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**Opening Plenary:
Human Rights, the Environment, and the Private Sector**

Tuesday, January 25, 2011, 9:30am – 12:00pm

Facilitator:

Amy Shannon, Program Officer, Charles Stewart Mott Foundation



Panelists:

Nnimmo Bassey, Executive Director, Environmental Rights Action; Advisor, Global Greengrants Fund

Theodoros Chronopoulos, Programme Director of Social Justice, The Sigrid Rausing Trust

Katherine Gilje, Executive Director, Pesticide Action Network – North America

Lewis Gordon, Director, Environmental Defender Law Center

Meg Taylor, Ombudsperson, International Finance Corporation

Sponsors:

Lawson Valentine Foundation; Global Greengrants Fund; Environmental Grantmakers Association;
Charles Stewart Mott Foundation

This session aimed to deepen understanding of the shared responsibility of funders pertaining to the intersection of the environment and human rights.

Gordon Lewis highlighted a few key challenges to ensuring the responsibility of private sector actors:



- Human rights law focuses on the relationship between states and citizens, neglecting to address private sector actors. The Special Rapporteur on business and human rights, John Ruggie, is working to change that by proposing a three pillar framework that includes: (1) the duty of governments to protect citizens from human rights violations, (2) the duty of private sector actors to respect human rights, and (3) the obligation to provide adequate remedy to victims of violations.
- Lack of judicial remedies outside of national law and courts;
- Lack of a clear legal duty for private actors;
- The frequently close relationship between private actors and host governments.

Meg Taylor contended that international financial institutions have a responsibility to demonstrate leadership on these issues.



Sixty two percent of the claims filed to her office at the International Finance Corporation (IFC) use human rights language, even though the IFC does not have a human rights mandate. While the IFC will incorporate some human rights language based on their current review of performance standards, they will not adopt a separate human rights framework.

Lewis pointed out that one sign of the inadequacy of redress opportunities for victims is the mounting violence surrounding resource conflicts. In these situations local community voices are largely ignored and there are only a few opportunities available for communities:

- Regional human rights bodies. Communities can argue that their governments are not honoring their duty to protect citizens from harm by a third party. The challenges with this route are that these processes are slow and that even if a favorable decision is awarded by the body, the government may not respect that ruling.
- Organization for Economic Co-operation and Development (OECD) process. This can only result in recommendations, as the OECD has no power to make binding decisions.
- Political and organizing advocacy work, i.e. holding local votes on proposed projects.
- Lawsuits in national courts or within the home country of the parent corporation.
- Criminal prosecution, which has been used mostly in Europe.

Taylor added that all IFIs have recourse mechanisms. She further explained the importance of following the money. While it is often apparent which corporation is committing human rights violations, the line of business behind those corporations is less visible. There is a real need for funders to focus on financial intermediaries. Out of the cases for which she has provided mediation and supported dialogue processes with, only one involved a financial intermediary. One initiative related to this is the Equator Principles, a financial industry standard for managing social and environmental risk in project financing.

Lewis shared a number of opportunities for funders and activists to address private sector violations:

- Bring violations to light, as many corporate violations occur without notice. He believes that there would be increased opposition if people had access to information.
- Increase use of national court systems, including suing corporations more often. Each case filed helps set a duty of care for corporations. One successful example was the Trafagero case, where a European company shipped toxic waste to the Ivory Coast and a tort case brought in England, resulting in a substantial settlement.
- Bring cases to local courts and help develop local legal capacity.

Taylor problematized the legal approach by raising challenges faced by local communities without legal resources or opportunities. Sixty-two percent of the complaints she receives come directly from local communities and as such, she recommends that funders focus on strengthening civil society in countries where large amounts of private sector money exist. She has also found that communities are often concerned with what benefits they will receive, such as job training, schools, hospitals, infrastructure, and that these concerns should be raised at the beginning of negotiations with corporations.

In response to a question from the audience, Lewis explained that while community referenda votes are not binding, they are one tool available. They can be used to debunk corporate propaganda that the project enjoys widespread community support, can be used to make the case to local government and as a way in which community members can have a voice in the process. Where referenda have been held, ninety to ninety-five percent have voted against projects. He recommends that communities try everything, as there is no silver bullet.

Taylor has focused mostly on non-judicial remedies, which she believes are more accessible to local communities and provide the greatest opportunity for real change on the ground.

Question & Answer:

An audience member shared that there is an organized network of foundations that use their shareholder proxies to vote to make change within corporations. Other participants agreed that foundations need to consider where their own assets are invested.

Questions from the audience included:

- What about corporate money and its influence in political processes?
- What about international agreements that protect corporate privacy and interests, do these supersede national protections?
- How can we as funders be more effective with our grantmaking to broaden range of options and make these more effective and make systemic change?

Lewis: How do we confront the reality that corporate power has grown enormously, how can it be reigned in? We need to raise awareness about corporate violations and support legal work and systems at all levels. We should use what we currently have at our disposal via a trial and error process.

Taylor: What do you do with a central government who has decentralized power through local governments and supports the expansion of corporate power and reach?

- Do not ignore local government. Ensure that local government authorities are involved in any processes as observers so that they do not feel dismissed.
- Non judicial remedies can be very effective. Courts are always an option but in many countries going through the court system is expensive and laborious. Additionally, if Ruggie proposes a global judicial mechanism, who is going to sign on? The United States will not even sign onto the ICC, and if there is going to be a global judicial mechanism, it must apply to all.
- A role for foundations is to think through what the incentives are for NGOs to find a resolution to the problem, as I have found that sometimes NGOs are prolonging resolution out of their own interest.

Bassey shared that he has seen that many of the human rights issues he has worked with have environmental roots.



Community petitions may ask for benefits from corporations, but many of these demands are not based on full knowledge, but a mindset that corporations cannot be effectively challenged. Communities need to understand the impact of 'development' in all aspects before demands can be scrutinized and adopted.

Gilje outlined the work of the Pesticide Action Network, which began thirty years ago as a human rights environmental movement where activists from 22 countries came together out of concern of global reliance on pesticides.



PAN now includes 600 organizations in 90 countries and focuses on ending reliance on pesticides, food sovereignty, and reduced corporate control over food. She highlighted relevant human rights issues, including:

- Contamination without consent (right to health, healthy environment);
- The way pesticides are a lynchpin of agriculture controlled by corporations;
- Right to favorable working conditions;
- Right to food (many of the hungriest in the world work within the food system).

Chronopoulos shared that The Sigrid Rausing Trust's entry point to these issues is to check the power of governments and companies.



They are funding organizations that focus on building corporate accountability case by case, at the local, national and regional levels.

Bassey continued to explain the merits of utilizing a small grants strategy in providing groups resources to use both judicial and non judicial methods. Another critical role funders can play is providing support for groups working on similar issues to organize meetings and cultural exchange to learn from one another's strategies and successes.

Gilje pointed out that there are 2.5 – 3 million farm workers and 2 million farmers in the U.S., with over 50% of farm workers undocumented. Even those that are documented do not enjoy basic labor protections, i.e. they can be fired for organizing. Lack of enforcement of labor laws has devastating effects on farm workers and families. There are no easy ways to report pesticide exposure and wage and hour violations happen frequently. This is compounded by a lack of access to political structures and pervasive structural racism. We are currently witnessing the corporate capture of the policy regulatory system and food system. She recommends working toward policy change, grassroots organizing and movement building. There are so many opportunities within the global supply chain for influence, public shame and media advocacy.

Levers for Grantmakers

- Empower communities and local civil society
- Localize litigation
- Pressure supply chains
- Use both judicial and non judicial mechanisms, i.e. dispute resolution via IFIs, public campaigns
- Research how big companies get finance to do projects. There is an increase in the use of new funders, such as hedge funds and intermediary funders. This serves to outsource compliance and raises the question of who is doing due diligence.
- Support climate justice work
- Support community organizing and education with small grants.
- Support the translation of company voluntary principles into legislation.
- Reflect on which direction U.S. philanthropy is pushing agriculture around the world
- Invest resources into educating funders on the political economy and how what we consume produces human rights violations. Capitalism has changed; we need to better understand how money circulates and how decisions regarding trade and investment negotiated in secret.
- Build capacity at local level where there is potential for conflict and support orgs going to work on following the money and financial intermediaries