the UN Committee Against Torture, the UN Committee on the Rights of the Child and the UN Committee on the Elimination of Discrimination Against Women. See [www.omct.org](http://www.omct.org)

<sup>4</sup> OMCT, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, p. 9, <http://escr.omct.org>

<sup>5</sup> *Interim Report of the Special Rapporteur of the Commission of Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/55/290, 11 August 2000, para. 37.

and are based, *inter alia*, on the experience acquired by OMCT's Economic, Social and Cultural Rights Team: Tom McCarthy, Michael Miller, Francesca Restifo and Jastine Barrett.

# 1. Introduction

This document is intended to provide you with a step-by-step guide to the compilation and submission of communications or “Action Files” to the United Nations (UN) and other bodies asking for action in cases in which the denial of economic, social and cultural rights leads to torture and other forms of violence or when violence impedes the enjoyment of economic, social and cultural rights.<sup>6</sup>

The importance – and specificity - of this guide lies in its focus on this link. This approach inevitably calls for a degree of analysis and a range of corrective measures significantly different to those associated with more “traditional” urgent appeals which, of necessity, call for immediate steps to end a situation of human rights abuses without necessarily seeking to analyse and address the root causes of these abuses.

Understanding and acting upon the root causes of torture and other forms of violence calls for the allocation of time and human resources to a given case, however this has the important benefit of leading to long-term solutions that can not only rectify a given human rights violation, but also contribute significantly to preventing similar such violations in the future. For those committed to the promotion of human rights principles, communications of this kind represent an important tool with which to work for positive change.

## Introducing Action Files

OMCT has given the name “Action File” to this form of communication in order to distinguish it from the widely used and understood “urgent appeal” or “urgent communication”.<sup>7</sup> The term was selected to reflect both the information these communications contain and their dynamic purpose, and is used throughout this guide. Action Files have a fourfold purpose:

- To expose and address violations of economic, social and cultural rights that generate – or risk generating – acts of torture and other forms of violence and, *vice versa*, acts of violence that compromise the enjoyment of economic, social and cultural rights;
- To mobilise support for victims of torture and other forms of violence;
- To identify and call for the implementation of corrective action aimed at both addressing the immediate issue and putting in place long-term solutions; and
- To exert pressure on the competent authorities to take appropriate action.

In order to illustrate the different dimensions of this form of communication, this guide draws on a number of Action Files OMCT and its partners prepared between 2007 and 2009. All of these cases are available for consultation on OMCT’s Economic, Social and Cultural Rights website, <http://escr.omct.org>. An example of an OMCT Action File is also included as an appendix to this report. The Action Files referred to in this guide are the following:

- **India:** Violence against and harassment of Dalit villagers involved in peaceful protest (IND041007.ESCR)
- **Sudan:** Ongoing violence against communities resisting dam construction in the Northern Nile Valley (SDN301107)

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<sup>6</sup> As defined under the 1966 International Covenant on Economic, Social and Cultural Rights.

<sup>7</sup> The “urgent communication” model is employed, in various forms, by OMCT, the Observatory for Human Rights Defenders (a joint initiative of OMCT and the International Federation for Human Rights) and Amnesty International, among others.

- **Philippines:** Military action seriously affecting safety and wellbeing of rural communities in Surigao del Sur (PHL031207.ESCR)
- **Philippines:** Mining activity on Subuyan Island must be halted to prevent further killings and violence (PHL121207.ESCR)
- **India:** Another forced eviction by police in Kolkata, West Bengal (IND141207.ESCR)
- **Bangladesh:** Risk of violent suppression of public opposition to the Phulbari coal mine project (BGD211207.ESCR)
- **Kenya:** Military action involves serious human rights violations against civilians (KEN060608.ESCR)
- **Bangladesh:** Arson attack on indigenous Jumma community in Sajek Union, Chittagong Hill Tracts - Bengali settlers, with military support, torch houses of indigenous community (BGD290808.ESCR)
- **Bulgaria:** Call on the Parliament to adopt effective legislation to protect persons with mental disabilities from social exclusion and severe human rights violations including inhuman and degrading treatment (BUL031208.ESCR)
- **India:** Act to stop the imminent forced eviction of 5000 people in Howrah, West Bengal (IND150109.ESCR)

### **What kinds of cases are suitable for Action Files?**

Action Files are effective tools, but it is important to be aware of when and how they are best used and in what situations other tools might be more effective. The most distinctive characteristic of Action Files is that they are specifically conceived to address cases of torture and other forms of violence associated with the denial of economic, social and cultural rights. Some cases you come across might, however, be predominantly or exclusively associated with issues of civil and political rights, while a socio-economic or cultural dimension might be largely or wholly absent. In these cases the approach discussed in this guide will be much less applicable. If you are in doubt as to whether an Action File is the appropriate tool to deal with a given case, consult the five scenarios outlined in Section 2 of this guide and assess whether one or more of these situations correspond to the case you have before you.

The kind of analysis associated with Action Files often requires a significant investment of time and resources, but some human rights abuses call for an immediate response (when, for example, a person's life or physical integrity is directly threatened). In these latter cases the speedy dissemination of a brief urgent appeal or communication is likely to be a more effective strategy. This does not mean, however, that an Action File cannot subsequently be developed to address the underlying causes of this abuse and to help prevent further such abuses in the future.

There are also situations where the relatively "high profile" approach associated with any form of widely-disseminated communication may be counterproductive. This is an important consideration in certain politically sensitive cases, or in situations in which there is a risk that the safety and wellbeing of the victim or victims will be further compromised by this kind of initiative. Here, bringing pressure to bear through, for example, less public communications or diplomatic channels may be a more effective strategy.

There are also cases concerning, for instance, harmful legislation or government policy that may be more effectively addressed by direct communication or dialogue with the government in question. This approach is most likely to bear fruit with democratically elected

governments that already demonstrate a degree of openness toward the promotion of human rights.

### **A word about information**

Information is one of the key resources we possess in the fight against torture and other cruel, inhuman or degrading treatment or punishment. The very nature of these activities – and their absolute illegality under international law - mean that those who perpetrate or tolerate such acts often seek to conceal them or, in the case of other forms of violence such as forced evictions or suppression of peaceful protest, to depict them as actions necessary for economic or social development.

The widespread dissemination of information is one of the most effective means we have at our disposal to counter these developments, cast light on illegal acts and draw attention to spurious justifications for unacceptable actions. It is this concept that lies at the heart of all forms of communications and appeals. Bringing the attention of the UN, governments, international and regional intergovernmental organisations such as the European Union, international financial institutions, development agencies, private actors such as corporations and banks, the media and the general public to acts of torture and other forms of violence is a means of exerting pressure and ensuring that human rights standards are fully respected around the globe.

If information is the key to exposing torture and other forms of human rights abuses, then we can allow for no doubt over the validity or accuracy of the information reported in an urgent communication. Even a small error can undermine the credibility of a case, while the reporting of false information, albeit unknowingly, can seriously discredit an organisation. For this reason, time dedicated to verifying sources and cross-checking information is time well spent.

## 2. How torture and other forms of violence are related to economic, social and cultural rights

Understanding the ways in which torture and other forms of violence are related to the denial of economic, social and cultural rights is a crucial first step in identifying the areas in which strategic action can be undertaken to reduce or eliminate this violence. On the basis of OMCT experience in this area, it is possible to identify at least five ways in which this link can operate.

*1. The socio-economic status of poor and marginalised groups and individuals, including those marginalised on the grounds of their cultural identity, makes them particularly vulnerable to violence, including torture and cruel, inhuman and degrading treatment, and its effects.*

The poverty and marginalization that vulnerable groups and individuals experience do not allow them to defend themselves and demand their rights.<sup>8</sup> This in turn helps create a climate of impunity favourable to continued torture and other forms of violence. In the words of the Special Rapporteur on the question of torture, poor people are often *“deprived of the means to claim and ensure the enforcement of their rights, including their right to legal representation and to obtain legal remedies such as compensation”*.<sup>9</sup> This phenomenon is apparent, for example, in the discrimination and violence faced by persons with disabilities in institutions in Bulgaria addressed in OMCT Action File BUL031208.ESCR.

In some cases discrimination within society in general, and the police and justice systems in particular, can be such that the very fact of being poor is treated as a crime. Furthermore, poor people and marginalised groups or individuals who have been submitted to torture or other forms of violence can face significant obstacles to seeking redress or lodging complaints. These obstacles may be as a result of direct costs involved in seeking medical corroboration of torture or other forms of violence, accessing justice or hiring a legal representative, or they may be due to indirect costs (the cost of travelling to court, for example, or taking time away from work to attend a hearing). Discrimination may also constitute a significant obstacle to accessing justice for members of certain socio-economic, religious or ethnic groups.

*2. Violence is inflicted on persons because they demand respect for economic, social or cultural rights – their own or those of others.*

Trade unionists, workers, human rights defenders and citizens in general in the exercise of their legitimate human right to demonstrate, strike or otherwise claim respect for basic economic, social or cultural rights can be subject to violent attacks by official and private forces. Arrested, they also risk being subjected to cruel, inhuman and degrading treatment and even torture.<sup>10</sup> In Sudan, for example, security forces opened fire on communities

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<sup>8</sup> For more information on vulnerable groups and torture, see the OMCT paper presented to the UN Committee Against Torture “Torture and violations of Economic, Social and Cultural Rights: Appraisal of the Link and Relevance to the Work of the United Nations Committee Against Torture”, OMCT, Geneva, November 2001, and OMCT *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*, Geneva, 2006, <http://escr.omct.org>.

<sup>9</sup> U.N. Doc. E/CN.4/2001/66 para. 10 See also the OMCT paper presented to the Committee Against Torture cited in footnote 7.

<sup>10</sup> For a more detailed description see OMCT, “Torture and violations of Economic, Social and Cultural Rights : Appraisal of the Link and Relevance to the Work of the United Nations Committee Against Torture”, *op. cit.*, in particular sections 2 & 3. Further, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An*

contesting the Government's moves to evict them from their traditional lands in the fertile Northern Nile Valley – the lands from which they derived their livelihood - to make way for Africa's most ambitious hydro-electric project (Action File SDN301107). Violence against trade unionists and workers is increasingly associated with the development of "free" or "export economic zones", where workers' rights are pared down to a minimum. Around the world, such zones are perhaps one of the most explicit expressions of a growing conviction among some governments that human rights represent an obstacle to effective economic development.

*3. Levels of violence in a given community or society can be such that individuals or groups are unable to enjoy their economic, social and cultural rights.*

The intensity of violence or conflict, or indeed the fear of such violence, can be so great that people are afraid to venture out to seek health care or social assistance. Likewise parents may be afraid to allow their children to leave their home to attend school. Cultural life can be curtailed in a similar way. The possibility of earning an adequate living can also be compromised because conflict has destroyed infrastructure or because it prevents people reaching their place of work.

OMCT addressed a case of this kind in December 2007, when it issued an Action File (PHL031207.ESCR) concerning "counter-insurgency" operations by the Philippine military in Surigao del Sur that saw troops billeted in community structures, including schools, and farmers prevented from working their land. In the case of the Mount Elgon District of Kenya (KEN060608.ESCR), OMCT not only called for an immediate halt to the widespread torture and extrajudicial killings of civilians by the military, but also drew attention to the serious socio-economic implications for communities in which a large number of men and youth had been abducted, injured or killed.

*4. Denials of economic, social and cultural rights are carried out so violently as to be considered ill-treatment under international treaties.*

Economic, social and cultural rights can be denied in such a brutal fashion as to amount to cruel, inhuman and degrading treatment. In 2002, the UN Committee against Torture found that the violent way in which Roma were evicted from their homes in the former Yugoslavia, and their dwellings destroyed and burned, constituted acts of cruel, inhuman or degrading treatment in violation of the Convention Against Torture. Although the destruction was carried out by private individuals, the Committee found that the State party was responsible for the violations of the Convention because the authorities acquiesced in the destruction.<sup>11</sup>

*5. Policies and programmes by governments, private actors or development and financial institutions can exacerbate poverty and inequalities and lead to increased levels of official, criminal and domestic violence*

Many of the cases addressed in OMCT Action Files fall into this category. For example, OMCT has issued two separate Action Files calling attention to the ongoing policy in the Indian state of West Bengal of engaging in violent forced evictions of some of the state's poorest citizens (IND141207.ESCR and IND150109.ESCR). In the Philippines, the Government has pursued a policy that promotes the interest of mining companies over the traditional land rights of the country's indigenous populations, leading to protest, violence

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*Interdisciplinary Study*, Geneva, 2006 contains examples of such practices from Argentina, Egypt, Nepal and Uzbekistan. <http://escr.omct.org>.

<sup>11</sup> Committee Against Torture, Communication No 161/2000: Yugoslavia, submitted by Hajrizi Dzemail. Document CAT/C/29/D/161/2000.

and the assassination of indigenous leaders. OMCT Action File PHL121207.ESCR focused on the shooting of an anti-mining activist by a private security guard during a demonstration outside the gates of a nickel mine in on Sibuyan Island in the country's Romblon Province.

Further, urban development projects can involve violent evictions and the destruction of homes and property. Protests may also arise as a result of concerns over the rise in the cost of food or other necessities and a deterioration in living standards. They can also reflect concerns about the health implications of certain industrial activities or their environmental impact, or because communities have been excluded from meaningful consultation or denied adequate compensation for the use of their land and resources.

## 3. Preparing an Action File

### Principal components of an Action File

Although the cases addressed in OMCT Action Files are geographically and thematically diverse, each Action File contains a number of common elements:

- A title and unique identification code;
- A concise case summary;
- A detailed description of the issue;
- An in-depth analysis of the context – not only economic, social and cultural, but also legal and political;
- References to international human rights standards that are violated;
- Requested corrective actions, both to address the immediate issue of concern and to prevent further human rights abuses in the future;
- Contact addresses (those to whom the file should be sent to halt the abuses);
- The date of the Action File;
- An invitation to inform OMCT of any initiatives taken and contact details at OMCT.

All these elements are included in the sample Action File addressing the risk of violent suppression of public opposition to the Phulbari coal mine project in Bangladesh (BGD211207.ESCR) in the appendix to this guide. An OMCT Action File is generally 5 to 10 pages in length, including requested actions and contact addresses. Recognising that certain recipients of the Action File will only require a brief outline of the case, OMCT Action Files always open with a case summary of no more than one page in length.

While human rights abuses often take place in a complex environment, and the information you receive concerning these abuses may be confused or even contradictory, it is important that the communication that you prepare is written in as simple a manner as possible and that key issues are clearly identified and effectively communicated.

The reach and impact of an Action File will also be influenced by the choice of language in which the document is prepared and disseminated. It is crucial that the key recipients of an Action File – the “competent authorities” who are being called upon to address the human rights abuse in question – are able to understand the text in the language in which they receive it. All OMCT Action Files are produced in English, reflecting the global reach of this language. Many are also translated into Arabic, French or Spanish, as appropriate for the case. OMCT partners also translate the Action Files into local languages.

### Collecting and verifying information

The information required for an Action File typically comes from two sources: the field (which might be called “primary information”) and additional research (“secondary information”).

Depending on the nature of your organisation, you might obtain primary information directly or, as in the case of OMCT, it might be transmitted from reliable partners in a timely and accurate way. Either way, the key primary information you will require to put together an Action File will answer the following questions:

- Whose human rights are being violated? (see Box 1)
- Who has carried out these violations and who, by act or omission, is ultimately responsible?

- What were the circumstances of the violations? and,
- When and where did these violations take place?

Having clear answers to these questions will also help in your analysis of the root causes and in developing recommendations for action.

Given the importance of accurate reporting, do not hesitate to check and cross-check information, returning to sources or seeking out new ones to offer corroboration.

At this stage it is also vital to ensure that the development and dissemination of an Action File is in the best interest of those who are victims of the human rights violations you have identified. In certain cases drawing public attention to the situation of an individual or group can put them at still greater risk. The safety of victims is paramount and you should take all the steps necessary to make certain that your initiative will not have a negative impact. This includes obtaining consent from the victim(s) or their representatives and seeking advice from those well-placed to assess the impact of the planned initiative.

### **Box 1: Identifying the victims**

The victims of torture or other forms of violence that result from violations of economic, social or cultural rights are frequently those who have least means to express their opposition to policies or projects that impact upon their life, and whose capacity to reach a negotiated resolution is most limited.

This is clearly illustrated by the case of a *dalit* village in India's Tamil Nadu State (Action File IND 041007.ESCR). Here, the failure of the owner of a nearby illegal aquaculture business to respect clearly-established industry norms had direct consequences for the health and livelihood of the villagers. When these villagers sought to protest against the harmful impact of the aquaculture farm, they were subjected to police violence and harassment, and had false charges of a serious nature brought against them by the owner of this farm. Sadly, the elements of this case from Tamil Nadu are replicated around the world, among communities that are marginalised or experience discrimination and hence lack the economic and political influence to shape development policies or to avoid their damaging effects.

In order to carry out the analysis an Action File calls for, it will almost certainly be necessary to complement your primary information with a certain amount of research. This will include identifying the principal international and regional human rights standards that are being violated (see, for example, the section on "Economic, Social and Cultural Rights" in the Phulbari Action File in the appendix to this guide), in addition to the relevant elements of national law. This will also assist when you come to develop recommendations for corrective action.

Other areas of research are determined by the specific case in question. Sometimes it may be necessary to trace private companies and financial interests involved in certain activities or projects and to identify the countries where these companies, or the parent companies, are registered. Preparing an Action File may also call for research into the economic and development policies of the country concerned or into specific topics not always familiar to human rights activists. In order to produce its Action Files, OMCT has, for example, carried out research into urban planning legislation, subcontractors and subcontracted elements in the

construction of hydro-electric dams, methods of industrial aquaculture farming, mining regulations in both Bangladesh and the Philippines, and land registration in Kenya.

Having collected and confirmed the primary and secondary information required for the Action File, you will be in a position to develop an analysis of the root causes of the case.

### **Analysing the root causes:**

To be effective, an Action File must make evident, for any given situation, how violations of economic, social and cultural rights are leading to violence or, conversely, how violence in one form or another is preventing a group or individual's full enjoyment of these rights. This is central to the success and impact of the Action File. If this dimension is not clear, the Action File will not convince those who receive it and the action required to remedy the situation will not be taken.

In some cases the root causes may be evident, but in more complex cases, arriving at the root causes may call for reflection and consultation. It is worth remembering, however that most if not all cases will correspond to one (or perhaps more) of the scenarios discussed in Section 2 and summarised in Box 2.

### **Box 2: Elements for analysing the economic, social and cultural root causes of torture and other forms of violence**

- The socio-economic status of poor and marginalised groups, including those marginalised on the grounds of their cultural identity, makes them particularly vulnerable to violence, including torture and cruel, inhuman and degrading treatment, and its effects. It also makes it difficult for them to seek redress.
- Violence is inflicted on persons because they demand respect for economic, social or cultural rights – their own or those of others.
- Levels of violence in a given community or society can be such that individuals or groups are unable to enjoy their economic, social and cultural rights.
- Denials of economic, social and cultural rights are carried out so violently as to be considered ill-treatment under international treaties.
- Policies and programmes by governments, private actors or development and financial institutions can exacerbate poverty and inequalities and lead to increased levels of official, criminal and domestic violence.

Economic interests are frequently the root cause of acts of torture and other human rights abuses. Indeed, economic development is all too often regarded by states as an imperative that may involve, or even require, the abuse of human rights, including the use of torture and other forms of cruel, inhuman or degrading treatment or punishment. In many cases, the target of these abuses are individuals or communities who express their opposition to development projects because such projects compromise their way of life or their standard of living. Often the issue at stake is access to the land on which they rely for their livelihood and, in the case of indigenous communities, from which they also draw their cultural identity.

Protests may also arise as a result of concerns over the health implications of certain industrial activities or their environmental impact, or because communities have been excluded from meaningful consultation or denied adequate compensation for the use of their land and resources. And violence is not only directed against those who seek to oppose certain economic projects or influence their form. It is also frequently employed as a means to protect economic interests from industrial unrest provoked by low wages, poor working conditions or restrictions on labour rights.

The purpose of an Action File is not to challenge the paradigm of economic development as such, but rather to identify how and why certain specific policies or projects can lead to human rights abuses and how these abuses might be brought to an end.

Indeed, in considering the economic roots of torture it quickly becomes apparent that, while the political ideology fuelling the drive toward development may vary from one situation to another, the result in terms of human rights abuses is often the same. For example, the shooting of the anti-mining activist in the Philippines addressed by OMCT in Action File PHL121207.ESCR took place in an economic and political context characterised by an unqualified commitment to trade liberalisation intended to attract foreign capital and accelerate domestic economic development. In contrast, in Sudan, where protesters against both the Merowe and Kajbar Dams have been shot by government security forces (Action File SDN301107.ESCR), the impetus for economic development is more closely tied to bilateral geopolitical interests and, specifically, to trade links with China based on a mutually advantageous exchange of oil and arms. Indeed, China is responsible for providing the majority of the financial backing as well as the technical expertise for Sudan's hydro-electric developments (although a number of European companies are also involved in supplying parts).

Through its activities, OMCT has amassed significant experience with dealing with the economic, social and cultural root causes of torture and other forms of violence, and its staff is available to provide advice regarding the analysis of specific cases.

### **Identifying elements for change**

The measures required to end identified human rights abuses and, importantly, to provide redress for victims will arise directly from your analysis of the situation and will often be of two types: immediate responses to rectify a given situation, and “structural changes” necessary for a more durable solution. The latter are intended to prevent the same situation arising again by reducing and eliminating the violations of economic, social and cultural rights that are at the root of the violence. To take the example of the forced evictions in West Bengal, India (Action File IND141207.ESCR), OMCT issued a series of recommendations aimed at ensuring firstly that those who had been forcibly and violently evicted from their homes were re-housed and adequately compensated, and secondly that the State's policy toward all citizens living in informal settlements be reviewed.

Whether dealing with immediate remedies or long-term solutions, practical, concrete recommendations are always preferable to vague statements. Thus for example, it is more constructive to recommend the establishment of an independent mechanism to monitor respect for human rights than simply to call for “an improvement in the human rights situation”. International and regional human rights instruments provide a solid foundation upon which to develop your recommendations. In the case of violence against indigenous communities, for example, both the 2007 UN Declaration on the Rights of Indigenous

Peoples and the Indigenous and Tribal Peoples Convention of 1989 (ILO Convention No. 169) offer important guidance. With regard to evictions, a set of practical standards is contained in the “Basic principles and guidelines on development-based evictions and displacement” prepared by the UN Special Rapporteur on Adequate Housing.<sup>12</sup>

Where your work has led you to identify specific vulnerable groups, (for example, residents of informal settlements, ethnic minorities or communities affected by large-scale infrastructure projects), it might be appropriate to request that affirmative preventive action be taken, for example, through special police training or education, monitoring by the authorities of the conduct of police and others, and special attention on the part of the authorities to ensuring that vulnerable communities are legally recognized, protected and receive basic public services.<sup>13</sup> The presence of poverty and marked socio-economic inequality might lead you to make recommendations concerning the creation of employment opportunities, better provision of education and health services and so on. In addition, recommendations can be made for the establishment of a permanent monitoring function with the participation of those directly concerned. Again, these recommendations should be as concrete and specific as possible.

In some cases it may be useful to suggest specific steps to achieve particular objectives. Thus, for example, while the key objective might be to introduce and effectively implement a law protecting indigenous land rights, this might, in fact, first involve carrying out an independent inquiry into the situation of indigenous land rights, consulting with indigenous communities, publicising the findings of the inquiry and consultations, and establishing a parliamentary working group to develop an appropriate draft law, before finally having this law approved and establishing an institution with the specific brief of implementing this law.

### **Identifying actors for change**

Having identified the measures necessary to end the human rights abuses in question and to obtain redress for victims, it is important to identify as clearly as possible the “competent authorities” that should take these steps. This involves selecting key public and private actors with the capacity to bring about change and assigning responsibility for implementing specific recommendations to each of them. In many cases, the ultimate responsibility for implementing changes will lie with the government (see Box 3). For each of the targets you should identify, draft or adapt concrete, practical and measurable recommendations within the competence of the target.

#### **Box 3: State and non-state actors**

In some situations the state is the direct perpetrator of human rights abuses, as in the case of the suppression of opposition to the Merowe and Kajbar Dams in Sudan (SDN 301107.ESCR).

In others, like the shooting of the anti-mine activist by a private security guard outside the gates of a mine jointly owned by Pelican Resources and Sibuyan Nickel Properties Development Corporation in the Philippines (PHL 121207.ESCR), the direct perpetrator is a non-state actor. In such cases, the company has a responsibility to cooperate with law

<sup>12</sup> *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18 5 February 2007.

<sup>13</sup> See for example the Argentine case study “The Village” in the OMCT study, *Attacking the Root Causes of Torture: Poverty, Inequality and Violence – An Interdisciplinary Study*. <http://escr.omct.org>

enforcement personnel, not to hinder or prevent the arrest of the guard in question, and to ensure that the victim's family or community is adequately compensated. The company should also review its security policy to ensure that this incident is not repeated.

The state's responsibility stems from its omission to adequately protect its citizens, punish the perpetrator and sanction the companies involved. It can also be called upon to review its practices regarding mining and correct legislative loopholes or contradictory policies that lead to dangerous stand-offs between local communities and mining companies, and even to reconsider its economic development strategy.

Where recommendations are directed at private companies, additional pressure can often be brought to bear, with positive results, by tracing and directing recommendations to parent companies as well as to the governments of the countries in which these companies are based. Further pressure can be brought to bear by ascertaining, if possible, which banks or financial institutions support these companies. Development agencies may also have an interest, and where this is the case, these too may be targeted with specific requests for remedial actions.

The scope of recommendations can be further broadened to incorporate national human rights institutions, regional bodies such as the European Union, and the UN, all of which might be in a position to bring further pressure to bear on the principal actors. For example, with regard to the Philippines and following an intervention of OMCT, the European Parliament in January 2009 called on the Council and the Commission "to ensure that the EU's financial assistance towards economic development in the Philippines is accompanied by scrutiny of possible violations of economic, social and cultural rights, with special attention being paid to encouraging dialogue and inclusion of all groups in society."<sup>14</sup>

For each of the "targets" you identify, provide accurate and up to date contact information in the form of the name and title of a responsible individual, a mailing address, a fax number and, importantly, an e-mail address. This enables those who support your Action File to add their voice to the call for remedial measures by directly contacting the actors you have identified, thus adding further weight to your communication. In the case of governments, try to provide specific contact information for the most relevant departments and ministries rather than a generic address.

### **Dissemination**

The full value of the research and analysis that goes into your Action File is only realised through this document's effective dissemination. There are two dimensions to this dissemination:

- Ensuring that the actors who are being called upon to take steps to address a given human rights abuse are aware of the Action File and of the actions they are being called upon to carry out, and
- Making sure that the Action File is circulated to the widest possible audience, calling upon recipients to add their own voice to the concerns expressed and the measures being requested.

As regards the first dimension, OMCT habitually sends copies of its Action Files directly to the individuals and institutions it cites, in some cases with accompanying letters underlining

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<sup>14</sup> See European Parliament Resolution of 12 March 2009 and OMCT Press Release of 26 March 2009 <http://escr.omct.org>

the issues raised in the Action File and asking for a response. The Action File can also be sent to the head of state of the country in question, again with an accompanying letter asking for the appropriate steps to be taken to rectify the situation and requesting that OMCT be kept informed of further developments. A copy of this letter is also sent to the appropriate Permanent Mission to the United Nations in Geneva to ensure that the country's diplomatic staff are aware of the initiative. In the case of Action File BUL031208.ESCR, which called on the Bulgarian Parliament to adopt effective legislation to protect persons with mental disabilities from social exclusion and severe human rights violations including inhuman and degrading treatment, transmission of this document to members of the Bulgarian Government and Parliament was followed immediately by an OMCT press release, further raising the profile of this issue.

In addition to targeted dissemination to those directly implicated in an Action File, OMCT and its partners circulate Action Files to all organisations belonging to the OMCT SOS-Torture Network, of which there are some 290 around the world, asking these organisations in turn to make direct contact with the competent authorities listed in the File and to add their voice to the calls for action. OMCT also possesses an extensive mailing list that includes media contacts and other institutions and individuals who have expressed interest in receiving and supporting OMCT communications, as well as the relevant elements of the UN, including the Special Procedures mandate holders, members of treaty bodies and units in the Office of the High Commissioner for Human Rights. Action files are sent to them also.

### ***National Human Rights Institutions***

In many countries, national human rights institutions (NHRIs) are playing an increasing important role in promoting and protecting human rights and they have the capacity to investigate violations of human rights and challenge government policies and actions. That is why it is important in preparing an action file or other form of intervention to consider addressing the complaint to the competent national human rights institution. For more information on those institutions and their place within the UN human rights machinery see [National\\_Human@ohchr.org](mailto:National_Human@ohchr.org).

In considering the issue of dissemination, it is also worth identifying specific groups and networks with a focus on the issues you raise and that would be interested in receiving and even re-transmitting your Action File. For example, the International Network for Economic, Social and Cultural Rights (ESCR-Net) has an extensive network dedicated to all aspects of the protection and promotion of economic, social and cultural rights, the Food First Information and Action Network (FIAN International) has a wide range of interests associated with the right to food, while the Child Rights Information Network (CRIN) is concerned about all developments that have an impact on the human rights of children.<sup>15</sup>

### **Follow-up and maintaining pressure**

Issuing and disseminating an Action File is an important step towards addressing specific human rights abuses and their root causes, but in order to maximise the impact of an Action File this initial activity should be complemented by a process of follow-up and monitoring. Of course, it is not always a simple matter for hard-pressed NGOs to find the time and resources to monitor cases and engage in follow up, however sustained pressure on those responsible for human rights abuses, or those with the means to bring influence to bear on a

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<sup>15</sup> See <http://www.escr-net.org/>, <http://www.fian.org/>, and <http://www.crin.org/>

given situation, can bring positive results. Indeed, the longer-term perspective of Action Files allows pressure to be maintained over a significant period of time.

#### **Box 4: Following-up on an OMCT Action File**

On 15 January 2009, OMCT issued an Action File (IND150109.ESCR) calling for action to stop the imminent forced eviction of 5000 people from Belgachia Bhagar in Howrah, West Bengal, India from land said to be in their legal possession. Eight days later, on the basis of new information received from a partner organisation, OMCT issued a follow-up document. Sent to the same recipients as the original Action File, this document explained that OMCT had received information that the eviction in Belgachia Bhagar did not take place as scheduled.

*Reliable information from Banglar Manabdhikar Suraksha Mancha (MASUM), a member of the SOS Torture Network, indicates that on 13 January the residents of Belgachia Bhagar sent a deputation to the Superintendent of Police and made an appeal to the Chief Justice of the Supreme Court. On 14 January, MASUM, together with a number of other civil society organisations joined the residents of Belgachia Bhagar in a gesture of solidarity. On the same day, the secretary of MASUM and a number of women from the affected community appeared before the Chief Justice of the High Court to appeal for a ‘stay’ upon the eviction order. This was not granted. At the same time, two petitions were filed at the High Court of Kolkata, neither of which were accepted. Despite this, the evictions – announced two days previously - did not go ahead.*

In its follow-up document, OMCT welcomed the fact that the evictions in Belgachia Bhagar did not take place as scheduled, but expressed its concern that the situation remained unresolved and that the possibility of mass forced evictions accompanied by violence was still hanging over the community. OMCT therefore renewed its call to the Union Government of India and the State Government of West Bengal,

*to halt immediately the eviction procedure and to scrupulously respect international human rights standards relative to the rights of the persons concerned, including respect for due process of law. In the event that the evictions take place, OMCT urges both authorities to ensure that the entire operation is carried out according to international standards on evictions, including freedom from violence, and to ensure also that the communities involved are granted relocation, alternative adequate housing and compensation.*

OMCT strategies for follow-up include:

- Monitoring the situation through information relayed by partner organisations, updates reported in the media, or additional research carried out by OMCT staff;
- Writing periodically to those principally responsible for the human rights abuses in question and reiterating the request to receive information on what remedial measures are being taken;
- Issuing a “follow-up” to the original Action-File (see Box 4). This generally takes place when there are new developments – positive or negative - in a case. Follow-up files generally bring attention to this new information while also reiterating the content of the original Action File.

## 4. Achieving results, bringing about change

Action Files can and do make a difference. Inevitably, as with much work in the area of human rights, results are not always immediate or, indeed, obvious, and in some cases the perpetrators of human rights abuses remain intransigent. For example – and perhaps not surprisingly - this has been the case with the Government of Sudan as regards the Merowe and Kajbar hydro-electric projects (SDN301107.ESCR). But lack of response on the part of governments should not be seen as discouraging: it is crucial to bring these issues to the public eye, and in some cases other actors may prove to be more responsive. In the case of Merowe and Kajbar, for instance, the European Parliament contacted OMCT seeking further information on the involvement of European companies in these projects. Certain other governments are much more sensitive to their international image, and many private companies and enterprises, particularly those registered in countries where human rights abuses equate to bad publicity and poor public image, are often quick to respond to criticism from human rights organisations.

More tangible results can be seen in the case of the fatal shooting by a private security guard of the activist protesting against mining operations on Sibuyan Island in the Philippines. Having produced Action File PHL121207.ESCR in December 2007, OMCT wrote to the Philippine Government in early 2008 to express its concern and to ask that an investigation into the killing be initiated and that steps be taken to ensure that indigenous rights, enshrined under Philippine law, were not compromised by large scale mining activities. OMCT sources indicate that the security guard was subsequently charged with murder and that his case was pending before the regional trial court. It was also reported that a Filipino Senator had urged the Department of Environment and Natural Resources to suspend all mining permits and applications in Sibuyan,<sup>16</sup> and that this request had been upheld by the Government.<sup>17</sup>

While economic imperatives tied to national interests may appear particularly difficult to challenge from a human rights perspective, the case of the proposed open-pit coal mine in Phulbari, in the Dinajpur District of Bangladesh (BGD211207.ESCR, reproduced in full in the appendix to this guide) offers an excellent illustration of how positive change can be achieved.

The development rights for this ambitious project are owned by GCM Resources, a British mining company. This project also enjoyed the financial support of the Asian Development Bank and several commercial banks (including UBS, Credit Suisse and Barclays). At the same time, however, the Phulbari project generated widespread opposition due to its feared environmental impact and its potential negative effects on the socio-economic wellbeing of the population affected (estimates range from 50,000 to 500,000 persons). A public demonstration against the mine in 2006 saw at least five persons killed and fifty others injured by the police and personnel of the Bangladesh Rifles. Concerned at the growing risk of further violence, OMCT developed an Action File which it sent to the Government of Bangladesh, GCM Resources, the Asian Development Bank, the financial institutions involved, UN special procedures mandate holders and the European Parliament. In this Action File, OMCT expressed its deep concern at the risk of further human rights abuses associated with the project and insisted that a decision on the future of the Phulbari mine

<sup>16</sup> [www.senate.gov.ph/press\\_release/2007/1005\\_legarda2.asp](http://www.senate.gov.ph/press_release/2007/1005_legarda2.asp);  
[www.senate.gov.ph/press\\_release/2007/1012\\_legarda1.asp](http://www.senate.gov.ph/press_release/2007/1012_legarda1.asp)

<sup>17</sup> [www.minesandcommunities.org/article.php?a=8998](http://www.minesandcommunities.org/article.php?a=8998)

should only be taken once a thorough, transparent and independent investigation into its human and environmental impact had been carried out, with the full and informed participation of all local communities.

In February 2008, at the invitation of GCM Resources, OMCT staff met with the company's Sustainable Development Manager in Geneva to discuss the issues of concern. In early April 2008, OMCT learned that the Asian Development Bank had decided to suspend its support for the project. In a statement, the Bank said,

*We think it is premature to continue dialogue with the private sector under current circumstances. So, at this stage we are open to suggestions of the government of Bangladesh, civil society and other stakeholders and prepared to review our engagement in this project to ensure that all sensitivities, including concerns relating to safeguard issues, are fully considered.*<sup>18</sup>

In June 2008 it was announced that Barclays Bank had sold its shares in GCM Resources. The Royal Bank of Scotland followed suit in October of the same year.

This outcome was by no means the result of OMCT's actions alone: the decisions of these financial institutions bear testament to the potential of concerted civil society action to influence an issue with serious human rights implications and, ultimately, they suggest that the primacy of economic interests, while not easily challenged, is by no means absolute.

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<sup>18</sup> See <http://www.guardian.co.uk/business/2008/apr/06/mining.bangladesh>

## 5. Conclusion

This guide is produced in the conviction that the Action File format represents a new and significant tool in the human rights activist's toolbox. The principles laid down in this guide are drawn from the experience that OMCT has accrued in almost two decades of innovative activity in the area of the economic, social and cultural root causes of torture and other forms of violence. The Action File is, however, by no means a static formula. Rather it is intended to evolve and adapt in the light of new experience and new cases, and in this respect OMCT relies heavily on the support, knowledge and insight of its partner organisations, which are well placed to bring new observations and new experience from the field.

One aspect, however, remains constant: many of the cases discussed in this guide refer to economic initiatives established or supported by national governments, and OMCT's principal aim in employing Action Files to address such cases is not to challenge the right of states to pursue development goals or to make use of the resources within their territory, but rather to ensure that this is done in the full respect of human rights. This involves not only addressing immediate human rights violations, but also laying the foundation of sustainable change toward a more just and equitable world in which individuals and groups are no longer victimised because of their socio-economic status or cultural identity.

## Appendix: Example of an OMCT Action File

OMCT ACTION FILE (BGD 211207.ESCR)

### **BANGLADESH: RISK OF VIOLENT SUPPRESSION OF PUBLIC OPPOSITION TO THE PHULBARI COAL MINE PROJECT, DINAJPUR DISTRICT, BANGLADESH**

*Your action is called for to suspend the Phulbari Project until community concerns are met*

#### **OMCT is concerned that police and security forces may again employ violence to deal with public opposition to the Phulbari open-pit mining project**

The International Secretariat of the World Organisation Against Torture (OMCT), on the basis of reliable information received, expresses its concern that communities affected by the proposed Phulbari open-pit coal mine in the Dinajpur District of **Bangladesh**, have been neither adequately consulted nor fully informed regarding this significant project.<sup>19</sup> Estimates put the number of people affected by the mine at anything between 50,000 and 500,000, including a number of indigenous communities. Many of these affected will be forced to leave their homes and land.

A public demonstration against the mine in August 2006 saw at least five persons killed and fifty others injured by the police and personnel of the Bangladesh Rifles. OMCT expresses its serious concern that further violence, ill-treatment and even deaths may ensue if local communities again seek to give public expression to their opposition.

To prevent further human right violations, and having regard to the strong local opposition to the project, OMCT calls upon the **Government of the People's Republic of Bangladesh** to instigate a thorough independent investigation into the human and environmental impact of the Phulbari coal mine project, ensuring the full and informed participation of all local communities, to make the findings of this investigation available in a public report and to abide by the recommendations of this report. It also calls for the Government to lift the restrictions on public demonstrations imposed under emergency rule and take all necessary steps to prevent future episodes of violence by police and security forces against persons defending their human rights.

OMCT calls upon **Global Coal Management Resources Plc (GCM)** - the company in charge of the Phulbari project - to suspend its activities in this area until this investigation has been conducted and to abide by the recommendations resulting from this investigation. It also calls upon GMC to fully respect the land rights, resources and livelihoods of all local communities affected by any subsequent mining activity and provide fair and adequate compensation wherever appropriate.

Finally, OMCT calls upon **UBS, RAB Capital and Barclays**, all of which have significant financial interest in GCM, to use their influence to ensure that the company abides by the recommendations issuing from the independent investigation and to make certain that it complies fully with national laws and international human rights standards.

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<sup>19</sup> Thanks to BanglaPraxis for support in preparing this appeal.

### The Phulbari coal mine project

The Phulbari coal deposit, in the Dinajpur District of Bangladesh, was discovered during the second half of the 1990s by the Australian mining company BHP. In 1998, the Government of Bangladesh awarded the licensing agreement for mining the deposit to the Asia Energy Corporation (Bangladesh) Pty Ltd,<sup>20</sup> a wholly-owned subsidiary of British-registered Global Coal Management Resources Plc. (GCM). The Phulbari mine is expected to lead to a 1 per cent increase in the gross domestic product of Bangladesh over the next 30 years, bringing more than US\$ 21 billion to the Bangladeshi economy.<sup>21</sup> The Asian Development Bank is scheduled to approve a US\$100 million private sector loan and a US\$200 million political risk guarantee in favour of the Phulbari project on the basis of environmental and social impact studies included in a Definitive Feasibility Study carried out since April 2004.<sup>22</sup>

The Phulbari project is an open-pit mine.<sup>23</sup> In order to access the coal seams, it is reported that between 140 and 300 metres of earth will need to be removed, affecting an area of 59 km<sup>2</sup>. In terms of the human impact of the project, there are differing views. According to estimates from GCM, the mining company involved, the project will affect approximately 50,000 people (a total of some 12,000 households), including some 2,200 indigenous people. Of this total, some 43,000 will be displaced from their homes and land by the mine. This number will be higher if the full-scale expansion plans for the mine are carried out. On the other hand, according to the National Committee to Protect Oil, Gas, Mineral Resources, Electricity and Ports, the number of people potentially affected could be as many as 470,000, including indigenous peoples belonging to Santhal, Munda and Mahali tribes, who occupy some 100 villages in Phulbari and surrounding sub-districts.<sup>24</sup>

In terms of the impact upon community structures, it is reported that the project will involve the closure of 50 educational institutions, including six colleges and 18 *madrasas*,<sup>25</sup> as well as 171 mosques, 13 temples and other religious establishments.<sup>26</sup> The mine will also have a significant environmental impact due to the considerable waste material produced in the extraction process. This in turn will have serious implications for the livelihood and, potentially, the health of local communities: the area around Phulbari is one of the most productive agricultural zones in Bangladesh, and the project will not only destroy productive farmland, but also cause the diversion of the Choto Jamuna River from its natural course. According to Professor Anu Muhammad in the Faculty of Economics at Jahangirnagar University, Bangladesh, studies in other countries have shown that rivers as far as 160km away from an open-pit mine can remain polluted for three decades as a result of the waste generated. He concludes that, "in a country like Bangladesh, with hundreds of small rivers linked like a huge net, polluted water can travel long beyond the mining area."<sup>27</sup> Despite these concerns, on 11 September 2005, the Bangladeshi Department of Environment

<sup>20</sup> Asian Indigenous and Tribal Peoples Network, [http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#\\_ftnref4](http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref4)

<sup>21</sup> BBC News: *Bangladesh coal divides region*, <http://news.bbc.co.uk/2/hi/business/5080386.stm>

<sup>22</sup> See Asian Development Bank – Projects, <http://www.adb.org/Documents/PIDs/39933014.asp>

<sup>23</sup> Open-pit mines are also known as opencast mines. Both terms refer to the extraction of rocks or minerals by excavating earth to create pits rather than sinking shafts and digging tunnels.

<sup>24</sup> The Daily Star: *Rehabilitation issue makes it a tough task*, <http://www.thedailystar.net/2006/08/29/d6082901159.htm>

<sup>25</sup> the Arabic term for “schools”.

<sup>26</sup> The Daily Star: *Rehabilitation issue makes it a tough task*, <http://www.thedailystar.net/2006/08/29/d6082901159.htm>

<sup>27</sup> BBC News: *Bangladesh coal divides region*, <http://news.bbc.co.uk/2/hi/business/5080386.stm>

approved the Environmental Impact Assessment Report prepared by the Asia Energy Corporation and granted environmental clearance for the mining operation.<sup>28</sup>

In order to gain the consent for the project from local communities, Asia Energy reportedly distributed colour televisions, cash, cloths and blankets to affected populations.<sup>29</sup> Furthermore, Asia Energy also reportedly refused to be bound by the 1894 Land Acquisition Act which regulates land acquisition and/or expropriation by the Government, and demanded the adoption of special laws in order to avoid the obligation to obtain the free, prior and informed consent of the affected communities.<sup>30</sup>

On 31 August 2006, five days after large and violent demonstrations against the Phulbari project, the Junior Minister for Food and Relief declared that the Government had revoked all existing agreements with Asia Energy and that a moratorium had been imposed on all open-pit mining in Bangladesh. On the same day, Asia Energy declared that it had received no official communication to that effect, and that the position of the Government remained to be clarified.<sup>31</sup> In practice, coal mining remains an important element in Bangladesh's development strategy: on 17 November 2007, the Coal Policy Review Committee adopted a proposal encouraging partnerships between the Government and foreign firms engaged in mining in order to promote investment in and develop of the coal sector. The Committee also suggested strengthening the existing Bureau of Mineral Development so that it could deal more efficiently with foreign companies in leasing transactions and indicated its intention to establish coal-based power plants in rural areas.<sup>32</sup>

### **Local resistance to the project and violence against protesters**

*“What will happen to us if we are forced to move from here? What will happen to our livelihoods? I don't want us to live like this. Our mosques and holy places and the places we were born will be destroyed. What will happen to the graveyards of our ancestors?”*

75-year-old man, resident of Phulbari sub-district<sup>33</sup>

Resistance to the proposed Phulbari project is widespread in the areas. On 26 August 2006, an estimated 50 to 100,000 demonstrators, mainly farmers and indigenous people, protested against the project.<sup>34</sup> At least five demonstrators were killed and about fifty others reportedly injured and taken to hospital after the police and the Bangladesh Rifles (BDR) opened fire on demonstrators.<sup>35</sup> The exact death toll as a result of the shooting remains unclear, and may be

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<sup>28</sup> Asian Indigenous and Tribal Peoples Network, [http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#\\_ftnref4](http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref4)

<sup>29</sup> The Daily Star: *Cancellation of Phulbari Coal Project demanded*, <http://www.thedailystar.net/2006/08/24/d608241004111.htm>

<sup>30</sup> Asian Indigenous and Tribal Peoples Network, [http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#\\_ftnref6](http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref6)

<sup>31</sup> Asian Indigenous and Tribal Peoples Network, [http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#\\_ftnref4](http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref4)

<sup>32</sup> *Government Prime Role Recommended in Coal Mining*: <http://phulbariresistance.blogspot.com/2007/11/govts-prime-role-recommended-in-coal.html>

<sup>33</sup> BBC News: *Bangladesh coal divides region*, <http://news.bbc.co.uk/2/hi/business/5080386.stm>

<sup>34</sup> Bangladesh News - Phulbari Coalmine Killing, 28 August 2006, <http://www.bangladeshnews.com.bd/2006/08/28/phulbari-coalmine-killing-thousands-defy-ban-stage-protest/>

<sup>35</sup> The people were identified as: Tariqul Islam (24 years-old), Ahsan Habib (35), Osman (24), Raju (8) and Chunnu. Asian Indigenous and Tribal Peoples Network, [http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#\\_ftnref4](http://www.aitpn.org/IRQ/vol-I/issues-2-3/story01.htm#_ftnref4)

as many as ten - it was reported that the BDR dumped some of the dead bodies.<sup>36</sup> Furthermore, the Bangladeshi *Daily Star* newspaper reported that, according to eye-witnesses, BDR personnel threatened Magistrate Abdul Aziz with a gun in order to make him sign the authorization to open fire on the protesters.<sup>37</sup> Neither the Government nor the Asia Energy Corporation have taken any responsibility for these events.

Under the Emergency Rule declared by Bangladesh's military government in January 2007, fundamental civil rights have been suspended and public protest banned.<sup>38</sup> These Emergency Rules effectively remove the possibility of the populations affected by the Phulbari mine engaging in peaceful protest, and OMCT expresses its strong concern that, should such protest nevertheless take place, they will be met with further and possibly more extreme violence on the part of the police and security forces.

Despite the violent suppression of public protest, resistance to the project remains high. On 15 December 2007, representatives of the sub-districts of Phulbari and neighbouring Birampur, Nababganj and Parbatipur wrote to the president and executive Directors of the Asian Development Bank expressing their concern that the project will, "increase the poverty of the local population as well as cause environmental disaster".<sup>39</sup> In this letter they claim that the social impact analysis carried out misrepresented the nature of public consultations around the project and that consultations emphasised the potential benefits of the project while failing to provide information on the negative impact. Furthermore, the community representatives express concern that only minimal information was provided in Bengali regarding the environmental impact of the project and that, to their knowledge, the environmental impact assessment has been neither translated nor summarised in the local language. They also underline that other media must be employed to communicate with a population of which approximately 60 per cent is illiterate. Additionally, they express serious concerns that land compensation and resettlement plans are insufficient to meet the losses likely to be incurred by local populations as a result of the mine, and that Asia Energy/GMC's claim that 50,000 persons will be directly affected (and hence entitled to compensation) is a significant underestimation.

### **Economic Social and Cultural Rights**

Bangladesh acceded to the International Covenant on Economic, Social and Cultural Rights on 5 October 1998, and consequently the Government of Bangladesh has the duty to ensure the protection, promotion and enjoyment of these rights for all its citizens. The Phulbari mine project jeopardises the human rights of thousands of people due to the mass evictions and destruction of agricultural land it will require and to the pollution that will result from the extraction activities. In particular, OMCT is concerned that the mine will seriously compromise the rights to health and to an adequate standard of living (including access to housing, land, adequate food and clean water) of those affected.<sup>40</sup>

<sup>36</sup>Bangladesh News: *Phulbari Coalmine Killing*, 28 August 2006

<http://www.bangladeshnews.com.bd/2006/08/28/phulbari-coalmine-killing-thousands-defy-ban-stage-protest/>

<sup>37</sup>The Daily Star: *Magistrate forced to give firing order*,

<http://www.thedailystar.net/2006/08/30/d6083001107.htm>

<sup>38</sup><http://jurist.law.pitt.edu/paperchase/2007/01/bangladesh-media-restrictions-under.php>

<sup>39</sup> see "Phulbari communities write to ADB President and Executive Directors",

<http://banglapraxis.wordpress.com/2007/12/19/phulbari-communities-write-to-adb-president-and-executive-directors/>

<sup>40</sup> *The Basic Principles and Guidelines on Development-based Evictions and Displacement* prepared by the Special Rapporteur on adequate housing clearly define forced evictions as a violation of human rights, *Basic principles and guidelines on development-based evictions and displacement*, A/HRC/4/18 5 February 2007

OMCT also wishes to underline the comments of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, who has expressed his concerns that the resources of indigenous communities are being appropriated and utilised, without prior consent, by powerful economic consortia, and that this, “is currently one of the most controversial issues involving indigenous people, the State, and private enterprises, and often also the international financial institutions.”<sup>41</sup> In addition, the recent UN Declaration on Indigenous Peoples' Rights states that, “indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”<sup>42</sup>

### **The role of financial investors**

According to the information received, UBS, RAB Capital and Barclays financial institutions all have an interest in GCM, the sole owner of the Asia Energy Corporation and the Phulbari Coal Project. In particular, UBS is the second largest listed shareholder, owning 11.39% of GCM.<sup>43</sup>

OMCT regrets the lack of transparency demonstrated by UBS in responding to civil society queries regarding its involvement in the Phulbari project. In response to questions on its position, the Bank denied that it had any strategic interest in the company and, noting that, “it does not comment on potential or specific client relations or transactions or its investments in any particular company”, indicated that its purchase of GCM shares, “may or may not” have been carried out on behalf of a third party or parties.<sup>44</sup> OMCT calls upon UBS, as a leading financial institution operating in the global market, to lead by example in establishing a more transparent system of accountability, assessing the human rights and environmental impact of potential investments and assuming responsibility for investments in activities that breach international law and violate human rights.

### **Requested actions**

*Please write to the **Government of Bangladesh** asking it to:*

- Instigate a thorough independent investigation into the human and environmental impact of the Phulbari coal mine project, ensuring the full and informed participation of all local communities. Make the findings of this investigation available in a public report (including appropriate language versions) and abide by the recommendations of this report. Request assistance from the UN Office of the High Commissioner for Human Rights to help ensure that the investigation is in conformity with international standards.
- Impose a moratorium on any other open-pit mining in Bangladesh, as initially announced on 31 August 2006, until the full impact on human rights and the environment of this activity has been assessed.
- Fully respect international human rights standards in any subsequent mining activity at Phulbari or elsewhere. This includes engaging in meaningful prior consultation with affected populations, ensuring that they are fully informed of the project

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<sup>41</sup> A/HRC/4/32, 27 February 2007

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/110/99/PDF/G0711099.pdf?OpenElement>

<sup>42</sup> UN Declaration on the Rights of Indigenous Peoples - Article 10,

<http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

<sup>43</sup> as of 15 November, 2007

<sup>44</sup> see <http://www.banktrack.org/index.php?show=news&id=138>

proposals and their own rights in this regard, and providing fair and adequate compensation for loss of land, housing or livelihood where displacement is unavoidable. Ensure in all such cases an adequate and appropriate resettlement programme.

- Ensure that the proposed coal policy review strictly adheres to international human rights standards and to international principles relating to forced evictions and indigenous peoples.
- Lift the restrictions on public demonstrations imposed under emergency rule and take all necessary steps to prevent future episodes of violence by police and security forces against persons defending their human rights.

*Please write to **Global Coal Management Resources Plc** asking it to:*

- Suspend activities in Phulbari until a thorough, independent and fully-consultative investigation into the proposed project's human and environmental impact has been conducted and abide by the recommendations resulting from this investigation.
- Fully respect the land rights, resources and livelihood of all local communities affected by any subsequent mining activity, and provide fair and adequate compensation wherever appropriate.
- Take all necessary measures to minimise the environmental impact of mining activities and avoid the pollution of water courses.
- Comply fully with national laws and international human rights standards in all aspects of its activities, in particular as regards the adverse effects of these activities on indigenous and local communities. Only carry out operations subsequent to a full human rights impact assessment, and having fulfilled, *inter alia*, the legal requirement to engage in meaningful prior consultation with persons affected.

*Please write to **UBS, RAB Capital and Barclays** asking them to:*

- Call for a thorough independent investigation into the human and environmental impact of the Phulbari coal mine project with the meaningful input of local communities.
- Use their financial influence in Global Coal Management Resources Plc. to ensure that the company abides by the recommendations issuing from the independent investigation and to make certain that it complies fully with national laws and international human rights standards.
- Carefully evaluate the impact of their current investments on the enjoyment of human rights around the world, and include a clear human rights impact assessment in future investment decisions.
- Promote greater transparency in their financial transactions.

*Please write to the **Asian Development Bank** asking it to:*

- Recognise the discontent of the majority of the local population at the manner in which the preparatory phases of the Phulbari project have been conducted and insist on the production of a comprehensive human rights and environmental impact study with the full and informed participation of all local communities as a fundamental condition for financial support. Continue to monitor the human rights situation in Phulbari and surrounding sub-districts should the project be approved.

OMCT also asks the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people, the UN Special Representative on the issue of human rights and

transnational corporations and other business enterprises, and the UN Special Rapporteur on adequate housing to monitor closely developments as regards the Phulbari coal mine project.

### **List of addresses**

#### *Government of Bangladesh and other Bangladeshi institutions*

Cabinet of the Government of the Peoples' Republic of Bangladesh, Cabinet Division, Building No. 1, Room No. 301, Bangladesh Secretariat, Dhaka-1000, Bangladesh.

Tel.: +88 02 7162099

Fax: +88 02 7160656

Dr. Fakhruddin Ahmed, Chief Adviser Government of the People's Republic of Bangladesh, Office of the Chief Advisor, Tejgaon, Dhaka, Bangladesh.

Tel: +88 02 8828160-79, 9888677

Fax: +88 02 8113244 or 3243 or 1015 or 1490

Barrister Moinul Hossain, Adviser, Ministry of Law, Justice & Parliamentary Affairs, Bangladesh Secretariat, Dhaka-1000, Bangladesh.

Tel.: +88 02 7160627

Fax: +88 02 7168557

Mr. Mohammad Ruhul Amin, Chief Justice, Supreme Court of Bangladesh, Supreme Court Building, Ramna, Dhaka-1000, Bangladesh.

Fax: +88 02 9565058

Barrister Fida M Kamal, Attorney General of Bangladesh, Office of the Attorney General Supreme Court Building, Ramna, Dhaka-1000, Bangladesh.

Tel: +88 02 9562868

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Mr. Nur Mohammad, Inspector General of Police (IGP), Bangladesh Police, Police Headquarters Fulbaria, Dhaka-1000, Bangladesh.

Permanent Mission of the People's Republic of Bangladesh to the United Nations in Geneva, 65 rue de Lausanne, 1202 Geneva, Switzerland.

Fax: +41 22 738 46 16,

E-mail: [mission.bangladesh@ties.itu.int](mailto:mission.bangladesh@ties.itu.int)

Embassy of the People's Republic of Bangladesh in Brussels, 29-31 rue J. Jordaens, 1000 Brussels, Belgium,

Fax: +32 2 646 59 98;

E-mail: [bdootbrussels@freegates.be](mailto:bdootbrussels@freegates.be)

Please also write to the Bangladeshi Embassy in your country.

#### *The Mining Company*

Global Coal Management (GMC) Resources Plc, 2nd Floor, Foxglove House, 166-168 Piccadilly, London, W1J 9EF, United Kingdom.

Tel.: +44 (0)20 7290 1630  
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E-mail: [info@gcmlc.com](mailto:info@gcmlc.com)

*Financial Interests*

Mr. Marcel Ospel, Chairman, UBS AG, Bahnhofstrasse 45, 8001 Zürich, Switzerland.

RAB Capital, 1 Adam Street, London, WC2N 6LE, United Kingdom.  
Tel: 0870 702 0000  
Fax: 0870 703 6101

Barclays, 1 Churchill Place, London, E14 5HP, United Kingdom.

*The Asian Development Bank*

The President and Executive Directors, Asian Development Bank, P.O. Box 789, 0980 Manila, Philippines.  
Tel.: + 632 632 4444  
Fax: + 632 636 2444  
E-mail: [information@adb.org](mailto:information@adb.org)

**Information on action taken and follow-up**

OMCT would appreciate receiving information on any action taken in relation to the matters dealt with in this Action File so that it might be shared with OMCT's network and others interested in this issue. Please quote the code of this appeal on the cover page in contacting us.

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Geneva, 21 December, 2007

**World Organisation Against Torture**

P.O. Box 21 - 1211 Geneva 8  
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