

ISERP: “SOCIAL & ECONOMIC RIGHTS LITIGATION – THE NEXT GENERATION”

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HUMAN RIGHTS, ECONOMIC DEVELOPMENT, MEGA PROJECTS AND THEIR IMPACTS

This panel was co convened by Dr. Namita Wahi, Fellow, Centre for Policy Research and Director of the Land Rights Initiative, and Ms. Komala Ramachandra, South Asia Director of Accountability Counsel. The panel also featured presentations by Mr R. Sreedhar, Chairperson of Mines, Minerals and People (mm&P) and Managing Trustee of the Environics Trust, and Dr. Natalia Angelo Cabo, Professor of Law, University of Los Andes, Bogota.

Mr. Sreedhar opened the panel and spoke about the direct relationship between resource extraction and human rights violations in India. In this regard, he remarked that the most critical challenge faced by India is to meet the requirements of food, energy and shelter at adequate levels without destruction of land, biomass and water, which in turn are the foundation for generating resources for economic development. He however added that though progressive laws are being framed in India to deal effectively with the current era of globalisation, privatisation and the rapid transformation of the economy, they are not strong enough to serve as barriers against capital intensive projects of dam construction, mining etc. Mr. Sreedhar expressed his concern regarding waiver of large sums of money owed by private industry for environment violations, and huge concessions being given to large corporations as ‘incentives’ for conducting

mining operations. He explained how rapid and indiscriminate mining was a growing trend in India, which was severely violating human rights and depleting the eco-system. Here again, to explain the direct correlation between human rights violations and depletion of the eco-system, Mr. Sreedhar cited the overlapping areas in India that were climactically vulnerable and also facing great impoverishment. In conclusion, he stated that while the current Indian model of development was economically lucrative for industry, it was impoverishing a large section of society and that this scenario warrants public and legal action.

The next panelist, Dr. Namita Wahi, spoke about the need for regulatory norms in carrying out of environmental and social impact assessments when the government lends to infrastructure projects. Dr. Wahi remarked that the industrial lobby has strongly opposed the progressive move of the legislature in the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, that includes requirements for consultation, compensation and social impact assessment of projects, by claiming that it is unworkable. This in turn, she explained, has influenced the current government to amend the law, to the extent of exempting a vast majority of infrastructure and other projects from the ‘consent’ and ‘social impact assessment’ provisions of the 2013 Act.

Dr. Wahi stated that in the light of this situation, there was a need for devising alternative ways by which industry could be incentivised or penalised to conduct social and environmental impact assessments. Accordingly, she decided to look into the role of financial institutions and the use of large amounts of public money in infrastructure and mining projects. Dr. Wahi found that Indian banks do not comply with any international standards (for instance, the Equator Principles followed by western private sector banks) pertaining to environment and social impact assessments and observance of due diligence norms. Only some multilateral financial institutions like the World Bank and Asian Development Bank have some form of environmental monitoring which is inconsistent, if not deficient. She attributed such laxity in India largely to the political economy of land deals, which enables investors to slip through the cracks by extra-legal means. She also mentioned that the Land Rights Initiative has filed an RTI with the RBI requesting details of compliance by the largest public sector banks, following the Supreme Court’s direction in December 2015 to the RBI to disclose information regarding loan details of large financial institutions.

Another legal perspective on the issue, but related to the role of courts was offered by the next panelist, Dr. Natalia Angelo Cabo. Dr. Cabo talked about a Colombian Constitutional Court case on ‘waste pickers’ in the intermediate city of Calle, broadly tracing its development from the stage of inception

until its outcome. However, she focused her remarks on the deficiencies that emerged during the court hearing of this case. This case involved the shutting down of a dump in the city of Calle as it had been contaminating a river in the city for many years. The dump was to be shut for ten years but the action caused the displacement of 10,000 families living in the vicinity. While the affected families themselves claimed only compensation, activists revealed that this case involved complex issues beyond that of displacement and compensation. Citing Rob Nixon, Dr. Cabo noted that this case was one of 'slow displacement', hindering the waste pickers' access to garbage, which was not only their sole source of income, but more importantly a very profitable business in general. She went on to explain how this particular case, though similar to two previous cases (on health and displacement, respectively) revealed how judicial dialogue and experimentalism can play out very differently even within the same local (Colombian) context. This is because in the *waste pickers' case*, the experimental techniques used in the previous structural cases, did not yield a solution. Two additional factors contributed to the Court's indecision in this case. The first factor, she discussed, was the general pattern that Colombian cities want to follow of becoming 'global cities' to attract more economic investment. One prerequisite of being a global city is cleanliness and modernity, which in this case went against the cause of the waste pickers, she explained. Secondly, she talked about the role played by the very influential *Fundacion Carvajal*- A "Foundation" that claims to provide assistance to the waste pickers to bring them out of poverty, but on the other hand, refuses to acknowledge these waste pickers as entrepreneurs, as it has high stakes of its own in the waste picking business. Dr. Cabo ended by expressing her concern about the failure of the Colombian Constitutional Court in providing a fair platform for public hearing to the petitioners, not only due to its own inefficiency, but also due to the influence of other ancillary, game-changing factors on the court.

The panel discussion was concluded by Ms. Komala Ramachandra, whose organisation, *Accountability Counsel*, works with supporting communities around the world whose human rights have been violated by internationally financed development projects. Ms. Ramachandra began by describing the functioning of multilateral financial institutions like the World Bank. Talking about the birth of such financial institutions, she explained that they were created to serve as antidotes to communism, which is why they represent the clear agenda of privatisation, but that instead what flowed was their reluctance towards acknowledging their human rights obligations. She noted that while institutions like the World Bank possess a clear mandate for inclusive development, there have been objections to how this mandate has been implemented by them. In this regard, she gave examples of how the IFC has over a period of time invested in massive commercial projects under the garb of development, by claiming that these projects have helped generate employment. She also spoke about how civil society has played a critical role in attempting to ensure accountability of these institutions with respect to their human rights obligations and how activists who have objected to World Bank projects have suffered a backlash (Human Rights Watch Report, 2015).

Ms. Ramachandra then spoke about a recent development that has taken place in the form of coming together of various developing countries with the aim of creating a 'multi-polar' system as a challenge to western dominance, something that has been perceived widely as an anti-colonial project. This development is largely a reaction to the fact that vast financial resources are concentrated in the western world. As a result, the concept of a 'New Development Bank', the "BRICS bank" has emerged that aims at 'south-south' co-operation and privilege. Ms. Ramachandra, however described this as a reactionary development that was bound to lead to perverse consequences. She referred to a statement the BRICS countries made at the UN Human Rights Commission which emphasised the need for 'development' to help realise human rights. This idea of treating development as a prerequisite to human rights, she expressed, is a *façade* for a more private sector driven form of development. In conclusion, Ms. Ramachandra admitted that the fate of human rights at this point is bleak owing to this changing development paradigm, but at the same time noted the potential of civil society in challenging the current notions of economic development.

In conclusion, the panelists presented a rich, multidisciplinary discourse regarding the impacts of development oriented mega projects on the lives and livelihoods of the poorest and most marginalised communities. In discussing different dimensions of the impact of economic development on social and economic rights of livelihood and the environment, the panelists sounded a cautionary note on the potential of SER recognition and enforcement in uplifting the poor, when pitched against hegemonic global narratives of economic development in developing countries like India and Colombia.