



2012 Annual Report



EARTHRIGHTS INTERNATIONAL

Our Mission

EarthRights International (ERI) is a non-governmental, nonprofit organization that combines the power of law and the power of people in defense of earth rights.

We specialize in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and community leaders, and advocacy campaigns. Through cutting edge strategies, ERI seeks to end earth rights abuses, to provide real solutions for real people, and to promote and protect human rights and the environment in the communities where we work.



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Letter from the Directors

Dear Friends,

We entered 2012 amidst news of a historic transformation in Myanmar (Burma) on one side of the world; on the other, the U.S. Supreme Court stood poised to hear a case that would shape the future of international human rights litigation in the United States. The stakes could not have been higher for our small organization, founded with the dual goals of defending earth rights in Myanmar while using law as a tool for promoting global justice and corporate accountability.

Since we founded the first EarthRights School in 1998, training emerging leaders from Myanmar, we have wondered when our students would be able to openly put their knowledge into practice. Now, as the Myanmar military gradually loosens its controls on the media and the public, our students and alumni are finding new opportunities for advocacy that they have never had before. In 2012, for the first time, we could actually see civil

society sprouting from the seeds we helped plant, as our alumni emerged from underground and conducted ground breaking advocacy from within their country.

For our staff members from Myanmar, these long-awaited changes have had profound personal consequences. Our Executive Director, Ka Hsaw Wa, for instance, was able to return to his family home for the first time since he fled into exile in 1988.

There are still, of course, many urgent human rights and environmental issues in Myanmar, which we will continue to document and expose to the world. Foreign investments must be coupled with strong human rights and environmental protections, or Myanmar's most vulnerable populations and ecosystems will suffer horrible consequences in the name of development.

If we were surprised by the sudden changes in Myanmar, we were equally taken aback by the Supreme Court's decision to hear, and then re-hear,



a case that would put the future of our corporate accountability litigation in the balance. While *Kiobel v. Royal Dutch Petroleum (Shell)* was not one of our own cases, we campaigned relentlessly in support of the plaintiffs, hoping to help them find justice in both the court of law and the court of public opinion.

Unfortunately, in the spring of 2013, the Supreme Court (arguably the most pro-corporate Court in history) gave Shell a pass in the *Kiobel* case, ruling that Shell could not be sued for torture, killing and other crimes against humanity because the abuses had happened outside of the U.S.

The ultimate impact of the retrograde *Kiobel* ruling on other cases remains to be seen. However, like the changes in Myanmar, the *Kiobel* case reminds us that the landscape of our work is always shifting.

Opportunities to advance human rights and environmental protections will come and go, as will challenges large and small. But whatever the

external circumstances, the greatest possibilities will arise from a thriving civil society with strong networks of informed advocates.

So, as we have since our founding in 1995, we remain true to our mission to combine the power of law and the power of people in defense of human rights and the environment.

Together with our alumni and allies in the Mekong and Amazon regions and around the world, we continue to seize critical opportunities to mobilize and speak out, to influence decisions and decision makers, to demand justice, and to shift power ever so slightly from those in centers of power to those in the margins.

Thank you for being with us in this ongoing struggle for justice and accountability.

In Solidarity,

Ka Hsaw Wa, Marie, Chana, Katie





The abuse of the many for the benefit of a few
cannot continue to be a model for business.

EarthRights works to shift the balance of power in the global economy.



Grassroots to Global

Mekong, Southeast Asia

Since 2009, we have provided strategic and logistical support to the Mekong Legal Network (MLN), an independent network of legal practitioners working on regional human rights and environmental cases and campaigns. ERI hosted MLN's 5th meeting in June 2012, and through strategic partnerships provided support to the ongoing casework of MLN partners in Cambodia, Laos, Vietnam and Thailand.

We also reconvened our Mekong Legal Advocacy Institute (MLAI), an innovative two-week training program which brings together legal practitioners from all six Mekong countries to learn about international human rights and environmental issues and principles of public interest lawyering.

For the first time, in 2012, lawyers from within Myanmar (Burma) participated in both the MLN meetings and the MLAI training program, increasing the ability of Myanmar lawyers to work on trans-boundary cases.

Our capacity building work is bearing fruit. Our MLAI and EarthRights School alumni, along with our MLN partners and other allies, are bolstering the ranks of civil society in the Mekong region and creating new opportunities for advocacy.

For instance, in 2012, the National Human Rights Commission of Thailand (NHRCT) accepted jurisdiction to review a complaint regarding land grabbing at the Koh Kong sugar plantation in Cambodia, filed by our MLN allies at the Community Legal Education Center of Cambodia (CLEC). The NHRCT's preliminary findings were among its first statements on a trans-boundary case, and the case has since been cited by the UN Special Rapporteur on Human Rights in Cambodia as "a landmark case for international advocacy in Cambodia."

We also provided legal and strategic advice and support to the Save the Mekong Coalition on issues of public participation and regional institutional strengthening of hydropower governance.

The scramble for investment in Myanmar is moving forward without protections for people and their lands.

Our networks of EarthRights defenders are building measures for accountability and safeguards for human rights and the environment.



A vertical photograph on the left side of the page shows a person's hand gently touching a field of vibrant green grass. The background is a soft, out-of-focus blue, suggesting a sky or a body of water. The overall mood is peaceful and connected to nature.

Grassroots to Global

The Amazon

While we have been working in the Amazon for over a decade, it has been just over a year since we opened our new office in Peru. Our Amazon team's accomplishments during this short time are inspiring.

In 2012, our staff made multiple trips to visit two indigenous Shipibo communities in the Ucayali region of Peru. These communities have experienced negative health and environmental impacts related to drilling by Maple Energy. We provided legal and strategic advice for their negotiations with the company and the government.

We conducted and supported trainings across the region, both on our own and in partnership with other organizations including Alianza Arkana, Peru Equidad, and the indigenous federation ORAU. These included trainings for judges, prosecutors, and lawyers, in the Amazon city of Pucallpa, as well as indigenous rights and prior consultation trainings in Ucayali.

In Pucallpa, Peru, at La Escuela Amazonica de Derechos Humanos, we provided curriculum design, logistical support, and classroom instruction. This school is run by alumni from the school we hosted in Ecuador from 2001 to 2005.

In Bolivia, we supported communities seeking to halt the construction of a mega-highway through the TIPNIS national park and indigenous reserve. In partnership with RAMA, a network of Amazonian lawyers, we assisted the leaders of the TIPNIS communities in presenting their case before the Inter-American Commission on Human Rights.

We also engaged in our first direct legal work in Peruvian courts, partnering with the Center for International Environmental Law (CIEL) to submit an amicus brief to the Constitutional Tribunal of Peru about the failure of the Peruvian government to consult with indigenous communities before granting a mining concession that threatens their environmental and human rights.

*EarthRights brings the power of
the law to the heart of the Amazon,
holding extractive industries
accountable for poisoning local
communities and their homelands.*





In the Courtroom: Pushing Back on Corporate Power

In May 2012, we won a final decision in the appeal in our case against Occidental Petroleum (Oxy) for its contamination of indigenous communities in the Peruvian Amazon. The Ninth Circuit Court of Appeals denied Oxy's petition to review the decision that the case should be litigated in Los Angeles. We continued working with the Achuar communities along the Corrientes River in support of their legal case against Oxy, and opposed Oxy's efforts to have the U.S. Supreme Court overrule the Ninth Circuit.

To strengthen and protect extractive industry transparency legislation passed by Congress in 2010, we took two legal actions in 2012, both times on behalf of Oxfam America. First, we filed suit to force the Securities & Exchange Commission (SEC) to issue its long-delayed rules implementing the law, which requires revenue transparency by oil, gas, and mining companies. Then, after the SEC finally issued those regulations, we intervened again in order to defend the regulations against a legal challenge from the oil industry.

We filed suit to obtain documents from Chevron relating to its gas flaring in Nigeria, in order to assist with litigation in Nigerian courts conducted by our partners.

We defended Amazon Watch and a number of activists and advocates from harassment by Chevron, in a case where Chevron is trying to avoid paying a multi-billion-dollar judgment for contamination in Ecuador.

In our litigation against Union Carbide for environmental contamination in Bhopal, India, the same trial judge who had dismissed both cases several times before dismissed one of the two suits again in early 2012. We filed our appeal to the Second Circuit Court of Appeals in late 2012, putting the other case on hold.

Our class action lawsuit against Chiquita for funding paramilitary death squads in Colombia remains active, but was dormant during 2012 while awaiting the Supreme Court's ruling in *Kiobel v. Shell*.

Showdown at the Supreme Court

In 2012, the U.S. Supreme Court heard two cases with serious implications for human rights and corporate accountability.

The first case, *Mohamad v. Palestinian Authority*, concerned whether organizations (including corporations) could be sued under the Torture Victims Protection Act (TVPA). Unfortunately, *Mohamad* was dismissed, ending TVPA cases against corporations complicit in torture.

The second case, *Kiobel v. Royal Dutch Petroleum (Shell)*, involved allegations that human rights abuses in Nigeria were

aided and abetted by Shell. *Kiobel* went before the U.S. Supreme Court not just once in 2012, but twice. The first hearing asked whether the Alien Tort Statute could be used to sue corporations, but the Court asked for a re-hearing to decide a broader question: whether the ATS allows victims of human rights abuses to seek justice in U.S. courts when the abuses happened in other countries.

We filed amicus briefs in support of the plaintiffs in *Mohamad* and both rounds of *Kiobel*. We also collaborated with NGOs and US law scholars on their *Kiobel* briefs, organized the filing of briefs by international scholars, and conducted advocacy to dissuade foreign governments from intervening on Shell's behalf, which Australia and Germany declined to do.

Beyond the courtroom, our "Too Big To Punish?" campaign and media outreach drew significant public attention to the *Kiobel* case, culminating in a rally outside the U.S. Supreme Court during the October 1st rehearing.

Unfortunately, in April 2013, *Kiobel* was dismissed, although the implications for other ATS cases remain to be seen.



Building the Next Generation of Earth Rights Defenders

In its 12th year, our EarthRights School Myanmar graduated 14 students from all across Myanmar, following 9 months of intensive studies, field research, and report writing. The diverse group of graduates included 7 men and 7 women and came from 9 different ethnic groups.

Responding to the evolving political situation in Myanmar, and the influx of foreign investment, our teachers devoted extra time this year to free and fair elections, transitions to democracy, and civil society advocacy strategies for responsible development.

Our EarthRights School Mekong celebrated 12 new graduates, two from each country in the Mekong region – Myanmar, Cambodia, China, Laos, Thailand and Vietnam. These 6 women and

6 men came from 10 different ethnic groups and equally diverse professional backgrounds.

During the school year, our students traveled throughout Thailand to visit communities impacted by the Map Ta Phut industrial zone, the Pak Mun Dam, the Mae Moh lignite mine, and the planned dam at Kaeng Seu Ten.

In addition to our own dedicated teachers, our schools rely on the wisdom and generosity of guest instructors. In 2012, we welcomed guest teachers from NEED-Burma, Green Border Energy, Bank Information Center, the Asian Development Bank, Mekong Watch, International Rivers, Chulalongkorn University, Alternative ASEAN Network, and more than a dozen members of our program staff and alumni networks.

“I want to stand up for the poorest people to create a more beautiful world.”

- An EarthRights School student from Myanmar



A Growing Network - Alumni in Action

Since 1998, nearly 250 students have passed through our EarthRights Schools. Many have gone on to inspiring careers as civil society leaders, defending their communities' human and environmental rights at the local and international levels, often working in partnerships with their fellow alumni.

In 2012, our small grants program funded alumni projects addressing earth rights issues in their own communities. These grants provide critical resources to implement alumni activities:

In Myanmar, we funded human rights and environmental impact trainings for indigenous Karen youth on the Salween River near proposed dam projects, leadership and peace building workshops in conflict-ridden Shan State, and advocacy trainings for communities in the Irrawaddy Delta suffering from poorly conceived resettlement and compensation programs after Cyclone Nargis.

In Laos, our small grants financed public education about potential impacts of a proposed dam in southern Laos, as well as screenings of an alumni-produced documentary for local organizations, officials, and citizens of northern Laos.

In Vietnam, we supported alumni monitoring of an ADB-funded livelihoods program, a human rights and environmental movie club for children in Hanoi, and youth trainings on climate



change and development projects in the Mekong Delta.

Finally, in Thailand, we provided funding for campaign support to local activists in Northeastern Thailand concerned with a local nuclear power facility

In addition to our small grants program, we provide technical support and mentorship for campaigns and legal advocacy by our alumni and their organizations. In 2012, eight of our alumni from Cambodia, Myanmar, Thailand, Vietnam and China attended the ASEAN Youth Forum and ASEAN People's forum, where they advocated for the adoption of an environmental pillar within the ASEAN framework, as well as a stronger ASEAN Intergovernmental Commission on Human Rights (AICHR).

Demanding Justice & Accountability

In 2012, we played a critical role in influencing the United States' evolving policy on investments in Myanmar (Burma) as it relaxed its former investment and import bans. Our recommendations to the U.S. government about which restrictions should still apply and how to implement binding reporting requirements for new investment promise to increase human rights accountability for U.S. companies doing business in Myanmar.

We also pursued two complaints under the OECD Guidelines for Multinational Enterprises in 2012. The first was filed in Canada against Barrick, arising out of abuses associated with a mine in Papua New Guinea. We are legal advisers to MiningWatch Canada, and helped prepare for an initial mediation session in Australia.

With our Cambodian partners, we filed a complaint with the U.S. National Contact Point for the OECD, alleging that an American sugar company was in violation of the OECD Guidelines for Multinational Enterprises by purchasing sugar

from the Koh Kong plantation, a project with known involvement in land grabbing and other rights abuses. This pressure, along with other legal and advocacy strategies, forced companies involved in the supply chain to start negotiating with the community, a preliminary but meaningful step in a case that has been ongoing for over six years.

The ASEAN Human Rights Declaration, drafted in 2012, has some serious flaws, but one bright spot is the inclusion of “the right to a safe, clean and sustainable environment” – the direct result of our joint submission with the Sydney Center for International Law, University of Sydney.

In 2012, when the U.S. Chamber of Commerce sought to weaken the Foreign Corrupt Practices Act (FCPA), we worked with the International Corporate Accountability Roundtable and other civil society partners to push back. The Department of Justice and the Securities and Exchange Commission responded by issuing new guidance for businesses without weakening the FCPA.



Emerging Strategies in an Evolving Myanmar

For nearly two decades we've been conducting clandestine fact-finding in Myanmar (Burma) to ensure local voices are at the forefront of advocacy and legal actions outside of the country. As Myanmar's political climate evolves, we're increasingly able to work inside its borders, partnering with local groups and communities to address the social and environmental impacts of large-scale natural resource development projects.

In 2012, we focused on establishing partnerships with local advocates and capacity-building activities designed to enable

local groups to effectively address the torrent of investments and new stakeholders operating in Myanmar.

We hosted our first Myanmar Legal Advocacy Training, a two-week course for 28 lawyers from inside the country, focusing on human rights, environmental rights, and land rights in Myanmar. In this and other courses in 2012, we trained well over 100 lawyers, both inside and outside Myanmar. We also prioritized training campaigners in effective strategies to defend local community rights, including an intensive three-week advocacy training for civil society members.

Outside of Myanmar, we engaged with companies around human rights and environmental due diligence related to new investments in Myanmar, ensuring that companies are aware of and modify their investments to mitigate the risks and increase benefits to locally impacted communities. We continued to engage governments around the work to ensure that they were incorporating the voices of the people of Myanmar as they modified their Myanmar policies.

We also worked to integrate advocacy and legal strategies within the region and across borders to hold corporations accountable for the negative impacts of their investment in Myanmar.



Financial Statement

	Unrestricted	Temporarily Restricted	Total
Revenues and Other Support			
FOUNDATION CONTRIBUTIONS AND FEES	\$53,116	\$1,450,238	\$1,503,354
GIFTS FROM INDIVIDUALS	111,953	338,000	449,953
INTEREST AND DIVIDENDS	11,900	0	11,900
MISCELLANEOUS	8,083	0	8,083
Net Assets Released from Restrictions			
SATISFACTION OF PROGRAM RESTRICTIONS	1,731,401	(1,731,401)	0
Total Revenues and Other Support	1,916,453	56,837	1,973,290

EarthRights International (ERI) is a nonprofit organization that combines the power of law and the power of people in defense of human rights and the environment. ERI is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. This Statement of Activities is excerpted from ERI's audited financial statements, prepared by Gelman, Rosenberg & Freedman for the year ended January 31, 2013.

	Unrestricted	Temporarily Restricted	Total
Expenses			
Program Expenses			
Legal	\$714,761	\$0	\$714,761
Campaigns	180,006	0	180,006
EarthRights Schools	451,348	0	451,348
International Cross-Cutting	752,778	0	752,778
Management and General	159,911	0	159,911
Development	167,582	0	167,582
Total Expenses	2,426,386	0	2,426,386
Change in Net Assets	(509,933)	56,837	(453,096)
Net Assets, beginning of year	3,134,674	1,628,060	4,762,734
Net Assets, end of year	\$2,624,741	\$1,684,897	\$4,309,638



2012 EarthRights International Staff

Leadership

Ka Hsaw Wa
Executive Director

Chana Maung
Southeast Asia Office Director

Katie Redford
Director

Marie Soveroski
Managing Director

Southeast Asia Staff

Nang Aung
Administrative Associate

Bo Bo
*Program Associate, Myanmar
Alumni Program*

Eliza Costello
Training Coordinator, ERSMY

Paul Donowitz
Campaigns Director

Patrick Dowd
Training Coordinator, ERSMK

Maureen Kelly
Deputy Office Director

Daniel King
Southeast Asia Legal Director

Ross Dana Flynn
Web & IT Coordinator

Naing Htoo
*Acting Myanmar Campaigns
Director*

Jirawat
Suriyashotichyangkul
Thai Legal Associate

Sabrina Kathleen
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Raa Hoo Lar
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Myanmar Alumni Program*

Bobbie Sta. Maria
Mekong Legal Coordinator

Cecile Medail
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Myanmar*

Khin Nanda
Program Coordinator, ERSMY

Si Phoung
Training Coordinator, ERSMK

Rowan Rylie
Mekong Legal Fellow

Saiaew
*Mekong Alumni Program
Coordinator*

Prajak Srikhampa
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Tong Teng
*Administrative Associate,
ERSMY*

Nyein Tun
Training Associate, ERSMY

Zaw Zaw
Myanmar Program Associate

Amazon Staff

Benjamin Hoffman
Amazon Staff Attorney

Lily La Torre Lopez
Senior Amazon Counsel

Marissa Vahlsging
Amazon Legal Fellow

Ximena Warnaars
Amazon Program Coordinator

Washington, D.C. Staff

Michelle Harrison
U.S. Legal Fellow

Erin McCluskey
Administrative Assistant

Brenden Sloan
Development Associate

**Peggy Martinez,
Joan Harrison**
*Dukes & Graves Accounting
Services*

Richard Herz
Litigation Coordinator

Maggie Schuppert
Development Director

Mike Uehlein
*Strategic Communications
Coordinator*

Jonathan Kaufman
Staff Attorney

Marco Simons
Legal Director

Brad Weikel
Communications Director

We would also like to thank our interns, volunteers, and partners:

Oliver Gilbert, Vanessa Loucky, Paula Andrea Ramírez Diazgranados, Alison Birchall, Hope Kwiatkowski, Karl Ross, Khin Thet San, Dan James, Shay Bauchner, Lily Bruns, Oliver Gilbert, Laura Gibbs, Ellen Bryna Smith, Marra Guttenplan, Si Si, Naw Eh Mu, Pi Nok, Pi Seng, Dan James, Ray Jeng, Christina Browning, Catherine Coumans, Kristen Genovese, Marcos Orellana, Amanda Monaco, Jessica Alatorre, BJ Kim, Desmond Sweeney, Mark Ekepa, Jethro Tulin, Shishir Jani, Sara Blackwell, Emily Ponder, Matt Craig, Maia Levenson, Rachel Kincaid, Tawnie Guilizia, Tyler Gianinni, Patrick Naagbanton, Misty Seemans, Isabel Munilla, Ian Gary, Atossa Soltani, Paul Paz y Mino, Andrew Miller, Kevin Koenig, Mitch Anderson, Chamberlain Amadi, Peter Schurman, Daniel Lee, Emma Pullman, Peter Roquemore, Matt Grason, Monica Tulchinsky, Amol Mehra, Katie Shay.





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Attorney, Thompson & Associates

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Wiwa v. Shell

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*Schonbrun DeSimone Seplow Harris
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Hoffman, Arturo Carrillo, Judith Brown
Chomsky, John DeLeon, and
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Metsagharun v. Chevron

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